



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

## FIRST SECTION

Applications nos. 19538/10 and 37026/13  
Anton Borisovich NICHEPORUK against Russia  
and Rinat Aydarovich SHAKIROV against Russia  
lodged on 19 March 2010 and 20 May 2013 respectively

### STATEMENT OF FACTS

The applicants are Russian nationals.

The facts of the cases, as submitted by the applicants, may be summarised as follows.

**1. Application no 19538/10** lodged on 19 March 2010 by Anton Borisovich NICHEPORUK who was born on 27 June 1978 and lived until his arrest in Kemerovo.

#### **A. Facts**

By the final judgment of the Kemerovo Regional Court the applicant was found guilty of, *inter alia*, aggravated theft and robbery, and sentenced to sixteen years and ten months of imprisonment in a correctional colony of a particularly strict regime. The end of the applicant's term of imprisonment will come in February 2021.

In 2007 the applicant started experiencing an extreme pain in his legs, numbness in the region of the stomach, and a severe pain in the thoracic and lumbar spine. He subsequently suffered paralysis which affected both legs. In 2008 the applicant was declared disabled.

On a number of occasions the applicant was placed in various medical penitentiary facilities for treatment which brought no effect.

In 2008 the administration of medical colony no. 12 where the applicant stayed at the time asked the Tsentralniy District Court of Novokuznetsk to release him on parole in view of a particularly serious health condition which, under the domestic law, warranted his release.

On 28 March 2008 the District Court dismissed the request, having merely relied on the fact that the applicant had been sentenced to a very long term of imprisonment

The applicant alleged that his appeal against that decision had never been dispatched by the administration of the colony.

A similar refusal to authorise the applicant's early release was issued by the Tsentralniy District Court in March 2009. The District Court cited a lack of any evidence that the applicant could not receive necessary medical assistance in detention or that the prognosis of his condition was negative irrespective of the type and quality of medical services he received. With that decision having been quashed on appeal, on 14 July 2009 another District Court, to which the case had been sent, refused to examine the merits of the request for release, having stressed that the administration of the colony should submit more recent medical reports assessing the applicant's condition.

In November 2010 a forensic medical commission examined the applicant and studied his medical history. In the report issued on 8 November 2010 the commission concluded that the applicant suffered a vascular disease of the dorsal cord with the express and persistent appearance of focal lesions of the brain and the pyramidal paraparesis of the lower extremities with the impairment of the pelvic functions and inability to move unassisted. According to the commission, the applicant's condition precluded his serving the sentence of imprisonment. The commission noted that the administration of the detention facility should seek his release.

On 9 December 2010 the Kirovskiy District Court of Kemerovo dismissed a request for the applicant's early release, having reasoned that he had committed a number of very serious criminal offences, that he had been sentenced to a lengthy period of imprisonment which he had just started to serve, that he had been convicted before and having been released on parole, had reoffended, that he had not been given any positive references from the penitentiary authorities and that there was no evidence that the applicant could not receive necessary medical attention while serving his sentence.

That decision was quashed on appeal and the case was sent for re-examination, with the appeal court having noted that the applicant had suffered from a very serious condition, that the medical assistance provided to him in detention had not led to any positive changes, that he had been unable to care for himself and that the conditions of his detention were not suitable for a person in his condition. The appeal court concluded that the District Court had failed to examine the materials presented by the administration of the colony and the medical experts in support of the request for the applicant's release.

On 14 March 2011 the District Court again refused to release the applicant, having reasoned that the medical treatment afforded to him in detention had brought certain positive changes. In the court's view, that fact prevented the applicant's release as under the Russian law it was only possible if the medical treatment had not led to any positive dynamic. The District Court took into account statements by a deputy head of the colony's medical unit which had testified that the applicant had not been able to move unassisted for three years and that he had spent the major part of the day laying on his bunk, having only been able to get up to use a lavatory room. The applicant had been given a wheelchair. He also could rely on assistance of inmates to move around. In addition, the medical personnel of the colony stated that the applicant's condition was incurable, irrespective

of the fact whether the medical care was provided by civil doctors or in a penitentiary medical facility. The District Court dismissed the applicant's argument that the detention conditions in correctional colonies or medical penitentiary facilities were not suitable for wheelchair-bound inmates. The court noted that the administration of the colony assigned inmates to assist the applicant when he wanted to take a walk or to take a shower. The lavatory room was also equipped with a special lavatory pan. The District Court also assessed a possibility of assistance on which the applicant could have count if released. In particular, it was established that the applicant was divorced and that the single person willing to take care of him was his elderly and sick mother who, in the court's view, was unable either to physically assist the applicant or to bear expenses for his medical care and social adaptation.

That decision was upheld on appeal on 10 May 2011, when the Kemerovo Regional Court fully endorsed the District Court's reasoning.

The applicant argued that the conditions of his detention with healthy inmates were unbearable. No accommodations were made to take care of his needs as a wheelchair-bound inmate. He had no easy access to shower or lavatory rooms or dormitory facilities. He had to rely on assistance of other inmates whom he, very frequently, could not ask for help due to shame or fear. As a result he had to spend a major part of his day on his bunk.

## **B. Complaint(s)**

The applicant complained, among other matters, under Article 3 of the Convention about the conditions of his detention.

**2. Application no 37026/13** lodged on 20 May 2013 by Rinat Aydarovich SHAKIROV who was born on 28 May 1963 and lives in the village of Surok, in the Mariy El Republic.

### **A. Facts**

On 22 April 2009 the applicant was arrested on suspicion of a crime. He was convicted as charged on 15 June 2009 and sentenced to three years of imprisonment to be served in a correctional colony. From 8 July 2009 to 5 February 2010 he served his sentence in correctional colony no. 5 and from 6 February 2010 until his release on 7 February 2011 he was kept in correctional colony no. 3.

The applicant underwent a surgery during which his right foot was amputated. On 18 March 2009 a forensic medical commission declared the applicant permanently disabled. An individual programme of rehabilitation was developed for him by the social services in view of his disability. The programme prescribed provision of a walking cane and an orthopaedic shoe. Subsequent examinations by forensic medical commissions in 2010 and 2011 confirmed the necessity to provide the applicant with the cane and the shoe. However, the applicant's requests to the administration of the two colonies where he was detained to comply with the medical requirements were to no avail as the facilities did not have necessary financial resources.

Following his release, the applicant lodged an action against the penitentiary authorities and the Russian Ministry of Finance, seeking compensation for the authorities' failure to provide him with the cane and the shoe. He argued that the conditions of his detention for three years had been unbearable. He had suffered pain and humiliation given his inability to move freely.

On 1 August 2012 the Yoshkar-Ola Town Court dismissed the action in full. That judgment was, however, quashed on appeal on 20 November 2012 by the Supreme Court of the Mariy El Republic. The appeal court awarded the applicant 20,000 Russian roubles (approximately 500 euros) in compensation for non-pecuniary damage.

### **B. Complaint(s)**

The applicant complained, among other matters, under Article 3 of the Convention about the conditions of his detention.

### **COMMON QUESTIONS**

Regard being had to the applicant's disability and, in particular, his suffering from severe movement impairment, were the conditions of the applicant's detention in various detention facilities where he was kept following his arrest/pronouncement of a disability, compatible with Article 3 of the Convention? In particular,

(a) what were rules governing detention of disabled detainees?

(b) were any specific measures taken by the penitentiary authorities to accommodate the applicant, a disabled detainee, and if so, what steps were taken, when and by whom? The Government are asked to produce photos of housing/living and common premises (dormitories, shower rooms, lavatory facilities, recreation yards, medical units) in detention facilities demonstrating what measures were taken to meet the applicant's special needs.