

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

FIFTH SECTION

CASE OF SUSLOV v. UKRAINE

(Application no. 46298/19)

JUDGMENT

This version was rectified on 8 December 2022
under Rule 81 of the Rules of Court.

STRASBOURG

6 October 2022

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



In the case of Suslov v. Ukraine,

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

Lətif Hüseynov, *President,*
Lado Chanturia,
Arnfinn Bårdsen, *judges,*
and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 24 February 2022,

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

PROCEDURE

1. The case originated in an application against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 10 August 2019.

2. The applicant was represented by Mr A.A. Kristenko, a lawyer practising in Kharkiv.

3. On 14 November 2019 the Court applied an interim measure in accordance with Rule 39 of the Rules of Court, indicating to the respondent Government to immediately transfer the applicant to a specialist civil hospital in order to complete his medical examinations with respect to his Hepatitis C according to the doctor's recommendations, to conduct the medical examinations with respect to mercury poisoning in compliance with the doctor's recommendations, and to provide him with the necessary medical treatment of his Hepatitis C and mercury poisoning in accordance with the doctor's recommendations given on the basis of the aforementioned examinations. On the same day priority treatment was given to the case under Rule 41 of the Rules of Court. Notice of the application was given to the Ukrainian Government ("the Government").

4. The Russian Government did not avail themselves of their right to intervene in the proceedings pursuant to Article 36 § 1 of the Convention. The Armenian Government exercised their right to intervene under Article 36 § 1 of the Convention and Rule 44 of the Rules of the Court and submitted written comments.

THE FACTS

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

6. The applicant alleged that he did not receive adequate medical care in detention. He also raised other complaints under the Convention, including under Article 34, having argued that the Government had failed to comply with the interim measure imposed by the Court under Rule 39 of the Rules of Court (for further details see the appended table).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

7. The applicant complained principally 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."

8. The Ukrainian Government discerned no violation of the applicant's rights. The Armenian Government stated that there was a violation of Article 3 of the Convention. The applicant maintained his complaints.

9. 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.

10. 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)

11. 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 *Nevmerzhitsky v. Ukraine,* no. 54825/00, §§ 103-05, ECHR 2005 II, *Melnik v. Ukraine,*

no. 72286/01, §§ 104-06, 28 March 2006 and *Logvinenko v. Ukraine,* no. 13448/07, §§ 68-78, 14 October 2010). 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.

12. These complaints are therefore admissible and disclose a breach of Article 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

13. The applicant complained under Articles 6 and 13 of the Convention about the excessive length of the civil proceedings and lack of an effective domestic remedy in that regard, raising issues under the relevant well-established case-law of the Court (see appended table). He also argued that the Ukrainian Government's failure to comply with the interim measure indicated under Rule 39 of the Rules of Court had violated his right to individual application. He relied on Article 34 of the Convention.

14. The Ukrainian Government discerned no violation of the applicant's rights. The Armenian Government stated that there was a violation of the applicant's rights. The applicant maintained his complaints.

15. The applicant's complaints about the excessive length of the civil proceedings and absence of the domestic remedies to complain about it are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other ground. Accordingly, they must be declared admissible. Having examined all the material before it, the Court further concludes that the applicant's complaints under Articles 6, 13 and 34 of the Convention disclose violations of the Convention in the light of its findings in *Karnaushenko v. Ukraine*, no. 23853/02, 30 November 2006 (concerning the complaint about the excessive length of the civil proceedings and lack of the domestic remedies in that regard) and in, among many other authorities related to the complaint about the failure to comply with an interim measure under Rule 39, *Konovalchuk*, cited above, §§ 75-81; *Klimov v. Russia*, no. 54436/14, §§ 41-50, 4 October 2016; *Khloyev v. Russia*, no. 46404/13, §§ 59-68, 5 February 2015; and *Salakhov and Islyamova v. Ukraine*, no. 28005/08, §§ 216-24, 14 March 2013.

III. REMAINING COMPLAINTS

16. The applicant also raised other complaints under Articles 2, 3 and 13 of the Convention regarding his mercury poisoning in prison and allegedly ineffective ensuing investigation.

17. The Court notes that the investigation into the applicant's complaint of mercury poisoning, opened in October 2018, was terminated in May 2020 in view of the absence of constituent elements of a crime. After the decision

of May 2020 was quashed by the domestic court on 15 April 2021, the investigation appears to be pending. The Court has examined the application and considers that, in the light of all the materials in its possession and in so far as the matters complained of are within its competence, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

18. 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."

19. Regard being had to the documents in its possession and to its case-law (see, in particular, *Logvinenko,* cited above, §§ 89-95), the Court considers it reasonable to award the sums indicated in the appended table. It rejects any additional claims for just satisfaction raised by the applicant.

20. 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. *Declares* the complaints concerning the failure of the authorities to provide the applicant with adequate medical care in detention, about the excessive length of the civil proceedings and lack of an effective domestic remedy, as set out in the appended table, admissible and the remainder of application inadmissible;

2. *Holds* that these complaints disclose a breach of Article 3 of the Convention on account of the inadequate medical care in detention;

3. *Holds* that there has been a violation of the Convention as regards the other complaints raised under well-established case-law of the Court (see appended table);

4. *Holds* that the respondent State has failed to comply with the interim measure indicated by the Court under Rule 39 of the Rules of Court, in breach of its obligation under Article 34 of the Convention (see appended table);

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the amounts 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

6. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 6 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Lətif Hüseynov
Acting Deputy Registrar	President

APPENDIX

Application raising complaints under Article 3 of the Convention (inadequate medical treatment in detention)

Application no. Date of introduction	Applicant's name Year of birth	Principal medical condition	Shortcomings in medical treatment	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage per applicant (in euros)[1]	Amount awarded for costs and expenses per application (in euros)[2]
46298/19 10/08/2019	**Merabi Otarovich SUSLOV** 1963	hepatitis, diabetes, mercury poisoning	lack of/delay in medical examination, lack of/delay in medical testing, lacking/delayed drug therapy 29/10/2018 pending More than 3 years and 29 days	Art. 6 (1) - excessive length of civil proceedings (7 years and 11 months before two instances, still pending); Art. 13 - lack of any effective remedy in domestic law in respect of length of proceedings; Art. 34 - hindrance in the exercise of the right of individual petition - failure to comply with the interim measure indicated under Rule 39 of the Rules of Court, in particular to transfer the applicant to a specialist civil hospital in order to complete the medical examinations of the applicant with respect to his Hepatitis C. and mercury poisoning and to provide him with the necessary medical treatment of the above conditions. The authorities did not transfer the applicant to the hospital in view fearing that he might escape or attacked by the family of the victim for whose murder he had been convicted	9,750	1,500 to be paid to the applicant's lawyer, Mr A.A. Kristenko, directly[3]

[1] Plus any tax that may be chargeable to the applicant.
[2] Plus any tax that may be chargeable to the applicant.
[3] Rectified on 8 December 2022: the text was "1,500".