

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

THIRD SECTION

CASE OF YERUSLANOV v. RUSSIA

(Application no. 69591/17)

JUDGMENT

STRASBOURG

7 July 2022

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



In the case of Yeruslanov v. Russia,

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

Darian Pavli, *President,*
Andreas Zünd,
Mikhail Lobov, *judges,*

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 16 June 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 25 September 2017.

2. The applicant was represented by Ms N. Yeruslanova, a lawyer practising in Moscow.

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. He also raised other complaints under the provisions of the Convention.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

6. 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."

7. 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.

8. 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).

9. 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.

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

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

11. The applicant also complained that no effective domestic remedies regarding the quality of the medical care in detention were available to him. His complaints fall 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 ..."

12. 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,* 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.

13. 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.

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

14. The applicant submitted other complaints which also raised issues under the Convention, given the relevant well-established case-law of the Court (see the appended table). These complaints 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 concludes that they also disclose violations of the Convention in the light of its well-established case-law (see *Matyush v. Russia*, no. 14850/03, §§ 71-74, 9 December 2008, as regards delayed release from custody, and *Klimov v. Russia*, no. 54436/14, §§ 41-50, 4 October 2016, as regards the State's failure 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).

IV. REMAINING COMPLAINTS

15. The applicant also complained under Article 5 § 1 of the Convention that his detention from 13 July to 4 October 2017 had been unlawful.

16. The Court has examined the complaint and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, it does not meet the admissibility criteria set out in Articles 34 and 35 of the Convention.

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

V. 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, *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 and dismisses the remainder of the applicant's claim for just satisfaction.

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 inadequate medical care and the lack of an effective domestic remedy in that respect, as well as other complaints under the well-established case-law of the Court, as listed in the appended table, admissible and the remainder of the application inadmissible;

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

3. *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;

4. *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 the appended table);

5. *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;

6. *Dismisses* the remainder of the claims for just satisfaction.

Done in English, and notified in writing on 7 July 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 domestic law)

Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Principal medical condition	Shortcomings in medical treatment Dates	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros)[1]
69591/17 25/09/2017	**Aleksey Nikolayevich YERUSLANOV** 1963	Yeruslanova Nadezhda Vladimirovna Moscow Region	Conjunctival MALT lymphoma	lack of/delay in medical testing, inability to have the biopsy; lack of permission to travel for surgery while being under house arrest 01/06/2017 – pending More than 4 year(s) and 2 month(s) and 30 day(s)	Art. 5 (1) - unlawful deprivation of liberty, including unrecorded detention and detention without a judicial order and any other legal basis - Unlawful detention after a release order between 04/10/2017 and 05/10/2017; Art. 34 - hindrance in the exercise of the right of individual petition - Failure to comply with the interim measure indicated to the Government under Rule 39 (dated 26/09/2017), namely, to ensure a biopsy examination of the applicant's tumour.	19,500

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