



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

FIRST SECTION

Application no. 21566/13
Sergey Pavlovich DENISOV against Russia
and 4 other applications
(see list appended)

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 21566/13 lodged on 11 March 2013 by Sergey Pavlovich DENISOV who was born on 18 September 1971 and lived until his arrest in Krasnoyarsk. He is detained in a temporary detention facility in Krasnoyarsk.

A. Facts

1. Applicant's arrest and detention

On 13 August 2012 the applicant was arrested on suspicion of having attempted to sell a large quantity of drugs (52.86 grams of heroine). Two days later the Sverdlovskiy District Court of Krasnoyarsk authorised his placement in custody for two months. The District Court reasoned that the applicant was charged with a particularly serious criminal offence which he had allegedly committed not long after he had served a sentence of imprisonment upon the previous conviction for a similar crime. The court also took into account a lack of stable income as the applicant worked as a realtor. These circumstances were interpreted by the District Court as evidence of the applicant's liability to abscond, re-offend or interfere with justice. The applicant's arguments that he was employed, that he was the breadwinner for a minor child and that he had a permanent place of residence did not convince the court. It also did not find that the applicant's poor health warranted his release as qualified medical assistance could be provided to him in detention.

The applicant did not appeal against the detention order.

On 12 October 2012 the District Court accepted an investigator's request for the extension of the applicant's detention until 12 December 2012. The court once again found that given his criminal history and the gravity of the current charges the applicant was liable to abscond, re-offend and tamper with witnesses. The District Court did not find any evidence showing that

the applicant was not fit to remain in custody and that he did not receive necessary medical assistance in detention.

The extension order of 12 October 2012 was upheld on appeal by the Krasnoyarsk Regional Court which fully endorsed the District Court's arguments. The Regional Court also noted that the applicant and his lawyer did not submit any evidence in support of their argument of the lack of medical assistance in detention.

Another extension of the applicant's detention until 12 February 2013 followed on 11 December 2012 with the District Court having found that the circumstances which had warranted his arrest still existed. The court once again dismissed the argument concerning the applicant's poor health and lack of proper medical assistance in detention.

On 10 January 2013 the Krasnoyarsk Regional Court upheld the decision on appeal, having been fully convinced by the District Court's reasoning. As to the applicant's argument about his poor health, the Regional Court reasoned as follows:

“Despite the accused's argument, [the court] did not establish any circumstances related to his health or other personal grounds and precluding his detention in the conditions of a temporary detention facility. Materials of the case file do not contain a medical report showing that [the applicant] suffers from a serious illness included in the list of serious illnesses precluding detention of suspects and accused persons, as adopted by a decree of the Government of the Russian Federation on 14 January 2011. The [District Court] did not examine such a report when it issued the decision [of 11 December 2012].

Moreover, [the applicant's] argument about his suffering from a serious life-threatening illness is not supported by any evidence from the file although the defence had an ample opportunity to provide such evidence if it existed.

If a medical commission issues a respective medical report concerning the necessity to continue detaining [the applicant], an investigator will immediately examine that issue.”

The District Court again extended the applicant's detention on 5 February 2013. The detention was authorised until 11 May 2013. The applicant, who appealed against that detention order, did not submit its copy to the Registry.

2. Applicant's state of health

As follows from a medical certificate issued by a physician from detention facility no. IZ-24/1 where the applicant is kept, the applicant suffers from HIV infection in stage 4A, penile cancer of the first degree and chronic hepatitis C. The applicant was diagnosed with HIV infection in 2001. The certificate also indicated that the applicant received the antiretroviral therapy. He however argued that his HIV treatment had been interrupted following his arrest, that he had not and still was not provided with necessary medical assistance, particularly in respect of the penile cancer which could be, if not cured, prevented from spreading. The applicant further submitted that his suffering from cancer warranted his release. In fact, the administration of a prison hospital where the applicant had been examined following his arrest recommended his release in view of his health condition.

The applicant sent a written request to the Investigating Department of the Krasnoyarsk Region, seeking a forensic medical expert examination to determine whether he suffered from a condition which, under the Russian penitentiary rules, precluded his detention on remand.

On 6 December 2012 a deputy prosecutor of the Sverdlovsk District prosecutor's office sent a letter to the applicant, informing him that while determining an issue of his further detention on remand the courts had already examined his arguments pertaining to the state of his health. The deputy prosecutor pointed out that the courts had not established that the applicant suffered from any serious illness precluding his detention on remand.

B. Complaint(s)

The applicant complained, among other matters, under Article 3 of the Convention about a lack of proper medical assistance in detention. He further complained under Article 13 of the Convention about absence of an effective remedy to complain about the inability to obtain the proper medical care in detention. Finally, he complained under Article 5 § 3 of the Convention about excessively long detention on remand without valid reasons.

2. Application no 28333/13 lodged on 25 April 2013 by Sergey Vitallyevich TSELOVALNIK who was born in 1977 and lived before his arrest in Rostov-on-Don. He is serving his sentence of imprisonment in a correctional colony in the Kemerovo Region. The applicant is represented by Ms N. RADNAYEVA.

A. Facts

On 19 November 2008 the applicant was convicted of several attempts to commit drug trafficking. He was sentenced to ten years and six months of imprisonment and sent to correctional colony no. 43 in Kemerovo.

Prior to the arrest the applicant was diagnosed with hepatitis C.

In December 2009 the applicant started experiencing a severe pain in the knees. Following a large number of complaints, in August 2010 he was transferred to a prison hospital in correctional colony no. IK-5. A medical examination in the hospital led to his having been diagnosed with an articular syndrome which doctors connected to his suffering from hepatitis C. No serious pathology was detected. The applicant was prescribed treatment with hepatoprotectors. However, despite the applicant complaining about a severe pain in the joints, doctors did not address those complaints.

The applicant and his relatives complained to various penitentiary authorities about the lack of proper medical assistance. Replies received by the applicant were almost identical in wording. The authorities noted that medical examinations of the applicant, including an X-ray exam, and his consultations in the prison hospital, did not reveal any articular pathology. They also stressed that the prison medical personnel was trained and equipped to address the applicant's health problems.

In May 2012 the applicant was taken on a number of occasions from the correctional colony in Kemerovo to the temporary detention facility in Rostov-on-Don to take part in court hearings related to a supervisory review of his conviction. The applicant's transfer from Kemerovo to Rostov included several transit destinations: towns of Mariinsk, Chelyabinsk, Samara, Saratov and Voronezh. In each of those towns the applicant was taken from a train to a temporary detention facility. The road took hours when the applicant had to carry a heavy bag with his belongings and to stay for hours without a possibility to rest, to sit or lie down, waiting for the admission to the facility. The applicant experienced pain. His condition started deteriorating following the transfer.

The applicant asked the administration of his colony to authorise a forensic medical examination or to admit him to a prison hospital for in-depth examination and treatment. He also complained that the medical unit of the correctional colony was not equipped to address his health problems. The applicant's relatives supported his request, having also asked to keep him in the colony in Rostov, close to the place of his residence. They argued that they had not been able to travel across the country to see the applicant and could not provide him with assistance or medicines as he was detained too far away.

On 1 August 2012 the head of detention facility no. 1 in Rostov sent a letter to the applicant's mother, informing her that a request for an admission to tuberculosis hospital no. 1 was sent by the medical unit of the detention facility. However, three days later that applicant was transported back to correctional colony no. IK-43 in Kemerovo. The long transit once again led to the deterioration of the applicant's condition. On arrival to the hospital the applicant complained about a severe pain, but his complaints were to no avail.

On 4 October 2012 the applicant was seen by a prison doctor and was placed in a punishment cell because a cell phone had been allegedly found in his cell and the applicant had been declared "a persistent offender of the internal order". The applicant submitted that it had been extremely cold in the punishment ward and that he had not been given any warm clothes. He further stressed that that situation had led to a further progress of his illness with the pain in the joints becoming unbearable. The applicant and his relatives complained to a large number of authorities about the lack of any medical attention in detention. One of those complaints brought a response from the Kemerovo Regional prosecutor's office. In a letter of 12 November 2012 a senior prosecutor from the office informed the applicant's mother that the applicant's examination in the prison regional hospital in correctional colony no. IK-5 had been scheduled for the end of 2012 to determine whether he suffered from an illness affecting the joints. A similar response came from the Kemerovo Regional Ombudsman.

In the end of October 2012, in response to the applicant's continuous complaints about the pain in the joints, his admission to the medical unit of the detention facility was authorised. He started receiving an anti-inflammatory drug to relieve the pain in the joints and to ameliorate his condition. The applicant submitted that the drug had given no effect.

On 6 December 2012 the applicant was transferred to the therapeutic department of the regional prison hospital. A complex examination of the

applicant, including by way of ultrasound testing, revealed that he suffered from a multi-level osteochondrosis in the chronic recurrent course and in the moderately acute stage. He was also diagnosed with syndromes of scapulohumeral periarthritis and lumbodynia. The applicant was recommended dynamic supervision in the detention facility and treatment, twice a year, with vitamins, metabolites, anti-inflammatory drugs and chondroprotectors. He was also proscribed exercise therapy and self-massage with various ointments. The doctors recommended that the applicant should avoid lifting heavy objects and should not be subjected to cold. In addition, they compiled a complex chemotherapy regimen for a case if the applicant's illness reached an acute stage. Having undergone the treatment in the hospital, the applicant was released in a satisfactory condition.

Three weeks after his release from the hospital the applicant was sent to Rostov, having been forced to follow the same route as in May 2012. The applicant stressed that he had been unable to follow any of the recommendations made by the doctors of the prison hospital. He had to carry a heavy bag with his personal belongings, he had to stay for hours in cold premises or outside without any possibility to lie down or sit, save for directly on the ground. He again started experiencing a severe pain in the joints and also when urinating. The applicant's requests for medical care were left without any response, until on 20 February 2013 he was urgently taken to a prison hospital to consult an urologist. However, given the late hour of the visit, the applicant could only be seen by a physician on duty who recorded the applicant's complaints and recommended his examination by a specialist. The applicant was sent back to the detention facility.

Two days later he was transported back to the correctional colony in Kemerovo. A month-long trip from Rostov to Kemerovo was accompanied by the applicant's persistent complaints about the deterioration of his health and about the inability to bear pain caused by the cold and the necessity to carry a heavy load. No measures were taken.

The applicant provides the following description of his current condition. His illness is in an acute stage with his suffering from a constant severe pain in the joints. He is rapidly losing weight. He weighs 58 kilogrammes while being 174 centimetres tall. The pain affects all joints making his movements almost impossible. He cannot sleep or walk without painkillers. The only medicaments provided (an anti-inflammatory drug and a chondroprotector) are ineffective for an advanced stage of the illness such as the applicant's. The applicant's request for a copy of his medical record to consult an independent specialist was met by a refusal from the administration of the correctional colony. The applicant was notified that the administration had no means to pay for a copy of his record.

B. Complaint(s)

The applicant complained, among other matters, under Article 3 of the Convention about a lack of proper medical assistance in detention. He further complained under Article 13 of the Convention about absence of an effective remedy to complain about the inability to obtain proper medical care in detention.

3. Application no 32863/13 lodged on 26 April 2013 by Sergey Borisovich LITVINOV who was born on 5 February 1964 and lived until his arrest in St. Petersburg. The applicant serves his sentence of imprisonment in a correctional colony in the Mordoviya Republic. He is represented before the Court by Ms Y. MUKHINA, a lawyer practicing in St. Petersburg.

A. Facts

On 26 June 2010 the applicant was arrested on suspicion of aggravated kidnapping and extortion committed within an organised criminal group and with the use of firearms. Two years later the Leningrad Regional Court found him guilty as charged and sentenced him to nine years' imprisonment. The judgment was upheld on appeal on 8 November 2012 by the Supreme Court of the Russian Federation.

At the time of the arrest the applicant suffered from the third-degree primary hypertension, third-degree arterial hypertension, a fourth-degree risk of complications in the blood-vascular system, nephrosclerosis, a chronic kidney illness in the fourth stage, arteriolar hyalinosis, and ischaemic illness as a result of a stroke suffered in 2007 and an infarction sustained in 2008. The applicant submitted that his medicaments had been seized during the arrest. As a result his condition seriously deteriorated.

On 2 December 2010 the applicant was declared disabled. A forensic medical commission assessed his condition and ruled that he suffered from a third-degree disability.

In March 2011, as a result of an acute respiratory illness and an interruption in the course of the drug therapy, the applicant experienced an acute coronary syndrome. That condition was characterised by unstable angina pectoris which required urgent medical assistance. That episode attesting to the progress of the illness led to an investigator's decision to authorise a forensic medical examination of the applicant. The examination was to determine whether the applicant was fit to remain in detention. However, it was never performed despite the fact that medical specialists confirmed that the state of the applicant's health continued deteriorating with his ischaemic disease progressing and his hypertension reaching a critical level. The applicant stressed that the progress of the illness was caused by the absence of the proper medical assistance in detention.

The applicant's poor state of health precluded his participation in a number of investigative actions in May and June 2011. His inability to take an effective part in the investigation was confirmed by the medical personnel of the detention unit. The applicant claimed that having been unhappy about a delay in the investigation, an investigator had authorised the applicant's transfer from the medical unit of the detention facility to a cell. The investigator had also prohibited the applicant's consultation by independent specialists, had refused to take medicaments from the applicant's relatives and had forced him to participate in investigating actions.

In a response to a rapid deterioration of the applicant's condition, an acting head of the medical unit of the detention facility, without any additional examinations or testing, prescribed the applicant a course of

injections which led to his suffering from a kidney colic. According to the applicant, although no medical assistance was provided to him on account of that episode, an investigator authorised his consultation by civil doctors in the presence of the medical personnel of the detention facility. The applicant stressed that the civil experts made written notes in his medical record, having also recorded the lack of proper medical treatment. However, as he later discovered, those notes had disappeared from his medical file.

On 8 December 2011 the applicant was admitted to a prison hospital where he was examined with a coronagraph. As follows from a medical certificate issued in the end of the examination, the applicant was recommended a routine endovascular treatment of the coronary arteries. The experts also drew up a list of recommendations and procedures to follow, including a specific chemotherapy regimen, a diet, supervision by a cardiologist and nephrologist, ECG examinations, clinical blood analyses, and a routine stent installation in the anterior descending artery. The applicant argued that neither of the recommendations had been followed.

The applicant provided the Court with a number of expert reports drawn up by various civil medical specialists on the basis of his medical records. In particular, on 8 January 2013 a nephrologist, having noted the lack of regular therapy and the progress of the applicant's kidney illnesses, stated that he was in a desperate need of permanent and strict medical supervision and a full course of antihypertensive drugs. The doctor concluded that there was a high risk of a further progress of the illness leading to the full loss of the functions of the kidneys or even reaching the terminal stage.

In another report a medical expert who had examined the applicant in the presence of the head of prison hospital no. 2 noted "an extremely negative prognosis of [the applicant's] ischaemic disease", particularly so "in the absence of the control over the course of the hypertension and the ischaemic illness". The expert also stressed that the applicant did not receive "a vital drug" – simgal, he was not examined by a cardiologist and nephrologist despite the recommendations made during his admission to the hospital in December 2011 as the Penitentiary Service did not employ those specialists and he could not undergo a recommended stent installation as the penitentiary hospitals were not equipped to perform that procedure. Other medical reports noted a particularly high risk of the applicant's coronary death, an insult and kidney failure. In their assessments of the applicant's condition in 2012 and beginning of 2013 experts continued recording the deterioration of the applicant's health in view of the absence of adequate medical supervision and therapy. Their recommendations of various tests and examinations, including a MRI testing and ultrasound examinations, were not followed through.

B. Complaint(s)

The applicant complained, among other matters, under Article 3 of the Convention about a lack of proper medical assistance in detention.

4. Application no 33841/13 lodged on 30 April 2013 by Vasilii Nikolayevich KUZMIN who was born on 28 October 1984 and lived before his arrest in the town of Cheboksary, Chuvashiya Republic.

A. Facts

By the final judgment of 15 November 2012 the Supreme Court of the Chuvashiya Republic convicted the applicant of aggravated robbery. The Supreme Court did not accept the applicant's pleas for release on parole in view of his suffering from a serious condition affecting his spine and heart and his being in need of an urgent placement to a hospital. The court, relying on medical opinions, concluded that the applicant's condition did not preclude his serving a sentence of imprisonment. The applicant was sentenced to four years of imprisonment to be served in a correctional colony.

The applicant suffers from ankylosing spondylitis (Bechterew's disease). As follows from court records submitted by the applicant to the Registry, throughout his detention after the arrest on 7 December 2012 doctors, including a rheumatologist, recorded the deterioration of his condition given that he could not receive necessary specific in-patient treatment in the detention facility. That medical opinion served as the basis for a court's decision to release the applicant on his own recognisance on 1 June 2012. The applicant was immediately admitted to the Scientific Research Rheumatology Institute for in-patient treatment. Relying on copies of medical records and decisions of medical commissions, the applicant submitted that the admission to the Institute was only possible when any other type of medical assistance in other medical facilities had proven to be ineffective. The Institute employed high-tech treatment methods and only accepted patients on the basis of the State quota. Upon the applicant's release doctors made a long list of recommendations, including the drug therapy, a schedule of specific medical analysis and examinations, limitation of physical exercise, therapeutic physical training, regular massages, and the supervision by a cardiologist. Readmission to the rheumatologic hospital was prescribed in three months.

The applicant further submitted that he required complex medical assistance to stop the development of his condition. However, such medical assistance could not be provided in detention. In fact, medical experts testified before the trial court that the applicant's illness was "actively progressing". That conclusion was supported by results of the applicant's MRI examinations performed in the Institute. The illness was affecting the entire spine. An inflammatory process was present in the applicant's eyes and heart muscles. A further progress of the illness could only be prevented by the use of genetically engineered medicaments which could only be given in a rheumatologic hospital. The courses of the drug therapy should be administered each eight weeks. The specialists also testified that the applicant's spine and other vital organs would be fully affected by the illness if he did not receive the recommended drug therapy.

The applicant argued that neither of penitentiary medical facilities had a licence to provide him with the required treatment.

B. Complaint(s)

The applicant complained under Article 3 of the Convention about a lack of proper medical assistance in detention.

5. Application no 44694/13 lodged on 29 August 2012 by Vladimir Vladimirovich KOLESNIKOVICH who was born on 17 November 1978 and lived in Krasnoyarsk before his arrest.

A. Facts

In 2005, following his arrest, the applicant was allegedly severely beaten up by police officers. He sustained a closed craniocerebral injury and his nose was broken.

Having produced an extract from his medical record, the applicant argued that in July 2011 an otolaryngologist recommended a surgical treatment of the nasal septum deviation. No medical procedure to ameliorate the applicant's condition has been taken subsequently although he did not cease to complain about difficulties while breathing and severe headaches.

The applicant further alleged that after yet another episode of beating in 2006 he had started experiencing a severe back pain. It was not until 2009 that the applicant was sent to a prison tuberculosis hospital where he was examined by a neurologist. The examination was only visual as the hospital did not have any specific equipment to perform an in-depth examination. The neurologist diagnosed the applicant with "persistent effects of a closed craniocerebral injury" and prescribed him the vitamin therapy. The applicant only received one vitamin of the line of those prescribed to him.

The applicant submitted that he continued experiencing a progressing pain in the lumbar and thoracic spine. In November 2011 the applicant received compensation from the State for unlawful institution of a criminal case. In March 2012 he asked the administration of his correctional colony to organise an MRI scanning of his spine in a civil hospital given that he was finally able to bear the costs of that examination.

In April 2012 the applicant underwent an MRI examination in the civil hospital. As a result of the scanning, he was diagnosed as follows: "signs of degenerative dystrophic changes in the lumbosacral and thoracic spine; Schmorl's nodules of [several] vertebrae [including of traumatic nature]; ... wide protrusions of [several] disks, spondylarthrosis, hemangioma; local arachnoid changes in the brain of the liquor cystic character". The applicant was also diagnosed with arthritis of the knee joints. The final diagnosis made by a neurologist on the basis of the visual examination and the MRI scan, was "disseminated osteochondrosis affecting the cervical, thoracic and lumbar spine; thoracic lumbodynia; hemangioma of TH7 vertebra". The applicant was recommended treatment, twice a year, with anti-inflammatory, pain-relieving and neurotropic drugs. The neurologist also recommended the exercise therapy, use of an orthopaedic mattress and pillow, body cast and portable crutches. The doctor noted that the applicant should be subjected to another MRI scanning in a year and that should there be any signs of the progress of the illness, such as pain and muscle syndrome, as well as limitation of the movement, he should be admitted to a specialised neurosurgical or neurological hospital for treatment.

The applicant argued that he had not yet received a single course of that drug therapy despite his persistent complaints of a severe back and chest pain. He stressed that no recommendation given by the neurologist had been

complied with. According to the applicant, the detention facility where he was kept did not employ any medical specialist who could attend to him. The facility also did not have any equipment as well as medicaments to treat him.

The applicant also suffers from gastric ulcer and gastritis. He frequently complained about new episodes of the illnesses and the resulting strong stomach pain. However, his complaints were not properly addressed.

B. Complaint(s)

The applicant complained, among other matters, under Article 3 of the Convention about a lack of proper medical assistance in detention.

COMMON QUESTIONS

1. The Government are requested to produce a typed copy of the applicant's complete medical record drawn up after his arrest, and, if available, copies of expert reports and secondary opinions from civil medical specialists assessing the applicant's health, the quality of the treatment afforded to him during the detention and laying down medical procedures which should have been or should be performed to maintain the applicant's health.
2. Taking into account the applicant's medical history, 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/her 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. Did the applicant dispose of effective domestic remedies – as required by Article 13 of the Convention – for his/her complaint about the lack of effective medical care?

CASE SPECIFIC QUESTION

Application no. 21566/13

Was the length of the applicant's pre-trial detention in breach of the "reasonable time" requirement of Article 5 § 3 of the Convention?

APPENDIX

No.	Application no.	Lodged on	Applicant name date of birth place of residence
1.	21566/13	11/03/2013	Sergey Pavlovich DENISOV 18/09/1971
2.	28333/13	25/04/2013	Sergey Vitalyevich TSELOVALNIK 25/07/1977
3.	32863/13	26/04/2013	Sergey Borisovich LITVINOV 05/02/1964
4.	33841/13	30/04/2013	Vasily Nikolayevich KUZMIN 28/10/1984
5.	44694/13	29/08/2012	Vladimir Vladimirovich KOLESNIKOVICH 17/11/1978