



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

FIRST SECTION

CASE OF GEPPA v. RUSSIA

(Application no. 8532/06)

JUDGMENT

STRASBOURG

3 February 2011

FINAL

03/05/2011

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

In the case of Geppa v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 13 January 2011,

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

PROCEDURE

1. The case originated in an application (no. 8532/06) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Valentina Petrovna Geppa (“the applicant”), on 30 December 2005.

2. The applicant was represented by Ms G.V. Zambrovskaya, a lawyer practising in Kursk. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that the authorities were responsible for the death of her son in a correctional colony and that there had been no effective investigation of the circumstances of his death.

4. On 6 November 2009 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant lives in Kursk. She is the mother of Yevgeniy Geppa, born in 1974 and deceased in 2004 while serving his prison sentence.

A. The events prior to Yevgeniy Geppa's death

6. On 19 November 1998 Yevgeniy Geppa was found guilty of organised violent robbery and, following appeal proceedings before the Kursk Regional Court which ended on 10 February 1999, was sentenced to eight years of imprisonment in a high-security penitentiary facility. He was sent to serve his sentence in IK-2 in Kosinovo, Kursk Region.

7. In the periods from 17 to 31 August 2000 and from 10 to 29 July 2003 he was transferred to the hospital of the Penitentiary Department in Kursk for treatment for chronic pyelonephritis of his only kidney in the active phase.

8. On 28 January 2004 he was transferred to the same hospital, having been diagnosed with a psychiatric disorder, namely, “past organic brain lesion of complex origin” (owing to a head injury and drug abuse), with emotional instability and compensatory behaviour. It was noted that his medical history included a reference to epileptic syndrome.

9. On 20 May 2004, following changes introduced to the Criminal Code, the Kursk Regional Court reduced the applicant's prison sentence to seven years and ordered it to be served in a facility of average security level. Yevgeniy Geppa was therefore transferred to the Lgov correctional colony OX-30/3 (*учреждение ОХ-30/3*, hereafter “the colony”).

10. In June 2004 Yevgeniy Geppa's wife received a letter from him. His distorted handwriting, repetitive use of words and confused language made her suspect that he was unwell.

11. On 5 August 2004 the applicant and Yevgeniy Geppa's wife visited him in the colony. They found him very weak, pale and exhausted. He had lost weight and had a blank expression. During the visit he fainted and collapsed on the floor; according to the applicant, when they pulled up his shirt they saw faded bruises of yellow-greenish colour on his chest. They also saw clotted blood on his lips. Yevgeniy Geppa told them afterwards that he was being beaten by the colony officials because he had refused “to co-operate”, that is, to systematically report on his fellow inmates. According to the Government, Yevgeniy Geppa had an epileptic fit on that day and his medical examination did not reveal any injuries.

12. On 20 August 2004 the applicant wrote to the Kursk Regional Prosecutor's Office complaining that her son had been ill-treated at the colony, referring to the incident of 5 August 2004 when he fainted during the visit; she described the injuries they had allegedly found on his chest and lips and also complained that he was not receiving medical care. She contended that this had not happened in the previous detention facility and had only started after her son's transfer to correctional colony OX-30/3. She requested that he be transferred elsewhere.

13. From 27 August 2004 to 18 September 2004 Yevgeniy Geppa was transferred to the hospital of the Penitentiary Department in Kursk for examination and treatment. He was diagnosed with a psychiatric disorder,

namely, “past organic brain lesion of complex origin” (owing to a head injury and drug abuse), with emotional instability and compensatory behaviour, and epileptic syndrome. In addition, he was diagnosed with chronic pyelonephritis of his only kidney at the stage of remission; it was recommended that he be placed in the psychiatric hospital of Smolensk.

14. In the meantime, on 3 September 2004 the applicant received a reply from the Kursk Regional Penitentiary Department of the Ministry of Justice to the effect that the on-site inspection conducted following her complaint had established that the conditions of her son's detention complied with the law and there were no grounds to transfer him to another facility. It was also stated that he was provided with medical care when necessary.

15. On 17 October 2004 the applicant and Yevgeniy Geppa's wife visited him in the colony for the last time. According to the applicant, when they met him he had had a fever and had been shivering despite being dressed in a winter jacket and gloves. He had allegedly told them that he had pain “all over inside” and splitting headaches but that the colony medical staff had refused to see him and had accused him of faking the illness. He had also allegedly told them that he had requested a transfer to the psychiatric hospital of the Penitentiary Department of the Smolensk Region (the psychiatric hospital of Smolensk) because he could not bear the constant beatings any longer. Before they said goodbye he had told them that he felt he was dying and they would probably not see him again.

16. On 18 October 2004 the applicant wrote to the Penitentiary Department complaining that her son was being ill-treated at the colony. She complained about the beatings, the deterioration of his health and the lack of medical assistance. She requested that he be given a medical examination to identify the cause of his headaches, stomach and chest pains, and deteriorating eyesight. She also requested to see his pre-transfer medical records from IK-2 and the colony medical records relating to the period between 27 August and 16 September 2004.

17. On 25 October 2004 the Penitentiary Department replied to the applicant that her enquiry had been examined by its medical division. It informed the applicant that Yevgeniy Geppa's medical file at the colony contained records on his past organic brain lesion of complex origin (owing to a traumatic brain injury and drug abuse), with emotional instability and compensatory behaviour, and epileptic syndrome; he was also diagnosed with chronic pyelonephritis of his only kidney at the stage of remission. It stated that he was receiving the necessary medical care. When interviewed, Yevgeniy Geppa had refused to be placed in the hospital of the Penitentiary Department but had given his consent to be placed in the psychiatric hospital of Smolensk. A similar letter was sent to her on 18 November 2004, adding that no physical force had been applied against Yevgeniy Geppa and informing her of his transfer to the psychiatric hospital of Smolensk.

18. On 14 November 2004 Yevgeniy Geppa was taken to the psychiatric hospital of Smolensk. On the way a stop was made at IZ-36/1 of Voronezh, where he asked to see a doctor. The medical examination revealed several symptoms of medium severity, such as a “confused state of consciousness”. After he had been given medication his condition improved, and he was sent on to Smolensk.

19. On 20 November 2004 Yevgeniy Geppa arrived at the psychiatric hospital of Smolensk. The medical examination conducted on his arrival established that his condition was serious, he was unable to walk by himself, was pale and his extremities were cold. He could communicate with the doctor, but quickly became exhausted. Symptomatic treatment began immediately and further examinations were ordered.

20. On 22 November 2004 Yevgeniy Geppa had a general blood test. On the following day he had a chest x-ray and an electrocardiogram. On 24 November 2004 he had an HIV test, which was negative.

21. On 29 November 2004 Yevgeniy Geppa underwent an x-ray brain scan that revealed hypertension. On the same day an electroencephalogram was performed, and it was concluded that there was probably a pathological formation in the left hemisphere. He also had a stomach x-ray on that day.

22. On 30 November 2004 he had a general ultrasound abdominal scan that revealed some changes in the liver and pancreas. On the same day he was seen by an infection specialist, who did not find any infection.

23. On 1 December 2004 he was seen by a neurologist who ordered a brain CT scan, which was performed on 6 December 2004 and confirmed the presence of a formation in the left hemisphere. It was followed by a consultation with a neurosurgeon, who advised against surgery. On the following day an oncologist diagnosed Yevgeniy Geppa with a brain tumour and oedema of the brain.

24. On 8 December 2004 Yevgeniy Geppa died.

25. On 9 December 2004 an autopsy, including a histological study, was conducted and established that Yevgeniy Geppa's death was caused by a brain tumour (glioblastoma multiforme).

B. Inquiry into Yevgeniy Geppa's death and subsequent proceedings

26. Following Yevgeniy Geppa's death the Smolensk Prosecutor's Office conducted an inquiry in order to decide whether there were grounds for a criminal investigation. On 17 December 2004 it decided that no criminal investigation was necessary. The decision referred to the autopsy report, the medical file, and the statements of the hospital director and detainee K., who was employed at the hospital.

27. On 21 December 2004 the applicant complained to the Kursk Regional Prosecutor's Office about the beatings to which her son had allegedly been subjected in the colony and alleged that there had been a negligent failure to provide him with medical assistance; she also alleged

that his transfer to the psychiatric hospital had been delayed without justification.

28. On 27 January 2005 the prosecutor's office decided that there were no grounds to open a criminal investigation into Yevgeniy Geppa's death. The prosecutor's office had questioned the colony officials and inmates, who made the following statements:

- the head officer of unit no. 12 where Yevgeniy Geppa was held stated that he had not received any complaints that physical force had been applied to Mr Geppa and had not seen any injuries on him;

- inmate K. stated that upon his arrival at the colony Yevgeniy Geppa had had certain health complaints, in particular he had mentioned that he was suffering from epilepsy; he had not seen any injuries on him and had not heard any complaints about the use of force against him;

- inmate Ch. stated that he had not seen any injuries on Yevgeniy Geppa and had not heard any complaints about the use of force against him;

- inmate Kh. stated that his sleeping place in the dormitory had been next to Yevgeniy Geppa's and that he had not seen any injuries on him or heard any complaints about the use of force against him;

- an officer of the visits and parcels section, M., stated that on 5 August 2004 Yevgeniy Geppa had been visited by his wife and mother and that about thirty minutes into the visit he had had an epileptic fit and had been taken to the medical unit; Yevgeniy Geppa's mother had not mentioned seeing any injuries on him;

- an officer of the visits and parcels section, Kh., stated that on 5 August 2004 he had searched Yevgeniy Geppa before the visit, though without removing his clothes, and had not seen any injuries on him; following an epileptic fit during the visit Yevgeniy Geppa had been taken to the medical unit; his mother had not mentioned seeing any injuries on him;

- inmate Sh. stated that on one occasion in August 2004 he had accompanied Yevgeniy Geppa from the medical unit back to unit no. 12; Yevgeniy Geppa had spent about one or two hours in the medical unit; on the way he had not heard any complaints; he could not say whether Yevgeniy Geppa had had any injuries;

- an officer of the medical unit, G., stated that on 5 August 2004 he had attended to Yevgeniy Geppa after he had fainted during the visit; when examined, Yevgeniy Geppa had been conscious; he had diagnosed him with epileptic syndrome and given him an injection of seduxen; he had had a bruise on his knee; no other injuries had been revealed;

- the head of the medical unit stated that Yevgeniy Geppa had been registered with the colony medical unit as suffering from a psychiatric disorder, namely, "past organic brain lesion of complex origin" (owing to a traumatic brain injury and drug abuse), with emotional instability and compensatory behaviour, and epileptic syndrome. From 27 August 2004 to 18 September 2004 he had been transferred to the hospital of the Penitentiary Department for examination and treatment; the above diagnosis

had been confirmed and in addition to that he had been diagnosed with chronic pyelonephritis of his only kidney at the stage of remission. It had been recommended that he be placed in the psychiatric hospital of Smolensk. In the colony Yevgeniy Geppa had been provided with adequate medical care; on 14 November 2004 he had been transferred, with his consent, to the psychiatric hospital of Smolensk.

29. The applicant challenged the decision of 27 January 2005 in court.

30. On 17 March 2005 the Kirovskiy District Court of Kursk found that the inquiry conducted by the prosecutor's office into Yevgeniy Geppa's death had been insufficient. It referred in particular to the failure to verify the allegations of ill-treatment and indicated that it was necessary to establish the origin of the head injury and the brain tumour which caused his death. The court granted the applicant's request and ordered the prosecutor's office to carry out the inquiry in accordance with law. The prosecutor's office appealed.

31. On 19 April 2005 the Kursk Regional Court upheld the decision of the Kirovskiy District Court dated 17 March 2005. Following this decision the prosecutor's office requested the Penitentiary Department to send Yevgeniy Geppa's medical file and the autopsy report to it.

32. On 22 April 2005 the applicant requested the prosecutor's office to grant her victim status in the criminal proceedings concerning her son's death. She also requested access to documents from his medical file.

33. On 3 May 2005 the prosecutor's office quashed its decision of 27 January 2005 refusing to open a criminal investigation and an additional inquiry was ordered. The applicant was informed of the decision; she was also informed that there were no grounds to grant her victim status.

34. On 13 May 2005 the prosecutor's office decided to refuse to institute criminal proceedings concerning Yevgeniy Geppa's death. It stated that an additional inquiry had been carried out, which had included an examination of the medical file and questioning of the psychiatrists of the colony and of the hospital of the Penitentiary Department. It was established that the cause of death, the brain tumour, was consistent with the earlier diagnosis indicated in the colony medical file. It was also noted that Yevgeniy Geppa had sustained a head injury in 1997 and in the past he had abused alcohol, psychotropic substances and home-brewed narcotics; he had also been diagnosed with epilepsy. It was therefore concluded that there were no grounds to believe that the colony staff had committed a crime against Yevgeniy Geppa.

35. The applicant challenged the decision of 13 May 2005 in court.

36. On 3 June 2005 the Kirovskiy District Court declared the decision dispensing with criminal proceedings unlawful. It found that the investigation file was incomplete and the prosecutor's conclusions contradictory, in particular with reference to the failure to verify the origin of the head injury and the brain tumour, as well as Yevgeniy Geppa's state

of health and the adequacy of his medical treatment prior to his transfer to the psychiatric hospital. The prosecutor's office appealed.

37. On 16 June 2005 the prosecutor's office sent a number of official inquiries to medical institutions. It asked the Kursk Regional Psychiatric Hospital if Yevgeniy Geppa's had been under their supervision in the past; it requested the details of his treatment for his head injury in 1997 from the Kursk Municipal Clinic and the Kursk Regional Clinic. Finally, it requested the director of the specialist oncology clinic to explain the origin, the development pattern, methods of diagnosing and treatment of the brain tumour with which Yevgeniy Geppa had been diagnosed and the recovery rate for the disease. The latter enquiry does not appear to have been answered.

38. On 30 June 2005 the Kursk Regional Court upheld, in substance, the decision of the Kirovskiy District Court dated 3 June 2005.

39. On 27 July 2005 the prosecutor's office quashed its decision of 13 May 2005 refusing to open the criminal investigation and an additional inquiry was ordered. The applicant was informed about the decision and provided with a copy thereof.

40. On 29 July 2005 the administrative officer of the hospital of the Penitentiary Department in Kursk wrote an explanatory note for the investigation file. He stated that during his in-patient treatment at the hospital Yevgeniy Geppa had showed no symptoms of formation of a brain tumour. Early signs of the tumour could have only been detected by a CT scan, which had not been possible in the hospital for the lack of the requisite equipment. Moreover, there had been no apparent reason to order a CT scan.

41. On the same day the prosecutor's office decided to refuse to institute criminal proceedings concerning Yevgeniy Geppa's death. It referred to the medical records dated October-November 1997 relating to his head injury and concluded that it had predated his imprisonment. It further stated that the medical equipment available at the institutions and medical centres of the penitentiary system could not be used to diagnose the early stages of a brain tumour or to assess the necessity of a CT scan. The scan was recommended on 1 December 2004, after the examination at the psychiatric hospital, and carried out on 6 December 2004, two days before Yevgeniy Geppa's death. It was therefore concluded that there had been no grounds to believe that the colony staff had caused Yevgeniy Geppa injuries or had been negligent in deciding to transfer him to the psychiatric hospital for examination. The applicant was informed about the decision and provided with a copy thereof.

42. The applicant challenged the decision of 29 July 2005 in court.

43. On 30 September 2005 the Kirovskiy District Court declared the decision dispensing with criminal proceedings unlawful. It found that the inquiry had failed to establish a link between the head injury sustained by Yevgeniy Geppa in 1997 and his death in 2004 and had also failed to

substantiate the conclusion that the medical care received by Yevgeniy Geppa had been appropriate for his condition. The court indicated that the above defects could only be remedied by a proper investigation and criminal proceedings and therefore it had been mandatory to open a criminal file. The court also pointed out that the procedural law did not allow a ten-day preliminary inquiry to be conducted more than once.

44. On 14 November 2005 the prosecutor's office quashed its decision of 29 July 2005 refusing to open a criminal investigation and an additional inquiry was ordered. The applicant was informed about the decision and provided with a copy thereof.

45. On the same day the prosecutor's office of Kursk requested the prosecutor's office of Smolensk to provide it with Yevgeniy Geppa's medical file from the psychiatric hospital of Smolensk and the autopsy report.

46. On 18 November 2005 the prosecutor's office decided to refuse to institute criminal proceedings concerning Yevgeniy Geppa's death. It essentially reiterated the contents of the decision of 29 July 2005, adding that the prosecutor's office of Smolensk had not replied to the request of 14 November 2005, hence there was no new information that would allow the allegations of medical negligence to be confirmed. The applicant was informed about the decision and provided with a copy thereof.

47. On 13 December 2005 the prosecutor's office of Smolensk forwarded the requested documents to the prosecutor's office of Kursk.

48. On 30 December 2005 the prosecutor's office quashed its decision of 18 November 2005 refusing to open a criminal investigation and an additional inquiry was ordered. The applicant was informed about the decision and provided with a copy thereof. On 10 January 2006 the term for additional inquiry was extended from three to ten days in order to obtain the medical expert opinion.

49. On 10 January 2006 the prosecutor's office requested the director of the Kursk Regional Clinic to explain the origin of, the possible cause of and methods of diagnosing the brain tumour found in Yevgeniy Geppa. The director was asked whether the tumour could have been caused by Mr Geppa's head injury, whether it was treatable and whether Mr Geppa's death could have been avoided if timely medical treatment had been provided.

50. On 16 January 2006 the clinic director and the head of the clinic's neurosurgery department replied as follows:

“1. The cause of cancerous brain tumours (glioblastoma multiforme) is currently unknown.

2. Neither scientific research data nor our experience confirms any link between brain injuries and [tumours].

3. Early signs of a brain tumour formation are general brain and localised neurological symptoms and changes in the fundus of the eye.

4. Glioblastoma multiforme is one of the most malignant forms of brain tumour with the period between its formation and death varying between two and six months depending on its location.

5. The prognosis of this disease, regardless of the promptness of its diagnosis and specialist treatment, is extremely negative, the disease not being susceptible to treatment.”

51. On 17 January 2006 the prosecutor's office decided to refuse to institute criminal proceedings concerning Yevgeniy Geppa's death. In addition to the medical documents and witness statements relied on in the previous decisions, it referred to the medical opinion of 16 January 2006 given by the Kursk Regional Clinic director. It concluded that there had been no evidence of violence or medical negligence having contributed to his death. The applicant was informed about the decision and provided with a copy thereof. She appealed against this decision in court.

52. On 13 March 2006 the Kirovskiy District Court declared the decision dispensing with criminal proceedings unlawful. It found that the inquiry had failed to address the reasons for the diagnosis having been established so late despite Yevgeniy Geppa's frequent examination and treatment; the court could not rule out that there had been an unjustified delay in providing him with specialised medical care and pointed out that the negative prognosis did not absolve the penitentiary and medical staff from taking all the necessary steps in order to diagnose and treat him. The prosecutor's office appealed.

53. On 11 April 2006 the Kursk Regional Court quashed the decision of 13 March 2006 on the grounds that it had failed to specify the shortcomings in the investigation that the prosecutor's office had to remedy. The case was remitted to the same court for a fresh examination.

54. On 25 April 2006 the Kirovskiy District Court found the decision dispensing with criminal proceedings lawful and justified. Addressing the applicant's argument that the investigators had failed to request the medical file from the psychiatric hospital of Smolensk, the court observed that the file had actually been obtained, that it had been attached to the investigation file and, furthermore, that it had been directly examined in the courtroom.

55. On 5 May 2006 the applicant was given the opportunity to access Yevgeniy Geppa's medical file.

II. RELEVANT DOMESTIC LAW AND PRACTICE

Early release on health grounds

56. Article 175 § 6 of the Penitentiary Code of the Russian Federation provides as follows:

“A detainee who has acquired a serious illness [other than psychiatric] which prevents him from serving his sentence may lodge a request with a court for [early] release ... [This request] must be lodged by the detainee through the administration of the penitentiary institution ... The said request must be accompanied by the expert opinion of a medical commission or a socio-medical expert institution and the detainee's prison record.”

57. On 6 February 2004 the Government of the Russian Federation adopted Decree no. 54 establishing a list of diseases incompatible with serving a prison sentence. That list included malignant tumours (cancer) in stage IV according to TNM classification (point 7 of the decree) and kidney diseases in the terminal phase with chronic renal failure.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

58. The applicant complained about the death of her son, Yevgeniy Geppa, while he was serving his prison sentence. She alleged that his death was caused by a combination of regular beatings by the colony officials, a lack of medical care in respect of the injuries sustained, and his previously acquired medical conditions. She relied on Article 2 of the Convention, which reads in so far as relevant as follows:

“1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

...”

59. The Government contested these allegations.

A. Admissibility

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

B. Merits

1. The parties' submissions

61. The applicant complained that the death of Yevgeniy Geppa was a result of his ill-treatment at the correctional colony OX-30/3 and the failure

of the penitentiary authorities to provide him with adequate medical assistance in respect of the injuries caused by beatings and his other ailments. She referred in particular to the episode of August 2004 when she had visited Yevgeniy Geppa at the colony and he had fainted during the visit. She alleged that she had seen bruises on his body and blood on his lips and that he had told her that he was being beaten by the colony officials. She also alleged that he had told her about the beatings during her last visit on 17 October 2004, but had said that he could not complain about it for fear of reprisals.

62. The applicant further alleged that the investigation had failed to verify her allegations that there had been an unjustified delay in transferring Yevgeniy Geppa to the psychiatric hospital of Smolensk and that he had been deprived of medical treatment in the period before his transfer.

63. She also argued that the prison authorities should have ordered his release on medical grounds but had failed to do so.

64. The Government contested each of the above allegations.

They referred to the medical opinion of 16 January 2006 given by the Kursk Regional Clinic director and the head of its neurosurgery department (cited in paragraph 50 above) indicating that the origins of the tumour found in Yevgeniy Geppa were unknown and that it was not susceptible to treatment. They further pointed out that the 1997 brain injury of Yevgeniy Geppa predated his imprisonment and that it had been documented in various medical records. They accordingly concluded that there had been no violation of Article 2 of the Convention as regards its substantive limb.

65. The Government further denied the allegations of medical negligence, claiming that Yevgeniy Geppa had been under medical supervision and had received the necessary treatment. The medical file contained records concerning the treatment received by him in 2000, 2003 and 2004 in relation to the chronic pyelonephritis and the post-traumatic psychiatric disorder (see paragraphs 7-8 and 13 above). As soon as his condition had required specialised medical care he had been transferred first to the hospital of the Penitentiary Department and then to the psychiatric hospital of Smolensk. At the latter institution he had been diagnosed with a brain tumour, but had died within days of the diagnosis having been established. The cause of the death had been found to be the brain tumour (glioblastoma multiforme).

66. As regards the allegations that Yevgeniy Geppa had been entitled to early release on medical grounds, in particular because of pyelonephritis of his only kidney, the Government claimed that that diagnosis did not automatically entitle him to release. They referred to the list of diseases deemed incompatible with serving a prison sentence adopted by the Government on 6 February 2004 and pointed out that release was obligatory in the event of kidney failure, which was not Yevgeniy Geppa's case. They referred to the autopsy report indicating that his kidney disease had been in the stage of remission and concluded that the penitentiary authorities had

therefore been under no obligation to initiate early release proceedings. The Government further claimed that if Yevgeniy Geppa had believed that he had medical grounds for early release, he could have applied for it of his own initiative, as provided by Article 175 of the Penitentiary Code, but he had not done so. There is no evidence that he had ever approached the colony administration with a view to requesting such a release, or that the administration had unlawfully hindered his right to do so.

67. Finally, as regards the procedural guarantees of Article 2 of the Convention, they claimed that the inquiry conducted into Yevgeniy Geppa's death had been prompt and thorough and that it had been conducted by the prosecutor's office, an authority independent from the Ministry of Justice, which governed the penitentiary system. They pointed out that the applicant's allegations of her son's ill-treatment had been looked into a number of times both before and after his death, and no evidence of beatings had been found. They contended that prior to his death Yevgeniy Geppa had not complained of ill-treatment. After the incident of 5 August 2004, when he had fainted during a family visit, he had been examined by a doctor, who had not noted any injuries except a bruise on his knee. The inquiry into his death had also looked into the allegations of ill-treatment because of their possible causal link to his death. Several colony officials and inmates had been questioned concerning the alleged beatings, and nobody had confirmed them. The Government contended that the inquiry's conclusions had been well-founded.

2. *The Court's assessment*

(a) **General principles**

68. The Court reiterates that Article 2 of the Convention, which safeguards the right to life, ranks as one of the most fundamental provisions in the Convention. Together with Article 3, it enshrines one of the basic values of the democratic societies making up the Council of Europe. The first sentence of Article 2 enjoins the Contracting States not only to refrain from the taking of life “intentionally” or by the “use of force” disproportionate to the legitimate aims referred to in sub-paragraphs (a) to (c) of the second paragraph of that provision, but also to take appropriate steps to safeguard the lives of those within its jurisdiction (see, *inter alia*, *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III, and *Keenan v. the United Kingdom*, no. 27229/95, § 89, ECHR 2001-III).

69. Persons in custody are in a particularly vulnerable position and the authorities are under an obligation to account for their treatment. Having held that the Convention requires the State to protect the health and physical well-being of persons deprived of their liberty, for example by providing them with the requisite medical assistance (see, *inter alia*, *Keenan*, cited above, § 111; *Mouisel v. France*, no. 67263/01, § 40, ECHR 2002-IX; and

McGlinchey and Others v. the United Kingdom, no. 50390/99, § 46, ECHR 2003-...), the Court considers that, where a detainee dies as a result of a health problem, the State must offer an explanation as to the cause of death and the treatment administered to the person concerned prior to his or her death.

70. As a general rule, the mere fact that an individual dies in suspicious circumstances while in custody should raise an issue as to whether the State has complied with its obligation to protect that person's right to life (see *Slimani v. France*, no. 57671/00, § 27, ECHR 2004-IX (extracts)).

71. The Court reiterates that where lives have been lost in circumstances potentially engaging the responsibility of the State, Article 2 entails a duty for the State to ensure, by all means at its disposal, an adequate response – judicial or otherwise – so that the legislative and administrative framework set up to protect the right to life is properly implemented and any breaches of that right are repressed and punished (see *Öneryıldız v. Turkey* [GC], no. 48939/99, § 91, ECHR 2004-XII). In particular, when a detainee dies in suspicious circumstances, an “official and effective investigation” capable of establishing the causes of death and identifying and punishing those responsible must be carried out of the authorities' own motion (see *Paul and Audrey Edwards v. the United Kingdom*, no. 46477/99, § 74, ECHR 2002-II).

72. The system required by Article 2 must provide for an independent and impartial official investigation that satisfies certain minimum standards as to effectiveness. Accordingly, the competent authorities must act with exemplary diligence and promptness, and must of their own motion initiate investigations capable of, firstly, ascertaining the circumstances in which the incident took place and any shortcomings in the operation of the regulatory system and, secondly, identifying the State officials or authorities involved. The requirement of public scrutiny is also relevant in this context (see *Kats and Others v. Ukraine*, no. 29971/04, § 116, 18 December 2008).

(b) Application of those principles to the present case

(i) Whether Yevgeniy Geppa died as a result of ill-treatment and inadequate medical care while in detention

73. The Court begins its examination by noting that the applicant alleged that the authorities were responsible for her son's death for two main reasons. Firstly, she believed that Yevgeniy Geppa had been ill-treated in the colony, and that he had thus sustained a head injury which had subsequently caused the brain tumour which ultimately led to his death. Secondly, she contended that the medical assistance provided to him in the penitentiary institutions had been inadequate, in particular that there had been an unjustified delay in transferring him to the psychiatric hospital of Smolensk, a specialised institution where he could have been treated for the brain tumour. In addition to that she argued that the penitentiary authorities

had failed to order his early release on account of his pre-existing kidney condition, and that that had been a factor contributing to his death.

74. Given the alleged causal link between Yevgeniy Geppa's alleged ill-treatment and death, in particular the contributory nature of the injuries to his terminal illness, the Court will examine the facts relating to the complaints under Article 2 jointly with those relating to Article 3 of the Convention. It will thereafter decide whether it is necessary to examine the complaints under Article 3 of the Convention separately.

75. As regards the allegations of ill-treatment, the Court reiterates that, in assessing evidence, it adopts the standard of proof "beyond reasonable doubt" (see *Orhan v. Turkey*, no. 25656/94, § 264, ECHR 2002). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. In this context, the conduct of the parties when evidence is being obtained has to be taken into account (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). In the present case, the applicant alleged that she had heard from her son that he had been ill-treated, a statement that is not supported by any other material in the case-file. It is particularly noteworthy that Yevgeniy Geppa never lodged any complaints regarding ill-treatment, even though the alleged beatings predated his death by several months. Moreover, it does not appear that he instructed the applicant to do so on his behalf, although he had clearly had the opportunity to do so during her visits on 5 August 2004 and 17 October 2004, when the beatings were allegedly mentioned. The inquiries into the applicant's allegations of her son's ill-treatment took place while he was still alive, and he made no statements to that effect when interviewed by the inspectors. While the Court is mindful of the applicant's argument that he did not wish to complain for fear of reprisals, it cannot establish the fact of ill-treatment if the only reliable information about it had been voluntarily withheld by the alleged victim of violence. It observes that there is nothing in the case file that would point to any other potential sources of relevant information. Accordingly the Court is unable to take any investigative steps beyond those already taken by the domestic inspectors who investigated the applicant's allegations of ill-treatment.

76. In view of the foregoing the Court is not in a position to conclude, beyond reasonable doubt, that Yevgeniy Geppa was subjected to beatings in the correctional colony.

77. The Court furthermore notes that the medical and forensic reports drawn up in Yevgeniy Geppa's case unequivocally point to the natural cause of his death, that is, the formation of a brain tumour. In particular, the Kursk Regional Clinic director and the head of its neurosurgery department refused, in their medical opinion of 16 January 2006, to make any connection between a possible head injury and the tumour formation. The Court therefore sees no basis to establish that Yevgeniy Geppa's death could

have been caused, directly or indirectly, by a trauma resulting from beatings.

78. It will therefore proceed to examine whether Yevgeniy Geppa died because he did not receive timely and adequate medical assistance in detention. The applicant contended that the medical staff and the administrative officers of the colony and of the other penitentiary institutions to which her son had been transferred for examination and treatment had been negligent in not having detected his condition until its terminal phase and had thus been unable to provide him with treatment that could have saved his life. The Government, on the contrary, claimed that the authorities had taken all the necessary measures to ensure he was provided with adequate medical advice and treatment.

79. The Court observes that the medical negligence alleged by the applicant has three aspects. Accordingly, it will have to examine firstly whether there was a negligent failure to diagnose Yevgeniy Geppa's tumour, which caused his death; secondly, whether the timing of his transfer to the psychiatric hospital adversely affected his prospects of recovery; and thirdly, whether the medical assistance provided to him between 5 August 2004 and 14 November 2004 was appropriate for his condition.

80. The applicant pointed out that the decline of Yevgeniy Geppa's health coincided with his transfer to the correctional colony OX-30/3. However, it must be noted that Yevgeniy Geppa had had a number of serious health conditions acquired prior to his imprisonment. In the four years preceding the transfer he underwent three periods of in-patient treatment at the hospital of the Penitentiary Department in Kursk for chronic pyelonephritis of his only kidney and a post-traumatic brain lesion. He had also been diagnosed with epileptic syndrome in the past. On account of the above conditions he was registered with the colony medical unit as requiring regular supervision. It appears that before the incident of 5 August 2004, when he fainted during the family visit to the colony, he did not require any examination or treatment except for the routine supervision of those conditions. As regards that episode, the Court considers that it must be viewed against the background of his medical history. It observes that after having fainted during the family visit Yevgeniy Geppa was immediately taken to the medical unit, where he was examined and diagnosed with epileptic syndrome and given an injection of seduxen. It was not unreasonable on the part of the medical personnel to assume that they were dealing with a routine outbreak of a chronic condition. Any doubts they might have had concerning the possible aggravation of his condition were adequately addressed by the follow-up decision to transfer Yevgeniy Geppa to the hospital of the Penitentiary Department in Kursk for further examination and treatment. The Court sees no reason to conclude that the medics' response to the episode of 5 August 2004 amounted to professional negligence or was inadequate.

81. Following that, from 27 August 2004 to 18 September 2004 Yevgeniy Geppa underwent in-patient examination and treatment at the hospital of the Penitentiary Department in Kursk. As regards the adequacy of the medical care provided at the hospital, the Court notes that he was treated in respect of a psychiatric disorder (post-traumatic brain lesion), according to the diagnosis established in that period. Neither the applicant nor Yevgeniy Geppa ever complained that the treatment provided by the hospital of the Penitentiary Department in Kursk was inadequate to the diagnosed conditions. There are also no grounds to find that the hospital staff were negligent in not having detected the formation of the tumour. It refers to the explanation given by the hospital official stating that during his in-patient treatment Yevgeniy Geppa showed no symptoms of formation of a brain tumour which would have made it necessary to order a CT scan. Nothing in the file indicates that that assessment had been unreasonable or negligent. Moreover, the hospital doctors, having recommended his placement in the psychiatric hospital of Smolensk, demonstrated adequate judgment of his need for further specialised examination and treatment. Yevgeniy Geppa himself agreed to the placement. The applicant also appears to have accepted that this recommendation was reasonable.

82. As to whether the transfer was carried out with sufficient promptness, the Court observes that the recommendation for Yevgeniy Geppa's transfer to the psychiatric hospital was made on 18 September 2004. The recommendation was not expressed in terms of urgency and did not contain any indication as to the timing or the modalities of the proposed transfer. Pursuant to this recommendation, and after giving his consent to the transfer, on 14 November 2004 Yevgeniy Geppa was sent to the psychiatric hospital of Smolensk. The Court considers that the recommendation was implemented within a reasonable time, given the absence of any indication that the case concerned a medical emergency. Moreover, the materials in the case file contain nothing to indicate that Yevgeniy Geppa himself asked for his transfer to be expedited or that there had been any objective reasons to do so. There is no basis to conclude that the authorities misjudged, or disregarded, the degree of his health decline when observing his general condition in the light of already existing medical assessment. The applicant's account of Yevgeniy Geppa's being denied medical assistance pending his transfer is not corroborated by any evidence at the Court's disposal.

83. The Court finally takes note of the medical opinion given on 16 January 2006 by the specialist of the Kursk Regional Clinic indicating that the development and the outcome of a tumour of the kind found in Yevgeniy Geppa does not depend on timely diagnosis and treatment. This opinion gives no support to the applicant's argument that the delay in his transfer accelerated his death. The Court cannot speculate as to whether Yevgeniy Geppa would have lived longer, or could have enjoyed a better quality of life, if his tumour had been diagnosed earlier.

84. The Court therefore concludes that the authorities discharged their positive obligations under Article 2 of the Convention in having provided Yevgeniy Geppa with adequate medical treatment.

85. As regards the applicant's argument that the penitentiary authorities had failed to order Yevgeniy Geppa's early release on account of his pre-existing kidney condition, the Court notes that this claim had no basis in the domestic law, which provided for release only if a kidney condition was associated with chronic renal failure. Yevgeniy Geppa, on the contrary, had a condition which was in the remission stage. Moreover, there is no evidence that he ever lodged a request for early release.

(ii) Whether there has been an effective investigation

86. In so far as the applicant could also be understood to be complaining about a lack of an effective investigation into Yevgeniy Geppa's ill-treatment and death, the Court notes that an obligation to conduct an effective investigation will arise if an individual dies in suspicious circumstances while in custody or where an individual raises an arguable claim that he has been seriously ill-treated. The Court has held on numerous occasions that an obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible. Thus, the investigation of serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony and forensic evidence. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see, among many authorities, *Mikheyev v. Russia*, no. 77617/01, §§ 107 et seq, 26 January 2006, and *Assenov and Others v. Bulgaria*, 28 October 1998, §§ 102 et seq, *Reports* 1998-VIII).

87. The applicant in the present case claimed that the death of her son had resulted from the cumulative effects of ill-treatment and a lack of medical care; accordingly it was incumbent on the authorities to verify both alleged causes of death. The Court will begin its assessment by noting that the autopsy conducted immediately after Yevgeniy Geppa's death was documented in a detailed post-mortem report which found that the death had been caused by a brain tumour. This finding was consistent with the diagnosis that had been established at the hospital days before his death. Accordingly, the Court considers that the death of Yevgeniy Geppa cannot

be described as a “death in suspicious circumstances”, despite the fact that he was in custody at the time of death.

88. The Court observes that immediately after Yevgeniy Geppa's death the prosecutor's office of Smolensk examined the autopsy report, the medical file and the statements of two witnesses in the context of a preliminary inquiry and concluded that it was not dealing with a matter that required a criminal investigation. In so far as the immediate response to his death is concerned, the Court considers that the authorities acted reasonably in having secured the forensic evidence necessary for any subsequent inquest and having conducted a preliminary inquiry into the circumstances of his death.

89. However, the authorities were later confronted with the applicant's allegations challenging the natural cause of death and were obliged to assess the possible impact of the alleged ill-treatment on Yevgeniy Geppa's state of health, as well as the adequacy of the medical care he was receiving in custody. Following her complaint of 21 December 2004, the prosecutors' office conducted an on-site inquiry during which they questioned the colony officials and inmates about any episodes of ill-treatment they could have been privy to or injuries they may have noticed on him. None of those persons corroborated the allegations of ill-treatment or the use of force. Based on their statements and the medical file the prosecutor's office refused to open a criminal investigation.

90. The Court observes that the prosecutor's decision not to open a criminal investigation was subject to four rounds of judicial review. In the first three rounds the courts found the inquiry incomplete and gave instructions to the prosecutor's office as to the further steps to be taken. They required, in particular, that the investigators look into the possible traumatic origin of the tumour of which Yevgeniy Geppa had died and also assess the adequacy of the medical treatment he had received. In the decision of 30 September 2005 the court held, in addition, that it was indispensable to address these issues properly in criminal proceedings. However, in its subsequent decision of 25 April 2006 the same court was satisfied with the content of the investigation file and no longer required a criminal case to be opened in order to address those issues.

91. Having regard to the principles developed in its case-law relating to the requirement of an effective investigation, the Court notes that the inquiry, despite having been reopened several times, lasted for about one year in total, which is not in itself unreasonable. As to its substance, it addressed the two allegations made by the applicant, that is, the allegation of ill-treatment and the allegation of medical negligence. The part of the inquiry concerning the alleged ill-treatment was also preceded by inquiries into the complaints which the applicant had brought while Yevgeniy Geppa was still alive. The Court has found above that the authorities were justified in having found these allegations unsubstantiated, particularly in view of Yevgeniy Geppa's own silence on the matter (see paragraph 75 above).

Moreover, as the Court also found above, it sees no obvious omissions on the part of the authorities in their attempts to gather evidence on this issue (*loc. cit.*).

92. As regards the verification of the allegations of medical negligence, the Court observes that the medical and forensic documents obtained by the inquiry were sufficient to address any suspicion of a criminal offence. In particular, the questions put to the medics involved in Yevgeniy Geppa's treatment and to the independent medical specialists were relevant and exhaustive on the point of the alleged link between Yevgeniy Geppa's death and possible omissions on the part of the medical and penitentiary staff. The Court considers that the final decision concerning the absence of grounds for opening a criminal investigation was reasonable and sufficiently argued on the basis of the information received in reply. Although it took several rounds of judicial review for the investigation to address this point in a satisfactory manner, the shortcomings had been duly corrected and the final procedural decision was taken within reasonable time.

93. The Court also notes that the applicant had been duly informed about every decision taken following her complaints, she could, and did, obtain access to the documents she requested, and her motions were examined by the courts reviewing the case. Indeed, she did not complain that she had not been sufficiently informed of, or involved in, the inquiry.

94. The foregoing considerations are sufficient to enable the Court to conclude that the authorities have complied with their obligation to conduct an effective investigation into Yevgeniy Geppa's death.

95. There has accordingly been no violation of Article 2 of the Convention as regards its substantive or procedural limb.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

96. The applicant complained of a violation of Article 3 of the Convention in respect of Yevgeniy Geppa, alleging that he had been ill-treated in detention. She reiterated, *mutatis mutandis*, her arguments concerning the complaint under Article 2 of the Convention. Article 3 of the Convention reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

97. The Government contested the allegation that Yevgeniy Geppa had been ill-treated. In this connection they reiterated their comments as regards the alleged violation of Article 2 of the Convention.

98. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

99. The Court observes that the complaint under Article 3 of the Convention has the same factual background as the above complaint under Article 2 of the Convention. Moreover, in finding no violation of the latter

provision the Court also had regard to the allegations of ill-treatment (see paragraphs 75-76 above) and the authorities' compliance with their procedural obligation to conduct an effective investigation (see paragraphs 89-91 above). In the light of this finding the Court considers that it is not necessary to examine the facts of the case separately under Article 3 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 2 of the Convention;
3. *Holds* that there is no need to examine the complaint under Article 3 of the Convention;

Done in English, and notified in writing on 3 February 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President