



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

FIRST SECTION

DECISION

Application no. 42209/09
Valeriy Aleksandrovich KISELEV
against Russia

The European Court of Human Rights (First Section), sitting on 19 February 2013 as a Committee composed of:

Khanlar Hajiyeu, *President*,

Erik Møse,

Dmitry Dedov, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having regard to the above application lodged on 15 May 2009,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant, Mr Valeriy Aleksandrovich Kiselev, is a Russian national, who was born in 1978 and lives in Astrakhan.

The Russian Government (“the Government”) are represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights

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

A. The circumstances of the case

In February 2006 the applicant was sentenced to seven and half years of imprisonment. In June 2006 he was placed in correctional facility IK-2 (‘IK-2’) in Astrakhan to serve the sentence.

On 13 March 2008 the applicant was taken for medical examination to a medical centre in Astrakhan as it was established that he had developed tuberculosis and several other illnesses including the ones of presumably oncologic nature.

From 20 March to 20 May 2008 the applicant was hospitalised for tuberculosis chemotherapy in a specialised medical institution and then between the end of May and the end of August 2008 for another round of tuberculosis treatment in the penitentiary hospital of IK-2. As a result it was established that he suffered from an aggravated form of tuberculosis of ontological nature (*tuberculoma*) which required a surgery.

On 18 August 2008 the administration of IK-2 requested the St Petersburg regional penitentiary hospital (the Gaaza hospital) to provide the applicant with specialised medical treatment owing to the lack of resources in their penitentiary hospital in Astrakhan. No reply was given to this request.

On 1 October 2008 the Astrakhan regional prosecutor's office replied to the applicant's complaints about the lack of medical assistance. They acknowledged that the request for treatment of 18 August 2008 had been sent to the Gaaza hospital belatedly and suggested that the applicant should lodge a request for early release on health grounds.

On 18 March 2009 the administration of IK-2 again requested the Gaaza hospital to provide the applicant with necessary medical treatment. No reply was given to this request either.

On 3 June 2009 the Astrakhan regional prosecutor's office replied to the applicant's repeated complaints of the lack of medical assistance stating that they had not received any replies from the Gaaza hospital to their requests for his specialised treatment in St Petersburg.

On 8 July 2009 the Gaaza hospital informed the administration of IK-2 in Astrakhan that they were ready to accept the applicant for medical treatment.

Between 20 July and 17 August 2009 the applicant was transferred from IK-2 in Astrakhan to the Gaaza hospital in St Petersburg. According to the applicant, at the time he suffered from severe pain and requested a medical assistance/escort for the transfer which took four weeks and included detention in various remand prisons in Astrakhan, Volgograd, Voronezh and Yaroslavl.

On 25 August 2009 the Astrakhan regional prosecutor's office replied to the applicant's complaint that the state of his medical condition had not required a medical escort for the transfer.

On 4 February 2010 (in the submitted documents the date is also referred to as 21 January 2010) the applicant was discharged from the Gaaza hospital with a diagnosis, which included, *inter alia*, liver cirrhosis, tuberculosis, myelitis (spine inflammation) and, tentatively, multiple sclerosis.

On 2 March 2010 (in the submitted documents the date is also referred to as 27 January 2010) the applicant was officially recognised by an official medical panel as having a disability of the 3rd degree.

On 21 May 2010 the Astrakhan Regional Department of the Execution of Punishment informed the applicant that his medical condition did not warrant his hospitalisation outside of penitentiary institutions.

On an unspecified date in the spring of 2010 the administration of IK-2 requested that the Leninskiy district court of Astrakhan (the Leninskiy district court) granted the applicant early release on health grounds.

In the spring 2010 the applicant was again hospitalised in the penitentiary hospital of IK-2 in Astrakhan.

On 24 May 2010 the Leninskiy district court examined the request for early release. It took, *inter alia*, the statement of the head of the therapy department of the penitentiary hospital in IK-2, Dr A.Yu. According to the transcript, the doctor testified that the applicant's medical condition was serious, but that their hospital did not have facilities to provide the required treatment to the applicant and that there were not any agreements to provide such treatment in other hospitals. Having examined the case, the court rejected the request for release, stating that the applicant's diseases were not included into 'The List of Diseases Incompatible with Incarceration' of 6 February 2004.

On 13 November 2012 the administration of IK-2 informed the Court that the applicant was released on 28 August 2012.

COMPLAINTS

Under Article 3 of the Convention the applicant complained of the lack of adequate medical treatment while in prison. In particular, he alleged that due to his medical condition, his transfer for medical treatment from IK-2 prison in Astrakhan to the Gaaza hospital in St Petersburg in July –August 2009 without proper medical assistance constituted an inhuman treatment.

The applicant also alleged that he did not have an effective domestic remedy against the alleged violation of Article 3 of the Convention.

THE LAW

The Court recalls Article 37 of the Convention which, in the relevant part, reads as follows:

“1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that

(a) the applicant does not intend to pursue his application;

...

However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.”

The Court observes that, by letters of 20 January 2012 the Government’s observations were sent to the applicant, who was requested to submit his observations together with any claims for just satisfaction in reply by 23 March 2012.

By letters dated 14 June and 1 October 2012, both sent by registered post to the applicant’s address in Astrakhan provided by him to the Court and to his address in the correctional facility IK-2, the applicant was notified that the period allowed for submission of his observations had expired and that no extension of time had been requested. On 1 October 2012 he was invited to inform the Court by 12 November 2012 whether he intended to pursue his application. His attention was drawn to Article 37 § 1 (a) of the Convention, which provides that the Court may strike a case out of its list of cases where the circumstances lead to the conclusion that the applicant does not intend to pursue the application. However, no response has been received from the applicant.

The Court considers that, in these circumstances, the applicant may be regarded as no longer wishing to pursue his application, within the meaning of Article 37 § 1 (a) of the Convention. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the continued examination of the case. In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President