



## The Russian State did not breach the Convention in refusing requests from drug addicts for methadone replacement therapy

In today's **Chamber** judgment<sup>1</sup> in the case of [Abdyusheva and Others v. Russia](#) (application no. 58502/11) the European Court of Human Rights held:

by six votes to one, that there had been **no violation of Article 8** (right to respect for private life) of the European Convention on Human Rights, and,

**unanimously**, that there had been **no violation of Article 34** (right of individual application) of the Convention.

The Court declared, by a majority, that **the application lodged by Ms Abdyusheva was admissible as regards the complaint under Article 8 and inadmissible for the remainder** and that the complaints submitted by Mr Kurmanayevskiy and Mr Anoshkin were inadmissible.

The case concerned the three applicants' requests to be prescribed replacement therapy for their opioid use.

Taking into account, firstly, the public-health risks of replacement therapy and, secondly, the individual situation of Ms Abdyusheva, who was receiving medical assistance, the Court considered that the Russian authorities had not violated the applicant's right to respect for her private life.

The substances requested by the applicants as substitutes for opioid products, namely methadone and buprenorphine, are prohibited in Russia to all patients for the purpose of medical treatment. The Court considered that, even assuming that the illnesses referred to by the applicants (diabetes, asthma or heart disease) could be compared to opioid addiction, there had been no difference in treatment between them and the patients cited as examples, given that the substances in question were in any event banned.

Lastly, in the light of the case file, the Court concluded that the State authorities had not hindered Ms Abdyusheva and Mr Anoshkin in the exercise of their right of individual application.

### Principal facts

The applicants, Mr Aleksey Vladimirovich Kurmanayevskiy, Ms Irina Nikolayevna Abdyusheva and Mr Ivan Vasilyevich Anoshkin, are three Russian nationals, born in 1981, 1966 and 1980 respectively and living in Kazan, Kaliningrad and Tolyatti.

The applicants, who had been heroin addicts for a long period, were treated by doctors in State hospitals who specialised in treating drug addicts. The applicants, who were dissatisfied with the treatment provided in those hospitals, submitted judicial applications requesting that replacement therapy with methadone and buprenorphine, which they considered more effective, be prescribed. Their requests were dismissed on the grounds that federal legislation prohibited the use of methadone and buprenorphine for the purpose of treating drug addiction.

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](http://www.coe.int/t/dghl/monitoring/execution).

According to information supplied by the Government, which the applicants did not dispute, Mr Kurmanayevskiy and Mr Anoshkin stopped using heroin in 2014.

Ms Abdyusheva has been using opioids since 1984. She submitted a report by a medical commission, made up of two toxicologists and a psychiatrist from a non-governmental organisation, the Ukrainian Institute for Public-health Research. The doctors indicated that the patient needed replacement therapy of the kind requested. In response, the Government submitted a medical certificate issued by a panel of Russian toxicologists, employed by the toxicology hospital which treated Ms Abdyusheva. This certificate specified that replacement therapy by methadone and buprenorphine did not remove the opioid addiction or result in remission. The doctors recommended that the applicant follow a treatment programme based on medical and social rehabilitation methods, which could give effective results regardless of the stage of addiction.

Mr Anoshkin has taken opioids since 1994. In April 2012 he submitted the same request as the other two applicants to the Ministry of Health of the Samara Region. The Ministry informed him that the substances in question were prohibited by law and suggested that he follow the conventional treatment. Mr Anoshkin appealed to the courts but his case was dismissed on the same grounds.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private life) of the European Convention, the applicants alleged that the failure to provide them with replacement therapy for their opioid addiction using methadone and buprenorphine had breached their right to respect for their private life. Mr Anoshkin and Ms Abdyusheva complained that the ban on replacement therapy was discriminatory against drug addicts. Relying on Article 34 (right of individual application), the applicants complained about Ms Abdyusheva's arrest for breach of the peace and uttering obscenities in a public place on 12 August 2014, and about an inspection to check compliance with fire-safety regulations in the premises of Mr Anoshkin's employer in December 2014, acts which, they alleged, amounted to interference with the exercise of their right of individual application. Relying on Article 3 (prohibition of inhuman or degrading treatment), taken separately and together with Article 14 (prohibition of discrimination), the applicants argued that the refusal of the Russian authorities could be considered as inhuman and degrading treatment.

The applications were lodged with the European Court of Human Rights on 18 October 2010, 25 August 2011 and 1 August 2013.

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

Georgios A. **Serghides** (Cyprus), *President*,  
Helen **Keller** (Switzerland),  
Dmitry **Dedov** (Russia),  
Branko **Lubarda** (Serbia),  
Alena **Poláčková** (Slovakia),  
Gilberto **Felici** (San Marino),  
Erik **Wennerström** (Sweden),

and also Stephen **Phillips**, *Section Registrar*.

## Decision of the Court

### Article 8

The Court noted that Mr Kurmanayevskiy and Mr Anoshkin had not demonstrated the need for any medical treatment at all and especially for replacement therapy in order to overcome their opioid

addiction. Indeed, according to the medical documents provided by the Government, they were both in a state of remission, and had been for four years and one year respectively. The applicants did not dispute this. Their complaints were therefore ill-founded and thus inadmissible.

With regard to Ms Abdyusheva, according to the information submitted by both parties she was not in remission, and the Court declared her complaint admissible.

With regard to the medical aspect, the Court was attentive to the arguments of both parties.

On the one hand, the Court noted that the Government considered replacement therapy not as a treatment for drug addiction, but as capitulation to it. The Court noted that, according to the Government, far from providing a solution to the problem, the substances in question presented serious dangers for public health, such as poly-drug use, that is, the risk of concurrent use of methadone with other opioids, such as heroin, resulting in exposure to the risk of an overdose and, consequently, a high risk of death. The Government stated that the two substances in question were opioids and that, far from ensuring recovery, they could in themselves merely lead to a new form of dependency. They emphasised that the authorities, who were responsible for the life and health of every person under their jurisdiction, could not ignore these risks. Lastly, the Government submitted that medical treatment ought to be entrusted to health professionals rather than to patients or lawyers, who did not have the necessary medical skills.

On the other hand, the Court noted that the applicant based her arguments on a wide European consensus concerning access to replacement therapy; on Russia's obligation to introduce this treatment, resulting, in her view, from the international conventions signed by that State; and, lastly, on the treatment's usefulness in preventing HIV.

The Court reiterated its earlier finding that replacement therapy with methadone and buprenorphine to treat opioid addiction, although widespread in the member States, was nonetheless controversial (see *Wenner v. Germany*, 1 September 2016, § 61). In assessing the parties' arguments the Court noted that it was competent only to apply the Convention, and that it was not its task to interpret or to review compliance with other international instruments. Moreover, Ms Abdyusheva did not refer to any legally binding instrument which would unequivocally oblige Russia to put in place a treatment for drug addiction using methadone or buprenorphine. As to the prevention of HIV, the Court was considering the specific case before it. From this perspective, the measure in question would not be such as to prevent the applicant, who already carried this virus, from contracting it. Lastly, with regard to the European consensus in this area, the Court held that this was indeed an important factor in analysing proportionality, but that it was not decisive.

The Court was of the view that the public-health risks raised by the Government – and undisputed by the applicant –, namely the dangerous nature of the substances in question, poly-drug use and the attendant increased risk of death, were sufficiently serious. The Russian authorities, inspired by the concern to safeguard the health of everyone under their jurisdiction, were therefore well-founded in introducing measures that were occasionally as drastic as the prohibition of certain opioids.

In the light of the Russian authorities' wide margin of appreciation in the area of public health, the Court considered that they were better placed than it to define policy in an area as sensitive as the fight against drug trafficking, regulation of the drug market and the medical treatment to be given to drug addicts.

In addition, the Court noted that the applicant had not been deprived of the possibility of following conventional treatment in Russian hospitals. It reiterated that its role was not to take the place of health professionals or to judge the effectiveness of addiction therapy methods.

Taking into account both the public-health risks of replacement therapy and the individual situation of Ms Abdyusheva, who was receiving medical attention, the Court considered that the Russian authorities had not overstepped their margin of appreciation and had not interfered with the applicant's right to respect for her private life. There had been no violation of Article 8.

#### Article 14 taken together with Article 8

The applicants compared their situation to that of other persons suffering from chronic and recurring illnesses such as diabetes, asthma or heart disease. However, according to the Government, in Russia the substances requested by the applicants as substitutes for opioids, namely methadone and buprenorphine, were banned from use in medical treatment of all patients.

The Court considered that, even assuming that the illnesses referred to by the applicants could be compared to opioid addiction, there had been no difference in treatment between them and the patients cited as examples, given that the substances in question were prohibited in every case.

The complaint was ill-founded and had to be dismissed.

#### Article 34

During her arrest and in the course of the ensuing administrative formalities at the police station, Ms Abdyusheva was neither asked about her application to the Court nor encouraged, directly or indirectly, to withdraw it. The police officers had simply indicated that she should go to the prosecutor's office for a meeting, a usual practice in gathering information. She attended the meeting of her own free will, accompanied by her lawyer, who was at liberty, if he had noted any potential abuse by the prosecutor, to bring it to the Court's attention. However, there was nothing in the documents submitted to the Court by Ms Abdyusheva and her lawyer implying an objection as to how the meeting was conducted or the prosecutor's behaviour. Thus, there was nothing to indicate that the interview in question had been intended to induce Ms Abdyusheva to withdraw or amend her application to the Court.

The Court was unable, on the basis of mere suspicions, to establish a link between the fire-safety checks carried out in the premises of Mr Anoshkin's employer and the application lodged by him before the Court.

The Court concluded that the State authorities could not be held to have hindered Ms Abdyusheva and Mr Anoshkin in the exercise of their right of individual petition. The respondent State had not breached its obligations under Article 34.

#### Article 3, taken alone and with Article 14

The Court held that the refusal to grant access to the medicines requested by the applicants was not in breach of Article 3 of the Convention.

A person undergoing withdrawal did indeed experience intense suffering, but this was not caused by State action and was only a consequence of the opioid addiction. Medical support for withdrawal – which the applicants had received – was available in Russian hospitals. The Court noted that the applicants did not specify instances when they had been refused such medical assistance or when it had been manifestly insufficient and had caused them suffering which reached the level of severity set out in Article 3.

Lastly, the Court considered that society's contempt for drug addicts, from which the applicants claim to have suffered, was hardly attributable to the State. There was no evidence that the State had humiliated the applicants. Nor had the applicants explained how authorisation to use methadone could change society's attitude towards them or inspire greater respect.

The Court noted that there were no allegations that suffering had been inflicted by State agents; the other complaints alleging treatment contrary to Article 3 were unsubstantiated. The Court found

that there had not been a difference in treatment between persons suffering from drug addiction compared with persons suffering from other illnesses.

The applicants' complaints were ill-founded and had to be dismissed.

### Separate opinions

Judges Dedov and Keller expressed separate opinions, which are annexed to the judgment.

*The judgment is available only in French.*

---

This press release is a document produced by the Registry. It does not bind the Court. Decisions, judgments and further information about the Court can be found on [www.echr.coe.int](http://www.echr.coe.int). To receive the Court's press releases, please subscribe here: [www.echr.coe.int/RSS/en](http://www.echr.coe.int/RSS/en) or follow us on Twitter [@ECHRpress](https://twitter.com/ECHRpress).

#### Press contacts

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel.: +33 3 90 21 42 08

**Denis Lambert (tel: + 33 3 90 21 41 09)**

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Patrick Lannin (tel: + 33 3 90 21 44 18)

**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.