



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

FIRST SECTION

Application no. 46404/13
Andrey Ruslanovich KHLOYEV against Russia
lodged on 22 July 2013

STATEMENT OF FACTS

The applicant, Mr Andrey Ruslanovich Khloyev, is a Russian national, who was born in 1974 and lived until his arrest in St. Petersburg. He is represented before the Court by Mr S. Golubok and Mr D. Laktionov, lawyers practising in St. Petersburg.

A. The applicant's arrest and detention

On 28 February 2012 the applicant was arrested on suspicion of several counts of aggravated kidnapping, extortion, robbery and possession of firearms.

On the following day the Oktyabrskiy District Court of St. Petersburg accepted the investigator's motion for the applicant's remand in custody, having linked the necessity to detain him to the gravity of the charges against him and the risk of his absconding, reoffending and obstructing justice. In particular, the District Court noted the applicant's potential to influence his accomplice, Mr G. (the prosecution's main witness in the case against the applicant), and stressed that firearms had been found in the applicant's car and that he was skilled in combat and fighting military techniques. That decision became final on 21 March 2012 when the St. Petersburg City Court upheld it on appeal having fully accepted the District Court's reasoning.

On 25 April 2012 the Oktyabrskiy District Court authorised the applicant's detention until 21 June 2012, having cited the similar reasons as in its previous detention order. Having mentioned the risk of collusion and, in particular, possible threats to accomplice G. from the applicant, the District Court relied on handwritten statements by Mr G. and a Mr K. A month later the St. Petersburg City Court fully endorsed the District Court's reasoning and upheld the extension order on appeal.

By another detention order issued on 19 June 2012 the District Court extended the applicant's detention until 21 August 2012, having essentially

relied on the same reasons as on the previous occasions. That detention order was also challenged on appeal and, with the appeal having been unsuccessful, became final on 10 July 2012.

Another extension followed on 17 August 2012 when the District Court accepted a request of an investigator to keep the applicant detained until 21 November 2012. The reasoning for the extension was slightly amended with the District Court citing the complexity of the case, the risk of the applicant's tampering with witnesses, in particular Mr G. and Ms K. who had expressed their fear of the applicant having confirmed that they had received murder threats, the risk of his absconding in view of his having worked in another Russian region with his work requiring a large number of trips, and a possibility for the applicant, if released, to contact other accomplices who had not yet been identified or apprehended. That extension order was also supported by the St. Petersburg City Court, on 19 September 2012.

Subsequent extension orders were issued by the District Court on 12 November 2012 and 24 January 2013, respectively, with the reasons for the applicant's detention remaining the same as on previous occasions. The detention order of 12 November 2012 was quashed on appeal by the City Court which on 10 January 2013, having remitted the matter back to the District Court, decided that it was necessary, in the meantime, to authorise the applicant's detention until 24 January 2013. The detention order of 24 January 2013 was upheld by the City Court on appeal.

The following request for extension lodged by an investigator was examined by the St. Petersburg City Court on 28 February 2013. Referring to Article 5 of the European Convention on Human Rights, the City Court found it necessary to keep the applicant in detention given the gravity of the charges against him and the particular complexity of the case. The applicant's arguments of a difficult family situation and precarious health condition which, in his eyes, called for his release did not convince the City Court. That decision was upheld by the appellate division of the City Court a month later.

A detention hearing on 20 May 2013 before the City Court was adjourned following the applicant's complaints of poor state of health and his having been attended to by an emergency medical team. Given that the applicant was unfit to continue participating in the hearing, he was taken back to the temporary detention facility.

On the following day the City Court authorised the applicant's detention until 28 August 2013, having again cited the complexity of the case, the gravity of the charges, the applicant's combat skills, and fears of Mr G. and Ms K. for their life and limb should the applicant be released. Having addressed the defence argument pertaining to the applicant's extremely grave health condition, the City Court concluded that he could receive necessary medical attention in detention.

At a hearing held on 25 June 2013 in response to the defence appeal against the detention order of 21 May 2013, the appellate division of the City Court heard an expert who had supported the view that the applicant's health was rapidly deteriorating in detention and that urgent medical care was required to preclude any further grave consequences to his health. Having concluded that the necessary medical services could be provided to

the applicant in detention and that the extension of his detention until 28 August 2013 was warranted by all the pertinent reasons cited in the detention order, the appellate division dismissed the appeal. A cassation appeal against the detention order of 21 May 2013, as upheld on 25 June 2013, was rejected by a City Court's judge without hearing on the merits on 26 August 2013.

Having noted that the applicant and his defence team were studying the case file, on 26 August 2013 the City Court authorised the applicant's custody until 28 October 2013. The remaining factors cited by the City Court as those warranting the continuation of the detention were the same: the gravity of the charges and the usual fears of the applicant colluding or reoffending. The defence arguments pertaining to the applicant's state of health were dismissed by the court as unreliable given that the expert opinions confirming the dangers to the applicant's health in the absence of the proper medical assistance in detention were summoned in violation of "procedural requirements". The appellate division of the City Court dismissed the appeal against that detention order on 13 September 2013.

On 4 November 2013 the applicant informed the Court that he had been released from detention. On 28 October 2013 the St. Petersburg City Court dismissed the investigator's request to continue detaining the applicant. In its decision the City Court heavily relied on the expert opinion of 16 May 2013, having cited at length the applicant's diagnosis and having repeated the experts' finding that the state of his health precluded his detention as he suffered from illness included in the List of Illnesses Precluding Detention of Suspects, as adopted by a Governmental decree on 14 January 2011. The City Court further held as follows:

« In view of the absence of the adequate medical supervision and [the applicant's] complaint about the state of his health, as confirmed in open court by a an emergency doctor who testified to the impossibility for [the applicant] to participate in a court hearing ..., [the applicant] was relieved from an obligation to continue taking part in the hearing on 24 October 2013.

Taking into account the abovementioned state of [the applicant's] health, the fact that the investigation in the case was completed, that the requirements of Article 217 of the Code of Criminal Procedure were complied with, the court is of the opinion that the circumstances which served as the ground for [the applicant's] arrest and the extension of his detention ceased to exist. At the court hearing the investigator did not put forward any evidence in support [of his argument] that [the applicant] may reoffend, abscond the investigation or the court or obstruct the proceedings in the case, given the gravity and the nature of the state of his health. [The applicant's] continuous detention poses threat to his life and limb, and moreover, will run counter to the requirements of Article 5 § 3 of the European Convention on Human Rights ... and the Russian Constitution. The length of [the applicant's] detention for more than 20 months ... will become unreasonable, and the investigation of the criminal case will become protracted should the court accept the investigator's request for a further extension of [the applicant's] detention.”

The applicant was released from detention on the following day.

An appeal against the detention decision of 28 October 2013 is currently pending.

B. The state of the applicant's health

On 10 April 2012 the applicant was subjected to a medical examination in detention facility no. 1 where he stayed at the time. The examination also included a chest X-ray exam which did not reveal any pathology. During the following examination by a prison physician on 10 May 2012 the applicant acknowledged his suffering from chronic viral hepatitis C. On 14 September 2012 following complaints of stomach pain, nausea and vomiting, he was diagnosed with an acute attack of the chronic gastritis and received treatment. A week later his diagnosis was amended to include diabetes. He was immediately transferred to the Gaaza prison hospital for inpatient treatment.

The applicant stayed in the hospital until 11 October 2012 having received treatment in respect of the following condition: sub-compensated first-type diabetes, diabetic polyneuralgia, chronic hepatitis C in the moderately active state. Having diagnosed the applicant with the left-sided pneumonia of the upper lobe of the lung, doctors suspected tuberculosis. The infiltrative pulmonary tuberculosis was confirmed by an X-ray examination on 26 September 2012. However, no bacteriological testing was performed to see whether the applicant was smear-positive. Another X-ray exam performed two weeks later did not show any dynamic in the illness process. The applicant received treatment with hepatoprotectors and antibiotics.

On his release from the Gaaza hospital the applicant was transferred to prison hospital no. 2 where he stayed until 18 October 2012 having continued receiving treatment with antibiotics. A culture test performed in the hospital showed that the applicant tested positive. The applicant's transfer to tuberculosis hospital no. 3 followed. On his admission to that hospital the applicant was diagnosed with acute right-sided lower-lobe pneumonia, first-type diabetes and polyneuropathy of the lower extremities. The applicant's condition was considered satisfactory. An X-ray test performed on 19 October 2012 resulted in the applicant having been diagnosed with pleuropneumonia in the lower lobe of the right lung. The applicant received antibacterial treatment with enlarged drug doses. The smear and culture testing produced negative results. The applicant also underwent clinical blood and urine testing. A tomography of the left lung performed on 25 October 2012 did not demonstrate any signs of the disintegration process. The applicant was transferred from the tuberculosis hospital to prison hospital no. 1 with his diagnosis having not been entirely confirmed. In particular, doctors placed a "question mark" in his medical record having cited such conditions as an abscess of the lung or empyema. At the same time, a medical certificate prepared in the tuberculosis hospital showed that between 23 and 28 October 2012 the applicant had been subjected to another series of culture and smear testing. However, the results of those tests which showed that the applicant was MBT positive were only received in December 2012 which led to his return to the tuberculosis hospital (see below).

Another month and a half, until 26 December 2012, the applicant spent in prison hospital no. 1. His diabetes took a "moderately grave" course. He was still continued being diagnosed with pneumonia having tested smear

and culture negative. At the same time the doctors' reading of an X-ray exam performed on 7 November 2012 raised a suspicion of the applicant suffering both from the infiltrative tuberculosis of the upper lobe of the left lung and the right-sided pneumonia. Another exam performed in the first days of December 2012 showed a positive dynamic in the arrest of the pneumonia process and no dynamic in the infiltrative tuberculosis process in the left lung. As follows from a typed copy of the applicant's medical record produced by the Government, on 2 November 2012 the applicant was seen by a tuberculosis specialist who prescribed treatment with four anti-tuberculosis drugs, including isoniazid, rifampicin, ethambutol and pyrazinamide. On 23 November 2012 the applicant was examined by an endocrinologist who amended his insulin therapy and introduced new hepatoprotectors in his regimen.

However, following a smear-positive test of the applicant, he was transferred back to tuberculosis hospital no. 3 on 26 December 2012 with the following diagnosis: smear-positive infiltrative tuberculosis, moderately grave course of the sub-compressive first-degree diabetes, diabetic polyneurologia and chronic hepatitis C. The applicant's condition on his admission to the hospital was considered "sufficiently satisfactory". As appears from the applicant's medical record, in the tuberculosis he continued receiving antibacterial chemotherapy with four first-line anti-tuberculosis drugs. His regimen also included hepatoprotectors, vitamins and insulin. An X-ray exam performed on 28 December 2012 the resolution of the infiltration process in the lower lobe of the lung. At the same time a test performed in October 2012 the results of which were received in January 2013 showed that the applicant developed multi-drug resistance, in particular to the majority of the first-line drugs, including streptomycin, ethambutol, isoniazid, rifampicin, cycloserine and rifabutin. That test led to the amendment of the applicant's chemotherapy regimen with the mentioned drugs having been excluded from his therapy and second-line anti-tuberculosis drugs having been introduced. The Government submitted extract from the daily logs showing the intake of the drugs by the applicant under supervision of the medical personnel.

Tests performed in the tuberculosis hospital demonstrated that the applicant's tuberculosis was in the disintegration stage. Further X-ray tests performed each two months showed minimal dynamic of the tuberculosis process. The applicant continued being seen at least once a month by an endocrinologist who recorded the negative development of the applicant's diabetes which he linked to the tuberculosis process.

On 5 April 2013 the applicant's anti-tuberculosis treatment was interrupted given particularly negative results of the liver functions clinical tests. Three months later the applicant resumed antibacterial treatment with second-line anti-tuberculosis drugs.

A certificate prepared on 13 August 2013 by the director of the tuberculosis hospital where the applicant remained until his release in November 2013, showed that the applicant was treated with the second-line antibacterial drugs. His diagnosis indicated in the certificate read as follows: "infiltrative pulmonary tuberculosis, [MBT smear-positive], multi-drug resistance, first-degree sub-compressive diabetes in the moderately grave course, polineuropathy of the lower extremities, chronic viral hepatitis C in

the replication phase and moderately acute condition”. The applicant’s condition was considered “satisfactory”. In another certificate issued in August 2013 the hospital director stressed that the applicant was subjected to necessary diagnostic and clinical testing, that he was placed on chemotherapy regimen having received full courses of drugs, including insulin, vitamins and antibacterial medicaments, and that he was seen by specialists, including a prison physician and tuberculosis specialist.

The Government provided the Court with copies of lists recording daily measurements of the glucose level, the results of a large number of clinical blood and urine tests, culture and smear sputum tests, as well as of ultrasound scanning to which the applicant was subjected.

After 12 August 2013 the applicant was examined by a physician, a tuberculosis specialist, an endocrinologist, an ophthalmologist and a psychiatrist. He continued being subjected to clinical and biochemical blood and urine tests, smear sputum tests, X-ray exams, ultrasound-scanning, electrocardiograms. The level of his glucose was measured daily. The applicant started gaining weight, having gone from 72 kilograms to slightly over 76.

On 18 September 2013 an expert medical commission assigned the second-degree disability to the applicant. Another medical expert examination on 21 October 2013 led to the conclusion that the applicant did not suffer from any illness which was included on the List of Illnesses Precluding Detention of Suspects, as adopted by a Governmental decree on 14 January 2011. According to the Government, given the quality of the applicant’s treatment in detention the applicant’s life and limb were not at risk.

At the same time, the applicant relied on a forensic medical report issued on 13 March 2013 by a commission of several experts, including, *inter alia*, a tuberculosis specialist, and endocrinologist, an infectious diseases specialist and a surgeon. As follows from that report, the applicant suffers from “insulin-dependent diabetes in a grave stage accompanied by the de-compensation of the carbohydrate metabolism ... with symptoms of polyuria and polydipsia in the presence of chronic complications: diabetic angiopathy and polyneuropathy of the upper and lower extremities, diabetic nephropathy and encephalopathy of the mixed genesis; ... infiltrative multi-resistant tuberculosis of the upper lobe of the left lung in the dissolution stage, in open form; chronic hepatitis C in the moderately active stage, toxic hepatitis as a result of [the applicant] taking large quantities of anti-tuberculosis drugs; kidney failure of the second degree”. The commission also concluded that given a high risk of the development of further grave complications of the applicant’s illnesses, he needed “constant dynamic medical supervision and treatment to restore and support his general state of health, which could only be done in the conditions of a specialised medical facility employing an endocrinologist, a hepatologist, an infectious diseases specialist, and a tuberculosis specialist”. The commission also noted that the applicant could remain in the ordinary detention facility if he remained under constant and dynamic supervisions of the mentioned specialist and received necessary treatment. Having been asked whether the applicant suffers from a condition precluding his detention in the conditions of an ordinary detention facility, the experts repeated their finding that the

applicant could not participate in investigative actions or be detained in a detention facility “without proper medical assistance”.

The applicant also submitted two reports prepared by infectious diseases specialists from two very prominent Russian civil hospitals/medical universities. On the basis of the applicant’s medical record, the specialists concluded that he required a far-more reaching assessment and treatment in a specialised civil hospital.

The applicant also informed the Court that following his release from detention on 29 October 2013 he had been immediately admitted to St. Petersburg Research Institute of Phthisiopulmonology for in-patient treatment.

C. Rule 39 request

On 19 July 2013 the applicant asked the Court to apply Rule 39 of the Rules of Court and to authorize his transfer to a specialised civil medical facility as an interim measure.

The applicant claimed that the medical assistance he received in detention was insufficient in view of his very grave diseases. His condition required constant medical supervision by specialised medical staff. The facility’s medical staff was incompetent to deal with such serious conditions. According to the applicant, such inadequate medical assistance resulted in a brutal aggravation of his condition.

On 22 July 2013 the Acting President of the Section decided to request the Government under Rule 54 § 2 (a) of the Rules of Court to submit information of the applicant’s health, the amount of medical aid he received and the authorities’ compliance with recommendations made by forensic medical experts in their report on 13 March 2013.

Following the receipt of the Government’s submissions and the applicant’s comments to them, on 3 October 2013 the Acting President of the Section decided to indicate to the Russian Government, under Rule 39 of the Rules of Court, that it was desirable in the interests of the proper conduct of the proceedings that the applicant should be immediately examined by medical experts independent from the penitentiary system with a view to determining: (1) whether the treatment he was receiving in the penitentiary facilities was adequate to his condition; (2) whether his current state of health was compatible with detention in the conditions of a detention facility or its medical unit; and (3) whether the applicant’s current condition required his placement in a hospital.

On 1 November 2013 the Government responded to the Court’s letter of 3 October 2013, having submitted a one-page copy of a report drawn up on 21 October 2013 by doctors from tuberculosis hospital no. 3 where the applicant had been detained and treated on a number of occasions; an extract from the copy of the applicant’s medical record issued after August 2013; and certificates issued by the head of the tuberculosis hospital no. 3 describing the applicant’s condition and listing certain medical procedures to which he had been subjected. As followed from the report of 21 October 2013, the applicant “did not suffer from an illness which was included on the list of serious illnesses precluding detention of accused or charged persons”. The report did not contain any reference to an opinion by civil

experts and did not provide any information in addition to the general statement of the applicant's condition not precluding his further detention.

The Government also answered the three questions which, in his letter of 3 October 2013, the Acting President had asked to address to independent medical experts. In particular, having provided an answer to the first question related to the adequacy of the applicant's treatment, the Government stressed that the applicant had been placed under a dynamic medical supervision in relation to illnesses and was subjected to medical procedures necessary to safeguard his health. The Government submitted that the applicant received necessary medical attention and that no additional medical procedures were required. They further stressed that the applicant's condition did not call for his placement in a civil hospital. They relied on the report issued on 21 October 2013 in hospital no. 3, having noted that the applicant did not suffer from a condition precluding his detention.

In a letter received by the Court on 6 November 2013 the applicant complained under Article 34 of the Convention that the Government had not organised his examination by civil experts and that the report prepared by the penal medical staff of tuberculosis hospital no. 3 had not contained answers to the three questions posed by the Acting President of the Section on 3 October 2013.

COMPLAINTS

The applicant complained under Article 3 of the Convention that he had not received adequate medical assistance in detention and under Article 5 § 3 of the Convention that his detention on remand had not been based on any relevant grounds.

QUESTIONS TO THE PARTIES

1. Taking into account the applicant's medical history, have the Government met their obligation to ensure that his 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.
2. Was the length of the applicant's pre-trial detention in breach of the "reasonable time" requirement of Article 5 § 3 of the Convention?
3. Given the Government's response to the Court's decision to impose, on 3 October 2013, an interim measure under Rule 39 of the Rules of Court, has there been a 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?