



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

FIRST SECTION

DECISION

Application no. 13817/05
Aleksy Yevgenyevich AKSENOV
against Russia

The European Court of Human Rights (First Section), sitting on 15 January 2013 as a Chamber composed of:

Isabelle Berro-Lefèvre, *President*,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having regard to the above application lodged on 3 March 2005,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Aleksy Yevgenyevich Aksenov, is a Russian national who was born in 1976 and lived before his arrest in the town of Balakovo, Saratov Region. He is serving his sentence in the correctional colony in the town of Pugachev, Saratov Region. The applicant was represented before the Court by Mr V. Rufakov, a lawyer practising in the town of Balakovo. The Russian Government (“the Government”) were

represented by Mr G. Matyushkin, Representative of the Russian Federation before the European Court of Human Rights.

The circumstances of the case

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

3. On 11 February 2000 the applicant was arrested on suspicion of murder and was placed in a temporary detention cell at a local police station. Five days later he was transferred to a temporary detention facility. On admission to the facility, the applicant was subjected to a medical examination, including an X-ray exam of his chest. The X-ray examination revealed certain changes in the applicant's lungs in the form of small nidi which were considered to be "inactive tuberculosis changes". According to the applicant, the overall conditions of his pre-trial detention had been highly unsatisfactory, as they had featured overcrowding, poor standards of hygiene and nutrition, and a lack of fresh air.

4. Following the applicant's conviction of murder, on 26 December 2002 he was sent to correctional colony no. USH-382/23 to serve his sentence of twelve years' imprisonment. According to the applicant, between 27 April 2003 and 19 February 2004 he was held in cell no. 15, which had previously accommodated an inmate suffering from open tuberculosis.

5. Having relied on a copy of the applicant's medical records, the Government submitted that X-ray chest examinations performed between 2001 and 2003 had not shown any changes or development of the nidi in his lungs.

6. On 19 February 2004 the applicant was transferred to a prison hospital, having complained of stomach pain. The applicant argued that he had been held in a room with tuberculosis patients. His requests for a transfer to another hospital unit were to no avail. Tests performed in the hospital showed that the applicant's tuberculosis had progressed. As is noted in the applicant's medical records, he started receiving antibacterial treatment. An intensive chemotherapy regimen resulted in the partial resolution and reduction of the tuberculosis changes in his lungs. Having completed the treatment and undergone medical testing, including sputum smear and culture tests, the applicant was released from the hospital on 28 July 2004 with his condition being considered satisfactory. In the colony the applicant continued the second phase of the chemotherapy regimen with first-line anti-tuberculosis drugs. The final diagnosis indicated in the medical records was "clinical recovery from focal pulmonary tuberculosis".

7. In August 2004 the applicant complained to a prosecutor of his having been infected with tuberculosis while in detention. At the same time, he also lodged an action against the prison hospital seeking compensation for

pecuniary and non-pecuniary damage, arguing that he had been infected in the hospital.

8. By letter of 24 August 2004 the prosecutor informed the applicant that his case disclosed no violations of the law on penal institutions.

9. In the course of the compensation proceedings the Zavodskoy District Court of Saratov sought a medical expert opinion. Experts concluded that it was impossible to determine the exact date when the applicant had contracted tuberculosis, but it could not have happened in the hospital since the first signs of the tuberculosis process had been detected before his admission to the hospital. By a judgment of 30 May 2005 the court dismissed the applicant's action as ill-founded. On 5 October 2005 the Saratov Regional Court upheld the judgment on appeal, fully endorsing the District Court's reasoning.

B. Relevant domestic law and international reports and documents

10. The relevant provisions of domestic law and international reports and documents governing the health care of detainees are set out in the following judgments: *A.B. v. Russia*, no. 1439/06, §§ 77-84, 14 October 2010; *Yevgeniy Alekseyenko v. Russia*, no. 41833/04, §§ 60-66 and 73-80, 27 January 2011; and *Pakhomov v. Russia*, no. 44917/08, §§ 33-39 and 42-48, 30 September 2011.

COMPLAINTS

11. The applicant complained under Article 3 of the Convention of his having contracted tuberculosis while in detention. He further complained under Articles 3 and 6 of the Convention about the conditions of his detention in the temporary detention facility, ill-treatment by the police after his arrest, an erroneous prosecutor's decision, and unfair compensation proceedings, in that the courts had failed to issue a judgment in his favour.

THE LAW

12. The applicant complained under Article 3 of the Convention that he had contracted tuberculosis during his detention in the prison hospital.

A. Submissions by the parties

13. The Government submitted that the medical evidence, including the X-ray tests performed on the applicant's admission to the temporary detention facility and the subsequent exams carried out between 2001 and 2003, showed that the applicant had already had a history of tuberculosis upon his detention. According to medical specialists and research, the majority of the Russian adult population and, consequently, the majority of individuals entering the Russian penal system, were already infected with mycobacterium tuberculosis. They cited statistical data, arguing that out of 100,000 persons infected with the bacteria only 89 would develop an active form of the illness. The applicant had never shared a cell with anyone suffering from tuberculosis. The Government drew the Court's attention to the fact that modern science could not clearly identify the factors which lead to the reactivation of the tuberculosis process. It had, however, been established that people with a weak immune system were prone to the infection. Hereditary factors also needed to be taken into account.

14. The Government further argued that, even with the medical exams having shown that the illness had not progressed, the prison medical personnel had nonetheless continued closely monitoring the applicant. As soon as the doctors had noticed the activation of the illness, he had immediately undergone all necessary examinations and had received treatment. That treatment had been effective and had resulted in the applicant's clinical recovery.

15. The applicant maintained his complaint.

B. The Court's assessment

16. The Court observes that, as stated in the Government's submissions, towards the beginning of 2004, more than four years after his arrest in February 2000, tests showed that the applicant suffered from the active form of tuberculosis. At the same time, there is evidence that he had been infected with tuberculosis prior to his arrest. In particular, on his admission to the temporary detention facility, an X-ray exam revealed certain tuberculosis changes in his lungs which the doctors considered "inactive". No development of tuberculosis was discovered in the period between February 2000 and the beginning of 2004, when the medical examinations in the hospital revealed that the illness had progressed.

17. Keeping in mind the medical evidence before the Court showing that the applicant had been infected prior to his arrest, he, therefore, appears to argue that the authorities should bear responsibility for the activation of the tuberculosis process. In this regard, the Court notes the Government's opinion that mycobacterium tuberculosis (MBT), also known as Koch's bacillus, may lie dormant in the body for some time without producing any

clinical signs of the illness. However, as is apparent from the parties' submissions, the applicant experienced the reactivation of the tuberculosis process while serving his sentence of imprisonment. In this respect, the Court is mindful of the applicant's submissions that he had been detained with inmates suffering from open tuberculosis. It also does not lose sight of the statistical estimates that place Russia among one of the top twenty-two high-burden countries for tuberculosis in the world, a dramatic increase in the incidence of the disease having been recorded in the 1990s, with some reports indicating that tuberculosis is twenty times more prevalent in Russian prisons than in the country in general (see *Yevgeniy Alekseyenko*, cited above, § 79).

18. While finding it particularly disturbing that the activation of the applicant's infection could have occurred in a custodial institution within the State's control as an apparent consequence of the authorities' failure to eradicate or prevent the spread of the disease, the Court reiterates its consistent approach that this fact in itself would not imply a violation of Article 3, provided that the applicant received treatment for it (see *Alver v. Estonia*, no. 64812/01, § 54, 8 November 2005; *Babushkin v. Russia*, no. 67253/01, § 56, 18 October 2007; *Pitalev v. Russia*, no. 34393/03, § 53, 30 July 2009; *Pakhomov v. Russia*, no. 44917/08, § 65, 30 September 2010; *Gladkiy v. Russia*, no. 3242/03, § 88, 21 December 2010; *Vasyukov v. Russia*, no. 2974/05, § 66, 5 April 2011; and more recently, *Dmitriy Sazonov v. Russia*, no. 30268/03, § 40, 1 March 2012).

19. The Court observes that the applicant did not complain that he had not been provided with adequate medical assistance in detention. Indeed, his medical records show positive changes following the applicant's treatment, which ultimately resulted in his "clinical recovery from focal pulmonary tuberculosis". Nothing in the case file leads the Court to conclude that the applicant did not receive comprehensive medical assistance during the various stages of his tuberculosis treatment. The applicant did not deny that medical supervision had been given and tests had been carried out, or that the prescribed medication had been provided, as indicated in the medical records submitted by the Government. In fact, he did not indicate any shortcomings in his medical care.

20. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

21. The applicant also submitted a number of other complaints alleging violations of his rights under Articles 3 and 6 of the Convention. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application

must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

André Wampach
Deputy Registrar

Isabelle Berro-Lefèvre
President