



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

## FIRST SECTION

Application no. 49038/12  
Vladimir Nikolayevich GUSEV against Russia  
and 3 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 49038/12** lodged on 1 March 2012 by Vladimir Nikolayevich Gusev who was born on 26 January 1953 and lives in the village of Ivanovskoye, Stavropol Region.

#### **A. Facts**

The applicant was arrested in January 2004. Following his conviction in December 2005, he was sent to serve the sentence of imprisonment to a correctional colony in the Stavropol Region.

According to the applicant, after his arrest he did not have any health problems until in July 2010 he started experiencing a severe pain in the lower back. He also suffered from leg cramps either at night or after a physical exercise, such as a walk to the third floor of a colony dormitory.

The applicant was sent for treatment to the medical unit of the correctional colony, where a prison doctor diagnosed him with the varix dilatation in the right calf. The applicant was given medicaments to treat his hypertension and prescribed a heparin ointment which he received from his sister. He was also offered to undergo inpatient treatment in the colony hospital. On 14 October 2010 the applicant was taken to the colony hospital where he received treatment comprising drugs against high blood pressure, polyvitamines, a heparin ointment, diclofenac and nicotinic acid administered intravenously. The applicant alleges that he was also placed under a drip containing an unknown substance. Although he experienced particular discomfort during and following those procedures, the doctors refused to inform him of the nature of the substance given to him through the drip. Two weeks after the commencement of the treatment in the hospital the applicant started experiencing a serious pain in both legs. He

could barely walk. Moreover, a large blackish spot appeared on the surface of his left shank. The spot was growing having expended from 3 to 24 sq. cm. The applicant stated that it could have been a sign of internal bleeding but doctors merely covered the spot with a brilliant green antiseptic.

On 18 December 2012 the applicant was sent to the Stavropol Regional prison hospital in correctional colony no. 3. He was transported together with 40 other inmates having made stops in three transit detention facilities with the trip having taken more than twenty-four hours. The applicant did not receive any medical assistance during his transit.

For two weeks following the applicant's admission to the hospital in colony no. 3 he was not seen by a doctor. A medical assistant attended to him, having brought pills and placed him under a drip and having made shots twice per day. The applicant was not given any information on the treatment. Several days later he was diagnosed with trophic ulcer as a necrotic defect. Additional treatment was introduced – an anti-inflammatory ointment was applied and the applicant's leg was bandaged. Daily changes of bandages were performed by an inmate nurse with a medical assistant observing.

After two weeks of the applicant's stay in the hospital he was informed about his forthcoming discharge despite a rapid deterioration of his condition. The applicant complained to the head of the hospital that he had never been seen by a doctor. Another prison doctor was appointed; the applicant remained in the hospital and continued receiving the identical assistance as during the first two weeks. The new doctor did not visit the applicant once.

On 9 February 2011 the applicant was hastily discharged from the hospital as a medical commission had arrived to examine a large number of lethal cases in the hospital in 2010. The applicant stated that his discharge had been authorised despite the fact that he had an open untreated crus ulceration which continued expanding. The applicant lost a lot of weight in the hospital having gone from 88 kilograms upon his arrival to 63 on his discharge.

Between 9 to 14 February 2011 the applicant was transported from the hospital in colony no. 3 to his correctional colony no. 11. He was taken from a prison van to a transit facility to be only returned to a prison van and then taken to a prison train. No treatment was provided and his bandages were never changed.

On 14 February 2011 the applicant was admitted to the medical unit of the correctional colony. The treatment in the unit included an irregular change of bandages without proper cleaning of the ulceration and the application of an ordinary anti-inflammatory ointment. The applicant submitted that the inflammation continued growing, his pain was unbearable and he had difficulties to make even simple movements.

The applicant's sister brought him crutches, bandages, antiseptics and other medicines necessary to treat his condition. At the same time, the prison doctor went on leave and a prison medical assistant started attending to the applicant. After less than two weeks of her regular and attentive services, the applicant's ulceration skinned over and he no longer needed a bandage. However, having returned from leave, the attending doctor applied an ointment to the applicant's ulcer and bandaged him again. Following that

procedure, the crust on the ulcer ripped off and the ulceration started heavily bleeding again. The treatment took its previous circle with irregular changes of bandages and the inflamed area causing pain and growing.

Given a further deterioration of his condition, the applicant petitioned authorities for his transfer to a specialised prison medical facility and for his consultation by a civil specialist. His sister was ready to bear the costs of a consultation. Both requests were unsuccessful.

In May 2011 the applicant was sent to the prison hospital in colony no. 3 for “a surgical cleaning of the infected area”. The applicant again had to endure hardships of the trip being left without any medical attention for several days. According to him, he did not receive any treatment in the prison hospital. A surgeon who had once examined the applicant had assured him that there was no risk of his losing the leg and that he merely needed treatment in a specialised medical facility. The applicant was sent back to colony no. 11.

In the morning on 25 June 2011 the applicant was urgently taken to a hospital in Solikamsk. Given that he was unable to walk, he was transported on a stretcher to the transport zone in the colony from which he had been taken to a prison van. He was assisted by inmates during the remaining part of his two-day transit to detention facility no. 2 in Pyatigorsk. No medical services were provided. On 27 June 2011 he was admitted to the medical unit of the detention facility in Pyatigorsk where he remained until 3 July 2011. The applicant received analgesics and his bandages were regularly changed. His condition was considered to be grave.

On 4 July 2011 the applicant was forced to continue his trip to Volgograd where he arrived two days later and was placed in a temporary detention facility. He was not seen by a medical specialist either during his transit or in the detention facility in Volgograd. His trip continued on 11 July 2011. He made a transit stop in a detention facility in Kazan and three days later he arrived to correctional colony no. 9 in the Perm Region. That part of the trip was also characterised by the lack of medical attention.

From 14 July to 5 December 2011 the applicant underwent treatment in the vascular surgical department of the Perm regional prison hospital. On his admission to the hospital he was diagnosed with the infected ulcerous necrotic defect measuring 25 centimeters in length and 10 centimeters in width and reaching the bone tissue of the shinbone. Hospital doctors concluded that given a serious lack of treatment, time had been lost and the applicant’s leg could not be saved. The ulcer could lead to the general sepsis. On 11 August 2011 the applicant’s left leg were amputated at the hip. On 21 September 2011 he underwent another surgery, a lumbar sympathectomy on the right side.

On 22 November 2011 the Solikamsk Town Court, in response to the request from the administration of the Perm regional prison hospital, authorised the applicant’s release on parole given his suffering from an “untreatable illness”. The court noted a long list of medical conditions from which the applicant suffered, including his amputated leg, and concluded that his state of health warranted his release.

On 29 December 2011 the applicant was declared permanently disabled.

On 26 August 2013 the applicant lodged an action against the Service for Execution of Sentences and the Russian Treasury seeking compensation for

damage caused to his health as a result of the lack of proper medical assistance in detention. The outcome of the proceedings is unknown. The applicant provided the Court with a copy of his claim bearing a stamp of the Registry of the Kochubeyevskiy District Court of the Stavropol Region.

## **B. Complaints**

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.

**2. Application no 2763/13** lodged on 2 December 2012 by Ildar Fayzrakhmanovich Khayletdinov who was born on 19 December 1953 and is detained in a temporary detention facility in Astrakhan. He lived in Astrakhan prior to his arrest. The applicant is represented by Mr I. Makarov, a lawyer practicing in Astrakhan.

## **A. Facts**

### *1. Applicant's detention*

On 9 May 2012 the applicant was arrested on suspicion of murder. Two days later the Kirovskiy District Court of Astrakhan authorised his arrest, having noted the gravity of the charges against the applicant, his previous convictions, including for crimes of violence against persons, his failure to “get on the route of improvement”, absence of an “official” source of income and lack of persons to care for.

That decision was upheld on appeal by the Astrakhan Regional Court, which fully endorsed the District Court's reasoning. In addition, the Regional Court took into consideration that the applicant suffered from the HIV infection but stated that there was no medical evidence that he could not continue being detained in the conditions of a temporary detention facility.

Another extension of the applicant's detention followed on 9 July 2012 when the District Court accepted the investigator's arguments that he was liable to reoffend, abscond and interfere with the investigation of the case. The District Court linked those risks to the gravity of the charges against the applicant. At the same time the court examined medical evidence produced by the applicant in support of his claim that his suffering from an advanced stage of the HIV infection precluded his detention. The District Court dismissed the later argument having stressed that the applicant regularly received medicaments prescribed by a prison doctor and that there was no threat to his health through his detention in the temporary detention facility.

The Kirovskiy District Court issued further detention orders on 2 August, 6 September and 7 November 2012, having each time relied on the gravity of the charges and the flowing risk of the applicant absconding, interfering with justice and reoffending. The applicant's arguments about the progress of the HIV infection and a rapid deterioration of his health did not convince

the District Court. The most recent detention order of 7 November 2012 was upheld on appeal by the Astrakhan Regional Court on 14 November 2012. The Regional Court stressed that an additional time needed by the investigators to complete the pre-trial investigation resulted from the fact that the applicant had undergone a lengthy treatment in a prison hospital.

## *2. Applicant's state of health*

In January 2004 the applicant was diagnosed with the HIV infection in its third stage. He was taken under supervision by specialists of the Astrakhan Regional Anti-AIDS Center (hereinafter – the Anti-AIDS Center).

As follows from medical certificates provided by the applicant, on 22 March 2011 he started receiving the antiretroviral therapy which produced a very positive result with the viral load significantly decreasing and the applicant's immune status improving.

Following the applicant's arrest, doctors from the Anti-AIDS Center were allowed to see him on three occasions – on 26 June, 20 September and 2 October 2012. Since August 2012 the doctors recorded a negative dynamic in the applicant's condition. He developed concomitant illnesses and the viral load significantly grew. The doctors linked those events to the interruptions in the applicant's antiretroviral therapy. They also noted that following the reintroduction of the therapy the clinical analyses of the applicant's conditions showed the decrease of the viral load. Having given a negative prognosis to the applicant's condition, the doctors recommended continuing with the prescribed course of the antiretroviral therapy having paid particular attention to the necessity to permanently maintain the therapy without any interruptions.

On a number of occasions the applicant was transferred to the prison hospital in correctional colony no. 2 for treatment of concomitant illnesses. On 20 September 2012 the HIV infection progressed to stage 4A in the phase of unstable remission.

## **B. Complaints**

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 5 of the Convention about the lack of any valid reasons to hold him in detention.

**3. Application no 32917/13** lodged on 4 April 2013 by Vasiliy Ivanovich Khalvash who was born on 7 October 1954 and lived in St. Petersburg before his arrest. He is serving his sentence in a correctional colony in the Arkhangelsk Region.

## **A. Facts**

Since 31 July 2010 the applicant remained in detention. By a final judgment of 8 November 2012 the Supreme Court of the Russian Federation

found the applicant guilty of aggravated kidnapping and extortion committed within an organised criminal group and sentenced him to seven years of imprisonment accompanied by a year-long limitation of liberty.

As it appears from medical evidence submitted by the applicant, in 1997 he was diagnosed with posttraumatic cystic adhesive arachnoiditis of the brain, a cyst in the right temporal region and internal hydrocephalus. On a number of occasions between 1997 and 1999 he underwent inpatient treatment in the neurosurgical department of the Elizavetinskaya Hospital in St. Petersburg. As follows from a medical certificate issued in November 2010 by the director of the hospital, the applicant's condition requires permanent medical supervision by a neurologist and neurosurgeon for a purpose of ensuring an urgent surgical intervention when necessary. The hospital director also noted that such supervision could not be provided in the detention facility.

As follows from another certificate issued in 2000, three times a year the applicant required inpatient resorbing and dehydrating therapy. The doctors also mentioned a risk of his becoming blind if his condition deteriorated and no surgical treatment was provided.

Following the arrest, on 2 August 2010 the applicant was placed under the supervision by the medical personnel of temporary detention facility no. IZ-47/1 in St. Petersburg, commonly known as "Kresty". His medical record also mentioned him suffering from chronic hepatitis C and arterial hypertension.

The applicant submitted that no medical assistance was provided to him throughout the period of his detention, despite the fact that his condition deteriorated as the cyst was growing. He provided a copy of the record of a hearing on 4 October 2011 when the trial court heard a doctor from the neurosurgical department of the Scientific Research Institute for Emergency Treatment, Mr K. Having been questioned about the applicant's state of health, doctor K. explained that he had studied the applicant's medical history dating back to 2000 and he had observed him in person. Doctor K. noted that the applicant's condition, in particular a growing brain cyst, could lead to a brain oedema, particularly if the applicant experienced "an emotional change in his everyday life". The applicant's condition related to the appearance of the cyst could be treated through a surgery in a neurosurgical department of a hospital. The doctor also mentioned the applicant's serious spine problem which could lead to his complete paralysis. Having cited the results of an MRI scan of his back, the doctor noted that the illness had already affected the spinal cord substance and that the applicant required medical treatment. The doctor described the applicant's condition as progressing with the cyst constantly growing and stressed that he may experience severe headaches, nausea, aggression, high intracranial pressure, and various epileptic seizures. The doctor concluded by stating that the applicant was not fit to be detained in the conditions of an ordinary detention facility and that he was in need of medical attention.

On 25 July 2013 doctor K. made a report, assessing the applicant's condition on the basis of his medical records and an examination performed on 5 April 2012 in the temporary detention facility. The doctor stressed that the applicant had not received treatment recommended by him, including

the use of a special medical collar, chemotherapy and a surgery related to the cyst. Mr K. noted a negative dynamic in the applicant's condition and stressed that he required placement in a neurosurgical department of a hospital. He also needed close dynamic supervision comprising various tests and MRI examinations every eight months. The doctor concluded that the applicant was at risk of developing the brain ischemia which could lead to his death.

The applicant's lawyer requested a number of officials, including the investigating authorities and the head of the detention facility, to authorise the applicant's complex medical expert examination to assess the state of his health. As follows from a letter from the head of the detention facility, such a medical examination was scheduled and the applicant was to be transferred to an expert medical facility. It appears that the examination has never taken place.

## **B. Complaints**

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.

**4. Application no 52025/13** lodged on 29 June 2013 by Petr Petrovich Mumrayev who was born on 19 October 1962 and lived until his arrest in the village of Dubrovino, Novosibirsk Region. He is serving his sentence in a correctional colony in Novosibirsk.

## **A. Facts**

In December 2010 the applicant was arrested on suspicion of manslaughter. On 16 October 2011 he was found guilty as charged and sentenced to seven years of imprisonment. The judgment became final on 29 February 2012. On 15 March 2013 he was transferred to correctional colony no. 18 in Novosibirsk to serve his sentence.

The applicant alleges that despite his suffering from a serious medical condition characterised by a very severe pain and requiring the use of a strong pain relief medication and anti-inflammatory drugs, he did not receive any medical assistance in detention. Documents produced by him to the Court show that on his arrival to the colony he was diagnosed with dorsopathy (also known as the spinal disease), contracture of the third figure on the right hand, sensorineural hearing loss of the 4<sup>th</sup>-5<sup>th</sup> degree, chronic ethmoiditis, left sided chronic otopyosis, atherosclerosis of the lower extremities and pulmonary tuberculosis in the stage of clinical cure.

Following the applicant's complaint to the Novosibirsk Regional Prosecutor, prosecution authorities assessed the quality of the medical care afforded to him in detention. In a letter sent to the applicant and the head of correctional colony no. 18 on 23 May 2013 a deputy prosecutor of the Novosibirsk Region acknowledged that the medical personnel of the

correctional colony had failed to provide the applicant with the medical care of the established standard. In particular, they did not prescribe him required nonnarcotic analgesics and nonsteroid anti-inflammatory medicaments. They also did not subject the applicant to necessary testing, such as an electrocardiogram and clinical blood tests, which were necessary to address his atherosclerosis. The deputy prosecutor informed the applicant that the colony administration had been ordered to take necessary steps to remedy the violations.

## **B. Complaints**

The applicant complained 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 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 complaint about the lack of effective medical care?

### **CASE SPECIFIC QUESTION**

#### **Application no. 2763/13**

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**

<b>No.</b>	<b>Application no.</b>	<b>Lodged on</b>	<b>Applicant name date of birth</b>
<b>1.</b>	49038/12	01/03/2012	<b>Vladimir Nikolayevich GUSEV</b> 26/01/1953
<b>2.</b>	2763/13	02/12/2012	<b>Ildar Fayzrakhmanovich KHAYLETDINOV</b> 19/12/1953
<b>3.</b>	32917/13	04/04/2013	<b>Vasiliy Ivanovich KHALVASH</b> 07/10/1954
<b>4.</b>	52025/13	29/06/2013	<b>Petr Petrovich MUMRYAYEV</b> 19/10/1962