



## Aleksanyan v. Russia

Application No. 46468/06; [2009] ECHR 1226

**Country:** Russia

**Region:** Europe

**Year:** 2008

**Court:** European Court of Human Rights European Court of Human Rights

**Health Topics:** Disabilities, Health care and health services, HIV/AIDS, Infectious diseases, Informed consent, Medicines, Prisons

**Human Rights:** Freedom from torture and cruel, inhuman or degrading treatment, Right to due process/fair trial, Right to family life, Right to liberty and security of person

### Facts

A, a Russian national, was a former practicing member of the Moscow bar. On 29 March 2006 a Moscow district court authorized the criminal prosecution of A in connection with his alleged participation in the embezzlement of property and shares of several oil companies in the late 1990s. On 5 April 2006 Russian authorities searched A's home and country house pursuant to the district court's authorization. On 6 April 2006 A was arrested.

A unsuccessfully appealed the decisions authorizing the search of his premises, his prosecution and his detention. Thereafter, the authorization to detain A for additional periods of time was granted on several more occasions resulting in A being subject to detention until January 2009. The investigation against A was completed by December 2006.

A had serious eyesight problems when he was arrested in April 2006. In September 2006 A was diagnosed as HIV-positive. While in detention, A's eyesight and overall health deteriorated significantly. A alleged that medical checkups were performed sporadically and that it was difficult for him to obtain certain prescribed treatments. A was placed in the Moscow AIDS Centre for examinations on several occasions beginning in July 2007. Nonetheless, A's health continued to deteriorate. Finally, on 23 October 2007 a doctor at the Moscow AIDS Centre recommended that A be transferred to the center for further examinations and treatments. Instead, on 26 October 2007 A was transferred from remand prison to a remand prison hospital.

Meanwhile, A had already lodged an application with the ECtHR on 16 November 2006 against the Russian Federation under Article 34 of the ECHR. A alleged that because of his medical condition his detention amounted to inhumane and degrading treatment. A also alleged that his detention was unlawful and politically motivated. A further complained about the searches of his home and the effect that his detention had on his family life. In November 2007 A's lawyer asked the ECtHR to apply interim measures to the Russian Government under Rule 39 of the Rules of Court. In response, the ECtHR indicated to the Government an interim measure in November 2007 inviting the Government to transfer A to a specialized medical institution. The ECtHR indicated a second interim measure in December 2007 inviting the Government to allow A's examination by a mixed medical commission. On 24 January 2008 the ECtHR informed the Government of the complaints lodged by A under Articles 3, 5, 8, 13 and 18 of the ECHR. Preliminary hearings for the trial began on 30 January 2008. A's health continued to deteriorate and on 8 February 2008 A was transferred to an external haematological hospital where A claimed he was guarded around the clock and was almost constantly handcuffed to the bed. A was detained in that hospital while the ECtHR decided his case.

### Decision and Reasoning

The Court held that:

(1) the Government's objection that A's representative's "abusive language" constituted an abusive application under Article 35(3) was dismissed because, except in extraordinary cases, an application may only be rejected as abusive if it is knowingly based on untrue facts, and the ECtHR finds that the statements made by A's representative reflected his "emotional attitude" towards the behaviour of the authorities, which "value judgments" and as such cannot be regarded as "untrue";

(2) it cannot conclude that A's deteriorating eyesight was attributable to the authorities or is incompatible with his detention from the standpoint of Article 3, but the central issue in the case is considered to be the treatment A received after he was diagnosed as HIV-positive and the Government violated Article 3 because its failure, at least until A's transfer to the haematological hospital in February 2008, to transfer A to a hospital that specialised in treating AIDS caused A to suffer inhuman and degrading treatment;

(3) from December 2006 the authorities prolonged A's detention on grounds that were not "relevant" nor "sufficient" in violation of Article 5(3);

(4) notwithstanding that the searching of a lawyer's premises should be subject to especially strict scrutiny, the serious deficiency of the search warrants issued on 4 and 5 April 2006 was in itself sufficient to conclude that A's premises were searched in violation of Article 8;

(5) due to its findings under Articles 3, 5 and 8 the ECtHR did not consider it necessary to examine A's remaining complaints under Articles 8, 13 and 18;

(6) the Government failed to honour its commitment under Article 34 by not complying with the two interim measures in November and December 2007;

(7) A's other allegations that A and his lawyer were unduly "pressured" under Article 34 had not been sufficiently substantiated; and

(8) A's continued detention was unacceptable and the Government must replace A's detention on remand with other reasonable, less stringent measures of restraint (or a combination of such measures) provided by Russian law.

## **Decision Excerpts**