



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

FIRST SECTION

Application no. 59705/12
Valentina Olegovna SERGEYEVA and Irina Yuryevna
PROLETARSKAYA against Russia
lodged on 20 August 2012

STATEMENT OF FACTS

The applicants, Ms Valentina Olegovna Sergeyeva and Ms Irina Yuryevna Proletarskaya, are Russian nationals, who live in Moscow. They are represented before the Court by Mr I. Sharapov, a lawyer practising in Moscow.

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

The first applicant is a sister of Mr B. who died of AIDS on 6 May 2008 in the Botkin Infectious Diseases Clinical Hospital in St. Petersburg (hereinafter – the Botkin hospital). The second applicant is the mother of Mr P. who died of AIDS on 19 June 2009 in the same hospital.

A. Circumstances of Mr B.'s death

Mr B. was diagnosed with HIV infection in October 2004 during a medical check-up performed in a temporary detention facility where he was kept on remand. On 1 December 2005 the Frunzenskiy District Court of St. Petersburg sentenced Mr B. to seven years of imprisonment, having convicted him of aggravated robbery. Mr B. was sent to serve his sentence in penitentiary facility no. US-20/5 in the Leningrad Region.

Following a serious deterioration of his condition, in March 2007 Mr B. was transferred to the Gaaza prison hospital in St. Petersburg (hereinafter – the Gaaza hospital). During his stay in the Gaaza hospital from March to June 2007 the applicant underwent a number of tests to monitor his immune status. In particular, a CD4 test showed the presence of less than 163 cells per cubic millimetre of blood. Mr B. was also diagnosed with chronic hepatitis B, tuberculosis of the peripheral lymph nodes and bowel dyskinesia.

In June 2007 Mr B. was transferred to medical colony no. 4 in the Karelia Republic to undergo tuberculosis treatment. According to the

applicants, the medical colony specialised in treating inmates who suffered from tuberculosis. A further transfer of Mr B. was effected on 4 July 2007 to medical penitentiary facility no. RB-2 in Karelia following his complaints of an acute stomach pain. In the latter facility Mr B. was subjected to clinical blood and urine tests and to an ultrasound examination of the abdominal cavity. Given that the initially posed diagnosis of appendicitis had not been confirmed, Mr B. was sent back to medical colony no. 4 where he received intensive anti-tuberculosis treatment until 3 September 2007.

In March 2008 Mr B.'s health seriously deteriorated with his having been diagnosed with right-sided poly-segmented pneumonia. As his condition remained moderately grave, specialists interpreted it as a sign of a further progress of his HIV infection. Mr B. was sent to medical penitentiary facility no. RB-2 for testing and assessment whether the anti-retroviral therapy should be initiated.

On admission to medical facility no. RB-2 Mr B.'s condition was considered by doctors as moderately grave. The assessment was done on the basis of the visual examination and results of clinical blood and urine tests. On 10 April 2008 Mr B. was admitted to the infectious diseases department of the facility where mostly inmates suffering from the HIV infection were detained. Six days later he was examined by a neurologist who diagnosed Mr B. as follows:

“discirculatory encephalopathy of toxic genesis accompanied by movement and trophic impairments; polyneuropathy”.

Mr B. was prescribed treatment with anti-bacterial drugs (antibiotics) vitamins, injections of glucose, iron and potassium chloride.

On 22 April 2008, given a drastic deterioration of Mr B.'s health, detention authorities decided to send him to a medical expert commission to prepare a report to seek his release on parole. An extract from the expert report prepared by the commission read as follows:

“From the anamnesis: the HIV infection was diagnosed for the first time in a detention facility in St. Petersburg on 25 October 2004... At the present moment the patient's condition is grave. Clinical diagnosis is: progressing HIV infection in stage 4B, candidiasis of the oral cavity, cachexia, a fever syndrome of unknown genesis, discirculatory encephalopathy of the second degree in the third stage of toxic genesis accompanied by movement and trophic impairments, chronic viral hepatitis B and C, extra-pulmonary tuberculosis”.

Three days later the Medvezhyegorsk District Court of the Karelia Republic authorised Mr B.'s early release in view his extremely fragile health. In particular, the District Court noted that Mr B.'s “health was extremely poor, [that] his life prognosis was unfavourable [and that] he could not move without assistance”. Mr B. was not brought to the hearing as his health did not warrant his transport.

When the first applicant came to facility no. RB-2 to pick up her brother, the latter was carried out on a stretcher by warders. Mr B. was unconscious. He was extremely skinny, “resembling a skeleton covered with the bluish skin”. The first applicant was forced to immediately take Mr B. by car to St. Petersburg where he was admitted to the Botkin hospital.

As follows from an extract of medical record no. 10631 issued by the Botkin hospital, Mr B. stayed in the hospital from 26 April to 6 May 2008, having been diagnosed with the HIV infection in the stage 5 (the terminal

stage), disseminated candidiasis of mucous membranes, overwhelming tuberculosis primarily affecting the thoracic and abdominal lymph nodes in the infiltration stage, the HIV-encephalitis, toxoplasmosis of the brain, brain oedema, right-sided pneumothorax, acute erosive ulcerous gastritis, gastrorrhagia, progressing multiple organ failure, anaemia of the mixed genesis, chronic hepatitis B and C, heroine dependency. On 6 May 2008, at 9.55 p.m., Mr B died without regaining consciousness.

B. Circumstances of Mr P.'s death

On 12 December 2006 the Lomonosovskiy District Court in St. Petersburg found Mr P. guilty of robbery and sentenced him to three years of imprisonment. By that time Mr P. was already serving a sentence of imprisonment following conviction of theft.

In August 2006 Mr P. was diagnosed with tuberculosis and was sent to the Gaaza hospital for treatment. Following a further progress of the illness in February 2007 he was transferred to medical correctional colony no. 4 in Karelia. Until 16 October 2008 Mr P. remained in the latter facility for treatment.

On admission to medical colony no. 4 Mr P. was diagnosed with the HIV infection in the stage 4B accompanied by infiltrative pulmonary tuberculosis, cachexia, candidiasis, generalized lymphadenopathy, genital pointed condyloma, nutritional dystrophy of the first degree, chronic hepatitis B, C and D. Doctors also noted that Mr P. had been under medical supervision in respect of his HIV infection since 1999.

During Mr P.'s stay in the medical colony, he was subjected to clinical blood and urine testing. He also underwent a chest X-ray examination and received sputum smear tests. According to the second applicant, Mr P. received anti-tuberculosis treatment, as well as a symptomatic treatment of the viral hepatitis and condylomathosis.

On 17 April 2008 a medical social forensic expert commission diagnosed Mr P. as suffering from multidrug-resistant infiltrative pulmonary tuberculosis in the infiltration and disintegration stage, HIV infection in the 4B stage, multiple genital condylomas, chronic hepatitis B, C and D, nutritional dystrophy of the first degree. Six months later the SegezhsK Town Court, having assessed the expert opinion and recommendations by the colony administration, released Mr P. on parole.

Having been released on 31 October 2008, Mr P. was immediately taken by his relatives to the Botkin hospital.

Relying on the text of Mr P.'s interview which he had given to the head of the Fund for Health Protection and Social Justice, the second applicant argued that he had not received the antiretroviral therapy and had never been immunologically tested during the entire period of his detention, despite his numerous complaints about the rapidly deteriorating health. The medical colony where he had been detained was only equipped to treat inmates suffering from tuberculosis. It did not employ an infectious diseases specialist or a dermatologist. A month prior to Mr P.'s release, he started complaining of a high fever, nausea and extremely poor condition. Citing his coming release, colony staff members refused to examine him or provide with any assistance.

After he had been admitted to the Botkin hospital, Mr P. was informed of a difficult medical choice that his doctors faced. His tuberculosis was in an extremely active and advanced stage blocking the commencement of the antiretroviral therapy. At the same time, he desperately needed that therapy as a life-supporting procedure. The doctors did not make any prognosis.

Mr P. died in the Botkin hospital on 19 June 2009. The death certificate indicated that he died from “an illness caused by the HIV infection”.

C. Complaints to prosecution authorities

The applicants, supported by an NGO, sent a letter to the Prosecutor General of the Russian Federation complaining about the lack of medical assistance leading to their relatives’ deaths. Their complaint was readdressed to the prosecutor’s office of the Karelia Republic.

As follows from a letter sent by a deputy prosecutor of the Karelia Republic, the medical colony where both Mr B. and Mr P. had been kept was not licenced to provide treatment to HIV-infected inmates, despite the fact that more than 320 persons suffering from that disease were detained there. The deputy prosecutor admitted that in 2007 and 2008 detention facilities of the Karelia Republic “had [had] problems with providing medical assistance to HIV-infected convicts in view of the fact that a large number of those inmates had been sent to the Karelia [detention facilities] from other regions”. In particular, the deputy prosecutor indicated that almost a hundred HIV-infected inmates had been transferred to the Karelia detention facilities in 2006 and another 176 convicts were sent to Karelia in 2007. Forty inmates suffering from the HIV infection died in 2006 and 2007. In 2008 the Karelia detention facilities received 270 inmates suffering from the HIV-infection and 272 inmates with tuberculosis. Twenty-eight inmates died of the HIV infection or tuberculosis or combination of the two diseases in the Karelia detention facilities in 2008. Having been alarmed by that situation, in June 2007 the prosecutor’s office of the Karelia Republic and the Prosecutor General’s office sent letters to the Ministry for the Execution of Sentences drawing its attention to the fact that the Karelia detention facilities, and in particular medical colony no. 4 which specialised on treatment of tuberculosis patients, could not perform examination of inmates suffering from the HIV-infection in combination with tuberculosis. The facility neither had a licenced special immunological laboratory to carry out examinations of HIV-infected inmates and to assess their immunological status, nor it had staff members qualified and educated to perform examinations and treatment of such inmates. Moreover, the facility did not have funds or resources to pay to specialists and to provide treatment to HIV-infected inmates. At the same time, the deputy prosecutor noted that after 2007 significant positive changes had been introduced in the Karelia detention facilities to satisfy the medical needs of inmates: staff had been re-qualified and certified to provide necessary treatment, the detention facilities had started receiving drugs included in the antiretroviral therapy, and civil specialists were invited on regular basis to provide assistance to prison medical personnel.

As follows from the same letter by the deputy prosecutor, Mr B. and Mr P. had never received the antiretroviral therapy during detention. The

deputy prosecutor concluded that given that the medical assistance provided to the applicants' relatives had not been of requisite quality, the authorities were to determine whether it was necessary to open a criminal case into the events. The applicants were to be informed of a decision taken.

In a letter sent by the Health Department of the Karelia Republic to the republican prosecutor's office as a result of the examination of Mr P.'s case in 2010, the health official noted that there was no evidence in his medical record that Mr P. had ever been seen by an infectious diseases specialist in detention. Furthermore, the official noted that he had not been subjected to any of the mandatory medical procedures provided to a patient suffering from the HIV infection in stage 4B, such as HIV viral load testing, CD4/CD8 count tests, examinations by a neurologist, otolaryngologist, surgeon and oculist to determine any AIDS accompanying illnesses, examinations by an infectious diseases specialist at least once in four months, ultrasound and ECG examinations, biochemical testing, clinical blood testing to determine the presence of antibodies related to hepatitis B and C, and antiretroviral therapy. The officials concluded that the lack of those procedures could have determined the active course of the chronic illnesses and precluded administering of the proper treatment.

On 5 August 2010 a senior investigator of the Karelia Republic prosecutor's office refused to open a criminal case into the deaths of Mr B. and Mr P. Having cited difficulties encountered by the penitentiary system of the Karelia Republic in 2006-2008, including an extremely large number of HIV-positive inmates, lack of specialists capable of dealing with inmates suffering from that infection (the entire Karelia Republic only had one specialist), absence of an immunological laboratory and no reserve of drugs included in the antiretroviral therapy, the senior investigator, nevertheless, stated that the penitentiary authorities in Karelia had "taken all currently possible measures to provide medical assistance to HIV-infected inmates". The senior investigator described steps which had been taken in 2008-2010 to ameliorate the situation, including the opening of a new infectious diseases facility, disciplinary measures against penitentiary officials, and cooperation with civil medical personnel. He also noted that both Mr B. and Mr P. had died from the infection which they had contracted prior to their arrival to detention facilities in Karelia. The senior investigator concluded that there was no causal link between the quality of medical services provided to them in detention, including the lack of the antiretroviral therapy, and their deaths. He also stressed that Mr B. had managed to live for almost three years in the Karelia detention facilities without the antiretroviral therapy and that Mr P. had died more than seven months after his release from detention.

D. Tort proceedings

In 2011 the applicants lodged an action against the Russian Ministry of Finance and penitentiary authorities seeking compensation for damage caused by their relatives' deaths. They argued that Mr B. and Mr P. had died as they had not received adequate medical assistance in detention.

On 28 October 2011 the Tverskoy District Court of Moscow dismissed the action, having found no evidence that any of the implicated State

officials had acted unlawfully or had failed to act or that they had violated any rights of the plaintiffs or their relatives. In particular, the District Court noted that there were no court decisions showing that Mr B. and Mr P. had not received proper medical care in detention. To the contrary, having cited the senior investigator's decision of 5 August 2010, the District Court held that both inmates had "received medical assistance".

On 22 February 2012 the Moscow City Court upheld the judgment on appeal, having fully endorsed the District Court's reasoning.

COMPLAINTS

The applicants complain under Articles 2 and 3 of the Convention that the lack of proper medical assistance in detention had subjected their relatives to inhuman and degrading sufferings and had caused their death.

QUESTIONS TO THE PARTIES

1. Did Mr B. and Mr P. have adequate medical assistance in detention facilities, in particular in respect of their HIV infection and concomitant illnesses? In particular, what medical specialists examined them? Did the specialists have the required competence to assess Mr B.'s and Mr P.'s condition? What medical tests the applicants' relatives were subjected to? Were those tests sufficient to assess their condition? What medical treatment was available to the applicants' relatives?
2. The Government are requested to produce a typed copy of Mr B.'s and Mr P.'s complete medical record drawn up after their arrest, and, if available, copies of expert reports and secondary opinions from civil medical specialists assessing their health, the quality of the treatment afforded to them during the detention and laying down medical procedures which should have been performed to maintain their health.
3. Taking into account Mr B.'s and Mr P.'s medical history, have the Government met their obligation to ensure that their health, well-being and lives are being adequately secured by, among other things, providing them with the requisite medical assistance, as required by Articles 2 and 3 of the Convention.