



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

FIRST SECTION

Application no. 66583/11  
Yuriy Vladimirovich BUDANOV against Russia  
lodged on 12 August 2011

**STATEMENT OF FACTS**

The applicant, Mr Yuriy Vladimirovich Budanov, is a Russian national who was born in 1972 and lived until his arrest in the town of Morshansk, Tambov Region.

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

**A. Criminal proceedings against the applicant**

On 25 October 2004 the applicant was arrested and placed in temporary detention facility no. IZ-68/2 in Morshansk.

On 1 February 2005 the Morshansk District Court found him guilty of murder and sentenced him to ten years of imprisonment. With the judgment becoming final on 10 March 2005, the applicant was sent to serve his sentence in correctional colony no. 5

**B. The applicant's state of health**

As follows from evidence presented by the applicant, in 2000 he was admitted for inpatient treatment to the neurological department of the Morshansk Town hospital following his complaints of frequent seizures and loss of consciousness. He was diagnosed with episynndrome against the background of vascular malformation in the right parietal lobe. In 2001 he was again admitted to the hospital having suffered severe headaches and seizures. Doctors confirmed the previous diagnoses of the vascular malformation of the brain accompanied by episynndrome and assigned the applicant the second group of disability. The applicant was not allowed to perform any physical activity or labour save for "light managerial work in a specially designated environment".

On 15 September 2006 the applicant was sent to the Tambov Regional hospital to undergo magnetic resonance imaging (“MRI”) of the head. On the basis of the MRI scan doctors made the following conclusions: “the ventricle system of [the applicant’s] brain was moderately enhanced; the outline of the sulci in the cerebral hemispheres was drastically sharpened (degeneration); extensive arterial venous malformation in the left side of the parietal lobe with the draining veins in the sagittal sinus; frontal sinusitis on the right side”.

According to the applicant, in 2009 his condition deteriorated. On 16 October 2009 he lodged a request with the Morshansk District Court, seeking suspension of the sentence in view of the state of his health. The applicant argued that he suffered from extremely severe headaches and that his seizures became more and more frequent. He also complained that he was unable to receive necessary medical assistance, including a brain surgery, in detention and asked the court to authorise a forensic medical examination to “determine the nature and severity of the brain damage” for a subsequent removal of the brain tumour, as well as to call a neurosurgeon from a civilian hospital to interpret the MRI scans of his head.

On 9 December 2009 the District Court, having heard the parties, decided that it was necessary to send the applicant to a prison hospital for a medical examination to determine whether the state of his health warranted his release.

Having received a report containing conclusions by the medical commission, on 26 February 2010 the District Court dismissed the applicant’s request for suspension of the sentence. It held as follows:

“As follows from the opinion of the special medical commission on the medical examination of [the applicant] performed on 28 December 2009...., the following diagnoses was established: organic emotionally labile personality disorder in connection to mixed illnesses (dyscirculatory vascular malformation, epilepsy with rear seizures, alcohol dependence syndrome in the moderate stage, in the stage of forced remission). By virtue of paragraph 20 of the List of Illnesses Precluding the Service of Sentence... [the applicant] cannot be relieved from serving the remaining part of his sentence.

Having considered the opinion of the special medical commission on the medical examination of [the applicant], [and] the nature of his illness, the court considers that the treatment of the illness can be ensured in detention. Moreover, taking into account the information on [the applicant’s] personality, the nature of the criminal offence of which he was convicted and which is considered particularly serious, [and] the references given [to the applicant] at the place of his former residence, the court considers that at the present time the aim of [the applicant’s] improvement has not been reached and, if his sentence is to be suspended, and he is to be released from detention, he would present a danger to the society [and] may reoffend.”

On 23 March 2010 the Tambov Regional Court upheld the decision, having found the District Court’s reasoning convincing and well-founded.

The applicant submitted an extract from his medical record issued by the Tambov Regional Clinical Hospital and a letter from the acting director of the Tambov Regional Health Department. The first document showed that the applicant required permanent supervision by a neurologist and regular MRI scans of the head. As follows from the letter of the acting director, the applicant was in need “of a surgery in a specialised federal centre” and that medical facilities in the Tambov Region were not equipped to perform such

a surgery. The acting director also noted in the letter that he had informed the Tambov Regional Service for Execution of Sentences (hereinafter – the Service) about the applicant’s state of health and the fact that the surgery was required.

In response to the applicant’s request to be sent to St. Petersburg Gaaza prison hospital where he could undergo a head surgery, on 2 July 2010 the head of the Service informed him that there was no medical necessity to perform a surgery.

On 20 September 2010 the director of the Gaaza hospital sent a letter to the head of correctional colony no. 5 which, insofar as relevant, read as follows:

“In response to your request ... of 12 August 2010 [I] inform you that [the applicant]... cannot be transferred to [the Gaaza hospital] for inpatient treatment, as the surgery in the present case is of high-tech kind and [the hospital] does not have necessary equipment to perform it at the present time.”

In 2011 the applicant filed another request for suspension of the sentence given his state of health. He insisted that his health continued deteriorating and the prison facilities had no means to perform a head surgery which he desperately needed.

Having studied medical evidence, including reports by the medical commission and the applicant’s medical history, on 14 April 2011 the Morshansk District Court concluded that the applicant’s state of health did not warrant his release and that his treatment could be ensured by the prison medical personnel. The District Court also noted that “an issue pertaining to [the applicant’s] surgery is at the stage of being discussed”.

On 21 July 2011 the Tambov Regional Court accepted the District Court’s conclusions made in the decision of 14 April 2011. The Regional Court’s reasoning was as follows:

“As it follows from the materials of [the applicant’s] case file, prior to having committed the murder [the applicant] suffered from the same illness and [the state of his health] did not preclude his having committed a particularly serious criminal offence.

As follows from the conclusions by the medical commission, [the applicant’s] illness does not preclude his serving the sentence. At the same time [the applicant] receives necessary assistance in detention. As to the surgery, this question is at the stage of being decided and, if decided in a positive manner, [the applicant’s] request [for the suspension of the sentence] will be examined again in compliance with the requirements of the law in force.”

## COMPLAINTS

The applicant complains under Articles 3 and 6 of the Convention that he suffers from a serious medical condition in the absence of adequate medical assistance in detention and that the proceedings regarding the suspension of the sentence were unfair in that the domestic courts refused to thoroughly consider his arguments. .

### 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 and which show what medical procedures he underwent and what medical services he received in detention.

2. The Government are invited to inform the Court of the applicant's current state of health, in particular the stage of the advancement of his brain condition.

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?