

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

THIRD SECTION

DECISION

Application no. 42372/08
Yuriy Leonidovich YEREMENKO
against Russia

The European Court of Human Rights (Third Section), sitting on 3 May 2016 as a Chamber composed of:

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

and Stephen Phillips, *Section Registrar,*

Having regard to the above application lodged on 11 June 2008,

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

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Yuriy Leonidovich Yeremenko, is a Russian national who was born in 1963 and is currently serving a prison sentence in the Republic of Tatarstan. He was represented before the Court by Mr E. Markov, a lawyer practicing in Strasbourg.

2. The Russian Government were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

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

1. Criminal proceedings

3. On 10 June 2002 the applicant was arrested on suspicion of being the organiser of a criminal group which committed dozens of violent offences, including murders.

4. On 17 July 2006 the Supreme Court of the Republic of Tatarstan found that the applicant had been the organiser of an established criminal group, and had masterminded and participated in a number of aggravated murders, extortion and money laundering offences. The applicant was sentenced to life imprisonment. The judgment became final on 12 December 2007 when it was upheld on appeal by the Supreme Court of Russia.

2. Medical treatment

5. In the years preceding his arrest the applicant suffered from a slowly progressing second-stage encephalopathy of mixed etiologies at the stage of decompensation, arterial hypertension, chronic hepatitis with hepatic impairment and cirrhosis, pancreatitis and focal duodenitis. In February 2001 he was certified for a period of one year as having a third-degree disability.

6. Upon admission to a temporary detention facility in June 2002 the applicant underwent a general medical check-up which included the measurement of his height and weight, recording of his blood pressure and body temperature, a chest X-ray examination, and tests for HIV and syphilis. A prison doctor noted the applicant's assertion that he was suffering from hepatitis C and prescribed him hepatoprotectors to support the liver.

7. Several months later the applicant complained of pain in the right hypochondrium. The prison doctor diagnosed him with hepatic cirrhosis. Hepatoprotectors, antispasmodic medications, vitamins and dietary nutrition were prescribed and provided.

8. Over the following two years the applicant was transferred between various detention facilities and each time was subjected to a thorough medical examination. It appears from the submitted documents that he was continuously provided with a special dietary regime and hepatoprotectors. The medical records show that he was examined and treated by prison doctors for an acute respiratory disease at the beginning of 2003, for headaches at the beginning of 2004, and haemorrhoids later in 2004.

9. In the autumn of 2005 the applicant was seen by a neurologist from a prison hospital and an infectious diseases specialist from a civilian hospital. The neurologist concluded that the applicant had encephalopathy of mixed etiologies and vegetative-vascular dystonia as well as a neuropathy of the right medium nerve. Nootropic medication and vitamins were prescribed. The infectious diseases specialist confirmed the presence of hepatitis and recommended a combined treatment involving cholagogue drugs and injections with both antiviral and hepatoprotective action.

10. At the beginning of 2006 the applicant complained to the prison doctor of discomfort in the abdominal area. The doctor found no signs of acute hepatitis and prescribed three weeks of treatment with hepatoprotectors and a special diet. In 2007 the applicant underwent regular check-ups performed by an infectious diseases specialist from a civilian hospital. On the doctor's recommendation he was given antiviral drugs and vitamins. In 2008 the applicant was given a course of nootropics for his brain vascular disorder. According to the medical records, the state of the applicant's health did not deteriorate over those years.

11. In 2009 the applicant was successfully treated for a cold, cystitis, orchitis and a perineum boil.

12. The authorities continued treating the applicant for hepatitis and cirrhosis of the liver. They also addressed his neurological problems and secondary medical conditions, such as seasonal colds. The applicant underwent a thorough medical examination performed by a medical panel comprising a number of specialists. In the report of 8 July 2010 the doctors concluded that the applicant was suffering from chronic hepatitis at a latent stage, first-stage cirrhosis of the liver and a second-stage encephalopathy of mixed etiologies. They also concluded that these primary chronic ailments had not progressed during the period of the applicant's detention. In late 2010 the applicant was diagnosed with developed chronic prostatitis and acute cystitis. The conditions were brought fully under control with a comprehensive drug regimen.

13. In 2011 the applicant underwent a number of medical tests and received treatment for hypertension, which seemed to have become a major health issue for him at the time.

14. On 10 February 2012 the applicant was seen by a surgeon in connection with haemorrhoidal bleeding. A drug regimen was prescribed, but it did not bring the expected results. Two weeks later the doctor recommended inpatient treatment.

15. The applicant was admitted to the surgical department of the Regional Hospital in Solikamsk. After a number of tests, including a sigmoidoscopy, the doctors established that the applicant had chronic internal haemorrhoids of the first stage. No surgery was required.

16. On 30 August 2012 he underwent a medical examination by a panel of doctors with a view to establishing whether he should apply for renewed certification as a disabled person. The commission gave a negative answer as his condition did not involve any functional pathology of his organs and his vital activity was not restricted.

17. On 3 September 2012 the applicant was discharged from hospital.

18. In 2013 most of the applicant's medical complaints concerned hypertension which, according to medical reports, had progressed to the second stage. His blood pressure was regularly monitored and he was given hypotensive drugs. The authorities also performed several tests, including an electrocardiogram examination in October 2013. That examination revealed a left bundle branch block. According to his medical records, the applicant continued to receive treatment for his heart, brain and liver conditions.

19. The applicant neither made any complaint about nor provided any description of the treatment received in the period after 2013.

B. Relevant domestic and international law

20. The relevant provisions of the domestic and international law on general health care of detainees are set out in the judgment of *Vasyukov v. Russia* (no. 2974/05, §§ 36-50, 5 April 2011).

COMPLAINTS

21. The applicant complained under Articles 3 and 13 of the Convention about the quality of the medical services provided to him whilst in detention and the lack of any effective domestic remedy for lodging a complaint in this regard.

22. The applicant also submitted under Articles 5, 6 and 10 of the Convention a number of complaints concerning various aspects of the criminal proceedings against him.

THE LAW

A. Alleged violation of Article 3 of the Convention

23. The applicant complained that the authorities had not taken steps to safeguard his health and well-being, having failed to provide him with

adequate medical assistance in breach of Article 3 of the Convention, which reads:

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

1. Submissions by the parties

24. The Government submitted that the applicant had been provided with adequate medical assistance. He had been regularly examined by both prison and civilian doctors and had received adequate medical treatment. The doctors had succeeded in preventing any serious deterioration in his health.

25. The applicant argued that the authorities had failed to provide him with proper medical services. In particular, doctors had not seen him regularly, his medical examinations had been perfunctory and he had not been supplied with all the drugs prescribed to him.

2. The Court's assessment

26. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, for example*, Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). Ill-treatment must, however, attain a minimum level of severity if it is to fall within the scope of Article 3 of the Convention. The assessment of this minimum is relative: it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A no. 25).

27. The "adequacy" of medical assistance remains the most difficult element to determine. The Court insists, in particular, that authorities must ensure that diagnosis and care are prompt and accurate (see *Khatayev v. Russia*, no. 56994/09, § 85, 11 October 2011; *Yevgeniy Alekseyenko v. Russia,* no. 41833/04, § 100, 27 January 2011; *Gladkiy v. Russia*, no. 3242/03, § 84, 21 December 2010; *Hummatov v. Azerbaijan*, nos. 9852/03 and 13413/04, § 115, 29 November 2007; *Melnik v. Ukraine*, no. 72286/01, §§ 104-06, 28 March 2006; and, *mutatis mutandis, Holomiov v. Moldova*, no. 30649/05, § 121, 7 November 2006) and that – where necessitated by the nature of the medical condition in question – supervision is regular and systematic and includes a comprehensive therapeutic strategy aimed at successfully treating the detainee's health problems or preventing their aggravation (see *Hummatov*, cited above, §§ 109 and 114, and *Sarban*

v. Moldova, no. 3456/05, § 79, 4 October 2005). The Court reiterates that medical treatment within prison facilities must be appropriate and comparable to the quality of treatment which the State authorities have committed themselves to providing for the entirety of the population. Nevertheless, this does not mean that all detainees must be guaranteed the same level of medical treatment as is available in the best health establishments outside prison (see *Cara-Damiani v. Italy*, no. 2447/05, § 66, 7 February 2012).

28. Turning to the circumstances of the present case, the Court notes that the eleven years of the applicant's detention were marked by slight augmentation of his hypertension and the development of several chronic conditions, such as haemorrhoids, prostatitis and cystitis. In the Court's view these changes do not appear to be anything other than the normal progression of medical conditions over an extended period of time. They do not give cause for serious concern as regards the quality of the medical care afforded to the applicant in detention.

29. The Court also observes that whilst in detention the applicant remained under the close medical supervision of a number of prison doctors and specialists from civilian hospitals, including an infectious disease specialist. He regularly underwent the most important medical tests and as soon as it was apparent that inpatient treatment had become urgent, he was admitted to a hospital.

30. The Court accepts the applicant's argument that he was not always provided with the drugs prescribed. However, in the absence of detailed information regarding the allegedly unavailable drugs, their therapeutic role and the periods of their unavailability, the Court is unable to examine the veracity of the applicant's allegation and reach any conclusion in this regard. In the Court's view the absence of certain medication does not necessarily undermine the effectiveness of the treatment as a whole. The dynamics of the applicant's chronic illness and the pace of his recovery from the secondary diseases convincingly demonstrate that his treatment was effective. Even if some drugs were unavailable, the Court cannot conclude that it deprived the medical treatment of its effectiveness and entailed serious suffering on the part of the applicant.

31. In the light of the above and taking into account the fact that the applicant did not submit any medical opinions suggesting that his treatment was ineffective, the Court cannot find that he was deprived of adequate medical care. Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

B. Alleged violation of Article 13 of the Convention

32. The applicant claimed that he had not had at his disposal an effective remedy for complaining about the lack of adequate medical assistance, as required under Article 13 of the Convention, which reads:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ...."

1. Submissions by the parties

33. The Government submitted that lodging a complaint with a prosecutor's office constituted an effective remedy for the applicant's complaint concerning the quality of the medical aid provided whilst he was in detention.

34. The applicant maintained his complaint.

2. The Court's assessment

35. The Court reiterates that this provision does not contain a general guarantee of legal protection for every substantive right. It relates exclusively to those cases in which an applicant alleges, on arguable grounds, that one of his rights or freedoms set forth in the Convention has been violated. According to the Court's case-law, this provision applies only where an individual has an "arguable claim" to be the victim of a violation of a Convention right (see, among other authorities, *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 51, Series A no. 131).

36. The Court has found above that the applicant's complaint under Article 3 of the Convention is manifestly ill-founded. In this connection, the Court would highlight that, on an ordinary reading of the words, it is difficult to conceive how a claim that is "manifestly ill-founded" can nevertheless be "arguable", and vice versa (see *Boyle and Rice*, cited above, § 54).

37. The Court therefore concludes that the applicant did not have an "arguable claim", and Article 13 of the Convention in conjunction with Article 3 is inapplicable to the case.

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

C. Other alleged violations of the Convention

39. Lastly, the Court has examined the remaining complaints submitted by the applicant. Having regard to all the material in its possession and in so far as these complaints fall within the Court's competence, it finds that they

do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 26 May 2016.

Stephen Phillips
Registrar

Luis López Guerra
President