



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

FIRST SECTION

Application no. 4895/06
Vladimir Alekseyevich ZABOYEV
against Russia
lodged on 18 November 2005

STATEMENT OF FACTS

The applicant, Mr Vladimir Alekseyevich Zaboyev, is a Russian national, who was born in 1976 and lived until his arrest in the town of Syktyvkar, Komi Republic.

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

A. Criminal proceedings against the applicant

On 20 February 2001 the Syktyvkar Town Court found the applicant guilty of murder threats and aggravated robbery and sentenced him to nine years' imprisonment. The judgment became final and the applicant was sent to serve sentence to a correctional colony. His subsequent attempts to institute supervisory-review proceedings to have his conviction overturned were to no avail.

B. The applicant's state of health

As follows from medical documents provided by the applicant, on 23 March 2008, during a regular X-ray testing in a correctional colony, he was diagnosed with tuberculosis. On 5 April 2008 the applicant was transferred to medical colony no. 18 in the town of Ukhta. During a blood check on admission to the colony he tested positive for hepatitis C.

Extracts from the applicant's medical history also show that until the test on 5 April 2008 there was no evidence that the applicant had hepatitis. In particular, a blood test for viral hepatitis performed on 1 March 2007 did not reveal the infection. The applicant insisted that he had been infected during a tooth extraction procedure in the colony as medical equipment had merely been cleaned with water without being properly sterilised.

The applicant remained in the tuberculosis department of the medical colony until 17 December 2008, having been treated for infiltrative tuberculosis of the upper lobe of the left lung in the active phase. The applicant's diagnosis on release from the hospital was infiltrative tuberculosis in the dissolution and consolidation stage. The applicant was to continue with the treatment in the correctional colony. He argued that the treatment had been ineffective, as his condition had continued deteriorating despite his having been provided with anti-tuberculosis medicines. The antibacterial regimen had also negatively affected his liver condition.

In response to the applicant's complaints about the contraction of tuberculosis and hepatitis C, the acting prosecutor of the Ukhta Town prosecutor's office, in his letter of 21 October 2008, noted that the applicant had most probably contracted tuberculosis in detention as an X-ray examination performed in November 2007 had revealed no presence of the disease. The acting prosecutor also observed that the applicant could complain to a higher-ranking prosecutor or the head of the Service for Execution of Sentences in the Komi Republic "to seek objective and full inquiry into the reasons and conditions of his illnesses".

The applicant followed the advice, having lodged a complaint with the Prosecutor General of the Russian Federation. In particular, he argued that he had contracted both illnesses in detention as a consequence of irresponsible actions of the detention authorities. Having relied on written statements by his inmates, including those who had tuberculosis, the applicant insisted that in December 2006 and January 2007 he had been detained together with detainees suffering from an open form of that infection. As a consequence the applicant was placed on a prophylactic regimen, having received a number antibacterial medicines for two months. At the same time, he stressed that he had received the antibacterial medicines without any observation or recommendation by a tuberculosis specialist. The applicant further complained that the prosecution authorities had failed to carry out an effective inquiry into the cause of his infections. It noted that while addressing, to a certain extent, his grievances about the tuberculosis, the acting prosecutor had entirely disregarded his complaint about hepatitis C.

In addition, the applicant, either himself or together with other inmates, lodged a number of complaints with various prosecution and investigating authorities, insisting that the colony officials did not provide him with adequate medical assistance in respect of the illnesses that he had contracted in detention. The complaints were either forwarded to other State bodies, including the colony administration and the Service for Execution of Sentences, or did not produce a response.

The applicant also complained about the quality of dental care in detention facilities, having argued that 30 percent of his teeth had been pulled out without any effort being made to treat them as the facility had not had a functioning dental drilling machine. A medical certificate issued by a doctor from correctional colony no. 35 where the applicant was detained in 2006 and 2007 shows that between 25 April 2006 and 15 March 2007 his nine teeth were extracted.

Citing reports by medical officers from the Federal Service for Execution of Sentences drawn up in the aftermath of an inspection of colony no. 35 in

2007, the applicant stressed that in 2007 the colony had registered 163 detainees as those infected with tuberculosis, of which 27 inmates were found to have an open form of the disease, with the total number of inmates with tuberculosis amounting to 406 persons.

In a short letter of 5 August 2008 a deputy head of the Service for Execution of Sentences in the Komi Republic informed the applicant that his complaint of having been infected with viral hepatitis during a medical procedure in a detention facility had not been supported by any evidence. The deputy head stated that detention facilities only used disposable syringes and properly sterilised other medical equipment.

In another letter of 22 December 2008 the deputy head notified the applicant that “negligent attitude on behalf of the medical personnel of the colony... [had not been] detected”.

In 2009 the applicant and two other inmates lodged a complaint with the Basmanny District Court of Moscow arguing that the investigating authorities had refused to perform an inquiry into their allegations of inadequate medical assistance and a spread of infectious diseases in detention facilities. In particular, they argued that the Investigating Committee of the Prosecutor General’s office had unlawfully forwarded their complaint to the prosecutor’s office in the Komi Republic which, in its turn, had already refused to deal with their complaints.

On 12 August 2009 the District Court dismissed the claim having indicated that the Investigating Committee had acted within its competence and had taken a correct decision to re-address the complaint to the local prosecutor’s office. At the same time, the District Court refused to examine the plaintiffs’ general claims of the prosecutors’ failure to act, having considered that the issue was outside its jurisdiction.

C. Complaints in respect of various aspects of conditions of detention in the colony

The applicant also lodged a number of complaints with various domestic authorities seeking, *inter alia*, amendment of his sentence or a change in the regime of his detention. He also accused the detention authorities of mismanagement of money sent to him by relatives. The complaints were found to be unwarranted or manifestly ill-founded.

COMPLAINTS

1. The applicant complained under Articles 6 and 13 of the Convention about inability to initiate a supervisory review of his conviction. He also argued that his complaints related to the conditions of his detention had not been properly dealt with.

2. The applicant also complained under Article 3 of the Convention that he had been infected with tuberculosis and hepatitis C in detention, that the authorities had failed to effectively respond to his complaints and that he did not benefited from adequate medical assistance.

QUESTIONS TO THE PARTIES

1. The Government are invited to submit a 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 C and tuberculosis infections and the drugs being provided for them.

3. Do the Government bear responsibility under the Convention for the applicant's infection with hepatitis C and tuberculosis?

4. Irrespective of the answer to question 3 above, 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?

5. Did the domestic authorities perform an effective inquiry into the cause of the applicant's infection with hepatitis C (see *Ismatullayev v. Russia* (dec.), no. 29687/09, 6 March 2012) as required by Article 3 of the Convention?