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

FOURTH SECTION

DECISION

Application no. 34505/16
Nataša RAJKOVIĆ
against Serbia

The European Court of Human Rights (Fourth Section), sitting on 3 September 2024 as a Committee composed of:

Anne Louise Bormann*, President*,
Branko Lubarda,
Sebastian Răduleţu*, judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 34505/16) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 10 June 2016 by a Serbian national, Ms Nataša Rajković ("the applicant"), who was born in 1973, lives in Aleksinac and was represented by Mr S. Veličković, a lawyer practising in Niš;

the decision to give notice of the application to the Serbian Government ("the Government"), represented by their Agent, Ms Z. Jadrijević Mladar, Representative of Serbia to the European Court of Human Rights;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the death of the applicant's husband, B.R., in a prison infirmary. The applicant alleged that her husband had not been provided with adequate medical treatment while serving a prison sentence.

2. B.R. was serving a sentence in Niš Prison (*KPZ Niš*), following his conviction for embezzlement.

3. Between October 2008 and June 2009, B.R. consulted five prison doctors on twenty-nine occasions, complaining of various neurological and

otorhinolaryngological symptoms. On each occasion he was provided with medical care and treatment.

4. In June 2009, while on approved leave from Niš Prison, B.R. was admitted to the Neurology Clinic in Niš, where he was diagnosed with headaches and otitis media and underwent treatment for twenty days. He underwent various complex diagnostic procedures, including a CT scan of the head and an MRI of the endocrania and orbit.

5. In July and August 2009 B.R. was prescribed three different sets of antibiotics and inhalation pumps for suspected bronchitis, as well as various medications for neurological disorders. It has not been argued that B.R. had not received that therapy.

6. In August 2009 the prison authorities have sent him for a check-up at the Pulmonary Diseases Clinic in Knez Selo. According to the resulting medical report, an attempt was made to carry out spirometry; however, as a result of the applicant's lack of cooperation, an accurate reading was not obtained. The pulmonologist recommended that B.R.'s condition be monitored and that radiological examinations be carried out.

7. The prison doctors subsequently referred B.R. for further assessment at the Pulmonary Disease Clinic in Niš and requested an examination by a neurologist.

8. On 30 August 2009 B.R. developed various unrelated neurological symptoms and breathing difficulties. He was admitted to the infirmary, where the physician on duty referred him for radiological examinations. The following day, B.R. was discharged from the infirmary, at his own request, claiming that he felt better.

9. On 1 September 2009 he was again admitted to the infirmary, where he died on 2 September 2009.

10. According to the autopsy report prepared by the Institute of Forensic Medicine in Niš on 3 September 2009, the cause of B.R.'s death was cessation of breathing and heartbeat due to purulent pneumonia. His body was in a very poor condition owing to a large benign thymus tumour, which could have contributed to the development of the pneumonia for which he was being treated.

11. Relying on the autopsy report, the Niš Higher Prosecutor's Office and the Niš Police Administration concluded that B.R. had died of natural causes and that no criminal investigation was necessary. As established by the autopsy, he had had a very rare disorder (a thymus tumour).

12. On 12 February 2010 the applicant initiated civil proceedings against Niš Prison, seeking compensation for damage caused by her husband's death, alleging that it had been the result of medical negligence.

13. On 31 October 2012, the Niš Basic Court dismissed the applicant's claim. It referred to the autopsy report of 3 September 2009, experts' report of 12 January 2011 and a subsequent additional expert report from 17 April 2012 which stated, *inter alia*, that the benign thymus tumour had not been

discovered as a result of its secluded location, the non-specific symptoms of the disease and B.R.'s lack of cooperation.

14. On 2 April 2013 the Niš Court of Appeal dismissed an appeal by the applicant, holding that there had been no causal link between B.R.'s death and the actions of the medical practitioners at Niš Prison. The prison health service had, in accordance with domestic law, referred B.R. on numerous occasions to the appropriate medical services at civilian hospitals, which had taken over responsibility for his diagnosis and treatment.

15. On 17 May 2013 the applicant lodged a constitutional appeal, arguing that there had been a violation of her right to a fair trial. She maintained, in substance, that the death of her husband had been caused by medical negligence. On 1 September 2015 the Constitutional Court dismissed the appeal as unfounded.

16. Before the Court, the applicant complained, under Articles 6 and 13 of the Convention, that her civil claim for damages had been dismissed by the domestic courts. She also complained that the death of her husband had been caused by medical negligence. A wrong diagnosis had led to mistakes being made in his medical treatment and had caused him suffering in his final days.

THE COURT'S ASSESSMENT

17. The Court, being the master of the characterisation to be given in law to the facts of the case, considers that the applicant's complaints described in the preceding paragraph, should be examined solely from the perspective of Article 2 of the Convention (see, among other authorities, *Yüksel Yalçınkaya v. Türkiye* [GC], no. 15669/20, § 217, 26 September 2023).

18. The Court does not consider it necessary to examine the Government's objection that the applicant failed to exhaust all effective domestic remedies for her grievance under Article 2 of the Convention because this complaint is, in any event, inadmissible for the following reasons.

19. The relevant principles under Article 2 of the Convention concerning the State's obligations in the area of healthcare of persons in custody can be found in *Makharadze and Sikharulidze v. Georgia* (no. 35254/07, §§ 71-73, 22 November 2011).

20. In the instant case, the applicant has not alleged or implied that her husband had been intentionally killed by the doctors responsible for his care and treatment at the material time. She argued that those doctors had failed to take the necessary measures to provide her husband with proper treatment, thereby causing his death. In assessing whether the authorities did everything reasonably possible, in good faith and in a timely manner, in order to prevent the B.R.'s death, the Court refers to the conclusions of several independent experts reached in the course of the compensation proceedings against the prison authorities, to the effect that there had been no causal link between

B.R.'s death and the medical treatment to which he had been subjected (see paragraphs 13 and 14 above). There is nothing to indicate that the medical treatment and therapy administered to B.R., in the prison infirmary and civilian medical facilities under the Serbian health service, were inadequate in the circumstances of the case. In this connection it reiterates that it is not its function under Article 2 of the Convention to dispute the doctors' assessment of B.R.'s condition, or their decisions how he should have been treated (see *Glass v. the United Kingdom* (dec.), no. 61827/00, 18 March 2003). Those assessments and decisions were made against the background of the deceased's state of health at the time and the doctors' judgment as to the treatment required.

21. However, the events leading to the death of the applicant's husband and the alleged responsibility of the prison doctors involved are matters which must also be addressed from the angle of the adequacy of the mechanisms in place for shedding light on the course of those events, and thus allowing the facts of the case to be exposed to public scrutiny – not least for the benefit of the applicant (see *Powell v. the United Kingdom* (dec.), no. 45305/99, ECHR 2000-V).

22. The Court reiterates that, if an infringement of the right to life is not caused intentionally, the positive obligation imposed by Article 2 to set up an effective judicial system does not necessarily require the provision of a criminal-law remedy. In the specific sphere of medical negligence, as alleged in the present case, the obligation may, for instance, also be satisfied if the legal system affords victims a remedy in the civil courts, either alone or in conjunction with a remedy in the criminal courts, enabling the liability of the doctors concerned to be established and appropriate civil redress, such as an order for damages and for the publication of the decision, to be obtained (see, in respect of Serbia, *Milić v. Serbia* (dec.), no. 62876/15, § 54, 21 May 2019).

23. The applicant initiated civil proceedings in which she participated actively and availed herself of her procedural rights to influence their course. The domestic courts examined the applicant's compensation claim on the merits and after they subjected the impugned medical treatment provided to the applicant's husband to a detailed scrutiny, they ultimately found no fault attributable to the health professionals. The unfavourable outcome for the applicant does not suffice to find the respondent State liable from the standpoint of its positive obligations under Article 2 of the Convention.

24. Accordingly, the Court considers that the complaint under Article 2 of the Convention 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,

Declares the application inadmissible.

Done in English and notified in writing on 26 September 2024.

Simeon Petrovski Deputy Registrar	Anne Louise Bormann President