



Gladkiy v. Russia

Gladkiy v. Russia, App. No. 3242/03, Eur. Ct. H.R. (2010).

Country: Russia

Region: Europe

Year: 2010

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

Health Topics: Health care and health services, Health systems and financing, Infectious diseases, Medicines, Prisons, Water, sanitation and hygiene

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment, Right to due process/fair trial

Facts

The applicant, a Russian citizen convicted of a criminal offense, was sent to a prison facility, where, upon arrival, he underwent a fluorography test that showed no symptoms a tuberculosis (TB) infection. Six months later, a follow-up fluorography examination revealed the existence of TB in the applicant's left lung. Authorities transferred the applicant to the pulmonary tuberculosis ward of the detention facility's medical department and began treating the applicant's TB intensively, though with only two of the three TB drugs recommended by the World Health Organization (WHO). Eight months later, a further medical examination showed that the applicant's health had deteriorated significantly, and he was subsequently diagnosed with acute viral respiratory infection. Medical records from the preceding period specifically linked the deterioration of the applicant's health to "irregular medication." The applicant required additional intensive anti-tuberculosis chemotherapy up through the time of his release from detention two years later. Aside from his medical treatment, authorities detained the applicant in overcrowded prison cells, requiring inmates to take turns using an inadequate number of sleeping places. The cells also lacked sanitation and deprived the applicant of natural light and sufficient ventilation. In addition, the applicant and his cellmates could only shower once every two weeks, and they did not have complete privacy from each other at any time of the day.

Two years into his detainment, the applicant lodged a complaint against the detention facility and the Ministry of Finance for these "appalling" conditions, as well as for causing him to contract TB and for failing to adequately treat his TB. A district court dismissed his action, and a regional court, without securing the applicant's presence, upheld the judgment. In particular, the regional court concluded that it was "impossible" to determine the cause of the applicant's TB. Upon review, the president of the regional court reversed the court of appeals judgment and returned the case for renewed examination. The court of appeals affirmed the district court ruling a second time. Subsequently, the applicant complained to the European Court of Human Rights (ECHR) that the conditions of his detention violated his right to freedom from torture or inhuman or degrading treatment or punishment under Article 3 of the European Convention on Human Rights (Convention), as did the inadequate medical assistance provided to him. In addition, the applicant alleged that Russia violated his right to a fair and public hearing under Article 6 of the Convention insofar as authorities had failed to secure his attendance at his court of appeal hearing. He also complained that he had not received an "effective remedy" as required under Article 13 of the Convention when he had not been able to contest the finding concerning his contraction of TB.

Decision and Reasoning

The ECHR found that Russia had violated the applicant's rights under Article 3; however, it did not find a violation of Article 6 of the Convention. More specifically, the ECHR found that the conditions of the applicant's detention constituted inhuman and degrading treatment within the meaning of Article 3 insofar as Russia did not provide evidence demonstrating that it had organized the penitentiary system in such a way as to ensure respect of the detainees' dignity, including measures to provide adequate individual space, natural light and sufficient ventilation. Contemporaneously, a report of the regional ombudsman affirmed the conditions of severe overcrowding. The ECHR also took into consideration the fact that applicant was suffering from TB in such conditions when determining his Article 3 complaint.

Regarding the applicant's claim that Russian authorities caused him to contract TB and failed to adequately treat his infection, the ECHR found a separate violation of Article 3. In its analysis, the ECHR again considered that Russia did not provide evidence to refute the applicant's contention that the prison facility

lacked the financial resources to purchase necessary anti-TB drugs and that it administered available drugs without personal dosage assessments and with interruptions such that the treatment was “insufficient, sporadic and ineffective.” The ECHR further noted that states have a responsibility to ensure treatment of prisoners in its charge. After confirming that the prison could not determine with certainty that the applicant had not contracted TB while in its charge “this, the ECHR noted, would have required testing beyond the initial fluorography examination used” the ECHR found that Russia failed to adequately treat the applicant’s TB in violation of Article 3.

Finally, the ECHR did not find a violation of Article 6 because they determined that nature of the appeal for which authorities had not secured the applicant’s presence was of a highly technical nature and would not have required the applicant’s oral argument.

Decision Excerpts

“Having regard to its case-law on the subject and the material submitted by the parties, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Although in the present case there is no indication that there was a positive intention to humiliate or debase the applicant, the Court finds that the very fact that the applicant was obliged to live, sleep and use the toilet in a particularly limited space with so many other inmates, combined with the lack of access to fresh air, was sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.” Page 27, paragraph 72.

“While finding it particularly disturbing that the applicant’s infection with tuberculosis occurred in a penitentiary institution within the State’s control, as an apparent consequence of the authorities’ failure to eradicate or prevent the spread of the disease, the Court reiterates its constant approach that even if an applicant had contracted tuberculosis while in detention, this in itself would not imply a violation of Article 3, provided that he received treatment for it (see *Alver v. Estonia*, no. 64812/01, ¶ 54, 8 November 2005, and *Pitalev v. Russia*, no. 34393/03, ¶ 53, 30 July 2009, with further references). However, the State does have a responsibility to ensure treatment for prisoners in its charge and a lack of adequate medical assistance for serious health problems not suffered from prior to detention may amount to a violation of Article 3 (see *Hummatov*, cited above, ¶ 108 et seq.). Absent or inadequate treatment for tuberculosis, particularly when the disease has been contracted in detention, is most certainly a subject of the Court’s concern. It is therefore bound to assess the quality of medical services rendered to the applicant in the present case and to determine whether he was deprived of adequate medical assistance as he claims and, if so, whether this amounted to inhuman and degrading treatment contrary to Article 3 of the Convention (see *Sarban v. Moldova*, no. 3456/05, ¶ 78, 4 October 2005).” Page 32, paragraph 88.