

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

FOURTH SECTION

CASE OF VOSKANYAN v. ARMENIA

(Application no. 623/13)

JUDGMENT

STRASBOURG

24 January 2023

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Voskanyan v. Armenia,

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

Anja Seibert-Fohr*, President*,
Armen Harutyunyan,
Ana Maria Guerra Martins*, judges*,
and Valentin Nicolescu, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 623/13) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 20 December 2012 by an Armenian national, Ms Shushanik Voskanyan, born in 1982 and living in Vanadzor ("the applicant") who was represented by Mr K. Tumanyan, a lawyer practising in Vanadzor;

the decision to give notice of the complaints concerning the death of the applicant's husband to the Armenian Government ("the Government"), represented by their Agent, Mr G. Kostanyan, and subsequently by Mr Y. Kirakosyan, Representative of the Republic of Armenia on International Legal Matters and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 13 December 2022,

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

SUBJECT MATTER OF THE CASE

1. On 7 October 2010 the applicant's husband, S. Voskanyan, was arrested on suspicion of murder and armed assault. He was then placed in pre-trial detention in Vanadzor Detention Facility.

2. On 18 October 2010 S. Voskanyan complained of pain, swelling and hyperaemia in the left shin stating that he had injected saliva under the skin. Doctor M. of the detention facility medical unit examined him and prescribed treatment by medication (antibiotics, analgesics) and bandaging.

3. The next day Doctor M. recorded that crepitation was observed upon palpation and brown pus with an unpleasant smell (around 10-15 ml) was drained as a result of an incision (debridement). Doctor M. put a bandage recording that the previous bandage was missing.

4. On 20 October 2010 Doctor M. noted the same complaints and that there was brown pus discharge from the wound which had been cleaned and bandaged.

5. On 21 October 2010 Doctor N. of the detention facility medical unit reported to the chief of the facility about abundant blood and pus discharge from the wound. That had been cleaned and a sterile bandage was put but, according to the doctor, those actions were insufficient. Acute pain prompted

the doctor to believe that the infected area was likely to spread. To avoid further complications, the doctor requested instructions.

6. On the same date a surgeon from a civilian hospital, Doctor A., was invited. The record of that visit states the following: "I agree with the treatment".

7. S. Voskanyan, who was still complaining of pain in the left shin and overall weakness, continued receiving the same treatment on 22 and 23 October 2010. Medical records mention brown pus discharge from the wound.

8. On 24 October 2010 S. Voskanyan, who was already unable to move without assistance, was taken by his two cellmates to the medical unit of the detention facility because of the sharp deterioration of his health. It was decided to transfer to the Central Prison Hospital for an urgent surgery. He died on the same day in the detention facility.

9. On the same date the investigator took statements from Doctor M. and S. Voskanyan's cellmates, conducted an examination of the scene, the body, seized his personal and medical files and assigned an autopsy.

10. In his statement Doctor M. submitted that he had reported orally on the detainee's medical condition to his superiors, asking for hospital transfer for in-patient treatment, to no avail.

11. According to the autopsy report of 13 December 2010 S. Voskanyan's death had been caused by general intoxication of the body because of necrosis of the dermis, hypodermis and underlying tissues of the left lower extremity surface area as a result of an infected wound on the left shin with tissue erosion from the foot to the upper thigh.

12. On 30 December 2010 criminal proceedings were instituted against Doctor M. on account of medical negligence.

13. According to the report issued by a panel of forensic medical experts on 31 March 2011, S. Voskanyan's diagnosis was mainly incorrect; only an infected wound on the left shin was diagnosed in the event where, already on 19 October 2010, crepitation attested to the existence of a more serious pathology, gas gangrene. At that point the doctor was obliged to transfer the patient to hospital. If, starting from that day, S. Voskanyan had received treatment targeted at the anaerobic infection, transferred to hospital speedily and received relevant/conservative and surgical treatment, it would have been possible to prevent the negative outcome.

14. After the applicant joined the proceedings in April 2011, in June 2011 the investigator assigned an additional forensic medical examination by a panel of experts on the grounds that there were discrepancies between the expert reports with regard to the presence of ethyl alcohol in the blood and urine samples. According to the ensuing expert report, no certain conclusion could be drawn on the issue of alcohol intoxication. The report continued that it could not be definitely stated whether it would have been possible to save S. Voskanyan's life had he received full, targeted out-patient or in-patient

treatment. In case of such a grave infection even in-patient treatment could sometimes be ineffective, especially when the patient had regularly pulled the bandage, which had worsened the infection. In order to prevent the illness and improve the healing process it was necessary to transfer the patient to hospital since the necessary treatment was mainly of a surgical nature.

15. On 30 August 2011 the investigator decided to terminate the criminal proceedings and stop Doctor M.'s prosecution for absence of *corpus delicti*. The relevant decision stated, *inter alia*, that the infected wound had been caused and aggravated by self-harm and there was no sufficient evidence substantiating that S. Voskanyan had died because of Doctor M.'s failure to carry out his professional duties properly.

16. The Regional Court and the Criminal Court of Appeal rejected applicant's appeals against that decision stating that her rights were not breached. Her further appeal was dismissed in the final instance on 22 June 2012 by the Court of Cassation.

17. Relying on Article 2 of the Convention, the applicant complained that her husband had died as a result of the failure of the domestic authorities to provide him proper and timely medical care and that they failed to conduct an effective investigation into the matter.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

18. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

19. The applicable general principles concerning the State's responsibility for the death of a detainee as a result of a health problem and the obligation to conduct an effective investigation thereto have been summarised in the Court's judgments in *Slimani v. France* (no. 57671/00, §§ 27 and 29-30, ECHR 2004-IX (extracts)), and *Makharadze and Sikharulidze v. Georgia* (no. 35254/07, §§ 71-73, 22 November 2011).

20. Since 7 October 2010 until his death on 24 October 2010 S. Voskanyan was in detention and, accordingly, under the control of the Armenian authorities. It is not disputed between the parties that the infection which led to his death resulted from his self-injection of saliva under the skin. Regardless, considering that S. Voskanyan was under the control of the domestic authorities at the time, the Court is called to examine whether the authorities did everything reasonably possible, in good faith and in a timely manner, to try to avert the fatal outcome (see *Makharadze and Sikharulidze*, cited above, § 74).

21. According to S. Voskanyan's medical file, he requested medical assistance for the first time on 18 October 2010 (see paragraph 2 above).

However, it was not until 24 October 2010 that a decision was reached to transfer him to hospital but it was already too late to save his life (see paragraph 8 above).

22. It appears from the medical records that on 21 October 2010 Doctor N. alerted the administration of the detention facility about S. Voskanyan's worsening state of health and that the same day a surgeon, Doctor A., was invited from a civilian hospital (see paragraphs 5 and 6 above). However, in contrast to the other medical notes in S. Voskanyan's medical file, which contain a detailed account of the complaints, objective examination and prescribed treatment, the record concerning Doctor A.'s visit contains no such description whatsoever which raises doubts as to whether he actually examined S. Voskanyan during that visit. Such doubts are reinforced by the fact that it was subsequently established by all forensic experts that the required treatment was mainly of surgical nature and transfer to the hospital should have appeared as a necessity even to a general practitioner given S. Voskanyan's clinical situation (see paragraphs 13 and 14 above), therefore even more so to a surgeon. It cannot therefore be considered that the absence of S. Voskanyan's transfer to hospital in view of necessary surgical treatment was compensated by this visit arranged by the administration in the detention facility (contrast, *mutatis mutandis*, *Goginashvili v. Georgia*, no. 47729/08, § 76, 4 October 2011).

23. It was established during the investigation that already on 19 October 2010 there were apparent signs of a more serious pathology, gas gangrene, which called for an urgent hospitalisation in order to treat the infection, which would have made possible to prevent the negative outcome of the illness (see paragraph 13 above).

24. Although a further expert report indicated that it could not be definitely stated whether it would have been possible to save S. Voskanyan's life had he received the required treatment, the second expert panel equally found that S. Voskanyan's medical condition had required hospitalisation and surgical treatment (see paragraph 14 above). In any event, the validity of the report of the previous expert panel as regards its findings concerning the adequacy of S. Voskanyan's treatment while in detention was never questioned. In fact, the reason for assigning an additional forensic examination was merely to clarify the discrepancies with regard to the presence of ethyl alcohol in the samples taken from the deceased's body (see paragraphs 11, 13 and 14 above).

25. While the Court takes due note of the Government's argument, relying in part on the second expert panel's opinion, that S. Voskanyan's self-harm behaviour and inappropriate wound hygiene may have contributed to the unpredicted progression of the infection and inefficiency of the treatment provided, it does not find those circumstances to be decisive for the core issue of the present case for the following reasons. From the first days when the infected wound was reported, the prison authorities were made aware in

substance of those aspects (see paragraph 3 *in fine* above). Furthermore and more importantly, it appears from the expert reports and the relevant medical records that as from 19 October 2010 and the following days, S. Voskanyan's poor clinical condition should have left no doubts as to the necessity of his immediate hospitalisation because of a serious and fast-spreading infection, gas gangrene, which did not respond to the treatment provided. In that respect, the autopsy report speaks for itself as to the particularly wide-spread and noticeable infection and tissue damage (see paragraph 11 above).

26. Taking into account the expert panels' unanimous opinion about the defective medical treatment administered to S. Voskanyan, the Court considers that the prison authorities should have been aware of the risk that a delayed hospital transfer presented to his life in the context of an unmanageable infection of such extent. The object of the Court's examination being whether or not the domestic authorities fulfilled their duty to safeguard the life of the applicant's husband by providing him with proper medical treatment in a timely manner, the foregoing considerations enable the Court to conclude that the domestic authorities' behaviour towards a critically ill detainee amounted to a violation of the State's obligation to protect the lives of persons in custody (see *Mustafayev v. Azerbaijan*, no. 47095/09, §§ 62 *in fine* and 66, 4 May 2017, and contrast, *Geppa v. Russia*, no. 8532/06, § 83, 3 February 2011 where there was no forensic evidence to show that a positive outcome of a detainee's illness depended on timely diagnosis and treatment).

27. It follows that the respondent State failed to protect S. Voskanyan's life while in detention.

28. There has accordingly been a violation of Article 2 of the Convention in its substantive limb.

29. As regards the investigation conducted by the domestic authorities, the Court notes that the authorities undertook a number of investigative steps in the aftermath of S. Voskanyan's death (see paragraph 9 above).

30. However, despite concrete forensic medical evidence suggesting that the fatal outcome of S. Voskanyan's illness could have been prevented had he received adequate treatment and transferred to hospital in time, the investigation did not go beyond the question of Doctor M.'s individual criminal responsibility failing to examine the reason why the transfer was not organised earlier and to identify those responsible especially in the light of Doctor M.'s statements that he had reported about S. Voskanyan's alarming state of health to the administration of the detention facility and his superiors (see paragraphs 10, 13 and 15 above).

31. The Court therefore considers that the investigation's conclusions were not based on a thorough and objective analysis of all relevant elements (see *Muradyan v. Armenia*, no. 11275/07, § 135, 24 November 2016, and *Nana Muradyan v. Armenia*, no. 69517/11, § 126, 5 April 2022). As a result, the investigation failed to shed full light on all the circumstances surrounding S. Voskanyan's death, thereby failing to bring those responsible to account

(see, *mutatis mutandis*, *Tarariyeva v. Russia*, no. 4353/03, § 103, ECHR 2006-XV (extracts)).

32. The Court therefore finds that the authorities failed to carry out an adequate and thorough investigation into S. Voskanyan's death. It is thus unnecessary to examine the other aspects of the investigation (see, *mutatis mutandis*, *Anahit Mkrtchyan v. Armenia*, no. 3673/11, § 101, 7 May 2020).

33. Accordingly, there has been a violation of Article 2 of the Convention in its procedural limb.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. The applicant claimed 8,000 euros (EUR) in respect of pecuniary damage, which constituted the expenses borne by her alone after the death of her husband to raise their four children. She further claimed EUR 50,000 in respect of non-pecuniary damage and EUR 4,620 euros in respect of costs and expenses incurred before the domestic courts before the Court.

35. The Government contested these claims.

36. The applicant failed to submit any evidence to support her claims in respect of pecuniary damage. Furthermore, S. Voskanyan was under detention in relation to serious charges. Therefore, the applicant's claim under this head is moreover of a speculative nature and the Court rejects it. At the same time, the Court awards the applicant EUR 20,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to her.

37. Regard being had to its case-law and to the lack of proper substantiation in the documents in its possession, the Court rejects the claim for costs and expenses.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 2 of the Convention in its substantive and procedural limbs;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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;

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

Done in English, and notified in writing on 24 January 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Valentin Nicolescu Acting Deputy Registrar	Anja Seibert-Fohr President