



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

Communicated on 3 December 2014

FIRST SECTION

Applications nos. 24132/12 and 12617/14
Damani KAIMOVA and Others against Russia
and Sergey Pavlovich KOROSTYSHEVSKIY against Russia
lodged on 11 April 2012 and 1 February 2014 respectively

STATEMENT OF FACTS

The applicants are Russian nationals.

1. Application no 24132/12 was lodged on 11 April 2012 by Damani Kaimova, Maryam Moldyevna Kaimova and Zarina Tamiyevna Maskhurova, who were born on 16 February 1953, 13 January 2005 and on 18 September 1981, respectively. The three applicants live in the Chechen Republic and are represented before the Court by Mr E. Vesselink, V. Kogan and A. Kushleyko, lawyers from Stichting Russian Justice Initiative and Legal Assistance Organization “Astreya”.

On 21 December 2012 two other applicants, Islam Moldyevich Kaimov, born on 25 July 2003, and Zarema Lom-Aliyevna Kaimova, born on 29 November 1972, joined the case. These two applicants also live in the Chechen Republic and are represented by the same lawyers who represent the first three applicants.

All applicants are close relatives of Mr Moldy Lom-Aliyevich Kaimov (hereinafter – Mr M. Kaimov): the first applicant is his mother; the second applicant is his daughter; the third applicant was his wife; the fourth applicant is his son, and the fifth applicant is his sister.

A. Facts

In 2004 Mr M. Kaimov, having been diagnosed with tuberculosis, started receiving anti-bacterial treatment.

On 23 September 2006 Mr M. Kaimov was arrested and, by the final judgment of the Supreme Court of the Chechen Republic, on 28 October 2008 he was found guilty of several counts of criminal offences and sentenced to six years and six months of imprisonment.

In January 2009 Mr M. Kaimov was transferred to the correctional colony in the town of Nizhnekamsk, Tatarstan Republic, to serve his

sentence. Having visited her son in that colony, the first applicant found him in good health. She assumed that he received anti-tuberculosis treatment.

On an unspecified date Mr M. Kaimov was transferred to correctional colony no. IK-12/20 in the Tatarstan Republic. Having called his mother in December 2009, Mr M. Kaimov sounded weak and ill. He complained that he suffered from a relapse of the tuberculosis infection.

In February 2010 the first applicant visited Mr M. Kaimov in detention and noticed that his condition had deteriorated. Mr M. Kaimov complained that he suffered from permanent fever and that on occasions when his body temperature was too high, he only received certain drugs through injections.

On another visit to the correctional colony, the first applicant observed a further deterioration of Mr M. Kaimov's condition as he had difficulty to stand up straight and was too weak. He complained that he was not afforded any medical attention.

On 2 June 2010 during yet another phone conversation with her son, the first applicant learned that no treatment was yet provided to him.

Three weeks later the first applicant contacted another inmate detained together with Mr M. Kaimov. The inmate informed the first applicant that her son's condition was life-threatening, particularly so that he did not receive any medical care.

On 24 June 2010 the colony administration did not allow Mr M. Kaimov's lawyer to see him, having cited his poor health. Four days later the lawyer was admitted to the facility and took Mr M. Kaimov's statement. The latter indicated that he stayed in a prison hospital but that no treatment was afforded to him. He complained about a further development of tuberculosis, his suffering from severe stomach pain and his generally poor condition.

On 1 July 2010 Mr M. Kaimov died. On the following day the authorities issued the death certificate. It did not indicate the cause of death.

Two weeks later the first applicant received a medical certificate issued by the head of the prison hospital of correctional colony no. 2. The certificate indicated that Mr M. Kaimov had been admitted to the prison hospital, having complained of fatigue, fever, shortness of breath, dizziness, loss of weight, nausea, chest pain and an extremely heavy cough. Mr M. Kaimov had been diagnosed with infiltrative tuberculosis of the upper lobes of the two lungs in the disintegration stage; he was sputum smear positive. Mr M. Kaimov received antibacterial treatment of intensive regimen. Several months after the initiation of the treatment, Mr M. Kaimov no longer suffered from an open form of tuberculosis and in June 2009 he was declared clinically cured. However, in October 2009 his condition started deteriorating and following the diagnosis of the relapse of the tuberculosis, he was transferred to the prison hospital on 28 October 2009. Despite the re-initiation of the intensive antibacterial treatment, Mr M. Kaimov's condition became worse. He suffered from hemoptysis and tuberculosis intoxication. At the same time the intensive chemotherapy regimen started bringing positive results, demonstrated through the elimination of hemoptysis, improvement of appetites, etc. However, after May 2010 Mr M. Kaimov refused treatment, first occasionally and then permanently. Discussions on the negative consequences of the refusal did not have any effect on Mr M. Kaimov. As a result his condition

progressively deteriorated. He again exhibited significant signs of tuberculosis intoxication, pulmonary heart disease and decompensation of pulmonary heart. The applicant also suffered from the poly-resistance to antibacterial drugs. The head of the prison hospital noted that at that moment the prognosis for Mr M. Kaimov's life was extremely negative.

On 22 November 2010 Mr M. Kaimov's lawyer filed a complaint with the head of the Investigation Committee of the Tatarstan Republic, asking to institute a criminal investigation into the circumstances of Mr M. Kaimov's death.

Two weeks later the complaint was dismissed as unsubstantiated. That decision was quashed by a higher-ranking prosecutor on 27 December 2010 and a new round of the inquiry into Mr M. Kaimov's death was initiated.

On 5 January 2011 the investigator again refused to open a criminal case. Several days later both Mr M. Kaimov's lawyer and the first applicant appealed against that decision, as well as filed a number of similar complaints with various Russian investigating authorities, seeking the institution of criminal proceedings.

Following the annulment of the decision of 5 January 2011 on 15 March 2011, less than two weeks later, on 27 March 2011, the investigator again concluded that there was no criminal case to answer and closed the inquiry into Mr M. Kaimov's death.

However, on 10 May 2011, in response to another complaint by the first applicant, a senior investigator sent an order to the police department in the town of Kazan, informing them of the necessity to inquire into the complaint.

On 23 May 2011 Mr M. Kaimov's lawyer challenged both the decision of 27 March 2011 and that of 10 May 2011 in court.

On 29 May 2011 the police investigator, in response to the order of 10 May 2011, issued a decision refusing the institution of criminal proceedings. In particular, having questioned the head of the prison hospital, tuberculosis specialists and a medical nurse who had attended to Mr M. Kaimov, the police investigator stated that Mr M. Kaimov's death resulted from his own careless decision, that is his refusal to continue with the antibacterial treatment. The police investigator stressed that the prison medical personnel had taken all reasonable steps to convince Mr M. Kaimov to re-initiate the treatment. A mullah and the first applicant were asked to visit Mr M. Kaimov to influence his behavior. However, those actions did not bring any result. Mr M. Kaimov continued refusing the treatment. The investigator also noted that on 2 July 2010 the first applicant had asked the authorities, in writing, not to perform an autopsy as she had had no complaints about the quality of the treatment afforded to her son.

The first applicant appealed against the decision of 29 May 2011. Her appeal was rejected by the final decision of 11 October 2011 of the Supreme Court of the Tatarstan Republic. The courts of two instances found that the inquiry into Mr M. Kaimov's death had been thorough and comprehensive. The decision refusing the institution of criminal proceedings resulted from the examination of the medical file and questioning of a number of witnesses, including the medical personnel of the prison hospital. The courts endorsed the investigator's conclusion that Mr M. Kaimov had refused treatment and had not listened to recommendations from the medical

personnel or his relatives. The courts also noted that the first applicant was aware of Mr M. Kaimov's behavior and did not make any complaints about the quality of the treatment at that time.

Having relied on a handwritten letter from Mr M. Kaimov's inmate, the applicants argued that Mr M. Kaimov had not refused any treatment. He simply had not received any treatment.

B. Complaints

The first three applicants complained, among other matters, under Article 2 of the Convention about a lack of proper medical assistance in detention for Mr M. Kaimov and the authorities' failure to perform a thorough inquiry into his death.

2. Application no 12617/14 lodged on 1 February 2014 by Sergey Pavlovich KOROSTYSHEVSKIY who was born on 29 August 1949 and lives in St. Petersburg. The applicant is the father of Mr K.

A. Facts

1. Applicant's son's state of health. His death

In March 2007 the applicant's son was convicted and sentenced to four and a half years of imprisonment. He was sent to serve his sentence in correctional colony no. 4 in the Leningrad Region. On 2 February 2010 he was transferred to colony no. 7 in St. Petersburg. At least on two occasions during his detention, Mr K. was sent for in-patient treatment to St. Petersburg Gaaza prison hospital. During his first stay in that hospital from 12 August to 19 October 2008 Mr K. was diagnosed with pulmonary manifestation of cystic fibrosis, and pyelonephritis. The applicant's son medical history also indicated that in 1987 he had underwent a splenectomy (spleen removal surgery), that he had a 3rd-degree disability, that he suffered from HIV infection, hepatitis B and C and that since 2005 he had been under permanent medical supervision by the personnel of the AIDS Centre. Upon the applicant's request, doctors attending to his son in the Gaaza hospital authorised an HIV viral load test the results of which showed that the applicant's son required antiretroviral therapy. However, no therapy was scheduled and Mr K. was sent back to the correctional colony.

On 10 May 2010, during yet another stay in the Gaaza hospital, the applicant's son died. An autopsy examination showed that the son had suffered from AIDS (HIV infection in the stage 4B) which affected the brain; cachexia; candidiasis of the oral cavity and esophagus; systematic tuberculosis – left sided tuberculous pleurisy with obliteration of the left pleural cavity; miliary pulmonary tuberculosis affecting the two lobes, tuberculosis lesions of the lymph nodes; tuberculosis lesions of arachnoid membranes and cerebral tissues; chronic pyelonephritis and glomerulonephritis; kidney stones and chronic viral hepatitis B and C.

The applicant submitted that his son's death resulted from the absent or very poor medical care afforded to him in detention. Neither of the facilities,

where Mr K. had been kept, was equipped to provide the medical care of the requisite quality. They did not have medical specialists or equipment.

2. Refusal to institute criminal proceedings

On 5 June 2010 the acting investigator of the Central District Investigative Department in St. Petersburg refused to open a criminal case in relation to the applicant's son's death. The acting investigator relied on the following items of evidence:

- the death certificate which indicated Mr K.'s post-mortem diagnosis as the HIV infection in the stage of AIDS and tuberculous meningitis, and identified the cause of death as intoxication and multiple organ failure;
- report of a pathoanatomist identifying the cause of Mr K.'s death as the HIV infection in the stage of AIDS;
- report of the applicant's questioning in which he had acknowledged that his son had used drugs for a very long period of time, that he had been diagnosed with hepatitis during his first conviction of drug trafficking, and that he had not used drugs during his detention in a colony from 1998 to 2002 and then for two years after his release. The applicant further noted that in 2005 his son had been diagnosed with the HIV infection. Following his arrest in 2007 Mr K. had not received any treatment in respect of his illnesses, save during very short periods when he had stayed in the Gaaza hospital in 2008 and then in March 2010. Despite the fact that following his release from the Gaaza hospital in 2008 Mr K. had constantly complained of his deteriorating health, no treatment was provided. On 18 April 2010, in a correctional colony, Mr K. had lost consciousness and had become paralysed. He had been transferred to the Gaaza hospital.

Having relied on the listed evidence, the acting investigator concluded that there was no indication of a criminal offence.

It appears that on an unspecified date that decision was quashed. However, on 30 July 2010 the acting investigator again refused to open the criminal investigation into Mr K.'s death. She amended the list of evidence on which the decision of 5 June 2010 was based with an act of a forensic medical examination of the applicant's son's medical records. According to that act, Mr K. had suffered from a long list of illnesses (as already was stated in the autopsy report). Experts had also noted that in 2010 Mr K.'s HIV infection had progressed, having developed into generalised tuberculosis (the most frequent infection accompanying the HIV with the chance of its development being 70 to 90 percent for patients who, as like the applicant's son, were suffering from AIDS). The following conclusions of the medical experts read as follows:

“According to the medical documents provided to the experts, the following defects of medical care, diagnostic and treatment tactics of Mr K. between 2008 and 2010 can be identified: the development and progress of the HIV infection, as well as the appearance of the HIV-associated infections, were underestimated; the patient did not receive the antiretroviral therapy, the medical treatment afforded to him was not performed in a specialised facility; the antibacterial therapy ... [provided to him] was erroneous, as the use of [one of the main drugs on which the therapy was based] was contra-indicated to cases of kidney illnesses. In April 2010, when there was a suspicion that [the applicant's son] started suffering from tuberculosis, he was provided with anti-tuberculosis therapy, although the most optimal medicament for meningitis is streptomycin, grave cases [such as Mr K.'s] require the use of antibiotics

of the wide-spread effect. The main cause of Mr K.'s deteriorating health was the progress of his main illness and the joining of an acute form of generalised tuberculosis. Defects in the quality of the medical care could not serve as the ground for the deterioration of health but could only lower the efficiency of the afforded treatment. According to the autopsy report based on the examination of Mr K.'s body and clinical data, his death resulted from the illnesses, in particular the HIV infection in the form of AIDS of 4B stage in the presence of generalised tuberculosis, left-sided tuberculous pleurisy, broad miliary dissemination in the lungs, grave tuberculous encephalomeningitis with secondary disorder of microcirculation into the cerebral tissues, tuberculous nephritis, lymphadenitis of peribronchial and periportal ... groups of lymph nodes. The direct cause of death was oedema and swelling of the brain. There is only the indirect causal link between the defects in the medical care and Mr K.'s death as the identified defects did not serve as the ground for the lethal outcome and could only diminish the efficiency of the afforded medical treatment. The experts also concluded that the HIV infection in the form of AIDS of 4B stage, generalised tuberculosis, military pulmonary tuberculosis and encephalomeningitis, from which Mr K. had suffered, presuppose the unfavourable outcome, even for cases when the necessary medical care was fully afforded."

On 17 May and 13 October 2011 and 7 February 2012 various investigating authorities issued repeated refusals to institute criminal proceedings in respect of Mr K.'s death. In each of those decisions the officials heavily relied on the expert opinion that there had been no direct causal link between the death and the poor quality of the medical services.

3. Tort proceedings

The applicant lodged a tort action against the administrations of colonies nos. 4 and 7 and the Gaaza hospital. He argued that his son's death resulted from the poor quality of the medical assistance in each of the three facilities. Mr K. had not been properly diagnosed, including with a very grave form of tuberculosis; he had not received the antiretroviral therapy and his condition had not been subjected to adequate and comprehensive examinations.

On 1 April 2013 the Smolninskiy District Court of St. Petersburg entirely dismissed the claims against colony no. 7. The court reasoned that defects in the medical care in colony no. 7, including absence of proper diagnosis, lack of consultations by a tuberculosis specialist, absence of thorough and comprehensive examinations, resulted from the failure by the administration of colony no. 4 to transmit Mr K.'s medical record to colony no. 7. The District Court further concentrated on the defects of the medical care afforded to Mr K. in the two other facilities and partly accepted the claims against them. In particular, the court identified the following defects in the treatment:

- a significant delay in the transmission of the applicant's son's medical records, including the results of chest X-ray examinations, which stripped the personnel of the possibility to base their decisions on the medical evidence;
- failure to properly diagnose him, prescribe adequate therapy, following the deterioration of Mr K.'s health.

The District Court also cited the results of the expert examination (discussed above) and endorsed the experts' finding concerning the absence of the direct causal link. At the same time, the court noted that the experts had been unable to form an opinion as to the development of tuberculosis process and the related defects of the treatment, as there were no X-rays in

the applicant's son's medical record from 2008 to 2010. It also did not escape the court's attention that the most recent examination of Mr K. related to his HIV infection by specialists from the AIDS Centre had occurred on 25 June 2009. Those specialists had recommended an examination by a tuberculosis specialist. The District Court further made the following observations relevant to its finding of the authorities' failure to provide Mr K. with adequate medical care:

- there was objective evidence in the applicant's son's medical file that at least four weeks before his death his HIV infection had started rapidly progressing;

- colony no. 4 had failed to observe the frequency of chest X-ray examinations in the applicant's son's case;

- a chest X-ray examination performed on 18 January 2010 in the tuberculosis hospital in St. Petersburg had revealed massive pleural thickening in the lower and middle parts of Mr K.'s left lung. The results of that test called for a consultation of a tuberculosis specialist and further testing which had not been performed. Moreover, the results of that examination had not been transmitted to the administration of colony no. 7, resulting in further errors in Mr K.'s diagnosis and treatment, the most important of which the failure to promptly diagnose him with tuberculosis and initiate the treatment.

At the same time, not excluding that the failure to transmit documents and the resulting belated diagnosis and treatment could have negatively affected Mr K.'s condition, and that adequate and prompt medical assistance could have extended his life, the District Court noted that Mr K. had suffered from "a grave and hopeless illness". It further noted the short period between the loss of the medical file and Mr K.'s death and found that the failure to transmit the medical documents could not be considered as the major factor in his death.

The District Court awarded the applicant 5,000 Russian roubles (approximately 100 euros) to be paid by colony no. 4 and RUB 10,000 (200 euros) to be paid by the Gaaza hospital.

On 1 August 2013 the St. Petersburg City Court upheld the decision on appeal, having fully endorsed the District Court's reasoning.

On 18 February 2014 the Judge of the St. Petersburg City Court, having examined the applicant's cassation appeal, refused to institute the cassation proceedings and re-examine the judgments of 1 April and 1 August 2013.

B. Complaints

The applicant complained, among other matters, about a lack of proper medical assistance in detention for his son, leading to his death and absence of an effective inquiry into his death.

QUESTIONS

1. Did Mr M. Kaimov and Mr K. have adequate medical assistance in the relevant detention facilities, in particular in respect of their tuberculosis or/and HIV infection and concomitant illnesses? In particular, what medical specialists examined them? Did the specialists have the required competence to assess their condition? What medical tests were they subjected to? Were those tests sufficient to assess their condition? What medical treatment was available to them?

2. The Government are requested to produce a typed copy of Mr M. Kaimov's and Mr K.'s complete medical record drawn up after their arrest. The Government is to produce expert reports and secondary opinions from civil medical specialists assessing the health of Mr M. Kaimov and Mr K., 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 and life.

3. Taking into account Mr M. Kaimov's and Mr K.'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?

4. Having regard to the procedural protection of the right to life (see paragraph 104 of *Salman v. Turkey* [GC], no. 21986/93, ECHR 2000-VII), was the investigation by the domestic authorities into the death of Mr M. Kaimov and the death of Mr K. in breach of Article 2 of the Convention?