

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

THIRD SECTION

CASE OF PETROV v. RUSSIA

(Application no. 52873/11)

JUDGMENT

STRASBOURG

6 July 2017

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



In the case of Petrov v. Russia,

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

Luis López Guerra, *President,*
Dmitry Dedov,
Jolien Schukking, *judges,*

and Liv Tigerstedt, *Acting Deputy Section Registrar,*

Having deliberated in private on 15 June 2017,

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") by a Russian national, Mr Gleb Viktorovich Petrov ("the applicant"), on 7 July 20011.

2. The application was communicated to the Russian Government ("the Government").

THE FACTS

3. The relevant details of the application are set out in the appended table.

4. The applicant complained of the inadequate conditions of his detention and the lack of medical care in custody. Relying on Article 13 of the Convention he also alleged that no effective domestic remedies for his grievances had been available to him.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF DETENTION

1. Alleged violation of Article 3 of the Convention

5. The applicant complained of the inadequate conditions of his detention in remand prison no. IZ-66/1 in Yekaterinburg. 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."

6. The Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the applicant. They acknowledged that the conditions of his detention in remand prison no. IZ-66/1, Yekaterinburg, from 8 February to 14 March 2011, had been inadequate, and offered to pay him 3,700 euros as just satisfaction. They invited the Court to strike the application out of the list of cases in accordance with Article 37 § 1 (c) of the Convention. The amount would be converted into the currency of the respondent State at the rate applicable on the date of payment, and would be payable within three months from the date of notification of the Court's judgment. In the event of failure to pay the amount within the abovementioned three-month period, the Government undertook to pay simple interest on it, from the expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points. The payment will constitute the final resolution of the case insofar as it concerned the complaint about the poor conditions of detention.

7. The applicant did not comment on the terms of the unilateral declaration.

8. The Court observes that Article 37 § 1 (c) of the Convention enables it to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the applications".

9. Thus, it may strike out applications under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicants wish the examination of the cases to be continued (see the principles emerging from the Court's case-law, and in particular the *Tahsin Acar v. Turkey* (preliminary objections) ([GC], no. 26307/95, §§ 75-77, ECHR 2003-VI)).

10. The Court has established clear and extensive case-law concerning complaints relating to the inadequate conditions of detention (see, for example, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2012, and *Butko v. Russia*, no. 32036/10, §§ 54-64, 12 November 2015).

11. Noting the admission contained in the Government's declaration as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application insofar as it concerned the applicant's complaint about the poor conditions of his detention (Article 37 § 1 (c)).

12. In the light of the above considerations, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of this part of the application (Article 37 § 1 in fine).

13. Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application in this part may be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

14. Accordingly, in so far as the complaint under Article 3 about the conditions of the applicant's detention is concerned, this part of the application should be struck out of the list.

2. Alleged violation of Article 13 of the Convention

15. The applicant also argued under Article 13 of the Convention that he did not have at his disposal an effective domestic remedy to complain about the poor conditions of detention.

16. Having submitted the unilateral declaration only in respect of the applicant's complaint under Article 3 of the Convention, in their observations the Government acknowledged a violation of Article 13 of the Convention.

17. Taking into account the above and the extensive case-law on the issue, in particular, *Ananyev and Others* case (cited above, § 119), the Court concludes that there has been a violation of Article 13 of the Convention in view of the lack of an effective remedy for the applicant to complain about the conditions of his detention.

II. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION OF ACCOUNT OF THE QUALITY OF MEDICAL CARE IN DETETNION

1. Alleged violation of Article 3 of the Convention

18. The applicant also complained under Article 3 of the Convention that he had not received adequate medical treatment in detention.

19. 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). The Court has clarified in this context that the authorities must ensure that diagnosis and care are prompt and accurate (see *Gorbulya v. Russia*, no. 31535/09, § 62, 6 March 2014, 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 *Kolesnikovich v. Russia*, no. 44694/13, § 70, 22 March 2016, with further

references). The Court reiterates 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 *Sadretdinov v. Russia*, no. 17564/06, § 67, 24 May 2016, with further references).

20. Having examined all the material submitted to it, the Court has identified a serious shortcoming in the applicant's treatment, which is noted in the appended table. The Court has already found a violation in respect of similar issue (see *Khayletdinov v. Russia*, no. 2763/13, §§ 71-78, 12 January 2016, and *M.S. v. Russia*, no. 8589/08, § 99, 10 July 2014). 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.

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

2. Alleged violation of Article 13 of the Convention

22. The applicant also claimed that he had not had at his disposal an effective remedy to complain about the poor quality of the medical care, as required under Article 13 of the Convention.

23. 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, *Urazov v. Russia*, no. 42147/05, §§ 66-70, 14 June 2016; *Makshakov v. Russia*, no. 52526/07, §§ 86-89, 24 May 2016; *Reshetnyak v. Russia*, no. 56027/10, §§ 65-73, 8 January 2013; and *Koryak v. Russia*, no. 24677/10, §§ 86-93, 13 November 2012). 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 or her complaints under Article 3 of the Convention.

24. 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 their disposal an effective domestic remedy for his complaint about the quality of the medical assistance in detention, in breach of Article 13 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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."

26. Regard being had to the documents in its possession and to its case-law (see *Dumikyan v. Russia*, no. 2961/09, §§ 78-83, 13 December 2016, and *Makshakov v. Russia*, cited above, §§ 104-06), the Court considers it reasonable to award the sum indicated in the appended table in respect of non-pecuniary damage and to dismiss the remainder of the claim for just satisfaction.

27. The Court 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. *Decides*, having regard to the terms of the Government's declaration, and the arrangement for ensuring compliance with the undertakings referred to therein, to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention in so far as it concerns the complaint under Article 3 of the Convention about the inadequate conditions of the applicant's detention;

2. *Declares* admissible the applicant's complaint about the lack of an effective domestic remedy to complain about the inadequate conditions of detention, as well as his complaints concerning the lack of adequate medical assistance in detention and the absence of an effective domestic remedy in this connection;

3. *Holds* that there has been a violation of Article 13 of the Convention on account of the absence of an effective domestic remedy to complain about the conditions of detention;

4. *Holds* that has been a violation of Article 3 of the Convention on account of the lack of adequate medical assistance in detention;

5. *Holds* that there has been a violation of Article 13 of the Convention on account of the absence of effective domestic remedy to complain about the lack of adequate medical assistance in detention;

6. *Holds*

(a) that the respondent State is to pay the applicant, 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;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 6 July 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt	Luis López Guerra
Acting Deputy Registrar	President

APPENDIX

Application raising complaints under Article *3* of the Convention (*inadequate conditions of detention*)

Applicant name Date of birth	Representative name and location	Medical condition	Shortcoming in medical treatment	Amount awarded for non-pecuniary damage (in euros)[1]
Gleb Viktorovich Petrov 01/04/1973	Knyazkin Sergey Aleksandrovich Moscow	HIV with low CD4 count	lack of antiretroviral therapy	15,000

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