



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

FIRST SECTION

Application no. 52526/07
Nikolay Vladimirovich MAKSHAKOV
against Russia
lodged on 30 October 2007

STATEMENT OF FACTS

The applicant, Mr Nikolay Vladimirovich Makshakov, is a Russian national, who was born in 1978 and lived until his arrest in the town of Izhevsk, Udmurtiya Republic.

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

In October 2006 the applicant was arrested on suspicion of murder and placed in a police ward in the town of Sarapul, Udmurtiya Republic. The applicant submitted that the conditions of his detention had been extremely poor. According to him, on a number of occasions he was detained with inmates suffering from an open form of tuberculosis. On an unspecified date in October 2006 the applicant was transferred to temporary detention facility no. 1 in Izhevsk. He submitted that he was placed in a quarantine cell no. 59 where he stayed for a couple of days in inhuman conditions.

The applicant, who allegedly had no history of tuberculosis infection prior to his arrest, was diagnosed with tuberculosis several days after his admission to detention facility no. 1. The applicant stressed that an X-ray exam had shown an insignificant lobe density. In November 2006 he was transferred to the medical detention facility in correctional colony no. 4 for in-depth clinical assessment and, if necessary, treatment. The applicant also submitted that while having awaited the transfer to the medical detention facility, he had stayed in cell no. 94 where he had had no sleeping place as the cell had been overcrowded. He described the sanitary condition in the cell as appalling and inhuman.

Clinical testing performed in the medical detention facility confirmed the diagnosis of tuberculosis. The applicant submitted that he had not received any treatment and had merely been transferred back to the police ward in Sarapul several days after his diagnosis had been confirmed. During the trip his condition deteriorated. He complained of fever, nausea, headache,

cough, weight loss and fatigue. On admission to the police ward he sought medical assistance which could not be provided as the ward did not employ a doctor.

It appears that several days later the applicant was brought back to the medical detention facility and later transferred to a tuberculosis hospital. He, however, argued that the assistance provided in the hospital had been extremely ineffective or virtually absent. The medical personnel had demonstrated indifference and occasionally had used physical force against inmates, including the applicant. In January 2007 the applicant was transferred back to the medical detention facility. The applicant complained about his transfer to a prosecutor's office, having argued that he had no access to medical aid. No response followed.

In March 2007 the applicant who at that time was MBT negative was placed in a cell with inmates having an open form of tuberculosis infection. From March to May 2007 the applicant was detained in cell no. 4 with nine other ill inmates. He complained that the cell of twelve square metres had been extremely small to accommodate so many sick inmates. In addition, the sanitary conditions in the cell were poor. In May 2007 the applicant was transferred to cell no. 1 which was not different in any respect from cell no. 4, save for the fact that I had two windows.

A month and a half later the applicant learned that his infection had progressed. He suffered from severe nausea, cough, fever, lack of appetite, fatigue and pain in the chest. The applicant was again MBT positive. He did not cease to complain about the conditions of his detention and the lack of adequate medical assistance. His complains either did not bring any response or were considered to be unfounded.

At the same time the applicant started suffering for a strange form of skin illness. His attempts to obtain qualified medical advice were futile.

In October 2007 the applicant was transferred to the temporary detention facility and then, on an unspecified date, was sent to correctional colony no. 4 to serve his sentence. Until March 2008 the applicant was allegedly not provided with any assistance, save for visits from a colony doctor on rare occasions. In March 2008 he was diagnosed with infiltrative tuberculosis in disintegration stage and was assigned a second-degree disability. However, he was only prescribed a seasonal prophylactic treatment of the infection.

In April 2008 the colony administration announced the applicant that they no longer had an anti-bacterial medicine on which his chemotherapy regimen was largely based. At the same time they admitted that the prescribed drug regimen was not working as most probably the applicant developed a drug-resistant form of the infection. However, given that the colony did not have a necessary laboratory equipment to perform a drug resistance testing, that conclusion could not be confirmed.

The applicant also described the conditions of his detention in the colony. He argued that the colony was severely overcrowded with so many inmates sharing small dormitories, recreation yards and sanitary facilities. Having provided colour photographs of the sanitary facilities, he stressed that the sanitary conditions were extremely poor and that the colony premises were generally in the dilapidated state. He also attached copies of his numerous complaints to various State officials.

COMPLAINTS

1. The applicant complained under Articles 3 and 13 of the Convention about the lack of medical assistance in detention, extremely poor conditions of his detention on certain occasions in the police ward, the temporary detention facility, in the medical detention facility and the correctional colony and about the absence of effective remedies for his complaints under Article 3.

2. The applicant complained under other Convention provisions about his having been discriminated and ill-treated in detention.

QUESTIONS TO THE PARTIES

1. The parties are requested to answer the following questions concerning each detention facility where the applicant was held after March 2007:

(a) What was the floor surface of the barracks/sleeping premises/cells (in square metres)? How many bunk beds and/or sleeping places were available in the barracks/sleeping premises/cells? How many persons were/are detained simultaneously with the applicant? Indicate the maximum number of detainees, not the average. What is the overall number of inmates detained in the respective facility and what is the designed capacity of the facility? The Government are requested to provide extracts from registration logs to support their submissions.

(b) What are the dimensions of the windows? Do the windows allow entrance of fresh air?

(c) Is there a functioning artificial ventilation system in barracks/sleeping facilities/cells?

(d) What is the inmates' daily routine? How long do they spend in the sleeping premises? Indicate the frequency of outdoor exercise, the surface of the exercise yard (in square metres).

(e) Describe the sanitary conditions. How frequently are the barracks/sleeping premises/cells cleaned and disinfected? Who ensures the cleaning/sanitation of the premises?

(f) What is the applicant's daily food ration?

(g) Were the conditions of the applicant's detention compatible with Article 3 of the Convention?

2. Taking into account the applicant's medical history, in particular, his suffering from a long-term 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?

3. The Government are requested to produce a typed copy of the applicant's complete medical record drawn up after his arrest in October 2006.

4. 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?