



Khatayev v. Russia

App. No 56994/09, Eur. Ct. H.R. (2011).

Country: Russia

Region: Europe

Year: 2011

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

Health Topics: Health care and health services, Infectious diseases, Prisons, Violence

Human Rights: Freedom from torture and cruel, inhuman or degrading treatment

Facts

The applicant, a Russian citizen who was diagnosed with pulmonary tuberculosis and tuberculosis papillitis of the kidneys, was transferred to a special "medical colony" to serve a prison sentence of two years and six months for an aggravated robbery conviction. Upon his arrival, the facility provided a new complex prophylactic examination by a tuberculosis specialist began administering comprehensive treatment for his tuberculosis, including a proper course of anti-tuberculosis drug regimens accompanied by a special nutrition plan. Two years into his sentence, the applicant began to allege injuries resulting from beatings on the part of the staff at the medical colony. However, the examination by a host of medical practitioners concluded that the applicant was simulating his own injuries and the general deterioration of his health. Subsequently, the applicant alleged that he was severely beaten by authorities at the facility following his demand that authorities discontinue beating a fellow prisoner. The applicant claimed, in particular, that the authorities had broken his ribs, had caused him severe head and chest pains, and encouraged him to cut his forearms with a razor blade, which he did in response to his treatment. The applicant alleged that a similar instance of severe beatings occurred the following month and resulted in him suffering from stammering and distorted facial expressions when speaking. A record of the wounds appeared in the facility's medical records, but the Government contended that the applicant had self-inflicted the wounds in response to his transfer to a "punishment cell" for persistently violating prison regulations. An internal inquiry following the events also concluded that the injuries were a result of the applicant's own actions.

The applicant requested in a district court that criminal proceedings be instituted against the warders who participated in the two instances of alleged beatings, but the district court, which had relied heavily on the testimony of staff at the medical colony, found that the applicant was guilty of violently attacking the facility's staff. When his efforts to seek redress in a regional district court failed, the applicant filed an application with the European Court of Human Rights (ECHR). In particular, the applicant alleged that the authorities had violated his right to freedom from inhuman and degrading treatment and punishment under Article 3 of the European Convention on Human Rights (Convention) by not providing him effective medical assistance, refusing to send him to a specialized tuberculosis clinic, and failing to diagnose him with renal tuberculosis. The applicant also claimed that his treatment during the two instances of alleged beatings also constituted a violation of his Article 3 rights, as did the inadequacy of investigations following the beatings. The Government maintained that the medical colony provided adequate medical treatment to the applicant and that its internal inquiry supported its belief that the applicant's allegations regarding the two instances of beating was ill-founded.

Decision and Reasoning

The Court found that Russia did not breach the applicant's Article 3 rights to freedom from inhuman and degrading treatment with regard to the adequacy of medical treatment provided to the applicant. In its analysis, the Court noted that claims of inadequate medical treatment had to be examined on a "case-by-case" basis. The Court considered that the medical colony had provided the applicant adequate treatment insofar as the facility correctly diagnosed his condition, took necessary steps to prevent further onset of symptoms and prescribed the appropriate prophylactic treatment.

The Court also found no violation of the applicant's Article 3 rights with regard to the two alleged instances of severe beatings. According to the ECHR, the authorities had provided satisfactory and convincing explanations for each injury reported and that the support for their explanations rose to the requisite standard of proof, namely, "beyond reasonable doubt."

However, the Court found that Russia had violated the applicant's Article 3 rights in failing to adequately investigate the instances of alleged beatings. The Court considered that Article 3, read in conjunction with Article 1 of the Convention, required that Russia perform a "thorough" and "effective" official investigation. In particular, the ECHR called to question the fact that the same State authority implicated in the beatings at the medical colony conducted the investigation of the events. The Court also noted that the investigation's forensic examination occurred several months after the alleged beatings. Accordingly, the Court found that the investigation lacked the requisite level of impartiality and competence that Article 3 required. The Court therefore awarded damages and costs to the applicant.

Decision Excerpts

"97. The Court has consistently stressed that measures depriving a person of his liberty may often involve an element of the suffering and humiliation connected with a given form of legitimate treatment or punishment. In the context of detainees, the Court has emphasised that persons in custody are in a vulnerable position and that the authorities are under a duty to protect their physical well-being (see *Tarariyeva*, cited above, Â§ 73; *Sarban*, cited above, Â§ 77; and *Mouisel v. France*, no. 67263/01, Â§ 40). In respect of a person deprived of his liberty, any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3 of the Convention (see *Sheydayev v. Russia*, no.65859/01, Â§59, 7 December 2006; *Ribitsch v. Austria*, 4 December 1995, Â§ 38, Series A no. 336; and *Krastanov v. Bulgaria*, no. 50222/99, Â§ 53, 30 September 2004)." Page 27-28.

"112. The Court reiterates that where an individual raises an arguable claim that he has been seriously ill-treated in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. An obligation to investigate "is not an obligation of result, but of means": not every investigation should necessarily be successful or come to a conclusion which coincides with the claimant's account of events; however, it should in principle be capable of leading to the establishment of the facts of the case and, if the allegations prove to be true, to the identification and punishment of those responsible. Thus, the investigation of serious allegations of ill-treatment must be thorough. That means that the authorities must always make a serious attempt to find out what happened and should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions. They must take all reasonable steps available to them to secure the evidence concerning the incident, including, inter alia, eyewitness testimony, forensic evidence, and so on. Any deficiency in the investigation which undermines its ability to establish the cause of injuries or the identity of the persons responsible will risk falling foul of this standard (see, among many authorities, *Mikheyev v. Russia*, no. 77617/01, Â§Â§ 107 et seq., 26 January 2006, and *Assenov and Others v. Bulgaria*, 28 October 1998, Â§102 et seq., Reports of Judgments and Decisions 1998-VIII)." Page 32.