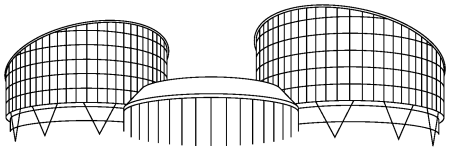

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF KONDRULIN v. RUSSIA

(Application no. 12987/15)

JUDGMENT

STRASBOURG

20 September 2016

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Kondrulin v. Russia,

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

Luis López Guerra, *President,*
Helen Keller,
Johannes Silvis,
Dmitry Dedov,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 30 August 2016,

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

PROCEDURE

1. The case originated in an application (no. 12987/15) 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, Mr Vladimir Ivanovich Kondrulin ("the applicant"), on 26 March 2015. Following the applicant's death, on 22 October 2015 the Russian NGO, the AGORA Interregional Association of Human Rights Organisations ("Agora") expressed its wish to pursue the application lodged by the applicant.

2. The applicant was represented by Mr S. Petryakov, a lawyer from Agora. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged that he had not received adequate medical assistance while in detention.

4. On 27 March 2015, at the applicant's request, the President of the Section decided to apply Rules 39 and 41 of the Rules of Court.

5. On 28 August 2015 the application was communicated to the Government. Among other things, the Court asked the Government whether their response to its decision to impose an interim measure under Rule 39 could entail a breach of Article 34 of the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1953 and lived in Magnitogorsk, in the Chelyabinsk Region until his arrest.

A. Arrest and conviction

7. On 28 June 2011 the applicant was arrested on suspicion of having committed a criminal offence. He remained in custody throughout the investigation and trial.

8. On 29 March 2012 the Pravoberezhniy District Court of Magnitogorsk sentenced him to thirteen years and ten months' imprisonment. The sentence was upheld on appeal by the Chelyabinsk Regional Court on 16 August 2012.

B. The applicant's health and his medical treatment in detention

9. In 2012, following a complaint by the applicant of pain in his lower abdomen, he was diagnosed with an enlarged prostate gland and underwent surgery in relation to that condition.

10. In April 2013 the applicant was transferred to the prison tuberculosis hospital in Chelyabinsk for testing of his urogenital system. Two operations were performed in the hospital, but various problematic symptoms relating to his urinary system persisted.

11. In February 2014 a biopsy of prostate tissue revealed the presence of cancer cells. The applicant was diagnosed with terminal prostate cancer which had spread to his liver and inguinal lymph nodes. His condition was aggravated by a wasting syndrome and paraneoplastic syndrome.

12. According to the applicant, he did not have access to the required medication in the hospital, and therefore his condition worsened.

13. On 30 October 2014 a medical panel confirmed his diagnosis, adding a list of secondary illnesses to it. The doctors concluded that the applicant's medical condition made him eligible for early release.

14. On 26 January 2015 the Metallurgicheskiy District Court of Chelyabinsk "the District Court" examined the applicant's request for early release on health grounds. In the proceedings the applicant was represented by Mr A. Lepekhin, a lawyer from Agora.

15. At the hearing the doctor who was treating the applicant testified that his condition had significantly deteriorated since the beginning of 2014. He received painkillers in hospital, but effective medical treatment was unavailable, owing to a lack of the required medication.

16. The acting head of the hospital stated that the applicant could only receive adequate medical treatment in another hospital.

17. The prosecutor opposed the applicant's being released, citing his failure to reform while in detention. He also stated that the release was not necessary, as the applicant could receive the required medical treatment within the prison system.

18. The court rejected the applicant's request for release. It found that he had failed to improve himself, that is to say, the aim of reforming him as a prisoner had not been achieved. His medical condition did not preclude further detention, as the requisite medical treatment was available within the prison system. To receive it, the applicant only needed a transfer to a different hospital.

19. On 7 April 2015 the Chelyabinsk Regional Court upheld the above decision on appeal, having fully endorsed the reasoning of the lower court. It also noted that, in addition to pain relief and therapy to relieve symptoms, the applicant could have chemotherapy, should the prison hospital receive the required medication.

C. Rule 39 request

20. In the meantime, on 26 March 2015 the applicant sought interim measures from this Court under Rule 39 to ensure adequate medical treatment or his release from detention.

21. On 27 March 2015 the Court decided to apply Rule 39, indicating to the Government that it was desirable in the interests of the proper conduct of the proceedings that the applicant should be immediately examined by medical experts who were independent of the prison system, with a view to determining: (1) whether the treatment he was receiving in the prison hospital was adequate with regard to his condition; (2) whether his state of health was compatible with detention in prison hospital conditions; and (3) whether his condition required his placement in a specialist, possibly civilian, hospital. Furthermore, the Government were also to ensure his transfer to a specialist hospital, should the medical experts conclude that he required it.

22. On 9 April 2015 the Government responded to the Court's letter of 27 March 2015, asserting that the scope and quality of the applicant's medical treatment in the prison hospital corresponded to his needs. They alleged that, owing to the gravity of the applicant's condition, only treatment of his symptoms was recommended, and such treatment was being provided in full. They submitted the following documents: a typed copy of the applicant's medical file; certificates from detention facilities summarising the applicant's treatment and describing his state of health; a report by a medical panel of 30 October 2014 confirming his eligibility for early release; a copy of the District Court's decision of 26 January 2015; a

statement by the acting head of the hospital in which he noted that the District Court had misinterpreted his testimony given on 26 January 2015, as he had never discussed the possibility of the applicant being treated in another hospital; and a statement by the head of the prison hospital in which he confirmed that the cancer treatment was only possible in a special oncological centre, and that he had never argued that it was accessible within the prison system.

23. On 28 May 2015 the applicant's lawyer submitted that the Government had not made arrangements for the independent medical examination indicated by the Court to be carried out. However, two independent doctors summoned by the applicant's lawyer had assessed the quality of his medical treatment in detention and the compatibility of further detention in the prison hospital with his state of health. In an expert report dated 23 May 2015 the doctors had concluded that the treatment the applicant was receiving in the prison hospital was inadequate. The belated diagnosis of prostate cancer and the failure to provide active treatment, such as glandular therapy, radiation therapy or surgery were mentioned among other major shortcomings on the part of the medical authorities. The doctors had also noted that the applicant could not be provided with adequate medical treatment in the prison hospital, because it had no licence for inpatient treatment of cancer patients and urological diseases. Accordingly, the experts had concluded that his detention in that facility did not correspond to his medical needs, and threatened his life.

D. Developments following the application of Rule 39

24. Over the following months the applicant's health continued to deteriorate, and the wasting syndrome progressed.

25. On 24 August 2015 the medical panel prepared a new report, again recommending the applicant's early release on health grounds. A court hearing on the matter was scheduled for 11 September 2015. Four days before that date the applicant died of cancer.

26. At the request of the applicant's lawyer, Mr A. Lepekhin, the Investigative Committee carried out a preliminary inquiry into the circumstances surrounding the applicant's death, which ended with a decision of 15 October 2015 not to open a criminal case.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

Medical care afforded to detainees

27. The relevant provisions of Russian and international law on the medical care of detainees are set out in the following judgments: *Ivko*

v. Russia, no. 30575/08, §§ 55-63, 15 December 2015; *Amirov v. Russia*, no. 51857/13, §§ 50-57, 27 November 2014; *Pakhomov v. Russia*, no. 44917/08, 30 September 2011; and *Yevgeniy Alekseyenko v. Russia*, no. 41833/04, 27 January 2011.

THE LAW

I. PRELIMINARY CONSIDERATIONS: THE *LOCUS STANDI* OF AGORA

28. The Court must first address the issue of Agora's entitlement to pursue the application lodged by the applicant.

29. The Court reiterates that on 22 October 2015 Agora informed it of the applicant's death end expressed a wish to take his place in the proceedings before the Court. Agora stated that the present case concerned an allegation of a serious violation of a core human right, and that there was a strong link between the applicant and Agora, because its lawyers had represented him in the proceedings before the national authorities and the Court.

30. The Government argued that Agora had no *locus standi* to pursue the application, since the rights enshrined by Article 3 of the Convention were eminently personal and non-transferable.

31. The Court has found 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). It is not only material interests which the successor of a deceased applicant may pursue by his or her wish to maintain the application. Human rights cases before the Court generally also 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). Whether the rights at issue are transferable to an heir willing to pursue an application on behalf of a deceased person is not therefore a decisive factor (see *Fartushin v. Russia*, no. 38887/09, §§ 31-34, 8 October 2015 and *Ergezen v. Turkey*, no. 73359/10, § 29, 8 April 2014). It has been also established that, in exceptional circumstances and cases concerning allegations of a serious nature, it should be open to associations to represent victims in the absence of a power of attorney, and notwithstanding that a victim may have died before the application in question was lodged under the Convention. The Court considered that to find otherwise would amount to preventing such serious allegations of a violation of the Convention from being examined at an international level,

with the risk that a respondent State might escape accountability under the Convention (see *Centre for Legal Resources on behalf of Valentin Câmpeanu*, cited above, § 112, and *Association for the Defence of Human Rights in Romania – Helsinki Committee on behalf of Ionel Garcea v. Romania*, no. 2959/11, § 42, 24 March 2015).

32. Considering the information in its possession, the Court notes that the applicant died in custody. He left no known relatives. Agora's lawyers represented him in his proceedings against the domestic authorities, and continued to do so even after his death, in the absence of any objections from the respective authorities. Accordingly, the Court considers that there was a strong link between the applicant and Agora.

33. Against the above background, the Court is satisfied that in the exceptional circumstances of this case and bearing in mind the serious nature of the allegations, it should be open to Agora to pursue the application (see, *mutatis mutandis, Centre for Legal Resources on behalf of Valentin Câmpeanu* [GC], cited above, § 112).

34. Accordingly, the Court dismisses the Government's objection and finds that Agora has standing to pursue the application.

II. ALLEGED VIOLATION OF ARTICLE 34 OF THE CONVENTION

35. The applicant argued that the Government's failure to have his medical examination performed had been in breach of the interim measure indicated by the Court under Rule 39, and had thus violated his right of individual application. He relied on Article 34 of the Convention, which reads:

> "The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

36. Rule 39 provides:

> "1. The Chamber or, where appropriate, its President may, at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted in the interests of the parties or of the proper conduct of the proceedings before it.
>
> 2. Where it is considered appropriate, immediate notice of the measure adopted in a particular case may be given to the Committee of Ministers.
>
> 3. The Chamber may request information from the parties on any matter connected with the implementation of any interim measure it has indicated."

A. Submissions by the parties

37. The Government opened their argument with an assertion that it could not be inferred from Article 34 of the Convention or "from any other source" that the interim measure indicated under Rule 39 was legally binding and that, accordingly, their failure to submit answers to the questions raised by the Court had not entailed a violation of Article 34, or any other provision of the Convention.

38. The Government continued by arguing that the applicant's right to communicate with the Court had in no way been interfered with. The applicant had retained counsel, who had submitted his application and continued to communicate freely with the Court. Lastly, the Government submitted that they had furnished medical reports prepared by prison doctors in response to the Court's questions, and that their submissions had answered the questions posed.

39. The applicant argued that the situation was similar to the case of *Amirov,* cited above, in which the Court had found a violation of Article 34 of the Convention following the Government's failure to comply with an interim measure imposed under Rule 39. As in the *Amirov* case (ibid.), the Russian authorities had again failed to comply with an order of the Court to provide an expert opinion by independent medical specialists assessing the applicant's state of health.

B. The Court's assessment

1. General principles

40. The applicable general principles are set out in the cases of *Paladi v. Moldova* [GC] (no. 39806/05, §§ 84-92, 10 March 2009), and *Amirov* (cited above, §§ 65-68).

2. Application of the general principles to the present case

41. Turning to the circumstances of the present case, the Court notes that on 27 March 2015 it indicated to the Government that it was desirable in the interests of the proper conduct of the proceedings that the applicant should immediately be examined by medical experts independent of the prison system, with a view to determining: (1) whether the treatment he was receiving in the prison hospital was adequate with regard to his condition; (2) whether his state of health was compatible with detention in prison hospital conditions; and (3) whether his condition required placement in a specialist, possibly civilian, hospital. Furthermore, the Government were to ensure the applicant's transfer to a specialist hospital in the event of an expert conclusion to that effect.

42. The Government responded by submitting various medical certificates and reports, including a report by a medical panel on the applicant's eligibility for early release. They also asserted that the scope and quality of the treatment being provided to the applicant in the prison hospital corresponded fully to his state of health.

43. The Court is not convinced by the Government's arguments. It reiterates that the aim of the interim measure in the present case was to obtain an independent medical expert assessment of the state of the applicant's health, the quality of the treatment he was receiving and the adequacy of the conditions of his detention in view of his medical needs. That expert evidence was necessary to decide whether, as the applicant argued, his life and limb were at real risk as a result of the alleged lack of requisite medical care in detention. In addition, the Court was concerned about the contradictory nature of the evidence in its possession. The interim measure in the present case was therefore also meant to ensure that the applicant could effectively pursue his case before the Court (see *Amirov*, cited above, § 70, and *Shtukaturov v. Russia*, no. 44009/05, § 141, ECHR 2008).

44. Whilst the formulation of an interim measure is one of the elements to be taken into account in the Court's analysis of whether a State has complied with its obligations under Article 34 of the Convention, the Court must have regard not only to the letter, but also to the spirit of the interim measure indicated (see *Paladi*, cited above, § 91), and indeed to its very purpose. As indicated by the Court, the main purpose of the interim measure was to prevent the applicant's exposure to inhuman and degrading suffering in view of his poor health, and his detention in a prison hospital which was, according to him, unable to ensure adequate medical assistance, and the Government did not claim to be unaware of this purpose . There could have been no doubt about either the purpose or rationale of that interim measure.

45. The Court does not need to assess the independence, professional expertise or qualifications of the doctors who prepared the documents submitted by the Government. It notes that the Government did not make arrangements for the requested medical examination, which was to provide answers to the Court's questions, to be carried out. Neither the medical reports nor certificates issued by the authorities contained any analysis of the adequacy of the applicant's medical treatment or the compatibility of the conditions of his detention with his state of health. Nothing suggests that the doctors compared the quality of the medical assistance afforded to the applicant with the requirements of applicable medical standards, guidelines or regulations.

46. The scope of the medical examination on 30 October 2014 was limited to checking the applicant's medical condition against an exhaustive list of illnesses provided for by Government decree which could have warranted his release. At no point during the examination did the doctors

from the prison hospital assess the applicant's state of health independently without reference to that list, or evaluate whether his illness, given its manifestation, nature and duration at that point in time, required his transfer to a specialist hospital. The Court therefore concludes that the documents furnished by the authorities have little relevance to the implementation of the interim measure it indicated to the Russian Government.

47. The Government further argued that they themselves had responded to the three questions put by the Court on 27 March 2015. In this connection, the Court notes that, in view of the vital role played by interim measures in the Convention system, they must be strictly complied with by the State concerned. The Court therefore cannot conceive of allowing authorities to circumvent an interim measure, such as the one indicated in the present case, by replacing expert medical opinion with their own assessment of an applicant's situation. However, that is exactly what the Government have done in the present case. In so doing, the State has frustrated the purpose of the interim measure, which was to enable the Court, on the basis of relevant, independent medical opinion, to effectively respond to and, if need be, prevent the possible continued exposure of the applicant to physical and mental suffering in violation of the guarantees of Article 3 of the Convention (see *Khloyev v. Russia*, no. 46404/13, § 67, 5 February 2015, and *Salakhov and Islyamova v. Ukraine*, no. 28005/08, § 222, 14 March 2013).

48. The Government did not demonstrate any objective impediment to compliance with the interim measure (see *Paladi*, cited above, § 92). Consequently, the Court concludes that the State has failed to comply with the interim measure indicated in the present case under Rule 39, in breach of its obligation under Article 34 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

49. The applicant complained that he had been unable to obtain effective medical care while in detention, which had put him in a life-threatening situation and subjected him to severe physical and mental suffering, in violation of the guarantees of Article 3 of the Convention, which reads:

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

A. Submissions by the parties

50. The Government put forward two arguments. Firstly, they argued that the applicant had failed to exhaust domestic remedies. They stated that he should have raised a complaint with the domestic authorities, such as the authorities which managed the detention facilities in question, a prosecutor's office or a court. Secondly, relying on the decisions of the

domestic authorities, in particular the decision not to open a criminal case, the Government argued that the applicant had been provided with the requisite medical treatment.

51. The applicant maintained his complaints. He argued that the medical assistance afforded to him was deficient, as confirmed by the expert report of 23 May 2015, particularly in view of the belated diagnosis of prostate cancer and the absence of any active medical treatment. He further stated that the authorities had been aware of his condition, but had not addressed the issue. The legal avenues proposed by the Government were ineffective.

B. The Court's assessment

1. Admissibility

52. In assessing the Government's argument that the applicant failed to exhaust the available avenues of domestic protection regarding the allegedly inadequate medical treatment, the Court reiterates that it has consistently held that the remedies proposed by the Government do not satisfy the relevant criteria (see *Ivko*, cited above, §§ 85-88; *Khalvash v. Russia*, no. 32917/13, §§ 49-52, 15 December 2015; *Patranin v. Russia*, no. 12983/14, §§ 82-88, 23 July 2015; *Koryak v. Russia*, no. 24677/10, §§ 82-86, 13 November 2012; and *Reshetnyak v. Russia*, no. 56027/10, §§ 65-73, 8 January 2013). The Court therefore rejects the non-exhaustion objection.

53. The Court notes that the applicant's complaint under Article 3 is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) General principles

54. The applicable general principles were recently summarised in the case of *Ivko* (cited above, §§ 91-95).

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

55. Turning to the circumstances of the present case, the Court observes that while in detention the applicant suffered from a life-threatening disease, cancer. His main contentions were that he had not been diagnosed with cancer in time, that he had not received active medical treatment, and had been detained in a medical institution which had no licence to provide the required medical services. The Government disagreed. They insisted that he had received comprehensive medical assistance in detention.

56. The Court has examined a large number of cases against Russia concerning complaints of inadequate medical services afforded to inmates (see, among the most recent examples, *Ivko*, cited above; *Koryak*, cited above, 13 November 2012; *Dirdizov v. Russia*, no. 41461/10, 27 November 2012; *Reshetnyak*, cited above; *Mkhitaryan v. Russia*, no. 46108/11, 5 February 2013; *Gurenko v. Russia*, no. 41828/10, 5 February 2013; *Bubnov v. Russia*, no. 76317/11, 5 February 2013; *Budanov v. Russia*, no. 66583/11, 9 January 2014; and *Gorelov v. Russia*, no. 49072/11, 9 January 2014). Paying particular attention to the vulnerability of the applicants in question in view of their detention, the Court has called on the Government to provide credible and convincing evidence showing that the applicants concerned received comprehensive and adequate medical care in detention. In the absence of an effective remedy in Russia whereby such complaints can be aired, the Court has had to examine the evidence before it to determine whether the guarantees of Articles 2 or 3 of the Convention have been observed.

57. Coming back to the expert report and other evidence submitted by the applicant in the present case, the Court is satisfied that there is *prima facie* evidence in favour of his submissions, and that the burden of proof should shift to the respondent Government.

58. Having regard to its findings under Article 34 of the Convention, the Court is prepared to draw inferences from the Government's conduct, and having closely scrutinised the evidence submitted by them in support of their position, it finds that they have failed to demonstrate conclusively that the applicant received effective medical treatment for his illnesses while in detention. The evidence in question is unconvincing and insufficient to rebut the applicant's account of the treatment to which he was subjected in detention. In such circumstances, the Court considers that the applicant's allegations have been established to the requisite standard of proof.

59. The Court thus accepts that the applicant's diagnosis was not established in a timely fashion, and that, being detained in a prison hospital and unable to access the requisite medical services, he was left without essential medical care (including active medical treatment) for his illnesses.

60. The Court expresses particular concern about the fact that even after the applicant's doctor acknowledged in open court the incompatibility of the applicant's health status with the conditions of his detention in the prison hospital, his transfer to an appropriate facility was not arranged.

61. In the light of the above, the Court considers that the lack of comprehensive and adequate medical treatment had the effect of exposing the applicant to prolonged mental and physical suffering, and constituted an affront to his human dignity. The authorities' failure to provide the applicant with the medical care he needed thus amounted to inhuman and degrading treatment for the purposes of Article 3 of the Convention.

62. Accordingly, there was a violation of Article 3 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant did not make a claim for damages.

B. Costs and expenses

65. Agora claimed 850 euros (EUR) to ensure remuneration for the services of its lawyer, who worked for the applicant *pro bono*.

66. The Government left this issue to the Court to decide.

67. Taking into account the absence of any supporting documents or costs actually incurred, the Court cannot grant the claim. It therefore rejects the claim in full.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* that Agora has *locus standi* in the proceedings;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 34 of the Convention;

4. *Holds* that there has been a violation of Article 3 of the Convention;

5. *Dismisses* the claim for just satisfaction.

Done in English, and notified in writing on 20 September 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Luis López Guerra
President