



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

FIRST SECTION

Application no. 31535/09
Vadim Vladislavovich GORBULYA
against Russia
lodged on 4 May 2009

STATEMENT OF FACTS

The applicant, Mr Vadim Vladislavovich Gorbulya, is a Russian national, who was born in 1973 and lived until his arrest in St. Petersburg. He is represented before the Court by Ms O. Stasyuk, a lawyer practising in St. Petersburg.

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 Kalininskiy District Court of St. Petersburg found the applicant guilty of unintentional manslaughter and sentenced him to ten years' imprisonment.

On 10 December 2008 the St. Petersburg City Court, by a jury verdict, found the applicant guilty of several counts of aggravated robbery and murder and sentenced him to life imprisonment. The applicant was represented by Ms D., retained counsel. On 5 March 2009 the judgment was upheld on appeal and became final.

B. Conditions of detention

1. Detention in facility no. IZ-47/1 in St. Petersburg

Since 15 December 2002 the applicant had been detained in facility no. IZ-47/1 in St. Petersburg, known as "Kresty". He alleged that cells had been extremely overcrowded, with cells nos. 899, 907, 90, 74, 184 and 411, where he was detained between 2002 and 2004, having housed from seven to nine inmates and cells where he was detained between 2004 and December 2008 having accommodated between 5 and 8 inmates. According

to the applicant, each cell measured eight square metres. Searches were performed in the cells daily when warders deliberately destroyed inmates' personal belongings.

On 10 December 2008 the applicant was transferred to cell no. 128 which also measured eight square metres and where he was detained alone. Cell no. 128 did not have a table or a chair. It also was not equipped with an artificial ventilation system. A video camera was installed in the corner of the cell "to spy on inmates" and as a result the applicant did not have privacy even when using a toilet. It was extremely cold in the cell in winter.

In response to the applicant's numerous complaints pertaining to the conditions of his detention and quality of medical care, various prosecution authorities responded that the conditions were satisfactory, save for minor irregularities pertaining to the absence of a bench in the cell, etc., and that the applicant received adequate medical assistance whenever he had asked for it.

2. Detention in a correctional colony

In October 2010 the applicant was sent to correctional colony no. 56 in the Sverdlovsk Region (commonly known as "Black Golden Eagle") where he arrived on 4 November 2010.

In compliance with the requirements of the Russian law, the applicant, having been sentenced to the life imprisonment, was to be detained in a cell and not in a dormitory. The applicant submitted that he had already changed a number of cells with the conditions of detention having been identical. He provided the following description of the conditions of his detention. He is detained in a cell measuring approximately 18 square metres and housing another inmate. The cell is under permanent video surveillance. The cell is not equipped with a lavatory pan or a tap of running water. Inmates are provided with a bucket of water for their daily needs: to drink, to wash themselves and to clean up a bucket which they use as a lavatory pan. In the morning the bucket is emptied into a cesspool outside the building. The bucket serving as a lavatory pan is not separated from the rest of the cell, thus offering no privacy. The heating system does not function properly. It is thus extremely cold in winter when the temperature outside drops below minus 30 or 40 degrees Celsius. The cell is not equipped with a ventilation shaft, thus it is stuffy and damp in the cell. The food provided in the facility is of poor quality. In 2011 the applicant was constantly given fish with worms. He attached those worms to his complaints to the prosecutor's office.

C. Medical assistance

The applicant alleged that in 2009 he was diagnosed with a gastric ulcer, haemorrhoids and fragile joints. The applicant insisted that his illness had been the direct result of his having been detained in the appalling conditions for so many years. He applied for medical assistance. An inmate nurse dismissed the request having noted that the applicant's case did not require medical care. On further occasions when the applicant sought medical care, prison doctors cited a lack of funds and absence of medicines having refused to treat him. The applicant's complaint sent to a prosecutor's office

on 21 April 2009 was left without a response. In June 2009 the applicant hurt his leg while descending a bunk. He lodged a large number of complaints with the head of the detention facility seeking medical assistance and, in particular, an X-ray examination of his leg. Following a complaint to a prosecutor's office the applicant was examined by a prison surgeon who, having threatened the applicant with violence, forbade him to ever complain again.

In June 2011 the applicant, having been serving his life imprisonment sentence, was taken outside to empty buckets to the cesspool. He slipped and fell, having injured his knee joint. The applicant complained that prison doctors had merely provided him with painkillers in response to his claims for medical assistance. As a result he cannot use his knee joint to the full capacity and his movement is restricted.

In June 2012 the applicant was detained in a cell where inmates suffering from an open form of tuberculosis had been detained before. The cell was not subjected to disinfection prior to the applicant's placement. On 24 April 2012 the applicant was diagnosed with infiltrative tuberculosis of the right lung in the disintegration stage. His requests for treatment were left without any response or were dismissed despite the fact that his illness has been progressing. Furthermore, in February 2012 the applicant was recommended a surgery to remove an inguinal groin hernia. The colony officials have not taken any steps to schedule the surgery. The applicant's complaints about the lack of medical assistance were to no avail.

COMPLAINTS

1. In the application form lodged on 12 August 2009 the applicant complained under Articles 3, 6, 8, and 13 of the Convention that the conditions of his detention in the "Kresty" facility had been appalling, that he had not received medical assistance during his detention in that facility, that he had not had an effective remedy against the alleged violation of his rights guaranteed by Article 3, that his having been subjected to surveillance by way of permanent video recording had constituted an unjustified interference with his private life and that in the criminal proceedings against him the presiding judge and his lawyer had misled the jury, that his legal counsel had, partly, misrepresented him, and that his co-defendant had been treated differently, having received unexplainable privileges from the presiding judge.

2. In a letter received by the Court on 16 August 2010 the applicant under Articles 3 and 6 of the Convention repeated his complaints laid down in the application form and complained about further procedural violations in the criminal proceedings against him. The applicant further insisted that his solitary confinement since December 2008, accompanied by daily searches in the cell, amounted to unjustified inhuman treatment in violation of the requirements of Article 3 of the Convention. He also complained about having been ill-treated by warders.

3. In a letter received by the Court on 15 February 2012 the applicant complained under Articles 3 and 13 about the degrading conditions of his

detention in the correctional colony, his inability to receive medical treatment in respect of the injured knee and absence of effective remedies for his complaints under Article 3.

4. The applicant finally complained, in a letter sent to the Court in August 2012, that he was not able to receive effective medical care in the correctional colony, including in respect of a life-threatening illness, tuberculosis, that he did not have an effective remedy in respect of his Article 3 complaint and that the criminal proceedings against him had been unfair, given various procedural violations.

QUESTIONS TO THE PARTIES

1. In respect of each cell in which the applicant was held in detention facility no. IZ-41/7 in St. Petersburg since 2002:

- (a) Indicate the cell number and the dates of the applicant's stay.
- (b) What was the floor surface of the cell (in square metres)?
- (c) How many bunk beds and/or sleeping places were available in the cell?
- (d) How many detainees were held in the cell? Indicate the maximum number of detainees, *not* the average.
- (e) Was the cell equipped with a *functioning* mandatory ventilation?
- (f) What kind of lighting was available in the cell? If the lighting was natural, indicate the dimensions of the window(s) and the number and thickness of metal bars; if the lighting was artificial, indicate the number of bulbs and their power.
- (g) Indicate the placement of the toilet pan (corner, wall-mounted, etc.) and the distances between (i) the pan and the dining table; and (ii) the pan and the nearest sleeping place.
- (h) Was there a partition separating the toilet pan from the rest of the cell? Indicate its height and the material it was made of.
- (i) Indicate the frequency of outdoor exercise, the surface of the exercise yard (in square metres) and the type of the roof above the yard (metal bars, solid roof, netting, etc.)

2. As regards the applicant's solitary confinement since December 2008 in detention facility no. IZ-47/1 in St. Peterburg, the Government are requested to indicate the correct dates when the solitary confinement commenced and when it ended and to provide copies of registration logs to support their submissions. Were the conditions in solitary confinement during that period compatible with Article 3 of the Convention?

3. The Government are requested to comment on all aspects of the conditions of detention which the applicant complained of in respect of correctional colony no. 56. In particular,

- (a) Was the cell adequately ventilated?
- (b) Was there an adequate supply of drinking water?

(c) Was there a water tap and a toilet pan sufficient to cater adequately to the sanitary needs of the detainees?

(d) Were the sanitary facilities in a good state?

The Government are requested to produce documentary evidence, including population registers, floor plans, colour photographs of the cells, sanitary facilities, etc., as well as reports from supervising prosecutors concerning the conditions of detention in the colony.

4. As regards the applicant's complaints concerning his conditions of detention during the entire period of his detention in facility no. IZ-47/1 and the correctional colony, did the conditions amount to the treatment prohibited by Article 3 of the Convention

5. Taking into account the applicant's medical history, in particular, his suffering from tuberculosis, 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.

6. The Government are requested to produce a typed copy of the applicant's complete medical record drawn up since 2009.

7. Did the applicant dispose of effective domestic remedies – as required by Article 13 of the Convention – for his complaint about the inhuman and degrading conditions of detention and lack of effective medical care? In particular, was there an effective mechanism, sufficiently established in law and practice, which would allow the authorities to put an end to a continuing violation of an applicant's rights under Article 3, while he is still in detention, and/or to grant him an adequate compensation for non-pecuniary damage?