



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

FIRST SECTION

Application no. 58530/08
by Vladimir Rufimivich NOGIN
against Russia
lodged on 20 November 2008

STATEMENT OF FACTS

THE FACTS

The applicant, Mr Vladimir Rufimivich Nogin, is a Russian national who was born in 1981 and lives in Syktyvkar. He is represented before the Court by Mr E.A. Mezak, a lawyer practising in Syktyvkar.

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

A. Criminal proceedings against the applicant

On an unspecified date criminal proceedings were brought against the applicant on suspicion of aggravated rape.

Between 8 August and 9 November 2006 the applicant was held in pre-trial detention in remand centre no. 1 of Syktyvkar (*ЧИЗО № 1 г. Сыктывкара*).

On 9 November 2006 the applicant was released subject to an undertaking not to leave a specified place.

On 8 December 2006 the Syktyvkar Town Court convicted the applicant as charged, and sentenced him to two years and six months' imprisonment. It is unclear whether this judgment was appealed against.

B. The applicant's medical condition

As can be ascertained from the medical documents submitted by the applicant, since the age of four he has been suffering from an insulin-dependent form of diabetes. It appears that that disease entailed

various complications, including diabetic angioretinopathy and diabetic complicated cataract.

On 24 April 2006 the applicant underwent a medical examination in connection with his eyesight problems at a municipal clinic at the place of his domicile. The examination confirmed that the visual acuity of the applicant's right eye was 0.02, which corresponded to his ability to count the fingers on a hand from a distance of one metre, and that the visual acuity of his left eye corresponded to his ability to see hand movements by his face. According to the applicant, at that time he was able to orientate himself within familiar spaces, for instance, to move in his flat, medical institutions and streets in the town.

On 20 November 2006, upon his release from pre-trial detention, the applicant underwent another medical examination at the same municipal clinic, which established that he could count the fingers on a hand from a distance of 0.5 metre, that is that the vision acuity was 0.01, and that he could see a hand movement by his face with his left eye. Surgical treatment for the cataract was recommended.

Upon the applicant's arrival at a penitentiary facility following his conviction by the Syktyvkar Town Court, he underwent a medical examination. He was diagnosed with a grave form of insulin-dependent diabetes, decompensation, diabetic polyneuropathy of the extremities, diabetic nephropathy, symptomatic arterial hypertension, chronic renal insufficiency, mature diabetic cataract of the left eye, immature diabetic cataract of the right eye and diabetic retinal angiopathy. The examination also established that the vision acuity of the applicant's right eye was 0.04, that is that he was able to count the fingers on a hand from a distance of two metres, and that the vision acuity of his left eye was 0.008.

In late December 2008, in connection with his request for release on parole (see below), the applicant was examined by a special medical commission of the penitentiary facility where he was being detained at that time. The commission confirmed that the applicant had a grave form of insulin-dependent diabetes and all the accompanying diseases which had been established before. As regards the applicant's eyesight, it was established that he could detect a hand movement near his face with his right eye and that his left eye was blind. The applicant was diagnosed with a complicated cataract in both his eyes, and in particular with an almost mature cataract in the right eye and a mature cataract in the left eye.

On 6 March 2009 the applicant was released from the correctional facility upon the expiry of the term of his sentence.

On 14 March 2009 the applicant was examined by an ophthalmologist at the municipal clinic at the place of his domicile. It was established that he could detect a hand movement near his face with his right eye and that his left eye was blind. The ophthalmologist recommended that the applicant undergo urgent surgical treatment for his cataract.

On 12 May 2009 the applicant was admitted to the ophthalmological surgery department of a public hospital for cataract surgery. According to the applicant, the doctors confirmed that his vision acuity corresponded to that established on 14 March 2009 and refused to carry out any surgery on the ground that they were not sufficiently experienced to operate on a cataract at such an advanced stage. They recommended that the applicant be

operated on in a specialised research institution. The applicant was discharged from the hospital on the next day.

On 10 July 2009 the applicant arrived at a research clinic for eye problems in Moscow. He was diagnosed with a complicated immature cataract, poliferative diabetic retinopathy and retinal detachment in respect of his right eye, and with a neovascular terminal glaucoma and advanced retinal detachment in respect of his left eye. The visual acuity of the right eye was “a light perception with correct light projection” and the left eye was blind.

On 14 July 2009 the applicant underwent successful surgery of the cataract in his right eye; when he was discharged from the clinic on 20 July 2009, he could detect a hand movement near his face with his right eye.

On 29 September 2009 he underwent another medical examination at the same clinic in Moscow with a view to establishing whether any further surgery of his right eye could be effective. It was established that he had a complete retinal detachment in his right eye caused by diabetes and that he was unable to see any distinct object with that eye, with the result that any further surgery would be devoid of any prospect of success.

C. Medical assistance to the applicant during his imprisonment

According to the applicant, throughout the period of his detention following conviction, his eyesight was progressively deteriorating because of the absence of the necessary surgical intervention.

In the applicant’s submission, at some point the authorities of the penitentiary facility where he was serving his sentence (“the prison authorities”) contacted a specialised prison hospital in St Petersburg (*межобластная больница имени Ф.П. Гааза г. Санкт-Петербурга*, “the St Petersburg prison hospital”) which carried out surgical operations on convicted persons. The prison authorities enquired as to the possibility of operating on the applicant in connection with his eyesight problems. The St Petersburg prison hospital allegedly replied to the prison authorities that the hospital did not, as a general rule, carry out any surgery on convicted persons sentenced to short terms of imprisonment, and that the applicant pertained to such a category of convicted persons. According to the applicant, he was unable to obtain any document from the correspondence between the prison authorities and the St Petersburg prison hospital.

According to the applicant, between April and July 2007, and then from early 2008 onwards, including on the date on which he lodged his application form with the Court, he did not receive special diabetic dietetic food in the correctional facility, which negatively affected his health. Also, in July 2008 the prison authorities allegedly provided the applicant with insulin the storage period of which had expired in March 2008. The applicant was informed of this by other convicts; he enclosed a written statement to that effect by one of them.

In a letter of 28 June 2007 the Federal Service of the Execution of Punishments in the Republic of Komi (“the Execution of Punishments Service”) informed the applicant’s mother, acting on his behalf, that the applicant was being provided with the necessary medical assistance in connection with his disease. In particular, at present he was undergoing

medical treatment in a prison hospital and was being provided with insulin and additional food. The letter also stated that surgery in respect of his eye diseases was necessary.

In a letter of 29 December [the year is missing] the Execution of Punishments Service informed the applicant's mother that in the near future the applicant would be sent to the St Petersburg prison hospital for surgery on his cataract. The letter also stated that there were no reasons to provide the applicant's mother with copies of the correspondence with the St Petersburg prison hospital.

On 22 July 2008 the same authority informed the applicant's mother that he received adequate medical treatment in respect of his diabetes, and that at present a request to the St Petersburg prison hospital was being prepared to carry out an additional medical examination on him and to decide whether surgery on his cataract was possible, and in the event of a negative answer, to provide recommendations as to the applicant's treatment or release on parole.

In a letter of 6 October 2008 the same authority replied to a complaint by the applicant's mother alleging poor medical treatment in respect of the applicant. The letter stated, in particular, that in connection with the deterioration of the applicant's eyesight, the prison authorities had sought his admission to the St Petersburg prison hospital; however, this request had been refused. It went on to say that on 2 October 2008 the applicant had been sent to another prison medical institution for examination, and that thereafter another request would be sent to the St Petersburg prison hospital for his admission there.

According to the applicant, during his examination in the medical institution to which he was sent on 2 October 2008, doctors confirmed that surgery on his eyes was necessary, but stated that an operation would only be carried out after his release from prison.

In the applicant's submission, by autumn 2008 his eyesight had deteriorated to the extent that it was recommended that he use a walking stick when moving in the penitentiary facility, even though that was usually prohibited to convicted persons under the relevant regulations.

In a letter of 11 November 2008 the Execution of Punishments Service refused the applicant's mother's request to provide her with copies of correspondence between the prison authorities and the St Petersburg prison hospital, stating that those documents contained medical information concerning the applicant and that he had not given his consent to their disclosure.

D. The applicant's requests for release on parole

Between 8 December 2006 and 6 March 2009 the applicant remained imprisoned pursuant to the court judgment of 8 December 2006. During this period, on several occasions he sought release on parole on medical grounds.

On 5 February 2008 the applicant lodged a request for release on parole, referring, *inter alia*, to his poor health and need for medical treatment, and in particular, surgery in respect of his eye diseases.

In a decision of 4 April 2008 the Ust-Vymskiy District Court of the Republic of Komi (“the District Court”) rejected the applicant’s request. It referred to the applicant’s negative characteristics as cited by the prison authorities and also stated that his diseases could not be grounds for his release on parole, as they did not prevent him from serving his sentence.

On 30 May 2008 the Supreme Court of the Republic of Komi upheld the first-instance decision following an appeal by the applicant.

On 18 November 2008 the applicant lodged another request for his release on parole. He pointed out, in particular, that he had diabetes and complicated diabetic cataracts on both his eyes, and that it was in 2006 that surgery in this latter respect had been recommended to him. The applicant also stated that his eyesight had significantly deteriorated during the period of his imprisonment.

On 23 January 2009 the District Court rejected the applicant’s request, stating that his diseases did not pertain to the list of diseases, as approved by a relevant governmental decree, which precluded the serving of a sentence in the form of imprisonment.

On 20 March 2009 the Supreme Court of the Republic of Komi upheld that decision following an appeal by the applicant.

COMPLAINTS

The applicant complains under Article 3 of the Convention that he was provided with inadequate medical treatment during his pre-trial detention in 2006. He further complains under this head that during his imprisonment following conviction, at some point he was provided with insulin the storage period of which had expired, and that for some time during his imprisonment he did not receive the necessary dietetic food, which negatively affected his health. He also complains that the authorities’ failure to ensure timely surgery in respect of his eye diseases led to his blindness. Lastly, the applicant complains about the domestic courts’ refusals to allow his release on parole on medical grounds.

QUESTIONS TO THE PARTIES

1. Did the applicant receive adequate medical assistance in respect of his diabetes during the period of his imprisonment following conviction between 8 December 2006 and 6 March 2009? The Government are invited to indicate the course of medical treatment, if any, which the applicant underwent in the above connection in each and every penitentiary facility where he was held during the aforementioned period. In particular, was the applicant provided with insulin suitable for him and of proper quality? The Government are invited to comment on the applicant’s allegation corroborated by a written statement by Mr V., another convicted person, that in July 2008 the applicant was provided with insulin, the storage period of which had expired in March 2008. Was the provision of special diabetic

dietetic food essential for the applicant, regard being had to his health problems? If so, did he receive such food through the entire period of his imprisonment? Overall, was the medical assistance available to the applicant in respect of his diabetes compatible with Article 3 of the Convention?

2. Did the applicant receive adequate medical assistance in respect of his eyesight problems, in particular his cataract and other eye diseases, during his imprisonment between 8 December 2006 and 6 March 2009? The Government are invited to indicate the course of medical treatment, if any, which the applicant underwent in the above connection in each and every penitentiary facility where he was held during the aforementioned period.

3. Was the medical assistance in respect of the applicant's sight problems compatible with Article 3 of the Convention? In particular, is there a causal link between the authorities' apparent failure to ensure that the applicant undergo surgery in respect of his cataract when imprisoned and his blindness and the futility of any further surgery for his eye diseases established by doctors in 2009 after his release? Did the authorities have adequate facilities to carry out such an operation within the penitentiary system, and, if not, were they under an obligation to place the applicant in a civilian hospital (see, in a somewhat similar context, *Akhmetov v. Russia*, no. 37463/04, §§ 75-85, 1 April 2010)? What were the reasons for the refusal by the St Petersburg prison hospital (*межобластная больница имени Ф.П. Гааза г. Санкт-Петербурга*) to admit the applicant for such surgery?

4. The Government are invited to submit a copy of the applicant's medical file(s) kept in each and every penitentiary facility where he was held between 8 December 2006 and 6 March 2009. The Government are also invited to submit a copy of the correspondence between the authorities of the penitentiary facilities where the applicant was held during the aforementioned period and the St Petersburg prison hospital (*межобластная больница имени Ф.П. Гааза г. Санкт-Петербурга*).