THIRD SECTION

**CASE OF KARAKHANYAN v. RUSSIA**

*(Application no. 24421/11)*

JUDGMENT

STRASBOURG

14 February 2017

FINAL

14/05/2017

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*

In the case of Karakhanyan v. Russia,

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

Luis López Guerra, *President,* Helena Jäderblom, Dmitry Dedov, Branko Lubarda, Pere Pastor Vilanova, Alena Poláčková, Georgios A. Serghides, *judges,* and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 24 January 2017,

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

PROCEDURE

1.  The case originated in an application (no. 24421/11) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Ms Olga Viktorovna Karakhanyan (“the applicant”), on 28 March 2011.

2.  The applicant, who had been granted legal aid, was represented by Ms M. Misakyan, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3.   The applicant alleged that her husband had died in detention owing to a lack of adequate medical assistance and that there had been no effective investigation of the circumstances of his death.

4.  On 15 December 2014 the application was communicated to the Government.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

5.  The applicant was born in 1973 and lives in Orenburg. She is the widow of Mr Sergey Viktorovich Grabarchuk, who was arrested on 3 April 2003 on suspicion of robbery and sentenced on 24 November 2003 by the Orenburg Regional Court to eleven years’ imprisonment. The applicant’s husband died in 2010 while serving his prison sentence.

A.  Medical treatment provided to Mr Grabarchuk in detention

6.  After his arrest Mr Grabarchuk was taken to a remand prison in Orenburg, where doctors carried out a general health check and noted that he had HIV and hepatitis C. A month later HIV antibody testing confirmed the diagnosis.

7.  In May 2003 Mr Grabarchuk was seen by an infectious diseases doctor, who found no HIV symptoms except for enlarged lymph nodes.

8.  Until late April 2009 Mr Grabarchuk’s health was stable. He had regular complete blood count tests, a basic metabolic panel, simple urine tests and a chest X-ray.

9.  On 30 April 2009 he complained of fever and a cough. Shortly thereafter Mr Grabarchuk was diagnosed with focal right-side tuberculosis and on 6 May 2009 transferred to a prison hospital for inpatient treatment.

10.  In the hospital Mr Grabarchuk received tuberculosis treatment. On 7 July 2009 he was seen by an infectious diseases doctor, who noted the progress of the HIV infection to the next stage because of a lack of antiretroviral therapy (“ART”). The doctor recommended an immunological assessment. On 27 November 2009 Mr Grabarchuk was discharged from the hospital on account of a “clinical recovery” from tuberculosis.

11.  On 12 February 2010, on the basis of a routine complete blood count, doctors at the prison medical unit diagnosed Mr Grabarchuk with acute pyelonephritis, or inflammation of the kidney.

12.  Three days later an infectious diseases doctor repeated the recommendation for an immunological assessment. It was performed on 1 March 2010 and revealed that the patient’s immune system had been seriously damaged by the HIV. Five days later he started receiving ART.

13.  According to the applicant, her husband suffered various side effects from the HIV treatment and tried unsuccessfully to have it changed.

.  One week later the following entry was made in his medical file:

“We, the undersigned, have made the present record to state that Mr S. Grabarchuk has refused ART.”

(The document was signed by the head of the medical unit, an infectious diseases doctor and a general practitioner).

15.  On 22 March 2010 a medical board recorded that the tuberculosis, which had been wrongly diagnosed by the doctors at the medical unit as pyelonephritis, had developed further. The board recommended treatment against the relapse. On the same day doctors at the medical unit made the following entry in the medical file:

“We, the undersigned, have made the present record to state that Mr S. Grabarchuk has refused anti-tuberculosis treatment.”

(The signatures are illegible).

16.  The applicant submitted that after the medical unit doctors had erred in the diagnosis of pyelonephritis, her husband had lost faith in them and had therefore refused to follow their recommendations, including those pertaining to the antiretroviral therapy.

17.  A week later, after new chest X-rays, the doctors confirmed that Mr Grabarchuk had tuberculosis and not pyelonephritis. His transfer to a prison hospital was ordered.

18.  On 13 April 2010 Mr Grabarchuk was admitted to the regional prison hospital for tuberculosis in Orenburg, where he received the standard tuberculosis drug regimen, which, as shown by the medical record, did not lead to an improvement in his condition.

19.  On 16 and 30 April and 11 May 2010 Mr Grabarchuk was seen by an infectious diseases doctor, who noted that because of the lack of antiretroviral treatment the HIV had progressed to its advanced stage, Aids. The doctor prescribed a complete blood count and ordered him to continue the tuberculosis treatment.

20.  Mr Grabarchuk lost weight and the ability to walk. His overall condition became critical. Given the seriousness of his condition, the detention authorities applied for his early release on health grounds, but on 13 May 2010 their request was refused.

21.  Mr Grabarchuk complained to the head of the medical authorities about inadequate medical treatment, requesting, among other things, an in-depth examination.

22.  On 14 May 2010, owing to a drastic deterioration in his health, an ambulance was called. An emergency doctor recommended Mr Grabarchuk’s transfer to a civilian hospital. The applicant was ready to cover transport expenses but a prison hospital medical board insisted on treating him in the prison hospital.

23.  Two days later Mr Grabarchuk died. An autopsy showed that he had died from HIV and tuberculosis which had led to pulmonary and cardiac failure.

B.  Criminal inquiry into Mr Grabarchuk’s death

24.  Shortly after the death of her husband the applicant complained to the Orenburg regional office of the Federal Service for the Execution of Sentences about the refusal on 14 May 2010 to transfer him to a civilian hospital.

25.  By a letter of 7 June 2010 the authorities informed the applicant that the prosecutor’s office was carrying out a preliminary investigation into the circumstances of her husband’s death.

26.  The applicant complained further, alleging that the head of the medical unit had shown deliberate indifference to Mr Grabarchuk’s condition.

27.  On 9 September 2010 the prosecutor’s office referred the case to the Investigative Committee of Orenburg Region.

28.  The Government did not submit the investigation file, stating that it had been destroyed in July 2014.

29.  Documents submitted by the applicant show that on 1 July and 27 October 2011 the investigating authorities obtained the autopsy report and questioned two doctors who had attended to Mr Grabarchuk in the prison hospital. The doctors stated that the patient had died of HIV and tuberculosis, despite their attempts to save his life. The investigator refused to open a criminal case.

30.  On 17 January 2011 the Novotroitsk Town Court, upon an application by the applicant, overruled the decision of 27 October 2011 on account of the failure of the investigating authorities to address the applicant’s allegation of deliberate indifference to the patient’s medical condition on the part of the head of the medical unit. A fresh investigation of the issue was ordered by the court. A month later the Orenburg Regional Court upheld that decision on appeal.

.  According to the applicant, no further investigation followed.

II.  RELEVANT DOMESTIC AND INTERNATIONAL LAW

32.  The relevant provisions of domestic and international law on the general health care of detainees are set out in *Ivko v. Russia* (no. 30575/08, §§ 55-62, 15 December 2015).

.  Rules on refusing to have medical treatment are set out in article 33 of the Russian Health Care Act (Federal law no. 5487-1 dated 22 July 1993). As in force at the relevant time it provided that a patient, or his or her legal representative, was entitled to refuse a medical intervention or request that it be stopped. If a patient refused a medical intervention that person, or a legal representative, was to be informed in an understandable manner about the possible consequences of such a refusal. The decision had to be recorded in the person’s medical file, contain a list of the possible adverse effects and be signed by the patient or patient’s legal representative, and by a doctor.

THE LAW

I.  ALLEGED VIOLATION OF ARTICLE 2 OF THE CONVENTION

34.  The applicant complained under Articles 2 and 3 of the Convention that the authorities had failed to provide her husband with adequate medical care in detention and that they had thus been responsible for his suffering and death. She also complained that the investigation into his death had been neither adequate nor effective.

35.  The Court considers that the above complaints fall to be examined under Article 2 of the Convention, the relevant part of which reads:

“1.  Everyone’s right to life shall be protected by law. ...”

A.  Submissions by the parties

1.  Submissions by the Government

36.  The Government asked that the claim concerning the adequacy of the medical treatment be rejected given that Mr Grabarchuk had not complained about the quality of his treatment. They also stated that the authorities had taken all possible steps to safeguard his health and life, but the patient had refused medical treatment, including ART.

37.  The Government further submitted that the investigation file had been destroyed on 29 July 2014, and that, in any event, no obligation to conduct an effective investigation into Mr Grabarchuk’s death had arisen because his death had not occurred in suspicious circumstances.

2.  Submissions by the applicant

38.  The applicant argued that both she and Mr Grabarchuk had complained about the medical treatment in detention. Her husband’s treatment had been deficient in many respects. In particular, the authorities had failed to perform regular CD4 counts, diagnose the relapse of tuberculosis in a timely manner or arrange for her husband’s transfer to a civilian hospital. Mr Grabarchuk had stopped trusting doctors and therefore his refusals of treatment had been legitimate.

39.  The applicant also criticised the investigation into Mr Grabarchuk’s death, arguing that it had not been effective. She stressed, in particular, that the investigating authorities had failed to comply with the court’s decision of 17 January 2011 ordering a more thorough investigation into the circumstances of the death.

B.  The Court’s assessment

1.  Admissibility

40.  Firstly, the Court notes that where a violation of the right to life has been alleged it has accepted applications from relatives of the deceased (see *Aytekin v. Turkey*, 23 September 1998, *Reports of Judgments and Decisions* 1998-VII). The applicant, the wife of the late Mr Grabarchuk, can therefore claim a violation under Article 2 of the Convention pertaining to the death of her husband in detention.

41.  Turning to the Government’s plea of non-exhaustion, the Court observes that the applicant sought the institution of criminal proceedings related to the death of her husband and challenged in court the investigating authorities’ decision not to open a criminal case (see paragraph 30 above). The Court has regarded a judicial appeal against a decision not to open a criminal case as a remedy (see, among many other authorities, *Borgdorf v. Russia* (dec.), no. 20427/05, § 27, 22 October 2013; *Dzhamaldayev v.  Russia* (dec.), no. 39768/06, § 28, 22 January 2013; and *Trubnikov v. Russia* (dec.), no. 9790/99, 14 October 2003). However, taking into account that, as submitted by the applicant and not disputed by the Government, she was unaware of any subsequent decision given by the investigating authorities in her case on the issue, she was not in a position to challenge it (see paragraphs 31 and 37 above). The Court therefore dismisses the Government’s objection of non-exhaustion of domestic remedies (see *mutatis mutandis Vladimir Fedorov v. Russia*, no. 19223/04, § 75, 30 July 2009, and *Oleg Nikitin v. Russia*, no. 36410/02, §§ 41-42, 9 October 2008).

.  As regards the Government’s allegations that there was no obligation under Article 2 of the Convention to ensure that there was an effective investigation into Mr Grabarchuk’s death, the Court observes that it has held that where a person dies in custody in circumstances potentially engaging the responsibility of the State, even where the apparent cause of death is a medical condition, Article 2 of the Convention entails a duty on the part of the State to ensure an adequate investigative response (see *Karpylenko v. Ukraine,* no. 15509/12, § 96, 11 February 2016, and *Karsakova v. Russia*, no. 1157/10, § 54, 27 November 2014). It finds that in the present case Mr Grabarchuk’s death in custody and his wife’s allegations of inappropriate medical treatment triggered the State’s duty to ensure that there was an effective investigation, as required by Article 2 of the Convention.

43.  The Court further notes that the applicant’s complaints are neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other grounds. They must therefore be declared admissible.

2.  Merits

(a)  The State’s compliance with its obligation to protect life

(i)  General principles

44.  The applicable general principles were set out in the cases of *Karsakova* (cited above, §§ 46-49); *Geppa v. Russia* (no. 8532/06, §§ 68‑72, 3 February 2011); and *Slimani v. France*, (no. 57671/00, §§ 27‑32, ECHR 2004‑IX (extracts)).

(ii)  Application of the general principles to the present case

45.  Turning to the circumstances of the present case, the Court observes that the applicant’s husband died of HIV and tuberculosis while in custody and, thus, was under the authorities’ control. In order to establish whether or not the respondent State complied with its obligation to protect life under Article 2 of the Convention, the Court must examine whether the domestic authorities did everything reasonably possible, in good faith and in a timely manner, to try to avert the fatal outcome of this case (see *Karpylenko*, cited above, § 81).

46.  The Court notes that between 22 March and 13 April 2010 Mr Grabarchuk did not receive treatment for tuberculosis and that from 13 March 2010 until his death he was not given any treatment for his HIV infection. The interruption of the treatment allegedly resulted from the patient’s refusal to have it (see paragraphs 14 and 15 above).

47.  The Court notes that Mr Grabarchuk’s refusal of the treatment was recorded in his medical file (see paragraphs 14 and 15 above). In that respect, it considers that the absence of the patient’s signature on the records of 13 and 22 March 2010, taken together with the applicant’s allegations of inadequate medical care, and in particular of her husband’s persistent requests to have the HIV treatment altered rather than cancelled, cast serious doubt on the genuineness of the alleged refusals. That doubt is amplified by the absence of any explanation as to why the patient himself did not sign the refusals. However, even assuming that the refusal was indeed genuine, nothing suggests that it was a knowing and informed refusal, as required by the Health Care Act (see paragraph 33 above), because there is no indication in the file that the doctors explained to the patient the ensuing risks for his health and life.

48.  The Court is of the view that an individual cannot exercise his right to refuse medical treatment in a meaningful and intelligent fashion unless he has sufficient information about the consequences that the refusal might entail. In the absence of such knowledge, a reasoned decision about whether to accept or reject treatment is not possible.

49.  In the light of the above the Court concludes that the applicant’s husband was deprived of life-saving treatment without sufficient grounds. It also notes that even when the patient’s condition became critical, he was not asked again about resuming HIV treatment.

50.  In those circumstances the Court concludes that the authorities should bear responsibility for Mr Grabarchuk’s death as they failed to provide him with vital, comprehensive and adequate medical care, in breach of the State’s positive obligations under Article 2 of the Convention.

(b)  The State’s compliance with its obligation to ensure an effective investigation

(i)  General principles

51.  The applicable general principles were set out in the cases of *Karpylenko* (cited above, § 96) and *Geppa* (cited above, § 86).

(ii)  Application of the general principles to the present case

52.  Turning to the circumstances of the present case, the Court observes that it has already found that a procedural obligation arose under Article 2 of the Convention to investigate the circumstances of the death of the applicant’s husband (see paragraph 42 above).

53.  It reiterates that the system required by Article 2 of the Convention must provide for an independent and impartial official investigation that satisfies certain minimum standards as to effectiveness (see *Trubnikov v. Russia*, no. 49790/99, § 88, 5 July 2005).

54.  The Court observes that the Government have not submitted the investigation file. They explained that it had been destroyed on 29 July 2014. The Court notes the absence of any explanation as to why that happened, on whose authority and on what legal basis.

55.  The Court draws inferences from the Government’s conduct and will therefore ascertain the effectiveness of the investigation on the basis of the material submitted by the applicant.

56.  The available documents show that the authorities did take certain investigative measures. For example, they obtained an autopsy report and questioned two doctors (see paragraph 29 above). However, they failed to duly assess the quality of the medical treatment, in particular, by addressing the applicant’s argument about deliberate indifference on the part of the head of the medical unit to the condition of the applicant’s husband. The domestic courts concluded that the investigators had committed serious errors in the course of the investigation. They therefore overruled the investigator’s decision of 27 October 2010 not to open a criminal case and ordered a further investigation, having noted a specific defect to correct (see paragraph 30 above).

57.  The Court notes, and this fact is not disputed by the Government, that no investigation followed those court decisions. Accordingly, the applicant’s key complaint, supported by specific medical evidence and thus warranting verification, remained without the requisite examination (see *Karpylenko*, cited above § 98).

58.  Having regard to the above considerations, the Court concludes that the authorities failed to carry out a thorough and effective investigation into the allegations that the applicant’s husband’s death resulted from a lack of adequate medical treatment. There has therefore been a violation of Article 2 of the Convention under its procedural limb.

II.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

59.  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.”

A.  Damage

60.  The applicant claimed 72 euros (EUR) in respect of pecuniary damage and EUR 124,285 in respect of non-pecuniary damage.

61.  The Government considered the claims to be excessive.

62.  The Court notes that the applicant did not submit a comprehensive explanation or documents demonstrating any pecuniary damage sustained. It therefore rejects the claim in full.

63.  As regards non-pecuniary damages, the Court, making its assessment on an equitable basis, considers it reasonable to award the applicant EUR 24,000 under that head, plus any tax that may be chargeable on that amount.

B.  Costs and expenses

64.  Without submitting a contract with her lawyer, the applicant claimed EUR 3,300 for legal costs incurred before the Court to be paid into the bank account of her representative.

65.  The Government stated that the claim was excessive and unsubstantiated by any evidence.

66.  According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the absence of basic supporting documents, such as a contract, and bearing in mind that the applicant was granted EUR 850 in legal aid for her representation, the Court rejects the claim for legal costs in full.

C.  Default interest

67.  The Court 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 application admissible;

2.  *Holds* that there has been a violation of Article 2 of the Convention on account of the authorities’ failure to protect Mr Grabarchuk’s right to life;

3.  *Holds* that there has been a violation of Article 2 of the Convention on account of the authorities’ failure to ensure an effective investigation into the circumstances of Mr Grabarchuk’s death;

4.  *Holds*

(a)  that the respondent State is to pay the applicant within three months of the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 24,000 (twenty four thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, in respect of non-pecuniary damage, plus any tax that may be chargeable;

(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;

5.  *Dismisses* the remainder of the applicant’s claim for just satisfaction.

Done in English, and notified in writing on 14 February 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Luis López Guerra  
 Registrar President