



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

Communicated on 15 December 2014

FIRST SECTION

Applications nos. 24421/11 and 55244/13
Olga Viktorovna KARAKHANYAN against Russia
and Lidiya Vladimirovna UVAROVA against Russia
lodged on 28 March 2011 and 12 August 2013, respectively

STATEMENT OF FACTS

The applicant in the first case (application no. 24421/11), Ms Olga Viktorovna Karakhyan, is a Russian national, who was born in 1973 and lives in Orenburg.

The applicant in the second case (application no. 55244/13), Ms Lidiya Vladimirovna Uvarova, is also a Russian national, who was born in 1957 and lives in Samara.

The circumstances of the cases

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

The applicant in the first case is the wife of Mr. G. who died on 16 May 2010 in the prison tuberculosis hospital in correctional colony no. 5 of the Orenburg Region. The applicant in the second case is the mother of Mr. U. who died on 20 December 2011 in the Samara Regional prison tuberculosis hospital.

1. Application no. 24421/11

(a) Circumstances of Mr. G.'s death

In 2000 Mr. G. was diagnosed with HIV infection.

On 24 November 2003 the Orenburg Regional Court sentenced Mr. G. to eleven years of imprisonment. Mr. G. was sent to serve his sentence in correctional colony no. 8 in the Orenburg Region.

In May 2009 Mr. G. contracted tuberculosis. On 19 May 2009 he was taken to the Regional prison tuberculosis hospital in correctional colony no. 5 of the Orenburg Region for inpatient treatment. On 4 November 2009 Mr. G. was dismissed from the hospital with the diagnosis of full recovery, and was sent back to correctional colony no. 8. According to the applicant,

Mr. G.'s release from the hospital was authorised despite his having been given an incomplete treatment course and his having been diagnosed with dark patches in the right lung.

In February 2010 Mr. G. complained of cough and fever. He was taken to the hospital in colony no. 8. He was diagnosed with kidney failure and pneumonia and received treatment for those diseases. The applicant alleged that the diagnosis had not been accurate, and that Mr G. had undergone treatment for diseases that he had not had.

It appears that, as Mr G.'s condition was not improving, on 23 March 2010 an additional examination was carried out, which resulted in the applicant's having been diagnosed with tuberculosis. For this reason on 13 April 2010 Mr. G. was transferred to the hospital in colony no. 5. On 14 April another examination was carried out, which disseminated tuberculosis in infiltration phase against the accompanying HIV-infection.

According to the applicant, by 1 May 2010 Mr G. could no longer walk unaided. After 8 May 2010 Mr G. lost capacity to walk.

On 13 May 2010 the colony administration unsuccessfully petitioned a court for Mr G.'s release from prison on the grounds of poor health.

According to the applicant, on 13 May 2010 at 7.30 p.m. Mr G. had fever of over 42° C.

On 14 May 2010 an ambulance was called for Mr G. Doctors recorded stable but grave condition and recommended Mr G.'s transfer to the tuberculosis dispensary in the town.

A medical panel held on the same day with the participation of a representative of the Anti-Tuberculosis Dispensary of Novotroitsk recommended Mr G.'s continuing outpatient treatment in the colony. According to the applicant, the dispensary refused to admit Mr G. because his condition was already fatal.

On the same date the applicant asked the administration of the colony to transfer Mr G. to the Regional tuberculosis hospital in the town of Rostosh, Orenburg Region. The applicant argued that Mr G. needed urgent introduction of a specific drug regimen. The medicaments, as well as the necessary equipment, were not available at correctional colony no. 5.

The applicant's request was dismissed on the ground that the colony lacked means and could not pay for Mr G.'s transportation to Rostosh. Instead the administration of the colony decided to send him to a hospital in Orsk. However, eventually Mr G. was not admitted to any hospital.

At a certain point Mr G. also developed acute cardio-pulmonary insufficiency. On 16 May 2010 he died.

(b) Complaints to the authorities

On 2 June 2010 the applicant lodged a complaint with investigating authorities arguing the colony personnel's failure to provide Mr G. with proper medical assistance.

On 1 July 2010 a senior investigator of the Novotroitsk Inter-district Investigation Department refused to open a criminal case into Mr G.'s death. In particular, the senior investigator relied on the autopsy results as well as statements by Ms Ch., a tuberculosis doctor of colony no. 5, and Ms K., the head of the medical unit of the same colony.

Ms Ch. stated that on 23 March 2010 Mr G. had arrived from colony no. 8 in the moderately grave condition. Mr G. had earlier undergone treatment in the tuberculosis hospital in colony no. 5 and had been dismissed from it in December 2009 with the diagnosis of clinical pulmonary tuberculosis. As Mr G. had also suffered from HIV, in March 2010 he had started receiving the antiretroviral therapy, but had interrupted it in April 2010. On 14 May 2010 an ambulance was called for Mr G. Doctor Kov. recorded that the patient had been in the stable but grave condition and recommended his transfer to the town tuberculosis dispensary. Ms Ch. noted that she had consulted the head of the tuberculosis dispensary, who had accepted to continue Mr G.'s out-patient treatment in accordance with the second-level drug regimen.

Ms K. submitted that Mr G. had received adequate medical assistance in colony no. 5.

According to the forensic medical expert report, Mr G. had died of the HIV infection characterised by the tubercular lesions of inner organs and of cardio-pulmonary failure.

On 20 July 2010 the senior investigator's decision of 1 July 2010 was annulled with a view to remedy shortcomings of the investigation and to conduct an additional inquiry.

On 17 August 2010 the applicant requested that criminal proceedings be brought against Ms L., the head of the medical unit of colony no. 8, on account of her alleged failure to correctly diagnose Mr G. in 2010.

On 14 October 2010 another autopsy was conducted resulting in an expert report no. 163. Experts found that Mr G. had suffered from the progressing stage 4B HIV infection and disseminated pulmonary tuberculosis in the infiltration phase accompanied by the lesions of liver, kidneys, adrenal glands, spleen, epicardium, acute disruption of the cervical blood circulation, and left-sided hemiparesis. The experts found that the in-patient treatment in the hospital of colony no. 5 had been correct and comprehensive and had complied with the established requirements. Having considered the gravity of the lesions of the inner organs, the steady progression of the pathological processes, and the absence of effect of the treatment, the experts concluded that Mr G.'s treatment in a specialised medical facility, should it had been effected, could not prevent his death.

On 18 October 2010 the investigators received the applicant's complaint of 17 August 2010.

On 27 October 2010 a senior investigator of the Novotroitsk Inter-district Investigation Department refused to initiate criminal investigation upon the applicant's complaint. The decision relied on the evidence collected before 20 July 2010 as well as on the expert report of 14 October 2010.

The applicant complained to a court. She argued that the investigator had failed to examine witnesses, to check whether Ms L. had been responsible for the incorrect diagnosis and inadequate treatment of Mr G., and to establish why Mr. G. had been incorrectly diagnosed and had not received appropriate medical care. The applicant relied on Article 2 of the European Convention on Human Rights and sought 5,000,000 Russian rubles (RUB) in compensation.

On 17 January 2011 the Novotroitsk Town Court declared ill-founded and unlawful the senior investigator's decision not to open a criminal case

of 27 October 2010. The court pointed out that in her complaints to the investigating authorities the applicant had sought the institution of criminal proceedings against Ms L. However, the decision of 27 October 2010 did not address that issue. The court ordered the investigators to remedy the shortcomings.

The applicant appealed arguing that the court had failed to address her request to find a violation of Article 2 of the European Convention on Human Rights, and to award compensation.

On 17 February 2011 the Orenburg Regional Court upheld that decision, having fully endorsed the Town Court's reasoning. According to the applicant, the final decision has not been enforced to date.

2. Application no. 55244/13

(a) Circumstances of Mr U.'s death

On 20 December 2000 Mr U. was arrested on suspicion of a criminal offence. He was allegedly in good health when remanded. On 1 October 2001 the Zheleznodorozhnyy District Court of Samara sentenced Mr U. to thirteen years of imprisonment. He was sent to serve his sentence in correctional colony no. 6 in the Samara Region.

On 6 May 2003 Mr U. was diagnosed with HIV infection. Until 2011 Mr U. did not receive any treatment.

On 7 December 2006, due to his having come into contact with inmates suffering from an active form of tuberculosis, Mr U. was transferred to medical colony no. 4 in the Samara Region for outpatient treatment. The applicant alleged that the transfer had been unlawful as Mr U. had not suffered from tuberculosis at that time. From 2006 to 2011 Mr U. underwent medical examination twice a year.

In November 2009 his motion for early release was denied.

On 11 January 2011 an X-ray exam showed changes in Mr U.'s lungs. On 27 July 2011 he was sent to the prison tuberculosis hospital in the Samara Region for an additional assessment.

Mr U. stayed in the hospital for six days. He was diagnosed with focal tuberculosis of the left lung in the infiltration phase, with the tuberculosis being not in the open form, and stage III HIV. He was prescribed antibacterial chemotherapy regimen for tuberculosis.

On 4 August 2011 Mr U. was sent back to the medical colony where the anti-tuberculosis chemotherapy comprising first-line drugs (isoniazid, pyrazinamide, rifampicin and ethambutol) was initiated.

On 31 October 2011 an X-ray examination revealed deterioration of Mr U.'s condition, namely signs of right-sided exudative pleurisy. On the same day he was transferred to the tuberculosis hospital. At 4.10 p.m. Mr U. was examined by the head of department. At 4.25 p.m. he was scheduled for a surgery, i.e. drainage of fluid in the right pleural cavity with the use of Bülow suction method. At 4.45 p.m. the surgery was completed. Follow-up examinations and treatment were prescribed.

On 1 November 2011 Mr U. was examined by a medical commission which diagnosed him with stage III HIV, focal tuberculosis of the left lung in the infiltration phase, and right-sided exudative pleurisy.

Another drainage of fluid in the right pleural cavity with the use of Bülow suction method was performed on 8 November 2011 at 11.45 a.m., following an acute deterioration of Mr U.'s condition.

On 6 December 2011 Mr U. was examined by an infection diseases specialist with the examination leading to the diagnosis of the stage IV HIV infection in the progressing state. Highly active antiretroviral therapy was prescribed. Mr U. refused the therapy.

Two days later a further deterioration of Mr U.'s condition occurred. His treatment was amended.

On 15 December 2011 Mr U.'s condition was assessed as grave by medical commission comprising a resuscitation specialist. Five days later Mr U. died.

(b) Complaints to the authorities

On 26 December 2011, 5 January and 6 February 2012 the applicant complained to the Healthcare and Social Development Ministry and to the Regional Prosecutor's office about her son's death resulting from poor medical assistance. She was informed that an inquiry would be conducted.

On 10 February 2012 the Regional Department of Healthcare and Social Development issued a warning to the administration of medical colony no. 4 in respect of a delay of over six months, between 11 January 2011 when an X-ray exam had showed changes in Mr U.'s lungs, and 27 July 2011, which it had taken authorities to transfer the applicant to the prison tuberculosis hospital.

On 1 March 2012 the Deputy Regional Prosecutor decided to refer the applicant's case to the Regional Investigation Department. The decision read as follows insofar as relevant:

“... on 7 December 2007 [Mr. U.] who did not suffer from tuberculosis, was unlawfully [...] transferred from correctional colony no. 6 to medical colony no. 4. [...] The failure of the medical colony's personnel to carry out their duties resulted in [Mr. U.]'s contracting tuberculosis, which eventually lead to his death”.

(i) Investigation by the Sovetskiy Inter-district Investigation Department

On 13 February 2012 a senior investigator of the Sovetskiy Inter-district Investigation Department refused to open a criminal case into Mr U.'s death. The decision was based on statements by the applicant, Mr. U.'s co-inmates, and the tuberculosis specialist from the medical colony.

That decision was quashed on 10 August 2012 by the Deputy Prosecutor of the Sovetskiy District of Samara with the following reasoning:

“... the decision was adopted in violation of the law as in the course of the inquiry necessary actions for the delivery of a lawful and well-founded decision had not been taken. In particular, it was not established why, after an X-ray exam of 11 January 2011 had revealed changes in [Mr U.'s] condition, it was not until 27 July 2011, that is six months later, that Mr. U. had been sent for an additional examination. The decision failed to assess the actions of the medical personnel of the tuberculosis hospital and to verify whether the diagnosis and medical assistance had been timely. It is also necessary to attach to the case file a copy of the formal warning issued by the Regional Prosecutor's office to the Federal Prison Service (“the FSIN”) of the Samara Region, and the results of its processing”.

It appears that on 17 September 2012 a new decision not to open a criminal investigation was taken. That decision was also annulled by the

Deputy Prosecutor of the Sovetskiy District of Samara, on 26 October 2012. The case was sent back for an additional inquiry.

It appears that on 4 October 2012 the senior investigator referred allegations of ineffective medical assistance in medical colony no. 4 for an additional investigation by the police. The documents sent to the police station were apparently lost, then restored and returned to the Sovetskiy Inter-district Investigatory Department, where they were again joined to the main inquiry case file.

It appears that on 5 November 2012 the senior investigator decided to refer the case to the Krasnoglinskiy District Investigation Department, insofar as that part of the case concerned allegedly ineffective medical assistance in correctional colony no. 6.

On 19 November 2012 a complex expert examination to determine the appropriateness of the medical care afforded to Mr U. was ordered in the framework of the inquiry conducted by the Sovetskiy District Investigation Department.

After that date the investigator adopted at least three decisions discontinuing the proceedings in respect of the complaints which had not been transmitted for the assessment by the Krasnoglinskiy District Investigation Department (on 26 November 2012, 5 July 2013, and 22 January 2014). The three decisions were subsequently annulled.

It appears that the investigation proceedings are still pending.

(ii) Investigation by the Krasnoglinskiy District Investigation Department

In the meantime, on 9 November 2012 an investigator of the Krasnoglinskiy District Investigation Department refused to open the criminal investigation, having relied on the submissions by the applicant, Mr U.'s fellow inmates and the colony tuberculosis specialist.

On 26 March 2013 the Deputy Head of the Krasnoglinskiy District Investigation Department annulled the decision of 9 November 2012, having reasoned as follows:

“The decision is premature; the inquiry was not comprehensive. In the course of an additional inquiry it is necessary to question the personnel of the tuberculosis prison hospital and that of correctional colony no. 6 about the medical care provided to Mr U. It is also necessary to attach to the case file [a legal act setting the standards for the quality of the medical care afforded to detainees] adopted on 9 July 2007 by Decree no. 474 by the Russian Social Development Ministry, as well as to carry out other investigation activities, and to deliver, on their basis, a lawful and well-founded decision”.

On 5 April 2013 a new decision not to open criminal investigation was taken. That decision was also quashed on 19 July 2013. The case was sent back for an additional inquiry, which was closed on 4 September 2013.

(c) Tort proceedings

In 2012 the applicant lodged an action against the Russian Ministry of Finance seeking compensation for damage caused by her son's death. She argued that Mr. U. had died as he had not received adequate medical assistance in detention.

On 3 December 2012 the Oktyabrskiy District Court of Samara dismissed the action, having found no causal link between the penitentiary

personnel's failure to dispense adequate medical assistance and Mr. U.'s death.

On 14 February 2013 the Samara Regional Court upheld the judgment on appeal, having fully endorsed the District Court's reasoning.

COMPLAINTS

The applicants in the two cases complained under Articles 2 and 3 of the Convention that the lack of proper medical assistance in detention had subjected their relatives to inhuman and degrading sufferings and had caused their death, and that the authorities had failed to conduct an effective inquiry. The second applicant also complained under Article 13 of the Convention about the absence of an effective remedy.

QUESTIONS TO THE PARTIES

1. Did Mr G. and Mr U. have adequate medical assistance in detention facilities, in particular in respect of their HIV infection and concomitant illnesses? In particular, what medical specialists examined them? Did the specialists have the required competence to assess Mr G.'s and Mr U.'s condition? What medical tests were the applicants' relatives subjected to? Were those tests sufficient to assess their condition? What medical treatment was available to the applicants' relatives?
2. The Government are requested to produce a typed copy of Mr G.'s and Mr U.'s complete medical record drawn up after their arrest, and, if available, copies of expert reports and secondary opinions from civil medical specialists assessing their health, the quality of the treatment afforded to them during the detention and laying down medical procedures which should have been performed to maintain their health.
3. Taking into account Mr G.'s and Mr U.'s medical history, have the Government met their obligation to ensure that their lives were 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 G. and the death of Mr. U. in breach of Articles 2 and 3 of the Convention?
5. Did the second applicant have an effective domestic remedy for her complaints under Article 2, as required by Article 13 of the Convention?