



Ukrainian authorities responsible for death of detainee with AIDS shortly after his release

In today's Chamber judgment in the case of [Salakhov and Islyamova v. Ukraine](#) (application no. 28005/08), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

three violations of Article 3 (prohibition of torture and of inhuman or degrading treatment) of the European Convention on Human Rights, on account of the inadequate medical care provided to Mr Salakhov both in the detention facilities and in hospital, and on account of his handcuffing in hospital;

two violations of Article 2 (right to life) of the Convention, on account of the authorities' failure to protect Mr Salakhov's life and on account of their failure to conduct an adequate investigation into the circumstances of his death; and,

a violation of Article 3 in respect of his mother's mental suffering.

The Court further found that Ukraine had failed to meet its obligations under **Article 34 (right of individual petition)** by not complying promptly with the Court's indication under Rule 39 (interim measures) of its Rules of Court to immediately transfer Mr Salakhov to hospital for appropriate treatment.

The case concerned the lack of appropriate medical care given to a detainee, who died from AIDS two weeks after he was released from detention.

Principal facts

The applicants, Linar Salakhov, born in 1981, and his mother Aliya Islyamova, born in 1955, were/are Ukrainian nationals. Ms Islyamova lives in the town of Zuya in Crimea. After her son's death in August 2008, she continued his application before the European Court of Human Rights on his behalf and introduced her own complaints.

Mr Salakhov was arrested in November 2007 on suspicion of robbing a mobile phone and placed in pre-trial detention. Tested HIV positive in 2005, his health sharply deteriorated in March 2008. He allegedly had a constant fever and suffered from serious digestive problems, making it necessary for the administration of the detention facilities to call an ambulance on several occasions. It is in dispute between the parties whether Mr Salakhov informed the investigator of his HIV infection upon his arrest. According to the Government, the authorities only learned of that infection in early June 2008, when he was taken to a hospital for examination. An infectious disease specialist diagnosed him, in particular, with pneumonia and candidosis. He concluded that Mr Salakhov's HIV infection was at the fourth clinical stage but found that there was no urgent need for

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

hospitalisation. On 17 June 2008, the European Court of Human Rights granted Mr Salakhov's request for an interim measure under Rule 39 of its Rules of Court, indicating to the Ukrainian Government that he should be transferred immediately to hospital for appropriate treatment. On 20 June 2008, Mr Salakhov was transferred to a hospital, where he was constantly guarded by police officers and, according to Ms Islyamova, kept continuously handcuffed to his bed.

On 4 July 2008, Mr Salakhov was found guilty of having acquired the mobile phone by fraud, and was sentenced to a fine. He remained in detention for two weeks after the verdict as a preventive measure pending its entry into force, despite his state of health being critical. Following his release on 18 July 2008, Mr Salakhov's health deteriorated and he died on 2 August 2008.

Ms Islyamova subsequently complained to the prosecution authorities that her son had not received timely and adequate medical care in detention, alleging that this had led to his death. In February 2009, the Ministry of Public Health set up a commission to investigate the complaints. Its March 2009 report concluded that the hospital bore no responsibility for Mr Salakhov's death. Upon Ms Islyamova's renewed complaint, the investigation was reopened and it was subsequently closed and reopened several times. In November 2010, a forensic investigation ordered by the prosecutor found, in particular, that the doctor's assessment in early June 2008 that Mr Salakhov's urgent hospitalisation was not required had not corresponded to his diagnoses. A criminal investigation into the hospital's liability was opened in December 2010.

Complaints, procedure and composition of the Court

The applicants complain/ed under Article 3 about the inadequate medical care during Mr Salakhov's detention, unjustified delays in his hospitalisation and his permanent handcuffing in hospital. Relying on Article 2, they complain/ed that the State had failed to protect his life. After Mr Salakhov's death, Ms Islyamova added to this complaint that the domestic investigation into the circumstances of her son's death was ineffective. Relying on Article 3, she alleged mental suffering on account of the fact that she had to witness her son dying without adequate medical care while being in totally unjustified detention, subjected to permanent handcuffing and confronted with the indifference and cruelty of the authorities. Finally, the applicants complain/ed that in June 2008 it had taken the Ukrainian authorities three days to comply with the European Court's indication to immediately transfer Mr Salakhov to hospital for appropriate treatment, in breach of Article 34.

The application was lodged with the European Court of Human Rights on 8 June 2008.

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

Mark **Villiger** (Liechtenstein), *President*,
 Angelika **Nußberger** (Germany),
 Boštjan M. **Zupančič** (Slovenia),
 Ganna **Yudkivska** (Ukraine),
 André **Potocki** (France),
 Paul **Lemmens** (Belgium),
 Aleš **Pejchal** (the Czech Republic),

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

Decision of the Court

Article 3 (Mr Salakhov)

Ms Islyamova's submission that her son had immediately informed the investigator of being HIV positive was not supported by any evidence. The Court therefore accepted that the authorities had only become aware of Mr Salakhov's HIV infection on 5 June 2008, when he was examined in hospital.

The Court observed that the applicants had made specific submissions regarding the deterioration of Mr Salakhov's health from March 2008. According to them, the medical response on the part of the detention facilities had been limited to sporadic ambulance calls. In the course of the investigation into his death, Ms Islyamova had sought access to and examination of his complete medical file from the detention facilities. However, that request had not been granted and the documents had not been made available to her or to the prosecution authorities. It had therefore been for the Ukrainian Government to submit copies of any relevant medical documents in the proceedings before the Court, which they had failed to do.

The Court could infer from that failure that Mr Salakhov had not received adequate medical assistance for his deteriorating health in the detention centres, even assuming that the authorities had been unaware of his HIV infection until 5 June 2008. There had accordingly been a violation of Article 3 as regards the medical care in the detention centres.

The Court further found a violation of Article 3 on account of the inadequate medical care provided to Mr Salakhov in hospital. While in hospital he had remained in detention and thus under the full control of the authorities, which had been obliged to account for his health and to provide him with adequate medical care. While it was not the Court's task to assess the quality of the medical treatment, it noted that, as a result of the forensic investigation, the Ukrainian authorities themselves had acknowledged that the medical assistance provided to Mr Salakhov by the hospital's doctors in June 2008 could not be regarded as adequate. The Court saw no reason to question those findings.

Finally, the Court found a violation of Article 3 on account of Mr Salakhov's handcuffing in hospital. The materials in the case file confirmed that he had been handcuffed all or most of the time while in hospital. There was no indication that he had ever behaved violently or attempted to escape. Moreover, he had been constantly guarded by the police and it had been clear that he was severely ill and extremely weak. His handcuffing could therefore not be justified by security considerations and in view of his poor state of health it had to be considered inhuman and degrading.

Article 2 (Mr Salakhov's death)

It was impossible to assess, and not decisive, whether or not the authorities' efforts could in principle have prevented Mr Salakhov's death. However, the Court found that the authorities had not done everything reasonably possible in the circumstances, in a timely manner, to try to save his life. In particular: he had been denied urgent hospitalisation, which he had required, for over two weeks; he had remained detained without any justification and while in a critical health condition; and, he had been subjected to continuous handcuffing which had further exacerbated his health condition. It followed that there had been a violation of Article 2 on account of Ukraine's failure to protect his life.

Article 2 (investigation)

The investigation into Ms Islyamova's complaints concerning the medical care provided to her son had been closed and reopened several times and had lasted for over three and a half years. There was no information available to the Court as regards the progress of the criminal proceedings in respect of the hospital's doctors. Furthermore, the failure of the investigating authorities to obtain Mr Salakhov's complete medical file from the detention facilities, even though Ms Islyamova had insisted on that measure, disclosed, in the Court's view, a flagrant deficiency of the investigation. Ukraine had thus failed to account sufficiently for the deterioration of Mr Salakhov's health and his subsequent death. There had accordingly been a violation of Article 2 on that account as well.

Article 3 (Ms Islyamova)

The Court considered that Ms Islyamova had been a victim of inhuman treatment, in violation of Article 3. In particular, the Court took the following factors into account: the parent-child bond between her and her son; the activeness of her efforts to save his life; the authorities' indifferent attitude towards her appeals; the fact that she had had to witness the slow death of her son without being able to help him; and, lastly, the duration of her suffering for about three months.

Article 34

Finally, the Court found that Ukraine had failed to meet its obligations under Article 34 by not complying promptly with the Court's indication under Rule 39 of its Rules of Court to immediately transfer Mr Salakhov to hospital for appropriate treatment.

Just satisfaction (Article 41)

The court held that Ukraine was to pay Ms Islyamova 50,000 euros (EUR) in her capacity as Mr Salakhov's successor in the proceedings and 10,000 in her personal capacity in respect of non-pecuniary damage and EUR 925 in respect of costs and expenses.

The judgment is available only in English.

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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.