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**EUROPEAN COURT OF HUMAN RIGHTS**

**THIRD SECTION**

**CASE OF SERGEYEVA AND PROLETARSKAYA v. RUSSIA**

**(Application no. 59705/12)**

**JUDGMENT <\*>**

**(Strasbourg, 13.VI.2017)**

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<\*> This judgment is final but it may be subject to editorial revision.

In the case of Sergeyeva and Proletarskaya v. Russia,

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

Branko Lubarda, President,

Pere Pastor Vilanova,

Georgios A. Serghides, judges,

and  , Deputy Section Registrar,

Having deliberated in private on 23 May 2017,

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

PROCEDURE

1. The case originated in an application (no. 59705/12) 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 Russian nationals, Ms Valentina Olegovna Sergeyeva ("the first applicant") and Ms Irina Yuryevna Proletarskaya ("the second applicant"), on 20 August 2012.

2. The applicants were represented by Mr I. Sharapov, a lawyer practising in Moscow. The Russian Government ("the Government") were represented initially by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The applicants alleged that the Russian authorities had failed to provide their two relatives with the appropriate medical care in detention, and had thus failed to protect their lives.

4. On 3 September 2013 the application was communicated to the Government.

5. The Government objected to the examination of the application by a Committee. Having considered the Government's objection, the Court rejects it.

THE FACTS

I. The circumstances of the case

6. The first applicant is a sister of Mr B., who died of AIDS in the Botkin Hospital in St Petersburg on 6 May 2008.

7. The second applicant is the mother of Mr P., who died of the same disease in the same hospital on 19 June 2009.

8. The applicants live in Moscow.

A. Mr B's detention and medical treatment

9. On 13 October 2004 Mr B. was arrested on suspicion of robbery. The next day the Frunzenskiy District Court of St Petersburg authorised his detention pending investigation. He was then taken to remand prison no. IZ-47/6 in the Leningrad Region. Twelve days later he was diagnosed with HIV.

10. In November 2004 Mr B. was transferred to remand prison no. IZ-47/1 in St Petersburg. On admission he informed the prison doctor about his HIV status. A relevant entry was made in his medical file, but no treatment was prescribed.

11. On 1 December 2005 the Frunzenskiy District Court of St Petersburg convicted Mr B. and sentenced him to seven years' imprisonment. In August 2006 he was sent to serve the sentence in correctional colony no. IK-5 in the Leningrad Region.

12. Having complained of abdominal pain, on 4 March 2007 Mr B. was admitted to the prison hospital, where he was later diagnosed with tuberculosis of the peripheral lymph nodes. It was decided that he should stay in the hospital for tuberculosis treatment.

13. On 16 March 2007 Mr B. was seen by an infectious diseases doctor, who ordered a CD4 count to be conducted. The test, performed five days later, showed that the level of CD4 cells was 163 cells/mm3, which corresponded to an advanced stage of the disease.

14. On 31 May and 16 June 2007 the infectious diseases doctor visited Mr B. According to the medical records, the latter asked for antiretroviral therapy. In response, the doctor "gave him a talk". No HIV treatment was prescribed.

15. On 20 June 2007 Mr B. was discharged from the prison hospital. Until April 2008 he was transferred from one prison medical facility to another for anti-tuberculosis treatment. Although the treatment was successful, the patient's overall medical condition continued to deteriorate. Medical specialists interpreted that as a sign of progressing HIV.

16. On 2 April 2008 Mr B. was admitted to prison hospital no. RB-2 in the Republic of Karelia. At that time he was unable to walk, was feverish and extremely emaciated. Eight days later he was transferred to an infectious diseases unit. His doctor alleged that his grave medical condition resulted from a lack of highly active antiretroviral therapy (HAART). Mr B. was prescribed antibacterial and disintoxication therapy.

17. On 22 April 2008 the medical authorities applied for Mr B.'s early release on medical grounds. Three days later the Medvezhyegorsk Town Court of the Republic of Karelia granted the request. On the same day Mr B. was released from detention.

18. On 26 April 2008 Mr B. was admitted to Botkin Hospital in St Petersburg. He did not regain consciousness and died there on 6 May 2008.

B. Mr P.'s detention and medical treatment

19. On 26 July 2006 Mr P. was convicted of theft and sentenced to a term of imprisonment. He was taken into police custody and two days later sent to remand prison no. IZ-47/6 in the Leningrad Region.

20. During the admission procedure he told the resident doctor that in 2000 he had been diagnosed with HIV, which by 2006 had progressed to AIDS. Before his arrest he had been receiving antiretroviral therapy. He was also suffering from hepatitis B, C, and D and a skin disease.

21. Having undergone a routine medical examination, on 31 July 2006 Mr P. was diagnosed with infiltrative tuberculosis of the right lung. A standard drug regimen was prescribed and administered to him in the prison medical unit. A chest X-ray examination carried out on 20 November 2006 showed a decrease in the area of the lung affected by the tuberculosis.

22. Mr P. was convicted of robbery in another set of criminal proceedings and on 12 December 2006 he was sentenced to three years' imprisonment. He was sent to prison medical facility no. 4 in the Republic of Karelia.

23. Mr P.'s medical condition worsened. The result of a sputum culture test performed on 26 February 2007 was smear-positive. By April 2007 Mr P.'s tuberculosis had developed resistance to six of the drugs he had been taking. Following a decision of the prison medical board on 16 June 2007, his drug regimen was adjusted.

24. On 26 June 2007 Mr P. was admitted to prison hospital no. RB-2 in the Republic of Karelia, where the tuberculosis treatment continued as prescribed. It appears that the change in medication improved the patient's lung condition. However, doctors noted a further development of opportunistic infections. A viral load test was performed, the results of which, as alleged by the second applicant, were not given to Mr P.

25. On 13 July 2007 Mr P. returned to the prison medical facility. Chest X-ray examinations carried out on 24 July and 26 September 2007 showed that the condition of Mr P.'s lungs had improved. The results of a smear test proved negative. On 16 October 2008 Mr P. was sent back to a regular prison ward. His treatment continued.

26. On 27 October 2008 at the request of Mr P., the Segezha Town Court of the Republic of Karelia ordered his release on parole. Having been released on 31 October 2008, Mr P. was taken to Botkin Hospital. He died in the hospital on 19 June 2009 from "an illness caused by the HIV infection".

C. Complaints to the authorities

1. Complaints to the prosecutors

27. On 26 May and 4 June 2010 a Russian non-governmental organisation, Agora, complained to the Russian Prosecutor General's Office of the lack of HIV treatment for detainees, including Mr B. and Mr P. The complaint was referred to the prosecutor's office in the Republic of Karelia.

28. In a letter to the Russian Prosecutor General's Office dated 6 July 2010 the prosecutor's office in the Republic of Karelia observed that in 2007 and 2008 prison authorities in Karelia had experienced difficulties with providing medical assistance to HIV-infected convicts in view of the fact that a large number of infected inmates had been sent to the Republic from other regions. The prosecutor's office said that the supply of drugs had been limited and the number of medical professionals had been insufficient, and acknowledged that the medical care of Mr B. and Mr P. had fallen short of the domestic standards. In particular, they had not received HAART. The prosecutor's office had sent the evidence it had gathered to the investigative committee in the Republic of Karelia to determine whether a criminal case should be opened.

29. On 5 August 2010 the investigative authorities refused to open a criminal case into the deaths of Mr B. and Mr P. Citing the difficulties encountered by the prison authorities of the Karelia Republic in 2006 - 08, including the large number of HIV-positive inmates, a lack of specialists trained to treat inmates suffering from that infection, the absence of an immunological laboratory and the lack of medication, the investigators concluded that the prison authorities had taken all possible measures to provide medical assistance to HIV-infected inmates. No causal link between the absence of HIV therapy and the deaths of Mr B. and Mr P. was established. The investigative authorities stressed that Mr B. had managed to live in detention without the antiretroviral therapy for almost three years and that Mr P. had died more than seven months after his release. The conduct of the prison and medical authorities, in the investigators' opinion, did not reveal any signs of a criminal offence.

30. The above decision was not challenged.

2. Tort proceedings

31. In 2011 the applicants lodged a claim for non-pecuniary damages against the Russian Ministry of Finance, arguing that their relatives' death from HIV had been caused by the authorities' failure to provide appropriate medical care.

32. On 28 October 2011 the Tverskoy District Court of Moscow examined the claim. It found that the burden of proof was on the applicants, who had to prove the unlawfulness of the prison officials' conduct, the alleged damage, and the causal links between the officials' conduct and that damage. Having noted the absence of a decision establishing a breach of the law by the prison authorities, and having referred to the decision not to open a criminal case into the deaths of the applicant's relatives, the court dismissed the claim as unsubstantiated.

33. On 22 February 2012 the Moscow City Court upheld the judgment on appeal, fully endorsing the District Court's reasoning.

II. Relevant domestic and international law

34. The relevant provisions of the domestic and international law on the health care of detainees, including those suffering from HIV, are set out in the following judgments: Pakhomov v. Russia, no. 44917/08, §§ 33 - 39 and 42 - 48, 30 September 2011; A.B. v. Russia, no. 1439/06, §§ 77 - 84, 14 October 2010; and Yevgeniy Alekseyenko v. Russia, no. 41833/04, §§ 60 - 66 and 73 - 80, 27 January 2011.

THE LAW

I. Alleged violation of Article 2 of the Convention

35. The applicants complained under Articles 2 and 3 of the Convention that the authorities had failed to provide Mr B. and Mr. P with adequate medical care in detention and that they had thus been responsible for their deaths.

36. 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

37. The Government put forward two lines of argument.

38. Firstly, they argued that the claim should be rejected because the applicants had not exhausted domestic remedies. The applicants had not sought the criminal prosecution of the officials allegedly responsible for their relatives' deaths, and had not appealed against the decision not to open a criminal case. The Government further stated that a claim for damages was an inappropriate legal avenue. The applicants should have asked the court to declare the prison authorities' actions/inaction unlawful.

39. In the alternative, the Government argued that the detainees had been under close medical supervision and had received appropriate medical treatment. They questioned the probative value of an expert report submitted to the Court by the applicants (see paragraph 40 below). They observed that it did not constitute forensic evidence and that, accordingly, the expert could not be held criminally liable for untruthful findings. They also argued that more than one medical expert had to assess the quality of the medical care, given that Mr B. and Mr P. had suffered from a large number and variety of illnesses. Lastly, the Government stressed that the expert had not come to any conclusion regarding the consequences of the shortcomings established.

40. The applicants argued that they had exhausted domestic remedies through tort proceedings, the most effective remedy available to them. They further argued that Mr B. and Mr P. had not received HIV treatment. They relied on an expert report prepared on 18 March 2014 by a forensic medical expert "of the highest category with twenty-nine years of professional experience". The expert established that the prison authorities had not observed the "Standard of medical treatment for patients with HIV" approved by the Ministry of Healthcare and Social Development of Russia on 17 August 2006. The "Standard" provided that an HIV-positive patient should be seen by an infectious diseases specialist at least four times, and that he or she should be subjected to in-depth biochemical blood testing at least three times, and to immune testing with a CD4 count at least twice per year. None of the aforementioned requirements had been met in respect of Mr B. and Mr P. The expert also noted the absence of HAART, which Mr B. had needed since 21 March 2007, when a test had revealed a low level of CD4 cells, and which Mr P. had required since his placement in custody in July 2006.

B. The Court's assessment

1. Admissibility

41. The Court reiterates at the outset that where a violation of the right to life is alleged, the Convention organs have accepted applications from relatives of the deceased (see Karpylenko v. Ukraine, no. 15509/12, § 73, 11 February 2016, and   v. Turkey, no. 22876/93, 14 May 2002). The first applicant, a sister of the late Mr B., and the second applicant, the mother of the late Mr P., can therefore claim a violation under Article 2 of the Convention pertaining to the death of their relatives.

42. Turning to the Government's plea of non-exhaustion, the Court observes that it has already held that a civil claim for damages was capable of providing redress and offered reasonable prospects of success for a claim about inadequate medical assistance in detention, if the applicant himself is not in the situation he or she has complained about (see Morozov v. Russia, no. 38758/05, § 47, 12 November 2015 with further references). In the present case the applicants lodged a claim for damages against the Russian authorities, alleging that the absence of proper medical care in detention had led to the death of their relatives, and subsequently challenged the unfavorable court judgment on appeal (see paragraphs 31 - 33 above). Accordingly, the domestic remedies have been duly exhausted.

43. The Court further notes that the applicants' 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) General principles

44. The applicable general principles were set out in Karsakova v. Russia, no. 1157/10, §§ 46 - 49, 27 November 2014; Geppa v. Russia, no. 8532/06, §§ 68 - 72, 3 February 2011; and Slimani v. France, no. 57671/00, §§ 27 - 32, ECHR 2004-IX (extracts).

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

45. Sensitive to the subsidiary nature of its role, the Court reiterates that it is not its task to rule on matters lying exclusively within the field of expertise of medical specialists and to establish whether an applicant in fact required a particular treatment or whether the choice of treatment methods appropriately reflected the applicant's needs (see Dumikyan v. Russia, no. 2961/09, § 58, 13 December 2016; Ukhan v. Ukraine, no. 30628/02, § 76, 18 December 2008; and Sergey Antonov v. Ukraine, no. 40512/13, § 86, 22 October 2015). However, given the vulnerability of persons in detention, it is for the Government to provide credible and convincing evidence showing that the individual concerned received comprehensive and adequate medical care in detention (see Dumikyan and Sergey Antonov, ibid.).

46. In the present case the Government did not submit any medical opinion on the quality of the medical care afforded to Mr B. and Mr P. The applicants provided the Court with an expert report (see paragraph 40 above), which identified several flaws in the medical treatment of the applicant's relatives and found that the treatment had failed to respond to the patients' medical needs. Although the report did not constitute forensic evidence as interpreted by the Government, the Court sees no reason to cast doubt on the veracity of the expert's conclusions, since the expert - and the Government did not argue otherwise - had appropriate qualifications and credentials, and his opinion was duly reasoned. Therefore the Court is ready to attach particular weight to this evidence.

47. Having closely scrutinised the documents submitted by the parties, the Court observes three major shortcomings in the medical care afforded to Mr B. and Mr P.

48. Firstly, the authorities did not ensure that the detainees were examined regularly by an infectious diseases doctor. Documents show that Mr B. was seen by such a specialist on only three occasions: for the first time in March 2007, more than two years after the authorities had discovered his HIV status (see paragraphs 13 and 14 above). Mr P. was in an even more difficult situation, having never been examined by such a doctor. Such limited access by HIV-positive detainees to the relevant medical specialist has already been the subject of criticism by the Court (see Kozhokar v. Russia, no. 33099/08, § 111, 16 December 2010).

49. Secondly, the authorities did not regularly subject the detainees to immunological testing. Both Mr B. and Mr P. underwent a CD4 count only once (see paragraphs 13 and 24 above). The Court has on many occasions been dissatisfied with such irregular testing, which fell short of the applicable standard of four CD4 cell counts and two viral load tests per year (see Khayletdinov v. Russia, no. 2763/13, § 75, 12 January 2016, and E.A. v. Russia, no. 44187/04, § 65, 23 May 2013).

50. Thirdly, and most importantly, Mr B. and Mr P. were not given HAART, the key treatment for HIV. Both patients' need for such treatment was obvious given the very advanced stages of their illness, the opportunistic infections that had developed, the low CD4 count revealed by Mr B.'s testing and the fact that Mr P. had been prescribed such treatment even before his imprisonment. The Court considers this to be a particularly serious shortcoming (compare with Khayletdinov, cited above, § 72; M.S. v. Russia, no. 8589/08, § 99, 10 July 2014; and Koryak v. Russia, no. 24677/10, § 102, 13 November 2012, where the authorities were reproached for delayed or interrupted antiretroviral therapy).

51. In the light of the above, the Court supports the expert conclusion and considers that the medical assistance provided to Mr B. and Mr P. was deficient. The seriousness of the shortcomings in their treatment is palpable and enables the Court to conclude that the domestic authorities have failed to comply with the requirements of Article 2 of the Convention by not providing the requisite standard of protection for the lives of the applicants' relatives.

II. Application of Article 41 of the Convention

52. 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

53. The applicants claimed 50,000 euros (EUR) each in respect of non-pecuniary damage.

54. The Government stated that the claim was excessive.

55. The Court, making its assessment on an equitable basis, considers it reasonable to award each of the applicants EUR 20,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

56. The applicants did not submit a claim for costs and expenses. Accordingly, there is no call to award them any sum on that account.

C. Default interest

57. 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;

3. Holds

(a) that the respondent State is to pay to each applicant, within three months EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage. That amount, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

(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;

4. Dismisses the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 June 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Branko LUBARDA

President

 ARACI

Deputy Registrar