



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

FIRST SECTION

Application no. 44212/06
Nikolay Borisovich KOZULIN
against Russia
lodged on 11 September 2006

STATEMENT OF FACTS

The applicant, Mr Nikolay Borisovich Kozulin, is a Russian national, who was born in 1961 and was serving his sentence in the correctional colony in the town of Rybinsk, Yaroslavl Region.

The circumstances of the case

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

1. Criminal proceedings against the applicant

By the final judgment of 7 September 2001 of the Yaroslavl Regional Court the applicant was found guilty of murder and sentenced to fourteen years' imprisonment.

Following a spree of the applicant's complaints, on 19 June 2006 the Supreme Court of the Russian Federation quashed the conviction and sent the case for a new examination to the trial court.

On 29 November 2006 the Krasnoperekopskiy District Court of Yaroslavl found the applicant guilty of murder and sentenced him to ten years of imprisonment. The judgment was upheld on appeal by the Yaroslavl Regional Court on 27 February 2007.

2. Applicant's state of health and quality of medical assistance

The applicant complained about ineffective treatment of a cataract leading to serious deterioration of his eyesight. According to him, for more than two years, between 2002 and 2004, he was unable to undergo an eye surgery as the detention authorities did not have necessary funds and equipment to perform it. The applicant supported his statements with a copy of a letter sent on 29 September 2002 by a deputy head of the medical

department of the System for Execution of Sentences in the Leningrad Region and St. Petersburg to the director of the colony where the applicant had been detained at the time. The deputy head informed the colony director that the applicant could not be sent for an eye surgery as the surgery was not urgent and there were no financial resources for the treatment.

In 2007 the applicant lodged a tort action against correctional colony no. 12, arguing that the authorities had been responsible for his almost total loss of vision in the both eyes due to ineffective and delayed medical treatment. He also submitted that he had contracted a number of serious illness in the colony, including pulmonary tuberculosis, a serious hearing loss, encephalopathy, neck osteochondrosis, so on.

On 23 November 2007 the Rybinsk Town Court authorised a forensic medical examination of the applicant to determine whether there was a causal link between the delay in the performance of the eye surgery and the drastic deterioration of the applicant's eyesight. The court order, in so far as relevant, read as follows:

"In the course of the examination of the case the court established that on 21 August 2002 an ophthalmologist concluded that [the applicant suffered from] a traumatic cataract of the left eye and myopathy of the first degree; [he] recommended [the applicant] a surgery in a specialised medical institution.

Since that [recommendation] no surgery was performed as [the colony] did not have financial resources.

On 18 March 2004 an ophthalmologist made the following conclusion: double-sided blindness, mature cataract of the right eye, immature cataract of the left eye.

From May to July 2004 [the applicant] received inpatient treatment in [a prison hospital] where he underwent a surgery: extracapsular cataract extraction of the left eye. He was released in a satisfactory state of health.

In October 2004 an ophthalmological medical expert commission declared [the applicant] permanently disabled [third degree disability]."

The outcome of the proceedings remains unknown.

As follows from extract no. 105 from the applicant's medical history, from 7 February to 20 March 2003 he underwent treatment in a prison hospital, having been diagnosed, for the first time, with ulcer. The extract also lists the following concomitant illnesses: atherosclerotic encephalopathy of the first degree, chronic left-sided maxillary sinusitis, a cyst in the left maxillary sinus, double-sided sensory deafness, mature cataract of the right eye, aphakia of the left eye, open-angle glaucoma of the left eye.

The extract indicated that the applicant complained about a pain in the left side of the face from which he had suffered since the eye surgery in 2004; pain in the epigastria, right side of the subcostal area, neck and thoracic spine, numbness in both arms, general fatigue, excessive sweating and cough with phlegm.

The applicant was released from the hospital upon his request following a certain improvement of his state of health. However, the doctors recommended to continue the treatment in the colony and to undergo inpatient treatment in the prison hospital twice a year. They also noted that a

request for another eye surgery should be sent to the St. Petersburg Gaaza Hospital.

The applicant provided the Court with a letter of 27 June 2008 from the head of the St. Petersburg Gaaza Hospital in response to the request for an eye surgery. The letter read as follows:

“... we inform that a request for [the applicant’s] surgery cannot be granted due to technical reasons, as no surgeries are performed at the material time in the ophthalmological department. [We] recommend you to resubmit the request in a year.”

In 2009 the applicant asked for an early release, having argued that his state of health warranted it. On 6 November 2009 the request was dismissed by the Rybinsk Town Court given the applicant’s non-compliant behaviour.

COMPLAINTS

1. In the first two application forms lodged on 11 September 2006 and 6 July 2007, respectively, the applicant complained under Articles 2, 3 and 6 of the Convention that his health had seriously deteriorated in detention and that the courts had incorrectly interpreted the facts and applied the law, that they had disregarded the applicant’s arguments, had forged trial court minutes and had failed to hear unidentified witnesses.

2. In his subsequent application forms lodged on 6 February 2009 and 5 February 2010 the applicant complained about his poor state of health and inadequate medical assistance in detention.

QUESTIONS TO THE PARTIES

1. The Government are invited to submit a typed copy of the applicant’s entire medical history and other relevant reports which describe the state of his health from the early months of his detention until the present moment.

2. 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?