CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 4353/03
by Nadezhda TARARIYEVA
against Russia

The European Court of Human Rights (Fourth Section), sitting on 11 October 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr G. BONELLO,
Mr M. PELLONPÄÄ,
Mr K. TRAJA,
Mr A. KOVLER,
Mr L. GARLICKI,
Ms L. MIJOVIĆ, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 4 December 2002,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Nadezhda Dmitriyevna Tarariyeva, is a Russian national who was born in 1946 and lives in the Krasnodar Region. She is the mother of Mr Nikolay Ivanovich Tarariyev, a Russian national who was born in 1976 and died on 4 September 2002. The respondent Government are represented by Mr P. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

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

1. Criminal proceedings against Mr Tarariyev

(a) Investigation in respect of the charges

On 5 October 1996 Mr Tarariyev was involved in a fist fight in which he hit his former girlfriend's boyfriend, who died three days later.

On 8 October 1996 criminal proceedings were instituted against Mr Tarariyev on suspicion of having caused grievous bodily injury that resulted in the victim's death, an offence under Article 108 § 2 of the RSFSR Criminal Code.

It appears that Mr Tarariyev absconded and on an unspecified date an arrest warrant was issued. On 26 June 1997 the Severskiy District Court of the Krasnodar Region confirmed the lawfulness of the arrest warrant.

(b) First conviction

On 6 April 2000 Mr Tarariyev was convicted as charged and sentenced to six years' imprisonment in a correctional colony. On the same day he was taken into custody and placed in the temporary confinement ward of the Severskiy District Police Department (*изолятор временного содержания Северского РОВД Краснодарского края*, the "Severskiy IVS").

On 14 April 2000 Mr Tarariyev was escorted to Remand Centre SIZO-23/1 at Krasnodar (*следственный изолятор ИЗ-23/1 г. Краснодара*, the "Krasnodar SIZO"). On 17 April 2000 X-rays and blood tests for HIV and syphilis were taken.

On 17 May 2000 the Krasnodar Regional Court upheld the conviction.

(c) Medical conditions in the Khadyzhensk colony

Mr Tarariyev was sent to serve his sentence at correctional facility no. UO-68/9 in the town of Khadyzhensk of the Krasnodar Region (*учреждение УО-68/9 ГУИН Минюста РФ по Краснодарскому краю*, the "Khadyzhensk colony" or "colony no. 9").

On 10 January 2001 Mr Tarariyev, who was in a serious condition, was taken into hospital for in-patient treatment. He was diagnosed with Morgagni-Adams-Stokes disease and an acute ulcer condition. Doctors prescribed strict bed rest and medicines. On 16 January 2001 Mr Tarariyev's state of health had improved slightly.

On 22 January 2001 he was escorted to Treatment and Prevention Institution no. 5 (14) (*лечебно-профилактическое учреждение № 5(14)*, "Institution no. 5") where he received treatment from 1 to 12 February 2001.

On 1 or 2 March 2001 Mr Tarariyev was brought back from Institution no. 5 with acute gastroduodenitis.

On 6 March 2001 he was examined and diagnosed with chronic gastroduodenitis. Certain medicines and vitamins were prescribed.

(d) Quashing of the conviction and a new trial

On 2 August 2001 the Presidium of the Krasnodar Regional Court quashed the judgments of 6 April and 17 May 2000 under the supervisory review procedure and remitted the case for a new trial.

On 22 September 2001 Mr Tarariyev was transferred to the Krasnodar SIZO. According to the applicant, her son's cell was severely overcrowded and accommodated 70 people instead of the 20 it was designed for. Detainees took turns to sleep. The air was musty and stuffy; outdoor exercise was only permitted for five minutes a day. The food consisted of sour cabbage soup. Mr Tarariyev allegedly received no medical treatment for his ulcer and the medicines delivered by the applicant were handed over to him two weeks late.

On 24 September 2001 Mr Tarariyev's lawyer applied to the trial court for his client's release pending trial. On 19 October 2001 the Severskiy District Court refused the application for release. On an unspecified date the Krasnodar Regional Court dismissed an appeal against the refusal. Copies of these decisions have not been made available to the Court.

On 20 February 2002 Mr Tarariyev fainted at the hearing. The trial court ordered a medical examination of Mr Tarariyev by doctors of the Krasnodar SIZO and by doctors of the district hospital. It put questions to them about the diseases Mr Tarariyev had, whether he needed in-patient treatment and whether he could remain in detention.

On 22 February 2002 the Afinskiy district hospital sent the following report to the Severskiy District Court, signed by the deputy head doctor, the head of department and the doctor in charge:

> "The Afinskiy district hospital no. 3 responds that Mr Tarariyev is undergoing treatment in the department of digestive diseases in connection with a heart disease (myocarditis) and an acute condition of duodenal ulcer.
>
> For treatment and differential diagnostics the patient is to remain in the department for no less than two weeks. [He] cannot be held in an investigations ward or a detention facility."

On 1 March 2002 Mr Tarariyev was discharged from the hospital to the Krasnodar SIZO. On 6 March 2002 he sought medical assistance and received in-patient treatment. He was diagnosed with stomach and duodenal ulcer, cardioneurosis and chronic gastroduodenitis.

On 9 April 2002 Mr Tarariyev wrote an "explanation" to the director of the Krasnodar SIZO, noting that he had no complaints about the conditions of detention, handling of parcels or visits.

From 15 to 26 April 2002 the applicant was held in the Severskiy IVS.

On 19 April 2002 the Severskiy District Court pronounced a new conviction against Mr Tarariyev and sentenced him to six years' imprisonment in a correctional colony. On 10 July 2002 the Krasnodar Regional Court upheld the conviction on appeal.

2. Mr Tarariyev's death

On 31 July 2002 Mr Tarariyev was transferred to the Khadyzhensk colony. According to the applicant, upon his arrival all medicines were taken away from him and no medical assistance was provided.

(a) Worsening of Mr Tarariyev's condition and the first surgery

At 8.30 a.m. on 20 August 2002 Mr Tarariyev applied to the medical department of the colony, complaining about acute pain. He was diagnosed as having a perforated duodenal ulcer and peritonitis. In view of his serious condition, a decision was made to transfer him to the Apsheronsk hospital.

At 1 p.m. on the same day surgery was performed on Mr Tarariyev at the Central District hospital of Apsheronsk.

The applicant maintained that she had visited her son on 20, 21 and 22 August and seen him shackled with handcuffs by his left hand to the hospital bed. A friend of hers, Ms Tsygankova, had also come to visit on 20 August. With the permission of the head of the resuscitation department, the applicant had stayed overnight on a spare bed. Her son had given her an authority form to collect his personal belongings.

On 21 and 22 August the applicant complained to the Apsheronsk prosecutor, the Krasnodar Regional Prosecutor's Office, the President of the Krasnodar Regional Court and the deputy head of the Khadyzhensk colony about the handcuffing of her son and asked for him not to be sent to Institution no. 5 in view of his condition.

(b) Mr Tarariyev's discharge and transport to Institution no. 5

On 22 August 2002 Mr Tarariyev was diagnosed with a breakdown of sutures in the duodenum, duodenal fistula and peritonitis. He was discharged from the Apsheronsk hospital and transported to Institution no. 5, 120 km away from Apsheronsk.

According to the Government, Mr Tarariyev was transported by a "special car" accompanied by an experienced medical nurse, Ms G. Snezhkina, who carried a set of necessary medical equipment on her. They produced a written statement by Ms Snezhkina. She indicated that during the journey she had talked to Mr Tarariyev about his health and measured his blood pressure which had been stable. The patient had had no complaints. The travel time had been two hours.

According to the applicant, she had objected to her son's discharge and transfer but the head of the resuscitation department, Mr Karpachev, had told her that the transfer was mandatory because Mr Tarariyev was a convict. She had assisted the medical staff to load the applicant, wrapped in a blanket, onto a wheel litter and then into the prison van ("*автозак*") onto a layer of padded cotton mattresses.

(c) Second surgery and Mr Tarariyev's death

On 24 August 2002 further surgery on Mr Tarariyev's abdominal organs was performed in Institution no. 5.

On 4 September 2002 the applicant came to see her son and learnt that he had died at 7.35 a.m. on that day.

According to the death certificate of 5 September 2002, the autopsy established that the death had been caused by acute anaemia (blood loss) provoked by massive gastrointestinal haemorrhage. The perforated duodenal ulcer was noted as a concomitant disease.

3. Investigation into Mr Tarariyev's death

On 7 September 2002 Mr Melnik, an assistant to the Teuchezh inter-district prosecutor, informed the applicant of his decision not to initiate criminal proceedings in connection with Mr Tarariyev's death.

On 8 February 2003 Mr Krut, the prosecutor of the Apsheronsk district, told the applicant that medical specialists of the Khadyzhensk colony had used their best efforts to save Mr Tarariyev's life as they had sent him to the Apsheronsk district hospital which possessed the necessary surgical equipment.

On 19 February 2003 Mr Krut issued a decision to initiate criminal investigation no. 366214 into the actions of medical specialists of the Apsheronsk district hospital. The Apsheronsk District Police Department was requested to carry out an inquiry under Article 118 § 2 of the Criminal Code (negligent infliction of a grievous bodily injury resulting from incompetent performance of professional duties).

Between 3 and 26 March 2003 the investigators interviewed the doctors Dudkin, Danilov and Karpachev of Apsheronsk hospital, the psychologist Ms Konyaeva of the Khadyzhensk colony and the surgeon Mr Davydov of Institution no. 5. Mr Davydov testified as follows:

> "...on the day of arrival Mr Tarariyev was in a serious state, unfit for transport... Conservative therapy was indicated... In the night of 23 August 2002 a haemorrhage began and we started discussing surgery... On 4 September 2002 he had another fit of intestinal haemorrhaging from the ulcer defect... Institution no. 5 has no facilities for blood transfusion because it has no contract with the blood-transfusion service. For that reason Mr Tarariyev received blood substitutes which could not stabilise hemodynamics adequately..."

On 27 March 2003 a police investigator ordered a medical inquiry into the circumstances of Mr Tarariyev's treatment and death.

By a decision of 1 April 2003, the applicant was granted victim status in criminal case no. 366214.

On 29 April 2003 a panel of three medical specialists returned the following unanimous findings:

> "...6. Given the duodenal ulcer complicated by perforation (defect of the wall of a hollow organ), the transfer of Mr Tarariyev from colony no. 9 to Apsheronsk hospital for surgery was required for vital reasons...
>
> 4.5. Examination and treatment of Mr Tarariyev in Apsheronsk hospital at the moment of his arrival was timely as his condition required emergency surgery. Owing to a short and defective description of the surgery at Apsheronsk hospital (the state of the stomach and organs of the abdominal cavity is not reflected, there is no indication of the method of suturing the ulcer defect, the nature of sanation and draining of the abdominal cavity), it is impossible to determine whether the surgical technique was correct. Two days later a breakdown of sutures was observed at the place where the ulcer defect had been sutured, which gives rise to doubts about the quality of... the performed surgery...
>
> 7.8. On 22 August 2002 the patient Tarariyev was unreasonably transferred to Institution no. 5 with the diagnosis 'Sutures breakdown in the duodenum. Duodenal fistula in formation, peritonitis'. The patient was in an extremely serious condition, not fit for transport and required further emergency surgery – relaparotomy, revision and sanation of organs of the abdominal cavity and removal of the duodenal fistula, which was not done by either the doctors of Apsheronsk hospital or the doctors of Institution no. 5. The transportation to Institution no. 5 aggravated the patient's condition and delayed emergency medical assistance. For unspecified reasons the surgery in Institution no. 5 was performed too late, two days after [the patient's] arrival.
>
> 9. The experts' panel considers that there is no causal link between the actions of the doctors of colony no. 9 and Mr Tarariyev's death... Defects in medical assistance administered to Mr Tarariyev in the Apsheronsk hospital and Institution no. 5 have cumulatively resulted in the patient's death and there is a causal link between these events."

On 21 May 2003 charges were brought under Article 109 § 2 of the Criminal Code (negligent manslaughter resulting from incompetent performance of professional duties) against the doctors of the Apsheronsk hospital and Institution no. 5. On 3 June 2003 the case against the doctors of Institution no. 5 was severed and referred for investigation to the Krasnodar Regional Prosecutor.

On 4 June 2003 the applicant requested Mr Krut to put additional questions to medical experts. In particular, she disagreed with the experts' findings in the part exculpating the medical staff of colony no. 9. She submitted that they were to blame for the acute condition of her son's ulcer and its ultimate perforation because all medicines had been taken away from

him and he had had to pick plantain and dandelions for self-treatment. The applicant did not receive any response to her request.

On 6 June 2003 an investigator of the Apsheronsk district prosecutor's office commissioned a supplementary medical expert examination, asking the experts to determine what medical instructions the doctors of the Apsheronsk hospital had failed to comply with.

On 19 June 2003 the experts reported as follows:

> "The experts' panel considers that the nurse O., the internist Kh., the anaesthetists-resuscitators K. and Shch., the head of resuscitation and anaesthology department Karpachev did not violate any provisions of their Code of Practice... when providing medical assistance to Mr Tarariyev.
>
> The surgeon Dudkin did not arrange for a consultation by an internist before the surgery; the surgery was performed with technical defects that resulted in the breakdown of sutures; he did not call for the head of the surgery department in good time (on 22 August 2002, i.e. two days later); together with the head of department, he decided to discharge the patient unfit for transport to another institution; he filled in the medical documents approximately... whereby he violated the rules governing provision of medical assistance in the field of general surgery and [certain provisions] of the Code of Practice of Surgeons.
>
> The head of the surgery department Danilov failed to control the surgeon Dudkin's actions; he did not examine the patient Tarariyev daily; it was his duty to control the discharge of a seriously ill patient unfit for transport (the surgical tactics were chosen incorrectly, further emergency surgery was required, a consultation with an expert in resuscitation and an internist was not organised before the discharge), which was in violation of [certain provisions] of the Code of Practice binding on heads of surgery departments.
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> Having regard to the above, the panel considers that the unjustified discharge of the seriously ill patient Tarariyev, unfit for transportation, from Apsheronsk hospital led to the belated provision of medical assistance, development of complications and death, for which the head of the surgery department is to be held liable pursuant to the Code of Practice."

By a decision of 21 June 2003 Mr Khut, senior assistant to the Agygheya Republic prosecutor, refused to initiate criminal proceedings against doctors of Institution no. 5 for lack of evidence of a criminal offence. On the basis of statements by Mr Davydov and Mr Teter, the deputy head of the therapy department, it was established that the medical records provided by the Apsheronsk hospital had contained no information on the performed surgery and post-operative complications, such as the breakdown of sutures. Mr Tarariyev's condition had been further aggravated by the conditions of his transfer in a prison van. Further surgery had not been performed immediately because an examination of the patient had been required. According to the decision, the very length of the post-operative period showed that the further surgery had been performed correctly and that the ulcerative defect which had ultimately caused the death had not been a

consequence of it. On 25 August 2003 the applicant received a copy of the decision.

On 10 July 2003 the investigator closed the criminal case against all the other doctors of the Apsheronsk hospital and preferred criminal charges against the head of the surgery department Mr Danilov. On 22 August 2003 the case was set down for trial.

On 30 September 2003 the Apsheronsk District Court of the Kransodar Region acquitted Mr Danilov. It found that no evidence produced by the prosecution confirmed Mr Danilov's guilt. In particular, the report of the medical experts of 29 April 2003 had only established a causal link between the actions of doctors of both hospitals and Mr Tarariyev's death, but had not directly implicated Mr Danilov. The second report of 19 June 2003 could not be relied upon because the Code of Practice was inadmissible evidence (for unclear reasons). On the basis of Mr Karpachev's testimony, the court found that Mr Danilov could not have reasonably foreseen the patient's death because Mr Tarariyev's condition at the time of his discharge "was improving" and "permitted his transport to a special hospital in Tlyustenkhabl".

Both the applicant and the prosecution appealed. The applicant claimed, in particular, that Mr Danilov had sent her son to certain death because he had authorised his discharge in a serious condition and transport for more than 100 km in a car unfit for transportation of patients. The court did not determine her civil claim against Mr Danilov and refused to adjourn the proceedings for ten days because her lawyer was engaged in the regional court. The prosecution challenged the court's decisions on admissibility and assessment of evidence.

On 10 December 2003 the Krasnodar Regional Court examined the appeals and upheld the acquittal, endorsing the arguments of the first-instance court.

On 5 November 2003 Mr Khut reported to the applicant that an additional inquiry into the actions of the staff of Institution no. 5 had been carried out further to her complaint to the Prosecutor General's Office. It was found that Mr Tarariyev had been kept in intensive care and received intensive infusion and antibacterial treatment in preparation for the surgery. Therefore, no negligence could be established.

On 27 January and 2 March 2004 the Prosecutor General's Office told the applicant that all inquiries had been carried out in a comprehensive and objective manner and there were no grounds to quash the decisions made.

4. Relevant medical documents

Medical in-patient record no. 53, opened for Mr Tarariyev on 1 February 2001 at Institution no. 5:

"Preliminary diagnosis: duodenal ulcer, recrudescence of chronic gastritis...

12 February 2001: discharged to colony no. 9 after improvement. Recommendations have been given...”

Duplicate of an unnumbered outpatient record from colony no. 9:

“Arrived from the [Kransodar] SIZO without a medical record. 31 July 2002: healthy, no complaints. Stomach ulcer in the anamnesis. Tuberculosis specialist: healthy. Internist: healthy.

20 August 2002, 8.30 a.m. ... Diagnosis: perforated duodenal ulcer. General peritonitis. Hypovolemic shock, 2nd degree. Needs urgent surgery. Medicines: ...”

Medical in-patient record no. 7377/1362, opened for Mr Tarariyev on 20 August 2002 at 11.30 a.m. at the surgery unit of the Apsheronsk hospital:

“...20 August 2002, 1.00-2.35 p.m. Surgery: laparotomy. Suture ligation of ulcer. Drainage of the abdominal cavity...

22 August 2002, 8 a.m. – 2 p.m. Examination by the head of the department. The patient is in a serious state due to the early post-surgery period and breakdown of sutures in the ulcer area...

23 August 2002: discharged for transfer to a special hospital.”

Medical record no. 419, opened for Mr Tarariyev on 22 August 2002 at 5.30 p.m. in the surgery unit of Institution no. 5:

“...24 August 2002, 3 a.m., doctor on duty. Urgent call to the resuscitation room... The patient is in a very grave state... haemorrhagic shock. Resuscitation measures taken. Treatment within the hospital capacity: there is insufficient quantity of menadion or aminocaproic acid...

24 August 2002, 7.35 a.m.-12.35 p.m. Surgery no. 225: relaparotomy...

29 August 2002. The patient’s state is stable, with a tendency to improve...

4 September 2002, 5.50 a.m. Urgent call to the room. Intense chest pain... At 7.35 a.m. death is confirmed.”

COMPLAINTS

The applicant complained, without invoking specific Convention provisions, about the inhuman conditions of her son’s detention, the lack of medical assistance and his death for which no one was held responsible.

The applicant complained under Article 3 of the Convention that her son had been beaten up by the police on 8 October 1996 which had resulted in a drastic deterioration of his health.

The applicant complained under Article 5 of the Convention that, despite the quashing of her son’s conviction on 2 August 2001 and his precarious state of health, the trial court had refused to release him pending trial.

The applicant complained under Article 6 of the Convention that her son had been denied a fair trial because the trial court had been biased towards the prosecution and had imposed an extremely severe punishment.

THE LAW

1. The applicant complained under Article 3 of the Convention that her son had been beaten up by the police in October 1996.

The Court observes that this complaint relates to a period preceding the ratification of the Convention by the Russian Federation on 5 May 1998.

It follows that this complaint is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

2. The applicant complained that the conditions in which her son had been held had amounted to torture because he had not been given adequate medical assistance. He had died in custody and those responsible had not been identified and punished. The Court will examine this part of the application from the standpoint of Articles 2, 3 and 13, which provide:

Article 2. Right to life

"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..."

Article 3. Prohibition of torture

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

Article 13. Right to an effective remedy

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Conditions of Mr Tarariyev's detention in the Severskiy IVS

The Government submitted that the applicant had not complained about any health problems while in the Severskiy IVS. In any event, the most recent period of his stay there had been in April 2002, which had been more than six months before the application was lodged with the Court.

The applicant replied that medical assistance in the Severskiy IVS had been non-existent. As a consequence, on 20 February 2002 Mr Tarariyev

had been admitted to a hospital directly from the court room because of a recrudescence of duodenitis.

The Court notes that the applicant's detention at the Severskiy IVS ended on 26 April 2002, whilst the application was only introduced on 4 December 2002, that is more than six months later.

It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

B. Conditions of Mr Tarariyev's detention in the Krasnodar SIZO

The Government submitted that on arrival at the Krasnodar SIZO Mr Tarariyev had been duly examined by medical specialists. An X-ray had been made twice – in 2000 and 2002. Following his complaint on 6 March 2002, he had received outpatient treatment appropriate for his illness. On three occasions the applicant had brought medicines that were used for his treatment. As Mr Tarariyev's statement of 9 April 2002 demonstrated, he had never complained about the medical conditions.

The applicant maintained that the conditions of detention in the Krasnodar SIZO had been poor. There was no bedding and the food was of appalling quality. Mr Tarariyev had contracted scabies and pediculosis. The medical examination carried out on arrival had purported to detect contagious diseases – tuberculosis, HIV or syphilis – and could not establish that her son had had an ulcer. Her son had not complained for fear of reprisals.

The Court has first to determine whether the applicant has exhausted domestic remedies. It reiterates that in cases where the applicants complained about the overcrowding and inadequate sanitary conditions of a remand centre, it found that the problems complained about were apparently of a structural nature and did not concern exclusively the applicant's personal situation, which called for a more flexible application of the exhaustion requirement (see *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004, and *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001). In those cases the Court further noted the applicants' attempts to make the authorities aware of their situation and to give them an opportunity to examine the conditions of their detention and offer redress, if appropriate (see the above-cited decisions and, by contrast, *Metelitsa v. Russia* (dec.), no. 33132/02, 28 April 2005, where the applicant never complained to any domestic authority).

In the present case the applicant's complaint stems not from the general conditions of detention but rather from the domestic authorities' alleged failure to cater for her son's particular medical needs. However, there is nothing to suggest that the applicant or her son ever brought these failings to the attention of the competent authorities during his detention at the Krasnodar SIZO. On the contrary, in his handwritten statement he

confirmed that he had never applied to the medical unit until 6 March 2002. In fact, it does not appear that any complaints concerning Mr Tarariyev's conditions of detention have ever been lodged. In these circumstances, the Court considers that, by failing to make the authorities sufficiently aware of her son's individual situation, the applicant did not exhaust domestic remedies.

It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

C. Conditions of Mr Tarariyev's detention in the Khadyzhensk colony

The Government, relying on a certificate from the acting director of the Khadyzhensk colony and the identically worded explanation by the head of the medical unit, submitted that Mr Tarariyev had been examined each time he arrived at the colony. After his return from Institution no. 5 in March 2001, he had been enrolled for regular medical check-ups (*диспансерный учет*). His medical record now being unavailable, it was not possible to indicate details of the treatment. On 20 August 2002 a doctor had diagnosed Mr Tarariyev with a perforated stomach ulcer and ordered conservative therapy. Within two hours he had been brought to the Apsheronsk hospital by a special car. A doctor and a nurse had accompanied him and continued the intravenous injection of drugs. The applicant had never attempted to pass any medicine to her son.

The applicant contested the Government's information as factually inaccurate. According to a duplicate of Mr Tarariyev's medical record submitted for the medical expert study in 2003, he had been considered healthy and there was no mention of any medical examination or regular check-ups. As regards the drugs allegedly injected into Mr Tarariyev on 20 August 2002, the duplicate record listed six medicines, whereas the certificates enclosed with the Government's memorandum referred to eight medicines, only one of which featured in both lists. These discrepancies cast doubt on the accuracy of the Government's submissions generally.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

D. Handcuffing of Mr Tarariyev at the Apsheronsk district hospital

The Government challenged as untrue the applicant's allegation that Mr Tarariyev had been shackled to the hospital bed. There had been no need

to apply such restraints because a special guard had been present during his removal from the hospital. In any event, the applicant had not been able to see her son after the surgery because only medical staff were allowed into the resuscitation department where Mr Tarariyev had been.

The applicant maintained that on 20 August 2002 the guard and the head of the resuscitation department had allowed her and Ms Anna Tsygankova to visit her son. They had both seen him shackled to the bed by his left hand. The applicant produced a written deposition by Ms Tsygankova in support of her contention. She further stressed that the Government referred to her son's removal rather than his stay at the hospital. Admittedly, there had been no point in using restraints during the removal because, in any event, her son had been unable to stand or walk on his own.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

E. Conditions of Mr Tarariyev's transport from Apsheronsk district hospital to Institution no. 5

The Government submitted that the applicant had been transported by a special car and accompanied by a trained medical specialist. His condition had been stable and he had had no complaints. The medical staff of Apsheronsk hospital had had no objections to the van and proposed conditions of transport. The Government referred to the written depositions by the nurse Ms Snezhkina and Mr Zakharchenko, head of the medical department of the Khadyzhensk colony.

The applicant replied that her son had been transported by the standard-issue prison van and not by a "special car". The medical experts, the prosecutor's office and doctors from Institution no. 5, all confirmed that the transport in unfit conditions had aggravated Mr Tarariyev's state.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

F. Alleged violation of Mr Tarariyev's right to life and the lack of an effective domestic remedy

The Government claimed that there had been no violation of Mr Tarariyev's right to life. His death had not been a consequence of inadequate conditions of detention or medical assistance, but the outcome of an unpredictable development of the disease he had acquired prior to his placement in custody. The investigators and domestic courts had thoroughly examined the circumstances of Mr Tarariyev's death, assessed a substantial body of evidence, commissioned a medical examination, interviewed witnesses and found no fault on the part of the medical staff or other persons. The applicant's civil action for compensation for the non-pecuniary damage had been refused because Mr Danilov had been acquitted and the Russian law of tort did not provide for no-fault liability in such a case.

The applicant replied that the appalling conditions of her son's detention at the Severskiy IVS, Krasnodar SIZO and Khadyzhensk colony, exacerbated by the lack of appropriate treatment, had led to a recrudescence of his ulcer on 14 August, its perforation and other complications on 20 August and his death on 4 September. Furthermore, the direct cause of Mr Tarariyev's death had been blood loss caused by internal haemorrhage. Both medical record no. 419 and Mr Davydov's testimony indicated that Institution no. 5 did not possess a sufficient quantity of haemostatics and no investigation into that matter had been carried out. The applicant considered that the investigation had been neither complete nor adequate.

The Court considers, in the light of the parties' submissions, that this part of the application raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

3. The applicant complained under Article 5 of the Convention that the trial court had refused her son's application for release pending trial.

The Court notes that the District Court refused Mr Tarariyev's application for release on 19 October 2001. Although the exact date when the Regional Court upheld that decision on appeal is not known, it had happened in any event before the conviction was pronounced on 19 April 2002. However, the application was only introduced on 4 December 2002, that is more than six months after these events.

It follows that this complaint has been introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

4. The applicant complained under Article 6 of the Convention about the biased attitude of the trial court and the excessive severity of the sentence.

The Court notes that there is no indication, apart from the applicant's own words, that the trial court sided with the prosecution or that its

evaluation of the facts and evidence was contrary to Article 6 of the Convention. The sentence imposed was within the limits established in the domestic law for the offence of which Mr. Tarariyev was found guilty and there was no apparent disproportionality between the offence (grievous bodily injury resulting in the victim's death) and the sentence (six years' imprisonment).

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints concerning the medical conditions of Mr Tarariyev's detention at the Khadyzhensk colony no. 9, his handcuffing at the Apsheronsk hospital, the conditions of his transport from the Apsheronsk hospital to Institution no. 5, the alleged violation of Mr Tarariyev's right to life and the lack of an effective domestic remedy;

Declares the remainder of the application inadmissible.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President