



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

FIRST SECTION

Application no. 8589/08
M.S. against Russia
lodged on 25 December 2007

STATEMENT OF FACTS

The applicant, M.S., is a Russian national, who was born in 1980 and is serving a prison sentence in Izhevsk, Udmurtiya Republic. The President granted the applicant's request for his identity not to be disclosed to the public (Rule 47 § 3).

A. The circumstances of the case

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

1. The applicant's arrest

(a) The official version

According to the official version of the events, on 31 May 2007 K., a close friend of the applicant's, was arrested by the police when he attempted to sell to P. the amphetamines he had earlier bought from the applicant. Then K. voluntarily agreed to participate in a test purchase operation organised by the police to help them arrest the applicant in order to stop his drug dealing and made a written statement to that effect. Then K., in the presence of two attesting witnesses and the police officers, called the applicant and asked him to sell him ten ecstasy pills. The applicant met K. at 11:00 p.m. He gave him the drugs and K. paid him in cash. Then the police officers arrested him. K. gave them the drugs he received from the applicant. The police officers took the marked bills K. had paid for the drugs from the applicant's bag. Then they cut off the applicant's nails for

forensic analysis. The attesting witnesses were present at the site and could observe the whole operation.

(b) The applicant's version

According to the applicant, K. called him and asked for help because of his arrest. He also asked for money. The applicant agreed to help him. When he met K., the latter put several bills in his bag which was open. Then several policemen in plain clothes arrested him. They handcuffed him, took the bills placed by K. from his bag, cut a part out of his bag and cut his nails off together with adjacent skin. When the applicant refused to sign the arrest records, one of the policemen punched him and the applicant signed the document.

Then the applicant was brought to the police station. The head of the police station S. beat the applicant up in order to make him confess to the crime. The policemen also took some of his personal effects and the cash he had on him. The applicant spent the night at the police station.

On 1 June 2007 the applicant met with lawyer Kh. The latter told him to confess to the crime, give cash to the policemen who would let him go and make sure that he got conditionally convicted. The applicant did as told by Kh.

2. The applicant's conviction

On 17 January 2008 the Lefortovskiy District Court of Moscow found the applicant guilty of drug dealing and sentenced him to ten years' imprisonment. The court based its findings on (1) the testimonies of K., police officers, one of the attesting witnesses and the investigator; (2) materials pertaining to the test purchase and (3) forensic evidence. The court also noted that the applicant's allegations of ill-treatment were not subjected to examination in the course of the trial.

At the trial the applicant was represented by three lawyers. He plead not guilty. He recounted his version of the events alleging that that K. and police officers had set him up.

On 23 April 2008 the Moscow City Court upheld the applicant's conviction on appeal.

3. Condition of transport

(a) Conditions of transport to and from the courthouse

During the period between 28 August 2007 and 28 January 2008, on seventeen occasions, the applicant was transported from the remand prison to the courthouse and back.

In the prison van, the applicant was placed in a compartment measuring 0.7 * 0.7 * 1.6 cubic metres. It was covered with metal sheets. Each trip to the courthouse lasted from one to three hours. Each trip back to the remand prison lasted from three to eight hours. After the court hearings, the applicant and other detainees was first taken to remand prison no. 77/1 where they were sorted depending on destination. During all the time the vans were parked at the said remand prison, their engines were off and the lighting, heating or ventilation did not function. The compartments inside

the vans were very cold in the winter time when the outside temperature was below 25°C. The inmates were not allowed to use the toilet. All the inmates smoked and the applicant, a non-smoker, was exposed to second-hand tobacco smoke.

(b) Conditions of transport to the correctional colony

On 21 May 2008 the applicant was transported to a correctional colony to serve a prison sentence. The trip lasted eighteen hours. The applicant was placed in a train compartment measuring 2.9 square metres together with 12 other inmates. During the whole trip they were not taken to the toilet and had to use plastic bottles to answer calls of nature right in the compartment in front of all the inmates. Practically all inmates smoked and the applicant was exposed to second-hand tobacco smoke.

4. Medical assistance

In June 2007 the applicant was diagnosed with HIV. He did not receive any regular medical assistance in that respect. On an unspecified date he was prescribed HAART treatment. However, it started only on 18 September 2012. As a result of the lack of treatment during a considerable period of time, the applicant developed tuberculosis, chronic bronchitis, chronic cholecystitis; lymphadenopathy, chronic tonsillitis and polyps in the gall bladder. The anti-tuberculosis treatment started only on 21 May 2012.

5. Proceedings concerning the applicant's transfer

On an unspecified date the applicant asked for a transfer to a correctional facility with a less strict regime.

On 14 August 2012 the Tengushevskiy District Court of the Mordoviya Republic dismissed the applicant's request noting that the applicant should complete the medical treatment prescribed prior to such a transfer, if any. The applicant did not appeal.

6. The applicant's status in the correctional colony

It appears that the applicant was subjected to a rape in prison and was treated by other inmates as "a prag". He was not allowed to use the dishes or cutlery used by other inmates. He could not sit on the same benches with them or use the same toilet or wash sink. The barber refused to cut his hair. Employment, other than a job of a janitor or a sewage pipe cleaner, was not open to him. Nor was he allowed to use the fridge. When the inmates marched together, he could be only behind all the other inmates.

7. Alleged interference with the applicant's right of individual petition

According to the applicant, the administration of correctional colony no. LPU-5 in the Mordoviya Republic where he was serving a prison sentence refused to dispatch his letters of 15 December 2011, 24 February, 21 June and 15 July 2012 addressed to the Court and containing his complaints about lack of inadequate medical care. He further alleges that the letters of 4 April and 1 August 2012 he received from the Court were opened and read by the administration of the correctional colony; that his

letter addressed to the Court of 14 June 2012 was opened and dispatched with a 25 days' delay; that his letter addressed to his lawyer Sh. of 22 June 2012 was not dispatched.

COMPLAINTS

The applicant complains under Article 3 of the Convention that the policemen cut his nails together with the adjacent skin right after his arrest in the street with an unsterilized device in order to debase and humiliate him; that he was transported to and from the courthouse and from the remand prison to the correctional colony in appalling conditions. The applicant further complains that he did not receive due medical treatment for HIV, that he contracted tuberculosis while in the correctional colony and that he did not receive adequate medical treatment in this respect; that he developed chronic bronchitis, chronic cholecystitis; lymphadenopathy, chronic tonsillitis and polyps in the gall bladder.

The applicant complains under Article 6 of the Convention that he was falsely accused and convicted on drugs charges; that two court hearings were held in the absence of his counsel P. who was at the time on a sick leave; that the domestic courts ignored his argument concerning the allegedly unlawful use of the materials pertaining to the test purchase conducted by the police in the course of the criminal proceedings against him; that the findings of the domestic courts were contradictory; that the domestic courts' sided with the prosecution.

The applicant complains under Articles 3 and 14 of the Convention that he was subjected to discrimination on account of his status as "a prag" and an HIV-infected person. He further alleges that he was refused a transfer to a correctional facility with a less strict regime in view of his medical condition.

The applicant refers to Article 13 of the Convention in respect of his complaints about the conditions of transport under Article 3.

The applicant complains under Article 34 of the Convention that the administration of the correctional colony refused to dispatch his letters of 15 December 2011, 24 February, 21 June and 15 July 2012 addressed to the Court and containing his complaints about lack of inadequate medical care. He further alleges that the letters of 4 April and 1 August 2012 he received from the Court were opened and read by the administration of the correctional colony; that his letter addressed to the Court of 14 June 2012 was opened and dispatched with a 25 days' delay; that his letter addressed to his lawyer Sh. of 22 June 2012 was not dispatched.

The applicant complains under Article 1 of Protocol No. 1 that his bag which was confiscated as evidence at the time of his arrest was damaged by the police.

QUESTIONS TO THE PARTIES

1. Were the conditions of the applicant's transport to and from the Lefortovskiy District Court of Moscow during the period between 28 August 2007 and 28 January 2008 and from Moscow to a correctional colony on 21-22 May 2008 to compatible with Article 3 of the Convention?
2. Did the applicant have at his disposal an effective domestic remedy for his complaints under Article 3 about the conditions of his transport as required by Article 13 of the Convention?
3. The Government are invited to submit a typed copy of the applicant's medical history and other relevant reports which describe his medical condition from the June 2007 to date.
4. Has the medical assistance available to the applicant been compatible with Article 3 of the Convention? In particular:
 - (a) Has the applicant received treatment for HIV? If yes, has it been adequate for the applicant's condition?
 - (b) Has the applicant received treatment for tuberculosis and in connection with his other diagnoses? If yes, has it been adequate for the applicant's condition?
 - (c) The Government are requested to explain whether antiretroviral therapy is available and administered to the applicant.
5. Has there been any hindrance by the State in the present case with the effective exercise of the applicant's right of application, ensured by Article 34 of the Convention? In particular, did the administration of correctional colony no. LPU-5 in the Mordoviya Republic refuse to dispatch the applicant's letters of 15 December 2011, 24 February, 21 June and 15 July 2012 addressed to the Court?