

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

THIRD SECTION

DECISION

Application no. 47061/15
Amur Abubovich KHAKULOV
against Russia
(see appended table)

The European Court of Human Rights (Third Section), sitting on 10 November 2022 as a Committee composed of:

Darian Pavli*, President*,
Ioannis Ktistakis,
Andreas Zünd*, judges*,
and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 25 September 2015,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant's details are set out in the appended table.

The applicant was represented by Ms V. Kogan, a lawyer practising in Moscow.

The applicant's complaints under Articles 3 and 13 of the Convention concerning the inadequate medical treatment in detention and the lack of any effective remedy in domestic law were communicated to the Russian Government ("the Government").

THE LAW

A. As to *locus standi* of Ms Sonova

Following the applicant's death on 7 October 2016, his widow Ms F. Sonova expressed a wish to pursue the application. The Government left the issue to the Court's discretion.

In the cases in which an applicant died after having lodged an application, the Court 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).

In view of the above and having regard to the circumstances of the present case, the Court accepts that Ms Sonova 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. Khakulov as the applicant in the present case.

B. Complaint under Articles 3 of the Convention (inadequate medical treatment in detention)

The applicant complained that he had not received adequate medical treatment in respect of his medical condition indicated in the appended table. He relied on Article 3 of the Convention, which reads as follows:

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

The Court observes that the general principles regarding the quality of medical care in detention have been stated in a number of its previous judgments (see, among many other authorities, *Blokhin v. Russia* [GC], no. 47152/06, §§ 135-40, ECHR 2016, and *Ivko v. Russia*, no. 30575/08, §§ 91-95, 15 December 2015).

The Court adopts conclusions after evaluating all the evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, for example, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 121, 10 January 2012). In cases regarding conditions of detention and medical assistance in detention the burden of proof may, under certain circumstances, be shifted to the authorities

(see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII; see also *Mathew v. the Netherlands*, no. 24919/03, § 156, ECHR 2005-IX). Nevertheless, an applicant must provide an elaborate and consistent account of the State's alleged failure to provide him with the required medical assistance, mentioning the specific elements which would enable the Court to determine that the complaint is not manifestly ill-founded or inadmissible on any other grounds.

In the present case, the Government contended that the applicant had been afforded adequate medical assistance. They relied on the medical records, certificates and excerpts of expert reports, including those issued by civil doctors.

The Court is satisfied that the records, certificates and excerpts are original documents which were prepared during the periods under examination, and which showed the actual medical procedures and treatment afforded to the applicant.

Having regard to the evidence provided by the parties, the Court concludes that the applicant received essential medical treatment in respect of his condition. The defects in the quality of medical care alleged by the applicant are either insignificant or not supported by sufficiently strong evidence. Therefore, they cannot be accepted by the Court.

In view of the above, the Court finds that the present complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Complaint under Article 13 of the Convention

The Court reiterates that Article 13 requires domestic remedies only with regard to complaints arguable in terms of the Convention (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). Since the Court has found above that the applicant's complaint about the quality of medical treatment in detention is manifestly ill-founded, no issue under Article 13 of the Convention arises in his case. The complaint under Article 13 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Holds that Ms Sonova has standing to pursue the application in her late husband's stead;

Declares the application inadmissible.

Done in English and notified in writing on 1 December 2022.

Viktoriya Maradudina Acting Deputy Registrar	Darian Pavli President

APPENDIX

Application raising complaints under Articles 3 and 13 of the Convention (inadequate medical treatment in detention)

Application no. Date of introduction	Applicant's name Year of birth	Principal medical condition	Alleged shortcomings in medical treatment Dates
47061/15 25/09/2015	**Amur Abubovich KHAKULOV** Born in: 1972 Died in 2016 Heir: **Fatima Mukhabovna SONOVA** 1971	Chronic kidney disease; terminal stage	Alleged failure of the authorities to provide the applicant with prescribed medication and haemodialysis 01/10/2014 to 07/10/2016 2 year(s) and 7 day(s)