

Press release issued by the Registrar

**CHAMBER JUDGMENT
KATS AND OTHERS v. UKRAINE**

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Kats and Others v. Ukraine* (application no. 29971/04).

The Court held unanimously that there had been:

- a **violation of Article 2** (right to life) of the European Convention on Human Rights concerning the Ukrainian authorities' failure to protect Olga Biliak's right to life on account of inadequate medical care during her pre-trial detention;
- a **violation of Article 2** of the Convention concerning the lack of an adequate investigation into Olga Biliak's death; and,
- a **violation of Article 5 § 1** (right to liberty and security).

Under Article 41 (just satisfaction), the Court awarded the applicants 7,000 euros (EUR), each, in respect of non-pecuniary damage, and EUR 1,050 to Oleg Kats for costs and expenses. (The judgment is available only in English.)

1. Principal facts

The applicants are three Ukrainian nationals: Oleg Volodymyrovych Kats and his wife, Tetiana Volodymyrivna Kats, both born in 1946, and their grandson, Stanislav Igorevich Biliak, born in 1993. They all live in Kyiv. They are the parents and son of Olga Olegivna Biliak, born in 1971, who died in pre-trial detention in February 2004. At the time of her arrest, she was a registered schizophrenic and infected with HIV.

The case concerned the applicants' allegation that the Ukrainian authorities were responsible for their relative's death as they had failed to provide her with adequate medical care during her detention or to release her on medical grounds.

Olga Biliak was arrested on 14 April 2003 and placed in pre-trial detention on suspicion of robbery; the criminal proceedings against her are still pending.

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

On her arrival at Kyiv City Pre-Trial Detention Centre no. 13 (“the SIZO”), she was examined by a doctor who found her to be generally healthy. However, throughout her detention she suffered from various chronic illnesses such as an ulcer, bronchitis, pyelonephritis and other conditions which, exacerbated by her HIV infection, required constant medical supervision and appropriate treatment.

Her father submitted that he had sent a letter to the SIZO management on 26 September 2003 in which he requested that his daughter, HIV-positive since 1999, be hospitalised. However, the prison authorities refused to transfer her to a specialist hospital and failed to move her to the SIZO’s medical wing. On 13 and 19 January 2004 the prosecution authorities also refused requests for her to be released, without addressing her health issues.

According to entries in Olga Biliak’s diary, her health started to seriously deteriorate in December 2003; she developed serious respiratory problems, had a very high temperature and rapid weight loss. She was given pills to reduce her temperature. At the beginning of January 2004 she complained to doctors of stomach pain and vomiting and was diagnosed with chronic gastritis.

On 21 January 2004 she was examined by a cardiologist, a psychiatrist and the head of the prison’s medical board. She had an X-ray and a blood test and was prescribed with anti-inflammatory tablets, light tranquilisers and antibiotics. The authorities claimed that it was at this point that they suspected she was HIV-positive. The next day the SIZO Governor requested the investigative authorities to consider releasing her on medical grounds.

On 29 January 2004 the district police department ordered Olga Biliak’s release. That decision took until 2 February 2004 to process and, in the meantime on 1 February 2004, she died. The autopsy report noted that she had died of HIV-related illnesses, in particular advanced purulent pneumonia.

Immediately after their relative’s death, the applicants lodged a criminal complaint against the SIZO staff for negligence. In the context of the ensuing investigation, Kyiv City Forensic Medical Bureau issued a report on 17 November 2006 in which it stated that incorrect diagnosis had resulted in a failure to provide Olga Biliak with appropriate medical treatment and that SIZO officials had therefore indirectly been responsible for her death. The investigation authorities have refused on three occasions to bring criminal proceedings on the ground that there was no evidence that the cause of death had been through violence or medical negligence. Those decisions have subsequently been quashed and the case remitted for further investigation; the proceedings are currently still pending.

The Government submitted that Olga Biliak had been examined by prison doctors on many occasions and prescribed appropriate medical treatment and medication; she had died from an unpredictable development of the illness with which she had been infected prior to her placement in custody and of which she had been reluctant to inform the prison authorities.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 29 July 2004.

Judgment was given by a Chamber of seven judges, composed as follows:

Rait **Maruste** (Estonia), *President*,
Karel **Jungwiert** (Czech Republic),
Volodymyr **Butkevych** (Ukraine),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro-Lefèvre** (Monaco),
Mirjana **Lazarova Trajkovska** (“the former Yugoslav Republic of Macedonia”),
Zdravka **Kalaydjieva** (Bulgaria), *judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

3. Summary of the judgment¹

Complaints

Relying on Article 2 (right to life), Article 3 (prohibition of inhuman or degrading treatment), Article 5 § 1 (right to liberty and security) and Article 13 (right to an effective remedy), the applicants alleged in particular that the Ukrainian authorities were responsible for their relative’s death as they had failed to provide her with adequate medical care during her detention.

Decision of the Court

Article 2

Concerning Olga Biliak’s right to life

The Court noted that, in view of the letter sent to the SIZO by Olga Biliak’s father, the prison authorities should have been aware of Olga Biliak’s HIV status at least as far back as September 2003. Given the vulnerability of those who were HIV-positive to other serious diseases, the Court found that Olga Biliak, refused access to a specialist hospital or SIZO’s medical wing, had been provided with a striking lack of medical attention to her health problems. Indeed, although she had been suffering from numerous serious diseases, her treatment had been very basic.

Furthermore, even though her health had seriously deteriorated in December 2003 and January 2004, a fact not contested by the Government, it had not been until 21 January 2004 that a more in-depth diagnosis of her state of health had been made. Even after 22 January 2004, when the management of the SIZO had acknowledged the need for her to be admitted to hospital and requested the investigating authorities’ authorisation to release her on medical grounds, she had remained in a SIZO cell.

Moreover, the prison management’s application for her urgent release had only been accepted after seven days and the decision to release her had then been processed with a four-day delay, during which time she had already died.

Lastly, the Court noted that the Government had not contested the accuracy of the report of 17 November 2006 which had concluded that inadequate medical assistance during Olga

¹ This summary by the Registry does not bind the Court.

Biliak's detention had indirectly caused her death; nor had the Government produced any other medical evidence to refute that conclusion.

Accordingly, the Court concluded that there had been a violation of Article 2 on account of the Ukrainian authorities' failure to protect Olga Biliak's right to life.

Concerning the investigation

The Court noted that the investigation was still pending even after four years and nine months. During that time the domestic courts had remitted the case for further investigation on several occasions with detailed instructions as to what evidence should be obtained and what circumstances should be established concerning Olga Biliak's death. Those instructions have, however, to date still not been fully complied with. In the absence of evidence from those additional inquiries, the decisions not to bring criminal proceedings, strikingly terse, had been limited to finding that Olga Biliak's death had not been caused by violence or medical negligence. Indeed, the investigation authorities have never properly addressed the main issue of the applicants' complaints, namely the quality of the medical treatment provided in view of the diseases with which their relative had been diagnosed. Finally, denied access to the case file and never informed or consulted about any proposed evidence or witnesses, the applicants, who have no formal status in the proceedings, have been to a large extent excluded from the investigation.

The Court therefore concluded that Ukraine had failed to conduct an effective and independent investigation into Olga Biliak's death, in further violation of Article 2.

Article 5 § 1

The Court observed that under Article 165-1 of the Ukrainian Code of Criminal Procedure a detained person should immediately be informed of a decision concerning their release. Furthermore, Article 20 of the Pre-trial Detention Act provided that management of detention centres were obliged, on receipt of a release order, to immediately discharge a detainee. It was not in dispute that none of the above had been done in the applicants' case and the Court therefore found that Olga Biliak's detention from 29 January to 1 February 2004 had been unlawful, in violation of Article 5 § 1.

Articles 3 and 13

Given its findings under Article 2, the Court did not consider it necessary to examine the complaints under Articles 3 and 13.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.