



## Salakhov and Islyamova v. Ukraine

Application No. 28005/08

**Country:** Ukraine

**Region:** Europe

**Year:** 2013

**Court:** European Court of Human Rights European Court of Human Rights

**Health Topics:** Health care and health services, Health information, HIV/AIDS, Hospitals, Medical malpractice, Prisons

**Human Rights:** Freedom from torture and cruel, inhuman or degrading treatment, Right to life

### Facts

The first applicant is Mr. Linar Irekovich Salakhov, who alleged that he had not received prompt and adequate medical care while in detention. Following his death, his mother Ms. Aliya Fazylovna Islyamova pursued the application on his behalf and joined her own complaints to the case.

In 2005, Salakhov first tested positive for HIV, though he did not begin medical monitoring. In November 2007, he was arrested on suspicion of theft and was placed in the Temporary Detention Facility of the Bakhchysaray Police Station (the ITT). On 2 December 2007, he was subsequently taken to Simferopol Pre-Trial Detention Centre no. 15 (the SIZO), where he was examined by doctors, was found to be in good health, and he did not report any health related complaints. While in detention at the SIZO, and after a subsequent transfer back to the ITT, he complained to medical staff about a variety of symptoms and ailments. Eventually, on 3 June 2008, he was taken to the Central Hospital where he was diagnosed with several conditions including suspected HIV infection.

On 5 June 2008, an infectious disease specialist determined that Salakhov's symptoms indicated HIV infection at the fourth clinical stage, but reached a conclusion that there was no immediate need for hospitalization. Over the course of that month, Salakhov was taken back to the Central Hospital several times and both Salakhov and his mother requested to the Court that the Ukrainian government hospitalize and treat him as a matter of urgency given his condition and the lack of adequate medical treatment in detention. The request was granted, but doctors continued to indicate that he did not require hospitalization and the Ukrainian government failed to do so. On 20 June 2008, he was transferred to the Central Hospital, where he was handcuffed to his bed and kept in a ward under police guard. He and his lawyer continued to request his release, and the Bakhchysaray court repeatedly rejected such requests.

On 4 July 2008, the Bakhchysaray court found Salakhov guilty of fraud, instead of robbery, sentencing him to a fine instead of detention. However, he was to remain in detention until the decision was finalized. Despite continuous requests from Salakhov, Islyamova, and his lawyer, he remained handcuffed. The security measures were lifted on 18 July 2008, and Islyamova took him home. However, he was subsequently hospitalized again and died on 2 August 2008.

Following Salakhov's death, Islyamova complained of the level of care given to her son in detention, and the Ministry of Public Health set up a commission to investigate the matter. The commission found that the deterioration of his health was attributable to the disease itself. In addition, the Bakhchysaray prosecutor repeatedly refused to bring any criminal proceedings against the police or the Central Hospital's staff. However investigations were ongoing. The second applicant continued the claims of violations of Article 2 (right to life) regarding her son and violations of Article 3 (prohibition on torture) for both her son and for herself.

### Decision and Reasoning

The Court held that the application is admissible. Despite not having told the authorities as early as possible about his HIV status, which would have expedited treatment, the applicants lodged numerous requests for release on health grounds which fulfills the rule of exhaustion of domestic remedies.

The Court held that there was a violation of Article 3 (prohibition of torture) due to the Government not producing evidence of medical treatment. The applicant provided some specific submissions about the

deterioration of her son's health from March 2008. While there was no documentary evidence to support the claim, the Court noted that the applicant did seek to obtain files from the Government that were never produced. The Government also never provided any medical files to the Court regarding the time between February and May 2008. This amounted to a violation of Article 3.

The Court held that there was a violation of Article 3 regarding inadequate medical care for Salakhov in the Central Hospital. The Court noted that the Crimea Bureau for Forensic Medical Examinations found at least two times when Central Hospital medical staff underestimated the seriousness of his condition and denied needed hospitalization.

The Court held that there was a violation of Article 3 regarding the handcuffing of Salakhov in the hospital. He was handcuffed in the hospital for 28 days despite his clearly critical condition and the Chief Doctor stating that the first applicant needed to be unrestricted in his movements. The lack of security justification and the first applicant's poor health culminated in a violation of Article 3.

The Court found no violation of Article 2 for the applicant's deteriorating health before 5 June 2008. The Court noted that Article 2 (right to life) requires States to do "everything which could reasonably have been expected of them under the circumstances to protect the first applicant's life." The Court previously had held that the first applicant had hid his HIV status, and that the authorities only became aware of it as of 5 June 2008. The Court held that the first applicant's initial deterioration did not violate Article 2 as the initial deterioration was not life threatening and because the authorities were not aware of the first applicant's HIV status.

The Court held that there was a violation of Article 2 due to the events after 5 June 2008, in addition to the Article 3 violation discussed previously. The Court noted that the first applicant remained detained as his health deteriorated even though he posed no danger to the public. While the first applicant was only detained in a hospital, his handcuffing diminishes this fact as a counterbalance.

The Court held that there was a violation of Article 2 due to the authorities' lack of a proper investigation into the cause of Salakhov's death. The Court noted that the investigation was closed and reopened several times and lasted for over three and a half years. Criminal proceedings against the Central Hospital's doctors were ongoing as was an investigation into the detention facilities' staff. The Court noted several basic investigative failings as pointed out by the domestic courts. The Court stated that these failings point to an investigation not genuinely aimed at the truth.

The Court held that there was a violation of Article 3 regarding the second applicant's mental suffering. The Court emphasized the special parent-child bond and that the second applicant was helplessly forced to passively witness her son's deterioration for three months. This was reinforced by her active attempts to help him that were indifferently dismissed by the authorities.

The Court also held that the government failed to meet its obligations under Article 34 by not complying with the Court's interim measures of 17 June 2008.

## Decision Excerpts

"In order to establish whether the rule of exhaustion of domestic remedies has been respected, it suffices for the Court to note the numerous requests for release on health grounds lodged by the first applicant in June 2008 with the court dealing with his criminal case. Those requests, in the Court's view, clearly voiced the first applicant's fears for his life." Para. 97.

"As to the earlier deterioration of his health in the detention facilities and the lack of prompt and adequate medical care available to him there, in respect of which the Court has found a violation of Article 3 of the Convention (see paragraphs 126-139 above), the Court considers that it is not in a position to examine these issues from the standpoint of Article 2 also, for the following reasons. Firstly, it does not appear that at that stage the health of the first applicant had deteriorated to such an extent that it could be considered life-threatening, and, secondly, the administration of the detention facilities were not aware of his HIV status and the inherent risks." Para. 169.

"What matters for the Court is whether they did everything reasonably possible in the circumstances, in good faith and in a timely manner, to try to save the first applicant's life."

182. The Court considers that this is not the case given, in particular, the fact that the first applicant was denied urgent hospitalisation, which he required, for over two weeks; that he remained detained without any

justification and while in a critical health condition; and that he was subjected, contrary to doctorsâ€™ recommendations, to continuous handcuffing which further exacerbated his health condition.â€• Para 181-182.

â€œOverall, the Court discerns a number of factors in the present case which, taken together, indicate a breach of the second applicantâ€™s rights under Article 3 of the Convention. Namely, it notes: the parent-child bond between her and the first applicant; the activeness of her efforts to save his life or at least to alleviate his suffering; the cynical, indifferent and cruel attitude towards her appeals demonstrated by the authorities both before the first applicantâ€™s death and during its subsequent investigation; the fact that the second applicant had to witness the slow death of her son without being able to help him in any way; and, lastly, the duration of her inherent suffering for about three months.â€• Para 204.

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