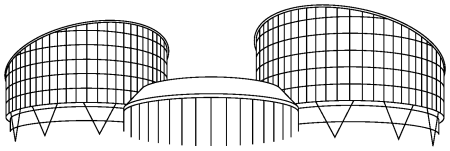

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF CEKIĆ v. SERBIA

(Application no. 19083/20)

JUDGMENT

Art 3 (substantive and procedural) • Positive obligations • Court unable to conclude based on the available material that the applicant contracted tuberculosis in prison, or that a concrete and proven risk of such infection was created by an omission attributable to the respondent State • Despite shortcomings in the preventive arrangements, there was no delay or deficiency in the medical response once the illness was suspected • Adequate and effective medical treatment • No situation of endemic or uncontrolled tuberculosis transmission at the relevant time • Adequate material conditions • Requisite threshold not attained • Shortcomings in civil proceedings did not prevent domestic courts from addressing substance of the applicant's allegations and insufficient to disclose a violation of Art 3

Prepared by the Registry. Does not bind the Court.

STRASBOURG

7 April 2026

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

In the case of Cekić v. Serbia,

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

Ioannis Ktistakis*, President*,
Lətif Hüseynov,
Darian Pavli,
Diana Kovatcheva,
Úna Ní Raifeartaigh,
Mateja Đurović,
Canòlic Mingorance Cairat*, judges*,
and Milan Blaško, *Section Registrar,*

Having regard to:

the application (no. 19083/20) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Serbian national, Mr Miloš Cekić ("the applicant"), on 7 April 2020;

the decision to give notice to the Serbian Government ("the Government") of the complaints concerning the alleged ill-treatment of the applicant and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 17 March 2026,

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

INTRODUCTION

1. The case concerns the conditions of the applicant's detention at Sremska Mitrovica Correctional Institution. It further relates to the applicant's alleged contraction of tuberculosis during his imprisonment and the adequacy of the medical treatment provided for that illness.

THE FACTS

2. The applicant was born in 1973 and is currently serving a prison sentence in Požarevac-Zabela Correctional Institution. He was represented by Ms S. Kovačević, a lawyer practising in Belgrade.

3. The Government were represented by their Agent, Ms Z. Jadrijević Mladar.

4. The facts of the case may be summarised as follows.

5. On 14 May 2008 the applicant started serving a prison sentence at Sremska Mitrovica Correctional Institution (hereinafter "Sremska Mitrovica Prison") after being convicted on three counts of robbery. Prior to that, he had been detained in Novi Sad District Prison for approximately 11 months. The applicant submitted that he had spent several years in various correctional facilities before that period, although there is no evidence for that in the case

file. On 2 December 2011 the applicant was transferred to Požarevac-Zabela Correctional Institution.

I. THE CONDITIONS OF THE APPLICANT'S DETENTION DURING SOLITARY CONFINEMENT AND ENHANCED SUPERVISION

6. The applicant submitted that he had spent 180 days under enhanced supervision during the months of February, March and July 2009, during which periods he had been held in a cell with three other prisoners, and that he had been held in solitary confinement for 15 days. Enhanced supervision is a special measure for the preservation of order and security in prison and solitary confinement is a disciplinary measure (see paragraphs 37 and 38 below). The applicant submitted that his cell during the periods of enhanced supervision had measured 15 sq. m and had been dirty and damp. The room used for solitary confinement had also been dirty and damp. He stated that he had been placed in the "enhanced supervision department" located in the fourth wing of the prison. He added that, although that department has since been relocated to the third wing, prisoners continued to be detained in that particular room for various reasons.

7. The Government submitted that the applicant had been subjected to the disciplinary measure of solitary confinement between 13 and 28 March 2009 and between 23 September and 8 October 2009. Prison doctors had certified that he had been in a suitable state of health to undergo that measure. He had been placed under the special measure of enhanced supervision between 18 February and 8 April 2009 (save for the period of solitary confinement) and again between 25 June and 23 September 2009. On all of these occasions, he had been held in the disciplinary department (*disciplinski deo – odeljenje*), which had been renovated in 2006. While in solitary confinement he had been accommodated in a room measuring 13.5 sq. m with a total volume of 29.7 cubic metres; while under enhanced supervision he had shared with one person a room measuring 16.5 sq. m with a total volume of 36.3 cubic metres. The rooms had been clean and orderly, benefited from natural light and ventilation, and each had been equipped with a toilet, a sink, beds, chairs, a table and a locker for clothes storage. During both solitary confinement and enhanced supervision the applicant had showered in a communal bathroom, had had two hours per day of out-of-cell time in the open air, and had been allowed to make telephone calls and to go to the prison canteen. That information had been provided in a report by the Directorate for the Execution of Criminal Sanctions (*Uprava za izvršenje krivičnih sankcija*) dated 1 April 2024.

II. THE APPLICANT'S MEDICAL CONDITION

8. On 15 May 2008, following his admission to Sremska Mitrovica Prison (see paragraph 5 above), the applicant underwent a medical examination. On that occasion he informed the doctors that he had hepatitis C and that he had used various drugs. He did not report to the prison doctor any symptoms commonly associated with tuberculosis, nor did he indicate that anyone close to him suffered from that disease. The applicant had regular meetings with a psychiatrist who prescribed him therapy for his drug-related problems.

9. Between 15 May 2008 and 17 October 2010 the applicant was examined 65 times by doctors working at Sremska Mitrovica Prison and a specialist in neuropsychiatry. There is no record that the applicant complained of any breathing problems at those examinations.

10. On 18 October 2010 the applicant saw a doctor at Sremska Mitrovica Prison in relation to a sore throat, runny nose and coughing. He was prescribed antibiotic therapy (Palitrex (Cefalexin)) and was advised to return for a follow-up examination if the symptoms worsened.

11. On 5 November 2010 the applicant underwent routine chest photofluorography, which revealed a visible change in the lung area raising a suspicion of tuberculosis infection. The applicant was isolated from other convicted persons to prevent spread of a possible infection.

12. On 9 November 2010 the applicant was admitted to the Special Prison Hospital (*Specijalna zatvorska bolnica* – hereinafter "the Prison Hospital") in Belgrade for further monitoring. According to the admission report, the applicant was not coughing and had no respiratory difficulties or any other symptoms of discomfort. On 13 December 2010 he was diagnosed with tuberculosis following bronchoscopy and microbiological testing.

13. The applicant was given antibiotic treatment against tuberculosis at the Prison Hospital from 15 December 2010 until 1 April 2011, when he was discharged from hospital and returned to Sremska Mitrovica Prison. Before being transferred, the applicant's sputum had tested negative for tuberculosis. His antibiotic treatment continued until 14 June 2011. The applicant tested negative for *Mycobacterium tuberculosis* bacteria on 11 July and 3 August 2011. He was left with residual scarring which does not impair his respiratory function. His health status has been subject to annual monitoring and the scarring is healing.

III. COURT PROCEEDINGS AT THE DOMESTIC LEVEL

A. Proceedings for preservation of evidence

14. On 21 April 2011, prior to lodging a compensation claim (see paragraph 17 below), the applicant submitted an application to the Sremska Mitrovica Court of First Instance aimed at securing evidence regarding the

conditions of his detention during the periods he spent in solitary confinement and enhanced supervision in 2009 (see paragraph 6 above). He requested that the domestic court order an on-site inspection and obtain an expert opinion from a construction specialist.

15. On 3 September 2012 the Sremska Mitrovica Court of First Instance dismissed his application. Referring to Article 269 of the Civil Procedure Act then in force (see paragraph 40 below), the court found no well-founded concern that the evidence in question might become unavailable or that its subsequent production would be significantly hindered. It held that the conditions of detention could be established through the testimony of other prisoners. As for the request to appoint a construction expert, the court considered that such an expert would not be competent to assess the conditions of detention.

16. The applicant lodged an appeal against that decision. On 25 December 2012 the Sremska Mitrovica Court of Second Instance dismissed that appeal and upheld the decision of the first-instance court. With regard to the applicant's assertion that the authorities might renovate the room in which he had been detained, the court considered that to be a speculative argument.

B. Civil proceedings

17. On 25 November 2011 the applicant brought a compensation claim against the Republic of Serbia. The applicant sought 4,000,000 Serbian dinars (RSD – approximately 39,000 euros (EUR)) in respect of non-pecuniary damage flowing from the fear suffered and a reduction in his ability to engage in daily activities related to his contracting of tuberculosis while detained in Sremska Mitrovica Prison. Specifically, he contended that he had been infected when he was held under enhanced supervision and solitary confinement, in conditions amounting to inhuman and degrading treatment, and that he had not been provided with adequate medical assistance. He described the cells in the manner summarised in paragraph 6 above. His complaints related to two periods of enhanced supervision, lasting 180 days in total, and to 15 days of solitary confinement.

18. On 1 November 2013 the applicant was heard before the Belgrade Court of First Instance no. 1 (hereinafter "the Belgrade Court of First Instance"). During that hearing the applicant submitted that he was seeking compensation for damage to his health. He alleged that he had been subjected to solitary confinement and enhanced supervision in Sremska Mitrovica Prison under conditions incompatible with human dignity. In particular, he claimed that the cells had been cold and damp, that while under enhanced supervision he had shared the cell with two other persons, and that use of that cell had subsequently been discontinued owing to its condition. He maintained that, as a result, he had experienced extreme physical weakness. Following consultations with prison medical staff he had been transferred to

the Prison Hospital, where he had undergone treatment for tuberculosis. While he stated that his health had improved after the treatment, he contended that he had been suffering acute psychological distress upon admission to the Prison Hospital because he had been unaware of the nature of his illness. He further stated that the tuberculosis had left scarring on his lungs and that he was required to undergo annual medical check-ups.

19. On 25 October 2016, a commission of three experts (a specialist in pulmonology and phthisiology, a permanent court expert specialised in neuropsychiatry, and a permanent court expert specialised in forensic medicine) delivered an opinion to the first-instance court.

20. The report indicated that the applicant's tuberculosis had been detected during routine chest photofluorography at Sremska Mitrovica Prison. It stated that the applicant had not experienced pulmonary discomfort before or during the successful treatment, which suggested that he had not suffered physical pain. As for the residual scarring on his lungs, the report indicated that it neither impaired his breathing capacity nor limited his ability to engage in daily activities. On the basis of a report submitted by Sremska Mitrovica Prison, in which it was indicated that no other prisoners had been diagnosed or treated for tuberculosis in 2009, the commission concluded that prison transmission had been impossible (the report prepared by Sremska Mitrovica Prison is not part of the case file). It noted that a prior infection could have reactivated owing to weakened immunity during solitary confinement, as imprisonment was inherently stressful. It was further noted that the applicant likely experienced some fear between learning of his diagnosis and receiving his first conclusively negative test result.

21. On 5 January 2017 the applicant requested the expert commission to clarify whether there existed a causal link between the conditions of his detention during solitary confinement and the activation of tuberculosis. On 6 March 2017 he applied to the first-instance court for a new expert opinion, alleging that the commission had failed to address whether he had contracted tuberculosis while in prison. That application was rejected. On 28 April 2017 the expert commission replied:

> "As there were no registered cases of active tuberculosis among the applicant's fellow prisoners, the commission unequivocally concluded that the applicant could not have become infected during his stay in the prison community.
>
> ...
>
> It is evident that prolonged exposure to poor living conditions (cold, dampness, lack of hygiene etc.) certainly creates circumstances conducive to the activation of diseases such as tuberculosis and the further aggravation thereof. However, our opinion also noted that the injured party did not suffer from a severe form of tuberculosis; rather, the disease was detected during routine systematic chest photofluorography, and throughout the entire course of treatment he did not experience even a minor impairment of respiratory function."

22. In a submission of 26 May 2017 the applicant amended his compensation claim. While maintaining the amount previously requested, he clarified that he sought compensation for non-pecuniary damage arising from physical pain and from the alleged violations of his rights to life and health, in addition to the grounds already raised in his claim of 25 November 2011 (see paragraph 17 above). He further stated that the measures of solitary confinement and enhanced supervision to which he had been subjected had been implemented in conditions of detention that violated human dignity.

23. In the same submission the applicant raised additional objections concerning the expert opinion. He noted that the case file did not indicate whether other prisoners in Sremska Mitrovica Prison had had tuberculosis. He also argued that, prior to his transfer to Sremska Mitrovica, he had spent time in Novi Sad District Prison and could have contracted tuberculosis there. He requested the first-instance court to obtain precise information from the prison authorities regarding the exact periods of his detention there before the transfer. Finally, the applicant contended that the expert opinion had failed to address whether the conditions of his detention had contributed to the development of tuberculosis.

24. On 5 June 2017, the Belgrade Court of First Instance granted the applicant leave to amend his claim (see paragraph 22 above) and dismissed it as unfounded. The judgment records that, in his reply to the defendant's observations, the applicant had stated that he was seeking compensation for non-pecuniary damage solely on account of the lasting effects on his health, and not for any alleged violation of human dignity or personal rights, nor for any alleged breach of the right to a trial within a reasonable time.

25. The applicant's claim was dismissed primarily with reference to the expert opinion (see paragraphs 19-21 above). The applicant had requested the first-instance court to summon another prisoner as a witness, but the request had not been granted as he had failed to provide the witness's address. His further requests for a new expert opinion and for information concerning his incarceration prior to his transfer to Sremska Mitrovica Prison had likewise been rejected.

26. Relying on Article 200 § 1 of the Obligations Act (see paragraph 41 below), the first-instance court found that it had not been established that the applicant had sustained the damage for which he sought compensation. It considered that the applicant had failed to demonstrate that the illness had had any lasting effects diminishing his ability to carry out daily activities. The first-instance court further held that the intensity and duration of the fear experienced by the applicant did not justify an award of monetary compensation, particularly in view of the successful outcome of treatment following the diagnosis and prescribed therapy. The same conclusion was reached regarding the physical pain allegedly caused by medical treatment itself (namely the administering of injections), with the court noting that the applicant had not proved that the illness itself had caused him any discomfort.

Lastly, the court held that the applicant could not claim compensation for an alleged violation of his rights to life and health, given the absence of physical pain, fear, or any reduction in his ability to carry out daily activities warranting compensation.

27. As regards the applicant's allegation that the conditions of detention in solitary confinement and enhanced supervision had contributed to the onset of tuberculosis, the first-instance court held that it was unnecessary to rule on that issue. It relied on the expert opinion stating that no other prisoners at Sremska Mitrovica Prison had been diagnosed or treated for tuberculosis in 2009 (see paragraph 20 above). The court further emphasised that the applicant had not claimed compensation for detention in inhuman conditions and therefore there was no need to establish whether those conditions had existed (see paragraph 24 above).

28. The applicant lodged an appeal in which he challenged the first-instance court's finding that he could not have contracted tuberculosis in prison. He argued that that conclusion, which was based on the report indicating that no other prisoners at Sremska Mitrovica Prison had been diagnosed or treated for tuberculosis in 2009, was unreliable given that preventive screenings in that institution were only carried out occasionally. Furthermore, he submitted that the court had failed to address the fact that he had been detained within the Serbian prison system prior to 2009. He also complained that the first-instance court had not examined his allegation that the conditions of his detention in solitary confinement and enhanced supervision had contributed to the activation of tuberculosis. Lastly, the applicant contested the dismissal of his claim concerning an alleged violation of his rights to life and health, maintaining that the damage to those rights had resulted from his detention in inhuman conditions, which in turn had led to his tuberculosis.

29. On 7 December 2017, the Belgrade Court of Appeal dismissed the applicant's appeal as unfounded and upheld the first-instance judgment, finding that the applicant had not sustained non-pecuniary damage warranting compensation under Article 200 of the Obligations Act. As regards his allegation that detention in allegedly inhuman conditions had caused tuberculosis, the second-instance court held that it had been established that the applicant could not have contracted the disease in prison. It further observed that the medical examination of 15 May 2008 that had been carried out on his arrival at Sremska Mitrovica Prison had shown that he had not been suffering from tuberculosis at that time (see paragraph 8 above). The court concluded that the first-instance judgment had correctly dismissed the claim for compensation for alleged breaches of the rights to life and health, as the tuberculosis infection had not been a direct consequence of his detention and had not caused non-pecuniary damage as defined by Article 200 of the Obligations Act.

C. Proceedings before the Constitutional Court

30. Following the appeal-court ruling, the applicant lodged a constitutional appeal in which he challenged the judgments of 5 June and 7 December 2017. He relied on Article 24 § 1, Article 25, Article 32 § 1, Article 36 § 1 and Article 68 § 1 of the Constitution (see paragraph 32 below). In outlining the alleged violations of Article 24 § 1, Article 25 and Article 68 § 1 of the Constitution (respectively the right to life, inviolability of physical and mental integrity and right to health), the applicant challenged the dismissal of his compensation claim and contended that those rights had been breached "by the conduct of the respondent towards [him], having regard to the previously described manner of enforcing the disciplinary measure of strict isolation". The applicant submitted that he had contracted tuberculosis while detained in Sremska Mitrovica Prison and that he had not been provided with adequate medical care. He complained of spending 180 days under enhanced supervision and 15 days in solitary confinement in conditions which he described as inhuman and degrading, in terms similar to those used before the Court (see paragraph 6 above). He reiterated his complaint that the authorities had failed to investigate the possible link between those conditions and his tuberculosis infection. He further argued that the lower courts had relied on a prison report stating that no prisoners had been infected or treated for tuberculosis in 2009, without addressing the fact that he had also been detained in prisons throughout 2007 and 2008 (see paragraphs 5 and 28 above). The applicant also complained about the decision to reject his application seeking the preservation of evidence (see paragraphs 15 and 16 above) and about the decision not to order a new expert opinion (see paragraph 25 above).

31. On 11 July 2019, the Constitutional Court rejected the applicant's constitutional appeal. His allegation that the trial had been unfair (Article 32 § 1 of the Constitution) was rejected as a "fourth-instance" complaint. His complaint under Article36 §1 was rejected as manifestly ill-founded. Finally, the complaints under Article 24 § 1, Article 25 and Article 68 § 1 of the Constitution were dismissed on the ground that they did not relate to the substance of the contested judgments.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LEGAL FRAMEWORK, PRACTICE AND DOCUMENTS

A. The Constitution of the Republic of Serbia (*Ustav Republike Srbije*, published in the Official Gazette of the Republic of Serbia – OG RS – no. 98/06)

32. Article 24 § 1 provides that human life is inviolable. Article 25 provides that physical and psychological integrity are inviolable and that no one can be subjected to torture, inhuman or degrading treatment or punishment, or to medical and scientific experimentation without their freely given consent. Article 32 § 1 provides, *inter alia*, that everyone shall have the right to a fair hearing before a tribunal in the determination of his or her rights and obligations. Article 36 § 1 guarantees equal protection of rights before courts and other state authorities, holders of public powers, and the authorities of autonomous provinces and local self-government units. Article 68 § 1 provides that everyone has the right to the protection of their physical and mental health.

B. Execution of Criminal Sanctions Act (*Zakon o izvršenju krivičnih sankcija*, published in the OG RS nos. 85/05, 72/09, and 31/11, currently not in force)

33. Article 60 § 1 provided, *inter alia*, that, following incarceration, the authorities had to identify a convicted person, carry out a medical examination of him or her and open a medical file.

34. Article 65 provided that everyone had to respect the dignity of the convicted person and that no one should endanger the physical or mental health of the convicted person. Article 67 provided, *inter alia*, that the premises in which convicted persons lived and worked had to be clean, dry, ventilated, heated, and adequately lit both by natural and by artificial light that enabled reading and work without impairing eyesight. Dormitories had to be sufficiently spacious so that each convicted person had at least 8 metres cubed and 4 sq. m of space.

35. Article 101 provided, *inter alia*, that convicted persons had the right to healthcare in accordance with the general regulations on health protection and the provisions of the Law. Where adequate health care could not be provided within the institution, the person had to be transferred to the Special Prison Hospital or another health care facility.

36. Article 103 set out the duties of doctors in prison institutions. Relevant to the present case was their obligation to examine each convicted person immediately upon arrival, assess his or her physical and mental health and

capacity for work upon incarceration and, when necessary, promptly attend to any person who complained of illness or showed signs of being ill, conduct daily examinations of those who were ill, and perform regular check-ups of all other convicted persons at intervals not exceeding three months.

37. Pursuant to Article 136 §§ 1 and 2 the measure of enhanced supervision (*smeštaj pod pojačan nadzor*), one of the special measures (*posebne mere*) set out in that provision, could exceptionally be ordered in respect of a convicted person who posed a risk of escape, violent behaviour, self-harm, or any other threat to order and security that could not be eliminated by other means.

38. Placement in solitary confinement during leisure time or throughout the entire day and night (*upućivanje u samicu u slobodno vreme ili tokom celog dana i noći*) was a disciplinary measure (*disciplinska mera*). It could be imposed only exceptionally, for serious disciplinary offences, and could not exceed 15 days, or 30 days in case of concurrence of disciplinary offences (Article 150). Solitary confinement entailed the exclusion of the convicted person from joint activities with other convicted persons during leisure time or throughout the entire day and night (Article 151 § 1). Article 152 § 1 provided that the room in which solitary confinement was enforced had to measure at least 4 sq. m and have 10 cubic metres of space. It had to be ventilated, lit by both natural and artificial light, be heated in accordance with climatic conditions, and equipped with a bed and bedding, a table, and a chair. In accordance with Article 153 § 1 a convicted person in solitary confinement had to undergo a medical examination at least once a day. The length of time a convicted person spent in solitary confinement could not exceed six months within a single calendar year. The governor of the institution had to immediately discontinue the enforcement of the measure if, according to a written medical opinion, further confinement would endanger the convicted person's health (Article 154 and Article 155 § 2).

C. Civil Procedure Act 2004 (*Zakon o parničnom postupku*, published in the OG RS nos. 125/04 and 111/09)

39. Article 193 § 1 of the Civil Procedure Act 2004, which was in force at the relevant time, provided that the claimant could amend the claim until the conclusion of the main hearing.

40. Article 269 of the Act provided that it was possible, if there was a well-founded concern that certain evidence would become unavailable or that its subsequent production would be significantly hindered, to request the taking of such evidence either during the civil proceedings or prior to their initiation.

D. Obligations Act (*Zakon o obligacionim odnosima*, published in the Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 29/78, 39/85, 45/89, and 57/89, the Official Gazette of the Federal Republic of Yugoslavia no. 31/93, and OG RS no. 18/20)

41. Article 200 provides, *inter alia*, that where the circumstances of the case justify it, particularly having regard to the intensity and duration of the pain and fear, a court will award just satisfaction in the form of monetary compensation for non-pecuniary damage arising from physical pain, mental suffering due to diminished quality of life, harm to liberty or personal rights, and fear.

E. The National Ombudsperson (*Zaštitnik građana*), the National Mechanism for the Prevention of Torture (*Nacionalni mehanizam za prevenciju torture* – "the NPM"), Report on the Visit to Sremska Mitrovica Prison, carried out from 9 to 11 April 2012, 71-161/12

42. In the introductory part, it was stated that the prison had separate quarters for the accommodation of prisoners subject to enhanced supervision and solitary confinement.

43. It was reported that the third wing accommodated prisoners subjected to enhanced supervision and those in solitary confinement. Although the building was old, the wings of the "T" shaped building had been reconstructed and were in good shape (see p. 30 of that report). Prisoners subject to enhanced supervision were held in a separate part of that building. The NPM team visited one cell, measuring approximately 10 sq. m, which accommodated two prisoners. The material conditions were reported to be adequate and there was no sign of moisture on the walls. The NPM team talked to one prisoner held under enhanced supervision and he had no complaints (see pp. 91-92 of that report).

44. As for solitary confinement, the prisoners subjected to that sanction were also held in a separate part of the building of the third wing. The NPM team visited one cell measuring 8 sq. m. The material conditions were adequate and there was no sign of moisture. The team spoke to one prisoner who was in solitary confinement and he had no complaints (see pp. 93-95 of that report).

45. The report noted that the first medical examination of a person deprived of liberty upon arrival was carried out by a general practitioner, no later than within 24 hours from the moment of arrival. The initial medical examination consisted of taking an anamnesis, analysing medical documentation (if the persons deprived of liberty had any with them), measuring height and weight, assessing mental state, measuring blood pressure, and performing a basic physical examination. Previously, as part of the first medical examination upon arrival at the prison, routine chest X-rays

were performed; however, that practice had been abandoned several years previously owing to a lack of material resources. Fluorography campaigns had been organised in 2010 and 2011 in cooperation with the anti-tuberculosis dispensary (see p. 141 of that report).

46. On the day of the visit by the NPM team there were six convicted persons with tuberculosis at the prison, according to the statistics of the prison medical team (see p. 156 of that report).

F. Helsinki Committee for Human Rights in Serbia (*Helsinški odbor za ljudska prava u Srbiji*)

1. Prisons in Serbia July-October 2010 (Zatvori u Srbiji jul-oktobar 2010), March 2011

47. This NGO visited Sremska Mitrovica Prison on 27 and 28 October 2010. The report indicated that several buildings had been built or reconstructed since the previous visit in 2005. It was stated that the "Enhanced Supervision Department" had been renovated after it had been damaged during a prison riot in 2006. At the time of the visit that department accommodated prisoners in solitary confinement who used to be accommodated in the second wing (see p. 4 of that report). The report indicated that the cells used for enhanced supervision, which accommodated two prisoners, as well as those for solitary confinement, were in good material condition.

48. It was reported that a lecture on tuberculosis was planned as part of a preventive screening campaign covering all institutions within the penal system. Furthermore, all institutions were to be visited by a bus equipped with a device for lung imaging. The imaging would be voluntary and, after the scans had been reviewed and suspicious cases identified, prisoners would be invited for additional tests and, if necessary, further treatment. At the time of the NGO's visit, the bus was present at Sremska Mitrovica Prison. Prisoners, sorted by their prison wing, were brought to the bus according to a schedule, where they spoke with medical staff and stated whether they agreed to the proposed diagnostic procedure (see p. 7 of that report).

2. Prison System in Serbia in 2011, March 2012

49. It was reported that a lung X-ray of convicted persons during the initial medical examination was done upon indication (see p. 53 of that report).

G. Other relevant information

50. A report titled "Comparative analysis of the implementation of tuberculosis prevention and control programs in 2017 in relation to the previous five years" (*Komparativna analiza realizacije programa prevencije i kontrole tuberkuloze tokom 2017. godine u odnosu na prethodnih 5 godina*), published by the Institute of Public Health of Serbia (*Institut za javno zdravlje Srbije „Dr Milan Jovanović Batut"*), stated that the tuberculosis incidence in the prison population in Serbia (per 100,000 prisoners) had been 70 in 2007, 42 in 2008, 24 in 2009 and 39 in 2010 (the total numbers of prisoners diagnosed with tuberculosis for those years were 21, 14, 8, and 13 respectively and the total number of prisoners in 2007 had been 9,000; see paragraph 53 below).

II. RELEVANT INTERNATIONAL DOCUMENTS AND REPORTS

A. Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on visits to Serbia

1. Report on the visit to Serbia and Montenegro carried out from 16 to 28 September 2004, CPT/Inf (2006) 18

51. The CPT delegation observed that the cells in the second wing of Sremska Mitrovica Prison lacked adequate levels of natural light and that they were overcrowded (see paragraph 97 of that report). As regards the disciplinary cells, it was noted that they were equipped with only a wooden platform (with a mattress and bedding), a box for personal belongings, a sink and a squat toilet, and that levels of natural light and artificial lighting were at best mediocre (see paragraph 133 of that report).

52. Paragraph 163 of the report highlighted the re-emergence of tuberculosis within the Serbian prison system and noted the absence of a systematic screening procedure upon arrival. That deficiency, combined with other contributing factors, posed a serious risk to the health of both the prison population and the wider community.

2. Report on the visit carried out from 19 to 29 November 2007, CPT/Inf (2009) 1; Response of the Government of Serbia of 14 January 2009, CPT/Inf (2009) 2

53. At the time of the visit, the total number of prisoners in Serbia stood at 9,000 (see paragraph 39 of that report).

54. Sremska Mitrovica Prison was undergoing major renovation works at the relevant time. The CPT noted that the conditions in the second wing remained as poor as those observed during the 2004 visit (see paragraph 51 above). That wing accommodated, among others, prisoners in solitary

confinement for disciplinary reasons, and the cells were found to be dilapidated, dirty and overcrowded (see paragraph 51 of that report). The CPT recommended that steps be taken to refurbish, as a matter of priority, the cells in the second wing (see paragraph 53 of that report).

55. The report indicated in paragraph 51 that the third wing, which had been refurbished, had a part of it reserved for prisoners identified as posing a security risk, prisoners segregated for their own safety and for those serving disciplinary sanctions. It further stated that those cells measured 10 sq. m and were accommodating two prisoners each, that they were well lit and ventilated, and they were in an excellent state of repair and cleanliness.

56. The Government informed the CPT that the second wing would be refurbished in 2009 and that prisoners from the second wing would be placed in a new facility that was initially supposed to have been a reception department (see paragraph 44 of the Government's Response).

57. The CPT observed that there had been delays of up to nine days in the conduct of initial medical examinations at Sremska Mitrovica Prison. Furthermore, the medical examination upon arrival appeared to be cursory, consisting merely of asking the prisoners questions about their previous diseases and taking their pulse and blood pressure. It was recommended to take steps to ensure that medical examinations on arrival should be comprehensive and include appropriate screening for transmissible diseases (see paragraph 72 of that report). In paragraph 75 of the report it was stated that the CPT had been informed by officials from the Ministry of Health that tuberculosis was no longer an issue of concern.

58. The Government stated that the failure to conduct the initial medical examination without delay at Sremska Mitrovica Prison had occurred only once and had not been repeated (see paragraph 66bis of the Government's Response). Furthermore, it was stated that a strategy for combating transmissible diseases in prisons had been developed. In 2007 the OSCE Mission in Belgrade had organised training for prison staff all over Serbia. Brochures had been published on preventing the transmission of infectious diseases and distributed to all prisons in Serbia. Further, pertinent training of staff employed in Serbian prisons had also been conducted in collaboration with the United Nations.

3. Report on the visit carried out from 1 to 11 February 2011, CPT/Inf (2012) 17; Response of the Government of Serbia of 14 June 2012, CPT/Inf (2012) 18

59. The CPT did not visit Sremska Mitrovica Prison in 2011. As for the prison institutions it did visit, it remarked that medical examinations on arrival remained superficial, consisting merely of an interview, and that there were no paraclinical referrals. It recommended that the medical examination on arrival should be comprehensive, including appropriate screening for transmissible diseases (see paragraph 73 of that report).

60. In their response, the Government of Serbia submitted that, upon the arrival of new prisoners, medical staff collect information from detainees regarding any current or past illnesses and related treatment, previous injuries or surgical interventions, use of psychoactive substances and potential withdrawal symptoms, as well as any psychiatric treatment received (see p. 21 of that document).

4. Report on the visit carried out from 26 May to 5 June 2015, CPT/Inf (2016) 21; Response of the Government of Serbia of 24 June 2016, CPT/Inf (2016) 22

61. The CPT carried out visits to several penal establishments, including Sremska Mitrovica Prison. It observed that screening for tuberculosis upon arrival was being performed at the Niš Correctional Institution and noted that all facilities appeared to have an accurate overview of the number of prisoners affected by transmissible diseases (see paragraph 79 of the report). At the same time, the CPT reiterated its earlier findings that the medical examination of newly arrived detainees remained superficial, being limited to an interview without any physical examination. It therefore recommended that the medical screening on arrival be comprehensive and include appropriate screening for transmissible diseases (see paragraph 81 of the report).

62. In their response, the Government indicated that all recommendations of the CPT would be applied by the health service of the Sremska Mitrovica Prison (see p. 21 of that document).

5. Report on the visit carried out from 31 May to 7 June 2017, CPT/Inf (2018) 21

63. The CPT did not visit Sremska Mitrovica Prison. As regards screening for tuberculosis, it was again stated that such a practice existed at Niš Correctional Institution and that all establishments appeared to have an accurate picture of the number of prisoners affected by transmissible diseases (see paragraph 58 of that report).

6. Report on the visit carried out from 9 to 19 March 2021, CPT/Inf (2022) 03

64. The CPT did not visit Sremska Mitrovica Prison. In reference to other establishments visited, the following was stated (references omitted):

> "86. The medical examination of newly admitted prisoners consisted of a physical check and anamnesis which included a questionnaire for the screening of infectious and transmissible diseases (i.e. Tuberculosis, HIV, and Hepatitis C), a risk assessment for the prevention of suicide and self-harming. That said, despite the very high prevalence of people coming into prison with a history of substance misuse, routine testing for these possible underling conditions was not being proactively sought due to financial shortages at the State level. Further, pulmonary radiography for suspect Tuberculosis had also been discontinued at the prison establishments visited.

The CPT is aware that in periods of economic difficulties - such as those encountered today in many countries visited by the CPT - sacrifices have to be made, including in prison establishments. However, regardless of the difficulties faced at any given time, the act of depriving a person of their liberty always entails a duty of care which calls for effective methods of prevention, screening, and treatment. Compliance with this duty by public authorities is all the more important when it is a question of care required to treat life-threatening diseases.

The CPT recommends that all newly-arrived prisoners within the Serbian penitentiary system are subject to a systematic screening for Tuberculosis and voluntary testing for HIV and Hepatitis B and C within 24 hours of admission."

7. Report on the visit carried out from 21 to 30 March 2023, CPT/Inf (2024) 04

65. This visit included Sremska Mitrovica Prison. It was stated that the medical examination of newly arrived prisoners consisted of a physical check and anamnesis which included a questionnaire for the screening of infectious and transmissible diseases such as tuberculosis. However, routine testing was not being proactively sought owing to financial shortages at the State level. The CPT recommended that systematic screening for tuberculosis should be offered at all prison establishments visited (see paragraph 64 of that report).

B. International reports and documents on healthcare issues

66. Relevant international reports and documents on general healthcare issues and those concerning transmissible diseases have been set out in the case of *Vasyukov v. Russia* (no. 2974/05, §§ 43-47, 5 April 2011).

67. Since then, the CPT has issued a comprehensive update on its views on healthcare in prisons. Thus, *Healthcare in Prison, Prison Standard* (CPT/Inf (2025) 37) in its relevant parts reads as follows:

"...

6. Prisons are high-risk environments for morbidity due to the higher prevalence of many diseases and substance use when compared with the outside community. Moreover, many persons entering prisons are in poor health and, given their specific healthcare needs, prisoners should enjoy at least the same standards of healthcare as those available in the community.

7. Attaining the appropriate level of healthcare for prisoners requires that:

i) prison healthcare services are organised in close relation with the general health administration of the community;

ii) health policy in prison is integrated into, and compatible with, national health policy;

iii) the level of healthcare prisoners receive addresses their specific needs and takes into account their higher morbidity; an equitable care approach may consequently need to go beyond the level required for patients in the wider community;

iv) various other requirements are met, such as continuity of care after admission to and release from prison, professional training and independence of prison healthcare staff, access to nationwide epidemiological screening programmes, and monitoring and independent inspections of prison healthcare services.

...

10. Upon admission to prison, every person should undergo a comprehensive medical examination by a healthcare professional (a medical doctor or a fully qualified nurse reporting to a doctor) as soon as possible and, save for exceptional circumstances, no later than 24 hours after their admission.

11. In the context of this examination, healthcare professionals should ... also screen for transmissible diseases (including systematic screening for signs of tuberculosis ...)

...

69. The task of prison healthcare services should not be limited to treating sick prisoners. Prevention and health promotion should be focused on the most prevalent health disorders of prisoners. It should include screening and the dissemination of awareness-raising information. Health promotion should be a system-wide approach involving all persons working or detained in prisons. This includes health and psycho-social education and participation in health promotion initiatives by the relevant authorities.

...

73. Material conditions can readily lead to an increased risk of transmission of a number of airborne infections, such as tuberculosis and other respiratory diseases, and skin infections. If a prison is overcrowded it acts as an incubator of diseases, which released prisoners, staff and visitors can then bring outside, thereby adversely affecting the health of the population as a whole.

74. In the context of preventing and managing the spread of transmissible diseases, the following measures or facilities should be regularly reviewed:

i) screening processes and voluntary testing (for example, HIV and hepatitis B and C);

ii) stocks of personal protection equipment (such as masks);

iii) isolation and quarantine premises;

iv) updated and comprehensive information about transmissible diseases available both to prisoners – in a language and form which they understand – and prison staff alike, before and – in the case of a positive result – after any screening test;

v) organisational preparedness for respiratory epidemics and the spread of other transmissible diseases."

C. Other relevant information

68. According to data from the World Health Organization, the incidence of new and relapsed tuberculosis cases in Serbia (per 100,000 population) amounted to 37 in 2007, 35 in 2008, 32 in 2009 and 30 in 2010. In 2023, that incidence stood at 14. In the same year, the average incidence in Europe was 24, while the global average was 134.

THE LAW

ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

69. The applicant complained that he had been detained in inadequate conditions while in solitary confinement and while subject to enhanced supervision, and that his cell during enhanced supervision had been overcrowded. Furthermore, he complained that after having spent time in those conditions he had contracted tuberculosis and had not been provided with adequate medical treatment. He relied on Article 3 of the Convention, which reads as follows:

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

A. Complaint concerning inadequate conditions of detention

70. The applicant complained that during solitary confinement and enhanced supervision he had been placed in dirty and damp cells which were located in the prison's fourth wing (see paragraph 6 above). He further complained that the cell in which he had been detained during enhanced supervision had measured 15 sq. m and that he had had to share it with three other prisoners.

1. The scope of the complaint

71. As regards the period to be examined, the Court notes that the applicant complained that he had spent 90 days under enhanced supervision and 15 days in solitary confinement in February and March 2009. He further submitted that in July 2009 he had spent another 90 days under enhanced supervision.

72. The Government submitted that the applicant had been in solitary confinement in the periods from 13 to 28 March 2009 and from 23 September to 8 October 2009, and under enhanced supervision in the periods from 18 February to 8 April 2009 (excluding the periods of solitary confinement) and again between 25 June and 23 September of the same year (see paragraph 7 above). The applicant did not dispute this. However, since he only complained of one instance of solitary confinement – 15 days in February and March 2009 – the Court will not deal with solitary confinement from 23 September to 8 October 2009.

73. As regards the remaining periods, the parties' accounts are not identical but are broadly consistent, and the applicant did not dispute the Government's assertion that he spent 15 days in solitary confinement between 13 and 28 March 2009 and that he was held under enhanced supervision between 18 February and 8 April (excluding the solitary confinement) and again between 25 June and 23 September of the same year. On that basis, the

Court will examine whether the applicant was detained in conditions contrary to Article 3 of the Convention during those periods.

2. Admissibility

(a) The parties' submissions

74. The Government argued that the applicant had failed to exhaust domestic remedies because he had failed to raise his complaint properly before the Constitutional Court. They further submitted that while in solitary confinement the applicant had been accommodated in a room measuring 13.5 sq. m with a volume of 29.7 metres cubed, and that while under enhanced supervision he had shared with one other person a room measuring 16.5 sq. m with a volume of 36.3 metres cubed. Those rooms were part of the "disciplinary department" which had been renovated in 2006 and which were clean, orderly and provided with natural light and ventilation (see paragraph 7 above).

75. As regards the periods during which he was subjected to the above--mentioned measures, the applicant did not dispute the Government's submissions (see paragraph 72 above). Moreover, in response to the Government's assertions concerning the material conditions of detention, the applicant claimed that while the "disciplinary department" might have been renovated, the cells in which he had spent time in solitary confinement and under enhanced supervision had not been. In all other respects, he maintained his complaints.

(b) The Court's assessment

76. The Court does not find it necessary to examine all the Government's objections as this complaint is in any event inadmissible for the reasons set out below.

77. The general principles concerning the compliance of conditions of detention with Article 3 of the Convention have been reiterated in *Ananyev and Others v. Russia* (nos. 42525/07 and 60800/08, §§ 139-42, 10 January 2012). As for the specific issue of overcrowding, the test is set out in *Muršić v. Croatia* ([GC], no. 7334/13, §§ 136-41, 20 October 2016).

78. Once a credible and reasonably detailed description of the allegedly degrading conditions of detention, constituting a prima facie case of ill-treatment, has been made, the burden of proof is shifted to the respondent Government who alone have access to information capable of corroborating or refuting such allegations. They are required, in particular, to collect and produce relevant documents and provide a detailed account of an applicant's conditions of detention. Relevant information on the conditions of detention from other international bodies, such as the CPT, as well as the competent national authorities and institutions should also inform the Court's decision on the matter (ibid., §§ 127-28).

79. Turning to the present case, the applicant claimed that he had been detained in solitary confinement and under enhanced supervision in the fourth wing. In their observations, the Government submitted that the applicant had on those occasions been held in the "disciplinary department", and the applicant did not contest this claim (see paragraph 75 above).

80. The CPT's reports of their visits in 2004 and 2007 stated that convicted persons were detained for disciplinary reasons in the second wing, which generally suffered from poor material conditions of detention (see paragraphs 51 and 54 above). In the report of the 2007 visit it was indicated that the third wing, which had been refurbished, had a part reserved for prisoners identified as posing a security risk, prisoners segregated for their own safety and those serving disciplinary sanctions. It further stated that the cells measured 10 sq. m and were being used to accommodate two prisoners each, and that they were well lit and ventilated, and in an excellent state of repair and cleanliness (see paragraph 55 above).

81. At the domestic level, the Helsinki Committee for Human Rights in Serbia, an NGO, visited Sremska Mitrovica Prison in October 2010. It is reported that the "Enhanced Supervision Department" had been renovated after being damaged in 2006 and that it accommodated persons in solitary confinement who used to be accommodated in the second wing. The report indicated good conditions of detention in rooms used for enhanced supervision and solitary confinement (see paragraph 47 above).

82. The above-mentioned reports are in line with the findings of the Ombudsperson, acting as the NPM, who visited Sremska Mitrovica Prison in 2012. With regard to the second wing, there was no indication that convicted persons were held there for disciplinary reasons. It was noted that individuals in solitary confinement and under enhanced supervision were accommodated in the third wing, in separate sections of the building. Although the building was old, certain parts had been reconstructed. The rooms used for the above-mentioned measures, which the delegation had inspected, were in good condition. The room for solitary confinement inspected by the NPM measured 8 sq. m, while the room for enhanced supervision inspected by the NPM measured 10 sq. m (see paragraphs 42-44 above).

83. In view of the above, and given that none of the reports suggested that convicted persons were held in solitary confinement or under enhanced supervision in the fourth wing, the Court considers the applicant's contention that he had been detained there on those occasions to be unsubstantiated. The Court observes that the Government submitted that the applicant had been detained in the "disciplinary department" without specifying the building in which that department was located. On the basis of the available reports cited above, the Court concludes that the applicant was detained in the "disciplinary department" which was located in the third wing. The CPT's report of 2007 documented that prisoners were held in solitary confinement in poor conditions in the second wing at least until November 2007 (see

paragraph 54 above). However, the applicant did not contend that he had been held in solitary confinement in that building.

84. Having established that the applicant was placed in the disciplinary department of the third wing, the Court will first examine his allegation that he had insufficient personal space during the periods of enhanced supervision. The applicant maintained that, while subject to enhanced supervision, he had been held in a cell with three other prisoners (see paragraph 70 above). However, the available reports indicated that the cells used for enhanced supervision in the third wing housed two prisoners (see paragraphs 43, 47 and 55 above), and the case file contains no material capable of corroborating the applicant's account. The Court further observes that, in the civil proceedings, the applicant stated that he had been held in a cell with two other persons (see paragraph 18 above), which undermines the credibility of his claim. The Government submitted that the applicant had shared a cell with one other prisoner (see paragraph 74 above). The Court therefore concludes that, while subject to the measure of enhanced supervision, the applicant shared the cell with one other prisoner.

85. Turning to the question of the size of the cell, the Court observes that the Government's measurements may be overstated, as the CPT and NPM reports indicated smaller dimensions (compare paragraph 74 with paragraphs 80 and 82 above). However, even on the basis of those latter figures, the cell measured 10 sq. m, which is sufficient personal space for two persons (see *Muršić*, cited above, § 140). The Court further observes that the applicant did not allege a lack of personal space during his solitary confinement.

86. Finally, the Court will examine the applicant's allegation that he was held in solitary confinement and under enhanced supervision in cells that were damp and filthy. The reports cited above described the rooms in the "disciplinary department" as being in good condition, with no mention of dampness or filth. While the applicant reiterated in his comments that his room had not been renovated (see paragraph 75 above), the case file contains no material capable of corroborating that assertion. The Court is aware that there are no reports for 2009, the year when the applicant was in solitary confinement and under enhanced supervision. However, having regard to the available material as a whole, it does not find a sufficient factual basis for holding that the material conditions complained of attained the threshold required by Article 3 of the Convention.

87. In light of the above, the Court concludes that, during the applicant's solitary confinement and enhanced supervision in 2009, the conditions of his detention (including the personal space afforded to him and the general material conditions) did not amount to treatment incompatible with Article 3 of the Convention.

88. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Complaints concerning tuberculosis

89. The applicant alleged that he had contracted tuberculosis while detained at Sremska Mitrovica Prison. He argued that the conditions of his detention during the periods of enhanced supervision and solitary confinement had contributed to the onset of the disease and that the authorities had failed to investigate that link, as they had not established the actual conditions of his detention. He further complained that the domestic courts had concluded that he had not been infected in prison solely on the basis of a report from the prison stating that none of the other prisoners there had been diagnosed with tuberculosis in 2009, ignoring the fact that he had spent time in prison prior to that year. The applicant stated that his infection had been discovered by chance. Furthermore, he claimed that he had not received prompt and adequate medical treatment for tuberculosis.

1. Admissibility

90. The Government argued that this part of the application should be declared inadmissible on the ground that the applicant had failed to properly raise his complaint before the Constitutional Court. While acknowledging that the applicant had relied on the rights to life and to the inviolability of physical and mental integrity and health, all protected by the Constitution (see paragraph 32 above), the Government maintained that he had essentially complained about the outcome of the compensation proceedings. Consequently, his constitutional appeal had been examined solely from the perspective of Article 32 of the Constitution (see paragraph 31 above). The Government further noted that the applicant had explicitly stated in his constitutional appeal that the alleged violations of the aforementioned constitutional rights had resulted from the rejection of his claim for non-pecuniary damages, and not from any legal acts or actions of State authorities directly threatening his life, physical or mental integrity, or health.

91. The applicant contested that argument.

92. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 of the Convention obliges those seeking to bring a case against a State before the Court to firstly use the remedies provided by the national legal system. Consequently, States are exempted from answering for their acts before an international body before they have had an opportunity to put matters right domestically (see *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 70, 25 March 2014).

93. An applicant's failure to make use of an available domestic remedy or to make proper use of it (that is to say, by bringing a complaint at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law) will result in an application being declared inadmissible by the Court (ibid., § 72).

94. The Court observes that the Constitutional Court of Serbia is bound by the complaint formulated in the constitutional appeal when examining whether there has been a breach of a right or freedom guaranteed by the Constitution and that it may only consider the appeal within the limits of the request as formulated (ibid., §§ 35 and 82).

95. Turning to the present case, the Court notes that in his constitutional appeal the applicant complained about procedural decisions to reject his request for the preservation of evidence concerning the conditions of his detention and his request for a new expert opinion. The applicant further alleged that the dismissal of his compensation claim had violated his rights to life, to the inviolability of physical and mental integrity, and to health.

96. The applicant also complained that he had contracted tuberculosis while detained in Sremska Mitrovica Prison (see paragraph 30 above). That complaint corresponds to the one raised in his application before this Court (see paragraph 69 above).

97. In view of the foregoing, the Court finds that the applicant raised before the Constitutional Court the complaint on which he relied in the present case and therefore dismisses the Government's objection on this point.

98. The Court further considers that this complaint is not manifestly ill-founded or inadmissible on any other ground under Article 35 of the Convention. It must therefore be declared admissible.

2. Merits

(a) The parties' submissions

99. The applicant reiterated his claims.

100. The Government acknowledged that the applicant's tuberculosis had manifested itself while he was in prison but maintained that it was not possible to determine precisely how and when he had been infected.

101. Regarding the screening practices, the Government submitted that newly arrived convicted persons were questioned about tuberculosis to assess the need for further medical examination, including questions on their own health and their family history in respect of lung diseases. They further noted that mobile X-ray fluorography units periodically visited prisons, allowing convicted persons to undergo screening. Where tuberculosis was suspected, the person was isolated to prevent transmission. In the applicant's case, his survey on arrival did not indicate a need for screening, and he underwent regular medical examinations without reporting symptoms typical of tuberculosis. As soon as an infection was suspected, he was isolated to protect others.

102. The Government added that the *Mycobacterium tuberculosis* bacillus could remain latent for years before becoming active. Given that tuberculosis was transmitted by droplets, they referred to the domestic courts'

finding that, during the applicant's periods of enhanced supervision and solitary confinement, no other convicted persons at Sremska Mitrovica Prison had been diagnosed with tuberculosis. Medical examinations of persons sharing a room with the applicant had revealed no potential carriers. It was, however, impossible to determine whether any of the applicant's visitors had been carriers.

103. As to the allegation that the material conditions of the applicant's detention under enhanced supervision and in solitary confinement contributed to the onset of the disease, the Government argued that the first symptoms of the disease had appeared after one year, making that unlikely. In any event, they maintained that those conditions had been adequate.

104. Finally, the Government argued that the applicant had received timely and adequate medical treatment. He had been hospitalised only a few days after tuberculosis was suspected and his general condition had been good. A bronchoscopy had been performed after one month and he had been prescribed quadruple antibiotic therapy. That treatment had continued after his discharge from the Prison Hospital, with his condition having been monitored by the prison doctor. The Government maintained that the therapy had been successful as there had been no recurrences of the disease and the scarring in the applicant's lungs was healing.

(b) The Court's assessment

(i) Relevant principles

105. The Court refers to the general principles concerning States' positive obligations under Article 3 of the Convention as to healthcare for prisoners, as set out in the case of *Fenech v. Malta* (no. 19090/20, §§ 125-28, 1 March 2022).

106. In particular, Article 3 imposes an obligation on the State to protect the physical well-being of persons deprived of liberty by, among other things, providing them with the requisite medical care. Thus, the Court has held on many occasions that a lack of appropriate medical care may amount to treatment contrary to Article 3 (see *Blokhin v. Russia* [GC], no. 47152/06, § 136, 23 March 2016, and the authorities cited therein). In its assessment of the "adequacy" of medical assistance, the Court considers that it must be guided by the due diligence test, since the State's obligation to cure a seriously ill detainee is one of means, not of result. Notably, the mere fact of a deterioration of the applicant's state of health, albeit capable of raising, at an initial stage, certain doubts concerning the adequacy of the treatment in prison, could not suffice, as such, 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 in timely fashion resorted to all reasonably possible medical measures in a

conscientious effort to hinder development of the disease in question (see *Goginashvili v. Georgia*, no. 47729/08, § 71, 4 October 2011).

107. An unsubstantiated allegation that medical care has been non-existent, delayed or otherwise unsatisfactory is normally insufficient to disclose an issue under Article 3 of the Convention. A credible complaint should normally include, among other things, sufficient reference to the medical condition in question; medical treatment that was sought, provided, or refused; and some evidence – such as expert reports – which is capable of disclosing serious failings in the applicant's medical care (see *Krivolapov v. Ukraine*, no. 5406/07, § 76, 2 October 2018).

108. Furthermore, the Court considers that the spread of transmissible diseases and, in particular, of tuberculosis, hepatitis and HIV/Aids, should be a public health concern, especially in the prison environment (see *Cătălin Eugen Micu v. Romania*, no. 55104/13, § 56, 5 January 2016). In that connection, and in addition to the positive obligation to preserve the health and well-being of a prisoner by the administration of any medical care required, Article 3 imposes on the State a positive obligation to put in place effective methods to prevent and detect contagious diseases in prisons. First and foremost is the State's obligation to screen detainees early, on their arrival in prison, to identify carriers of germs or contagious diseases, isolate them and treat them effectively. This is all the more important since prison authorities must not ignore any infections that break out among prisoners and expose others to the real risk of contracting serious illnesses (see *Gözütok v. Türkiye* (dec.), no. 41412/21, § 44, 18 March 2025).

109. Lastly, the domestic authorities have a procedural obligation to elucidate the circumstances in which infectious diseases were contracted in prison (see *Ismatullayev v. Russia* (dec.), no. 29687/09, § 27, 6 March 2012).

(ii) Application of those principles to the present case

110. At the outset, the Court reiterates that poor material conditions of detention may increase the risk of transmission or activation of airborne diseases such as tuberculosis. In the present case, however, it has found that the material conditions during the applicant's solitary confinement and enhanced supervision in 2009 were adequate.

111. The parties were in dispute as to how and when the applicant had contracted tuberculosis. The infection was first suspected on 5 November 2010, and the applicant was admitted to the Prison Hospital on 9 November 2010 (see paragraphs 11 and 12 above). It was noted that the applicant complained of a sore throat, a runny nose and coughing on 18 October 2010 (see paragraph 10 above).

112. The applicant arrived at Sremska Mitrovica Prison in 2008 (see paragraph 5 above). According to the available domestic and international materials, there was no systematic screening of newly arrived prisoners for tuberculosis in that prison. Although the NPM reported that routine chest

X-rays used to be performed upon arrival (see paragraph 45 above), that practice appears to have been discontinued as early as 2004 (see paragraph 52 above). In its most recent report following the 2023 visit, the CPT observed that tuberculosis screening for newly arrived prisoners was conducted by means of questionnaires but systematic testing was not carried out (see paragraph 65 above). The Government confirmed that there was no systematic screening and stated that tuberculosis screening was carried out following a risk assessment of each newly arrived prisoner (see paragraph 101 above).

113. The Court accepts the Government's assertion that the applicant's tuberculosis was suspected following a periodic screening in 2010 of the type described in paragraph 101 above. That is consistent with the NPM's findings that there had been *ad hoc* screenings in 2010 and 2011 (see paragraph 45 above).

114. The Court cannot overlook the fact that the screening which led to the discovery of the applicant's condition took place only some two and a half years after his arrival at Sremska Mitrovica Prison. That delay was clearly not insignificant, especially in view of the importance of early detection of transmissible diseases in places of detention. However, that consideration is not in itself sufficient to justify a finding that the respondent State failed to comply with its positive obligations under Article 3 in the circumstances of the present case. Once a suspicion of tuberculosis arose, the authorities acted without delay: the applicant was isolated on the same day and transferred to the Prison Hospital four days later (see paragraph 12 above). He was thereafter subjected to appropriate diagnostic procedures and treatment, which continued after his return to prison (see paragraph 13 above) and proved successful. The material before the Court does not disclose any delay or deficiency in the medical response once the illness was suspected.

115. The Court is mindful of the CPT's repeated recommendations that the Serbian authorities ensure comprehensive medical screening on admission, including appropriate screening for transmissible diseases such as tuberculosis. Those recommendations reflect the vulnerability of detainees and the well-established principle that prisons are environments in which the spread of infectious disease may present serious risks (see paragraphs 57, 59, 61, 64 and 65 above). The Court's task in the present case is to determine whether, in the applicant's individual circumstances, the shortcomings identified were such as to engage the respondent State's responsibility under Article 3.

116. With that in mind, the available material does not enable the Court to conclude that the applicant contracted tuberculosis in Sremska Mitrovica Prison, or that a concrete and proven risk of such infection was created by an omission attributable to the respondent State. Tuberculosis may remain latent for prolonged periods before becoming active, and the Court cannot exclude the possibility that the applicant had been infected before the period on which

his complaint is focused (see paragraph 5 above). Nor is there material before the Court showing that he was held together with detainees known to be suffering from active tuberculosis, or that there existed, in his immediate detention environment, an outbreak or comparable situation of uncontrolled transmission (contrast with *Vasyukov*, cited above, § 65).

117. As regards the absence of systematic tuberculosis screening upon arrival, the Court emphasises that preventive measures must be assessed in the light of the risk at issue and the particular context of detention. In the present case, the available material indicates that, while tuberculosis remained a matter of concern within the prison setting, Serbia did not present, at the relevant time, a situation of endemic or uncontrolled tuberculosis transmission comparable to the structural contexts examined in some of the Court's earlier case-law. That cannot dispense with the requirement of early screening, but it forms part of the context in which the Court must assess the proportionality and practical implications of the preventive measures in issue in the applicant's particular case.

118. The present case is to be distinguished from those in which the Court attached decisive weight to the absence of compulsory screening on admission in a context marked by a structural and acute prevalence of transmissible disease (*Jeladze v. Georgia*, no. 1871/08, § 44, 18 December 2012, and earlier in that of *Poghosyan v. Georgia*, no. 9870/07, § 69, 24 February 2009), coupled, where relevant, with other aggravating factors such as overcrowding (*Gladkiy v. Russia*, no. 3242/03, § 87, 21 December 2010). It should also be distinguished from a case in which the absence of such screening was examined in conjunction with the authorities' failure to take any steps to investigate the applicant's allegation that she had contracted hepatitis C due to negligent dental treatment in prison (see *Machina v. the Republic of Moldova*, no. 69086/14, §§ 8, 36, 37 and 44, 17 January 2023).

119. In the light of the above, and having regard to the particular circumstances of the present case, the Court is unable to find that the shortcomings identified in the preventive arrangements, taken together with the material conditions of the applicant's detention and the medical care actually provided to him, attained the threshold required for a finding that the respondent State failed to comply with its substantive obligations under Article 3. In particular, the applicant did not present symptoms suggestive of tuberculosis on admission or during the numerous medical examinations which followed; once a suspicion arose, he was promptly isolated and treated; and the treatment proved effective, with no relapse and no functional respiratory impairment being shown (see *Vasyukov*, cited above, § 66).

120. Finally, the Court will examine the applicant's allegation that the domestic civil courts failed to determine whether he had contracted tuberculosis in prison. The Court reiterates that Article 3 imposes a procedural obligation to elucidate the circumstances in which infectious

diseases are alleged to have been contracted in detention. It observes that the impugned civil proceedings lasted approximately six years (see paragraphs 17 and 29 above) and that nearly five years elapsed before the expert report was produced (see paragraph 19 above). The Court cannot, however, overlook the fact that the applicant did not complain about the length of those proceedings. It further notes that the domestic courts relied primarily on a prison report stating that no other prisoners in Sremska Mitrovica Prison had been diagnosed with tuberculosis in 2009, that report is not included in the case file. The applicant had been detained in Serbian prisons also before that year and some of his requests for clarification and additional evidence were refused (see paragraphs 23 and 27-29 above). In that respect, the Court observes that in his civil claim (see paragraphs 17 and 22 above) the applicant explicitly alleged that he had been infected with tuberculosis while in solitary confinement and under enhanced supervision in 2009. In these circumstances, and having regard to the material available as a whole, the Court considers that the shortcomings in the civil proceedings were not such as to prevent the domestic courts from addressing the substance of the applicant's allegation and that they are not sufficient to disclose a violation of Article 3 under its procedural limb.

121. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 3 of the Convention with regard to the applicant's complaints concerning his contraction of tuberculosis and the adequacy of medical treatment provided for that illness.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint under Article 3 of the Convention concerning the applicant's infection with tuberculosis admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 3 of the Convention in the context of the applicant's infection with tuberculosis and the treatment provided to him.

Done in English, and notified in writing on 7 April 2026, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško Registrar	Ioannis Ktistakis President