

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF ANDRIYANOV v. RUSSIA

(Application no. 9361/18)

JUDGMENT

STRASBOURG

13 October 2022

This judgment is final but it may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Andriyanov v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Darian Pavli*, President,*
Andreas Zünd*,*
Frédéric Krenc*, judges,*

and Viktoriya Maradudina, *Acting Deputy Section Registrar*,

Having deliberated in private on 15 September 2022,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application against Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 14 February 2018.

2. The applicant was represented by Mr R. Kachanov, a lawyer practising in Yekaterinburg.

3. Notice of the application was given to the Russian Government ("the Government").

THE FACTS

4. The applicant's details and information relevant to the application are set out in the appended table.

5. The applicant alleged that he did not receive adequate medical care in detention and that there was no effective remedy in that regard.

6. On 9 March 2018 it was decided to apply an interim measure under Rule 39. However, it was lifted on 15 April 2018 because the applicant was released.

7. On 13 December 2018 the applicant died.

THE LAW

I. AS TO *LOCUS STANDI* OF Mrs ANDRIYANOVA

8. Following the death of the applicant, his wife, Mrs Anna Valentinovna Andriyanova, expressed the wish to pursue the application.

9. The Government objected noting that the rights claimed by Mr Andriyanov under Articles 3 and 13 of the Convention belonged to the category of non-transferrable rights.

10. The Court reiterates that, in cases in which an applicant died after having lodged an application, it has taken into account the statements of the applicant's heirs or of close family members expressing the wish to pursue the proceedings before the Court. For the Court's assessment of the person's

standing to maintain the application on behalf of a deceased, what is important is not whether the rights at issue are transferable to the heirs but whether the victim made a choice to exercise his or her right of individual application under Article 34 of the Convention by activating the Convention mechanism (see *Ergezen v. Turkey*, no. 73359/10, § 29, 8 April 2014). The Court has accepted that the next-of-kin or heir may in principle pursue the application, provided that he or she has sufficient interest in the case (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 97, ECHR 2014). In this connection, the Court reiterates that human rights cases before it generally have a moral dimension and persons near to an applicant may thus have a legitimate interest in ensuring that justice is done, even after the applicant's death (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000 XII).

11. In view of the above and having regard to the circumstances of the present case, the Court accepts that Mrs Andriyanova has a legitimate interest in pursuing the application in the late applicant's stead. It will therefore continue dealing with the case at her request. For convenience, it will, however, continue to refer to Mr Andriyanov as the applicant in the present judgment.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

12. The applicant complained that he was not afforded adequate medical treatment in detention. He relied on Article 3 of the Convention, which reads as follows:

Article 3

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

13. The Court notes that the applicant suffered from serious medical conditions, as indicated in the appended table, which affected his everyday functioning. Therefore, he could have experienced considerable anxiety as to whether the medical care provided to him was adequate.

14. The Court reiterates that the "adequacy" of medical assistance remains the most difficult element to determine (see *Blokhin v. Russia* [GC], no. 47152/06, § 137, ECHR 2016). It has clarified in this context that the authorities must ensure that diagnosis and care are prompt and accurate (see, for example, *Gorbulya v. Russia*, no. 31535/09, § 62, 6 March 2014, with further references, and *Pokhlebin v. Ukraine*, no. 35581/06, § 62, 20 May 2010, with further references) and that – where necessitated by the nature of a medical condition – supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at successfully treating the detainee's health problems or preventing their aggravation (see, *inter alia*, *Ukhan v. Ukraine*, no. 30628/02, § 74, 18 December 2008, with further

references, and *Kolesnikovich v. Russia*, no. 44694/13, § 70, 22 March 2016, with further references). The Court stresses that medical treatment within prison facilities must be appropriate and comparable to the quality of treatment which the State authorities have committed themselves to providing for the entirety of the population. Nevertheless, this does not mean that each detainee must be guaranteed the same level of medical treatment that is available in the best health establishments outside prison facilities (see, for instance, *Sadretdinov v. Russia*, no. 17564/06, § 67, 24 May 2016, with further references, and *Konovalchuk v. Ukraine*, no. 31928/15, § 52, 13 October 2016, with further references).

15. Having examined all the material submitted to it, the Court has identified the shortcomings in the applicant's medical treatment, which are listed in the appended table. The Court has already found a violation in respect of issues similar to those in the present case (see *Blokhin,* cited above, §§ 120-50, *Reshetnyak v. Russia,* no. 56027/10, §§ 49-101, 8 January 2013, and *Koryak v. Russia,* no. 24677/10, §§ 70-110, 13 November 2012). Bearing in mind its case-law on the subject, the Court considers that in the instant case the applicant did not receive comprehensive and adequate medical care whilst in detention.

16. This complaint is therefore admissible and discloses a breach of Article 3 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

17. The applicant also complained that no effective domestic remedies regarding the quality of the medical care in detention had been available to him. His complaint falls to be examined under Article 13 of the Convention, which reads as follows:

Article 13

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority ..."

18. The Court has on many occasions established that there is a lack of effective domestic remedies to complain about the quality of medical treatment in detention (see, among many other authorities, *Reshetnyak,* cited above, §§ 49-101, and *Koryak,* also cited above, §§ 70-110). In the aforementioned cases the Court established that none of the legal avenues suggested by the Government constituted an effective remedy to prevent the alleged violations or stop them from continuing, or to provide the applicant with adequate and sufficient redress for his complaints under Article 3 of the Convention.

19. The Court sees no reason which would justify departure from its well-established case-law on the issue. It finds that the applicant did not have

at his disposal an effective domestic remedy for his complaints, in breach of Article 13 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

20. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

21. Regard being had to the documents in its possession and to its case-law (see, in particular, *Kolesnikovich,* cited above, §§ 82-92; *Tselovalnik v. Russia,* no. 28333/13, §§ 70-77, 8 October 2015; and *Budanov v. Russia,* no. 66583/11, §§ 77-83, 9 January 2014), the Court considers it reasonable to award the sum indicated in the appended table.

22. The Court further considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that Ms Andriyanova has standing to pursue the proceedings initiated by the applicant, her late husband;

2. *Declares* the application admissible;

3. *Holds* that this application discloses a breach of Article 3 of the Convention on account of the inadequate medical care of the applicant in detention;

4. *Holds* that this application discloses a breach of Article 13 of the Convention on account of the lack of an effective domestic remedy regarding complaints about the quality of the medical care in detention;

5. *Holds*
   (a) that the respondent State is to pay Ms Andriyanova, the applicant's heir, within three months, the amount indicated in the appended table, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English, and notified in writing on 13 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Darian Pavli
Acting Deputy Registrar	President

APPENDIX

Application raising complaints under Articles 3 and 13 of the Convention (inadequate medical treatment in detention and lack of any effective remedy in this regard)

Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Principal medical condition	Shortcomings in medical treatment Dates	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses (in euros)[1]
9361/18 14/02/2018	**Idiyat Faritovich ANDRIYANOV** Born in 1989 Died in 2018 Heir: **Anna Valentinovna ANDRIYANOVA** 1972	Roman Yevgenyevich Kachanov Yekaterinburg	HIV/AIDS, hepatitis	lack of/delay in consultation by a specialist, lack of/delay in medical examination, lack of/delay in medical testing, lacking/delayed drug therapy, the applicant had HIV at a very advanced stage; no HIV testing of the applicant took place between February 2016 and May 2017 on account of the lack of test systems at the penitentiary medical institution where he had been detained until his release (certificate established by the head of this institution on 05/03/2018); no treatment of HIV was provided at least for some time in 2018 and no regular medical examinations relating to this disease took place at that time 24/09/2014 to 03/04/2018 3 year(s) and 6 month(s) and 11 day(s)	15,000, to be paid to Mrs A. Andriyanova

[1] Plus any tax that may be chargeable to the applicant.