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

FOURTH SECTION

DECISION

Application no. 48663/20
Atılla VARDAR and Others
against Germany

The European Court of Human Rights (Fourth Section), sitting on 23 June 2026 as a Committee composed of:

András Jakab*, President*,
Anja Seibert-Fohr,
Corinna Wissels*, judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 48663/20) against the Federal Republic of Germany lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 27 October 2020 by the applicants listed in the appended table ("the applicants"), who were represented by Mr C. Yeginsu, a lawyer practising in London;

the decision to give notice of the complaints concerning the alleged failure to provide adequate medical care to Ü.V., the applicants' next-to-kin, as well as the alleged lack of an effective investigation into his death to the German Government ("the Government"), represented by one of their Agents, Ms N. Wenzel, of the Federal Ministry of Justice and Consumer Protection, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the alleged lack of an adequate medical care to Ü.V., allegedly resulting in considerable suffering and ultimately his death, as well as the alleged lack of an effective investigation into his death in violation of Articles 2 and 3 of the Convention.

2. The applicants are the two brothers and the mother of Ü.V. From January 1990 until his release on 15 August 2017 Ü.V. was placed in a State-run forensic psychiatric hospital in Berlin (*Krankenhaus des Massregelvollzugs* – "the KMV") for crimes for which he could not be held responsible owing to his paranoid schizophrenia. Around two months after his release, Ü.V. was admitted to a regular hospital (*Vivantes Klinikum* – "the VK"), where he was subsequently diagnosed with a brain tumour (glioblastoma) and given a fentanyl patch to ease his suffering. He died on 5 November 2017.

A. The criminal complaints lodged by the applicants

3. Soon after, the applicants lodged criminal complaints, *inter alia*, against the doctors from the KMV and VK who had treated Ü.V. as well as staff from the Berlin public health authority.

4. The Berlin Public Prosecutor's Office obtained several expert opinions to determine the cause of Ü.V.'s death. According to these opinions, he had died of multiple organ failure triggered by a brain haemorrhage caused by his tumour, a situation which had been beyond the doctors' control. In view of these findings, the Public Prosecutor's Office considered it unnecessary to take other investigative measures and discontinued the investigation.

5. The Berlin General Public Prosecutor's Office rejected an appeal lodged by the applicants against that decision. The Berlin Higher Regional Court declared a request by the applicants for a judicial decision inadmissible.

6. On 17 September 2020 the Federal Constitutional Court declined to accept a constitutional complaint lodged by the applicants for adjudication, without providing reasons (2 BvR 240/20).

B. The civil proceedings

7. On 30 December 2020 – that is to say, after the present application was lodged – the third applicant, acting in her capacity as one of Ü.V.'s heirs, lodged an action for compensation against the *Land* of Berlin with the Berlin Regional Court.

8. By a judgment of 4 June 2024, the Regional Court awarded Ü.V. compensation for additional pain and suffering in the amount of 35,000 euros (EUR), which was inherited by his heirs (the three applicants). It concurred with the opinion of the medical expert, whom it had commissioned and heard, and who had concluded that the tumour should have been diagnosed on 27 June 2017. At that point, Ü.V. had reported to the KMV symptoms which should have prompted an immediate neurological examination in order to rule out possible neurological problems such as a stroke. This examination would incidentally also have led to the detection of the tumour. The expert also had concluded that immediate treatment would likely have extended Ü.V.'s life

expectancy and reduced his pain and suffering prior to his death, but that it was highly likely that he would still have died. The average life expectancy of a patient suffering from an untreated glioblastoma was approximately two months, compared to approximately one to two years with comprehensive treatment, depending on different factors. However, as no medical examinations of the tumour had been carried out at that time, it was not possible to determine with certainty, in hindsight, how much longer Ü.V. would have lived had he received treatment in due time.

9. The court further concluded, *inter alia*, on the basis of the expert opinion that other instances of medical negligence or malpractice could not be established, in particular with regard to the alleged failure to make an even earlier diagnosis or the alleged improper administration of certain medications and anaesthetics by the doctors at the KMV. It also explained why it was not necessary to follow other lines of inquiry or gather further evidence in this regard.

10. By a judgment of 10 April 2025, the Higher Regional Court, following appeals by both the third applicant and the *Land* of Berlin, reduced the compensation to EUR 20,000. In essence, it endorsed the Regional Court's findings but held that Ü.V.'s physical and psychological condition preceding his admission to the VK had not deteriorated considerably as a result of the KMV's doctors' failure to diagnose the tumour on 27 June 2017.

11. An appeal by the third applicant against the refusal to grant leave to appeal on points of law against that judgment appears to still be pending before the Federal Court of Justice.

C. Complaints before the Court

12. The applicants complained under Articles 2 and 3 of the Convention that Ü.V. had died prematurely and suffered considerably because (i) the doctors and staff at the KMV had negligently failed to detect or had even deliberately concealed and encouraged the growth of his tumour, and (ii) the doctors at the VK had given Ü.V. a fentanyl patch despite existing contraindications and had failed to resuscitate him or had delayed resuscitation efforts, thus causing, or at least accelerating, his death.

13. The applicants further complained under Article 2 of the Convention that the domestic authorities and courts had failed to carry out an effective investigation into Ü.V.'s death.

THE COURT'S ASSESSMENT

14. The Court does not consider it necessary to address the Government's objection that the applicants had not exhausted the relevant criminal-law remedy in accordance with procedural law, or the question whether the application must be considered premature because of the pending civil

proceedings (compare *Dumpe v. Latvia* (dec.), no. 71506/13, §§ 55 et seq., 16 October 2018, and *Zlatanov v. Bulgaria* (dec.), no. 53050/21, § 174, 30 January 2024), as the application is in any event inadmissible for the reasons set out below.

A. The applicants' complaint under the procedural limb of Article 2 of the Convention

15. The Court observes that the domestic civil courts concluded in two well-reasoned judgments that the sole instance of medical negligence which had occurred during Ü.V.'s placement in the KMV had been the failure to perform a neurological examination on 27 June 2017. The other allegations of medical negligence or even deliberate malpractice were rejected, with the courts providing conclusive reasons for that decision (see paragraphs 8 et seq. above). Additionally, the Public Prosecutor's Office found that Ü.V. had died of multiple organ failure triggered by a brain haemorrhage caused by his tumour, and that this situation had been beyond the doctor's control (see paragraph 4 above).

16. Having regard to these findings as well as to the material before it, the Court reiterates that it is not its function, except in cases of manifest arbitrariness or error, to call into question the findings of fact made by the domestic authorities, particularly when it comes to medical expert assessments, which by definition call for specific and detailed knowledge of the subject (see *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, §§ 171 and 199, 19 December 2017). Hence, it sees no reason in the present case to depart from the domestic authorities' findings that Ü.V.'s death was not caused intentionally and that the sole instance of medical negligence related to the failure to perform a neurological examination on 27 June 2017.

17. Compliance with the State's procedural obligation thus did not necessarily require criminal investigations to be conducted (ibid., §§ 215-16). Accordingly, and since the applicants pursued both civil- and criminal-law remedies, the Court will assess whether those two remedies, taken together, were capable of satisfying the procedural obligation under Article 2 of the Convention (compare *Levon v. Lithuania*, no. 27121/23, § 123, 8 July 2025).

18. In this connection, the Court emphasises that the civil courts not only commissioned an expert opinion and heard the expert, but also provided conclusive reasons at two levels of jurisdiction for their decision not to follow other lines of inquiry or gather further evidence, acknowledged an instance of medical negligence, and awarded the applicants compensation in the amount of EUR 20,000 (see paragraphs 8 et seq. above). Moreover, the Court notes that the Public Prosecutor's Office also obtained several expert opinions to determine the cause of Ü.V.'s death (see paragraph 4 above).

19. The Court considers that by means of those measures and decisions taken together, the State discharged its obligations under Article 2 of the

Convention to carry out an investigation into Ü.V.'s death, to offer a plausible explanation for his death and the medical treatment provided to him before it, and to enable the applicants to obtain appropriate redress (compare *Dimitrovi v. Bulgaria* (dec.), no. 25776/05, § 60, 17 December 2013). The Court notes that, owing to the prohibition of *reformatio in peius*, the award of damages cannot be affected by the pending appeal against the refusal to grant leave to appeal on points of law (see paragraph 11 above).

20. It follows that the complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

B. The applicants' complaint under the substantive limb of Articles 2 and 3 of the Convention

1. The applicants' complaint regarding the medical care at the KMV

21. The Court reiterates that the sole instance of medical negligence which occurred during Ü.V.'s placement in the KMV related to the failure to perform a neurological examination on 27 June 2017 (see paragraph 18 above).

22. It also cannot ignore the domestic courts' finding that Ü.V.'s chances of surviving the tumour had from the outset been minimal, even if it had been diagnosed on 27 June 2017, and that the negligent failure to do so did not considerably affect his physical and mental health until his admission to the VK (see paragraphs 9 and 10 above).

23. Hence, the Court considers that the present case can be clearly distinguished from cases where the failure to establish a timely diagnosis prolonged the applicant's mental and physical suffering and as such constituted an affront to his or her human dignity (contrast *Kondrulin v. Russia*, no. 12987/15, §§ 55-62, 20 September 2016).

24. It follows that the complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

25. The Court adds that, even assuming that there had been a violation of the substantive limb of Articles 2 and 3 of the Convention, the complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a), as the applicants could no longer claim to be "victims" for the purposes of Article 34 in respect of this complaint, in view of the acknowledgment of the medical error by the domestic courts and the compensation in the amount of EUR 20,000 awarded to them, which constitutes appropriate and sufficient redress for the alleged violations of the Convention and which cannot, as explained in paragraph 19 above, be altered to their disadvantage (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, §§ 179-81, ECHR 2006-V).

2. The applicants' complaints regarding the medical care at the VK

26. Having regard to the domestic authorities' findings that Ü.V.'s death had been beyond the control of the doctors at the VK (see paragraph 4 above) and to the material before it, the Court lastly considers that there are no indications that the circumstances of the present case constitute the very exceptional circumstances defined in its case-law as being necessary to engage the responsibility of the State in respect of the acts and omissions of healthcare providers in respect of persons not deprived of their liberty (see *Lopes de Sousa Fernandes*, cited above, §§ 185-96). It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

C. Conclusion

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

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 16 July 2026.

Simeon Petrovski Deputy Registrar	András Jakab President

APPENDIX

List of applicants :

Application no. 48663/20

No.	Applicant's Name	Year of birth/registration	Nationality	Place of residence
1.	Atılla VARDAR	1976	German, Turkish	Berlin
2.	Mesut VARDAR	1976	German, Turkish	Berlin
3.	Nuriye Aysel VARDAR	1944	German, Turkish	Berlin