



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

FIRST SECTION

Application no. 76317/11
Vasiliy Viktorovich BUBNOV against Russia
lodged on 17 November 2011

STATEMENT OF FACTS

The applicant, Mr Vasiliy Viktorovich Bubnov, is a Russian national who was born in 1982 and lived in Kaliningrad until his arrest.

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

A. Criminal proceedings against the applicant

On 18 May 2006 the applicant was arrested on suspicion of murder. On 28 November 2006 the Leningradskiy District Court of Kaliningrad found him guilty of murder and attempted murder and sentenced him to thirteen years of imprisonment to be served in a correctional facility of severe regime. With the judgment becoming final the applicant was sent to correctional colony no. 9 in the Kaliningrad Region.

B. The applicant's state of health

As it appears from medical documents submitted by the applicant in 2008 he was diagnosed with HIV and started receiving antiretroviral therapy. In 2011 he was diagnosed with hepatitis C. Given a serious deterioration of the applicant's health, on 31 March 2011 he was transferred to the prison hospital in correctional colony no. 9 in the Kaliningrad Region where he has remained ever since.

On 24 June 2011 a medical commission of the prison hospital issued report no. 39-11, recommending the applicant's release on health grounds in line with paragraph 39 of the List of Illnesses Warranting Relief from a Sentence, adopted by a decree of the Government of the Russian Federation on 6 February 2004 (hereinafter – the List). The medical commission stressed that the applicant's diagnosis of "progressing HIV infection of the 4B stage despite administered antiretroviral therapy; a stage of secondary

illnesses which mainly affected the central nervous system in the form of encephalopathy and polyneuropathy; chronic hepatitis C and B in the acute condition; accompanying illness: chronic bronchitis, microbial facial dermatitis, mycotic lesions on the feet” warranted his release.

Acting in line with the recommendations of the medical commission, the head of correctional colony no. 9 filed a request with the Tsentralniy District Court of Kaliningrad seeking the applicant’s release. The applicant supported the request, having also argued that he did not receive necessary medical attention in detention, including for his HIV infection.

On 8 August 2011 the District Court dismissed the request, having found as follows:

“By virtue of Article 81 § 2 of the Russian Criminal Code a person who, after having committed a crime, contracted a serious illness which precludes his serving a sentence may be released by a court from further punishment.

As follows from report no. 39-11 of the special medical commission of [the prison hospital from correctional colony no. 8] in the Kaliningrad Region, following an examination on 24 June 2011 [the applicant] was diagnosed with progressing HIV infection of the 4B stage despite administered antiretroviral therapy; a stage of secondary illnesses which mainly affected the central nervous system in the form of encephalopathy and polyneuropathy; chronic hepatitis C and B in the acute condition; accompanying illness: chronic bronchitis, microbial facial dermatitis, mycotic lesions on the feet. According to the same report by the medical commission... [the applicant] may be granted a relief from the sentence in line with paragraph 39 of the List.

At the same time, a relief from sentence in view of an illness is a right and not an obligation for a court which deals with that issue; the court takes into account not only the presence of the illness included on [the List], but also the manner in which the illness precludes a detainee from serving a sentence, the nature and a degree of social dangerousness of the crime, the detainee’s ability to improve, his behaviour while he was serving sentence, his having a permanent place of residence, close relatives who may and wish to take care of the detainee, the term of imprisonment which has already been served and personal characteristics of the detainee.

In the course of the court proceedings it was established that [the applicant] had committed a particularly serious criminal offence and that he had served less than a half of the term of his sentence. [The applicant] was negatively characterised [by officials] during the term of his detention; on a number of occasions he violated the internal detention regulations, having received 34 penalties which have not yet expired. On 15 July 2009 he has been declared a “persistent offender” of the established detention regulations and was registered as a person prone to provocative behaviour. Having studied those violations, the court considers that they have persistent character.

According to explanations by doctor K., [the applicant] behaves inadequately and aggressively towards those around him; he does not control his behaviour.

Those circumstances make it possible for the court to conclude that the applicant did not step on the road of improvement; the particular features of his behaviour in the present time do not exclude a possibility of his committing other criminal offences, if he is to be released in view of his illness, thus presenting a danger to others.

The court also takes into account that there are special medical facilities within the prison system; those facilities can accommodate sick persons, including those who present an extreme danger to the society when there are grounds to believe that a person, if released, may commit another crime.

As it was established, [the applicant] is undergoing inpatient treatment in [the prison hospital in correctional colony no. 8]... where he receives necessary treatment free of charge. That hospital employs an infectious diseases specialist and a neurologist.

[The applicant's mother] also explained that she intends to help her son to pay for medicines when he requires inpatient treatment.

The court finds that if released [the applicant] will not be able to receive necessary assistance. Moreover, an opportunity to be placed in an infectious diseases hospital depends on availability of places; [in the prison hospital] [the applicant] receives treatment similar to that which he can receive in the infectious diseases hospital.”

On 4 October 2011 the Kaliningrad Regional Court upheld the decision of 8 August 2011, having given a full support to the District Court's findings.

C. Proceedings concerning conditions of detention

In 2011 the applicant lodged an action with the Tsentralniy District Court of Kaliningrad, seeking compensation for damage caused by poor conditions of his detention for seven days in 2002.

On 25 March 2011 the District Court partly accepted the claim, having awarded the applicant 2,000 Russian roubles (RUB) in compensation. The judgment became final on 20 July 2011, when the Kaliningrad Regional Court upheld it on appeal.

In another set of proceedings, the Tsentralniy District Court accepted another claim from the applicant regarding his three-day detention in a punishment cell in a temporary detention facility in 2007 and awarded him RUB 3,000. That judgment was also supported on appeal.

COMPLAINTS

1. In the application form lodged on 18 January 2012 the applicant complained under Articles 3, 6 and 13 of the Convention that the courts' refusals to release him from detention in view of the state of his health amounted to his being sentenced to death, given the poor quality of medical services and inadequate conditions of detention for severely ill detainees, such as he is.

2. In the application form lodged on 12 January 2012 the applicant complained under Articles 3, 5 and 6 of the Convention about the unfair criminal proceedings against him, his unlawful pre-trial detention and the poor conditions of his detention for which the Russian courts had refused to award him sufficient compensation.

QUESTIONS

1. The Government are invited to submit a typed copy of the applicant's medical history and other relevant reports which describe the state of his health from the early months of his detention to the present day.
2. The Government are invited to inform the Court of the applicant's current state of health, including details of the state of advancement of his hepatitis and HIV infections and the drugs being provided for them.
3. Have the Government met their obligation to ensure that that applicant's health and well-being are being adequately secured by, among other things, providing him with the requisite medical assistance (see *McGlinchey and Others v. the United Kingdom*, no. 50390/99, § 46, ECHR 2003-V), as required by Article 3 of the Convention, in the present case?
4. Does the applicant's state of health make him eligible for release on parole under the Russian law?
5. Given the authorities' refusal to grant the applicant early release despite the serious and rapid deterioration of his health, does his continued detention amount to torture, inhuman or degrading treatment or punishment, in breach of Article 3 of the Convention?