

May 2016

Context: Russia's hidden public health crisis

Opioid substitution therapy (OST) or medication assisted therapy (MAT) provides people who use heroin or other opiates with a medicine to treat and stabilise opiate dependence. OST is the internationally recommended standard of care for opiate dependence and is used extensively around the world.¹ Since the early 1970's, OST has been banned in Russia in favour of State run abstinence programmes proscribing treatment protocols widely discredited by the international medical establishment and refuted by scientific evidence.² Within the Council of Europe, only Russia prohibits OST.³ In Central Asia, OST programs are available in all countries except Turkmenistan, Uzbekistan and Russia.⁴

Unsafe injecting drug use is a primary driver of HIV infection in Russia. An estimated 80% of all people living with HIV in Russia are current or former injecting drug users. In January 2016, the one millionth person was formally diagnosed with HIV in Russia, though actual figures are likely closer to 1.5 million. The head of the Russian Federation's AIDS Agency has described the crisis as a concentrated epidemic on the verge of becoming generalised. Without access to evidence-based prevention services including sterile needles and OST, people who inject drugs will continue to face perilous risk for infection, with estimated infection rates doubling in the next 4-5 years. The inability of this key population to access prevention and treatment services is compounded by the highly punitive measures meted out by law enforcement, including frequent arrest and incarceration. These trying circumstances led three brave individuals to pursue access to methadone as a legal remedy, without success, in Russia's domestic legal system. After four years of litigation and evidence collection, all three have taken their cases to Strasbourg, seeking a judgment against Russia's ban of methadone by the European Court of Human Rights (ECtHR).

Case Facts:

The ECtHR has joined the three cases together in order to consider the blanket ban on the provision of OST in Russia:

1. *Kurmanayevskiy v Russia* (application 62964/10)⁵

Alexy Kurmanayevskiy, who is both HIV and HCV positive, has been using drugs since 1995 and has had 19 unsuccessful drug treatment attempts, using all drug treatment methods available in Russia.

2. *Abduysheva v Russia* (application 58502/11)⁶

Irina Abduysheva Teplinskaya is an activist from Kaliningrad, who is both HIV and HCV positive and previously had tuberculosis. She spent 16 years in prison for drug crimes, and had five unsuccessful drug treatment attempts. The ECtHR granted Irina's case priority status.

3. *Anoshkin v Russia* (application 55683/13)⁷

Ivan Anoshkin is an activist from Togliatti who has HIV and HCV and previously had TB. He has been using drugs since 1998 and has had three unsuccessful drug treatment attempts in state facilities and several more in private rehabilitation centres. In November 2012, Ivan underwent mandatory drug treatment where he was tortured and beaten; these abuses were documented and presented with the application to the ECtHR.

* The International Centre on Human Rights and Drug Policy is a leading centre for research and teaching on the intersections of human rights and international drug control law. The Centre is based at the Human Rights Centre, University of Essex. For more details about the centre's work and the cases, see here: www.hr-dp.org

The Canadian HIV/AIDS Legal Network is one of the leading organizations tackling the legal and human rights issues related to HIV. More information is available here: <http://www.aidslaw.ca/site/>

1. WHO/UNODC/UNAIDS position paper, *Substitution maintenance therapy in the management of opioid dependence and HIV/AIDS prevention*, 2004
2. OST was first banned by a Ministry of Health order and later banned in 1998 by the Federal Law.
3. According to most recent reports, OST is not delivered by public health services in the Principality of Monaco, but there is no prohibition on its use.
4. HRI (2014), *Global State of Harm Reduction 2014*. Harm Reduction International, London, online: <http://www.ihra.net/files/2015/02/16/GSHR2014.pdf>
5. Represented by Irina Vladimirovna
6. Represented by Mikhail Golichenko
7. Represented by Mikhail Golichenko

Applicants' main arguments:

All three applicants have alleged that the ban on OST by the Russian government interferes with their human rights as guaranteed in the European Convention on Human Rights (ECHR). In particular, the applicants have alleged breaches of Article 3 (prohibition of torture), Article 8 (right to respect for private and family life) and Article 14 (prohibition of discrimination).

The applicants argue that the cumulative effects of Russia's deliberate decision to deny access to OST and the impact of that decision on a group (people who use drugs) who are already vulnerable and in need of special protection, are in breach of Article 3 ECHR. Under Article 3, vulnerable groups are in need of special protection, and people who use drugs in Russia are an historically and systematically marginalised group.⁸ Actions by the Russian Federation in their ban of OST have led to an extreme deprivation for this group that is incompatible with human dignity and meets the minimum threshold of severity to engage Article 3.⁹

The applicants also argue that the ban of methadone, as set out in Article 31(1) and (6) of the Russian Federal Law on Narcotic Drugs and Psychotropic Substances, denies access to essential treatment to stabilize their health condition, thus help in stabilizing their private life. They argue the legal ban amounts to discrimination in connection with their health status and is in violation of Article 14 when read with Article 8 ECHR. Discrimination on the basis of health status falls within Article 14,¹⁰ and the applicants argue this must include chronic opioid dependence. The applicants allege that they are treated differently from those in an analogous situation, such as those with chronic conditions like diabetes, asthma or heart disease, who are permitted access to the necessary pharmacological maintenance therapies. Further, although there is a margin of appreciation, where a restriction relates to vulnerable groups, the Court has held that there must be weighty reasons for such a restriction.¹¹ Given the strong consensus on OST within the Council of Europe and the fact that people who use drugs are a vulnerable group, the applicants argue any margin of appreciation must be very narrow.

The position of the Russian Federation:

The Russian government argues that the prohibition of OST protects the health and life of Russians and their right to the highest attainable physical and mental health. They base this argument on the risk of mortality from OST and the diversion of OST to the illegal market, as well as arguing that OST merely replaces one illegal substance with another, when they advocate complete withdrawal from all narcotic drugs. They argue that in previous cases the ECtHR has left matters of health policy to domestic authorities and health practitioners as they are in the best position to strike a fair balance between the competing interests of the applicants and the community as a whole.¹²

Significance of the decision:

A decision in favour of the applicants would be a significant decision from the ECtHR because it will be the first legally binding decision which recognises people who use drugs as a vulnerable group, entitled to enhanced protection. However, this will not be a decision out of character with the ECtHR's previous jurisprudence, as a decision in favour of the applicants would be in keeping with the ECtHR's previous interpretation of articles 3, 8 and 14 of the Convention.

On the specific issue of drug use and access to evidence based treatment, this case will mark the first time an international human rights body has formally considered an individual case to assess the nature of a State's obligations related to the provision of medicines to ensure humane drug policy. It would also be the first time that an individual who uses drugs successfully secured justice in an international forum for a human rights violation arising from a national drug policy that denies access to essential medicines, including key HIV and TB prevention interventions.¹³

Further, although UN treaty bodies, UN special procedures, medical experts and NGOs have presented evidence about the Russian Federation's unscientific approach to drugs, a decision in favour of the applicants would be the first time Russia is confronted with a legally binding decision that their drug policy is out of step with European standards and international human rights obligations.

8. M.S.S. v Belgium and Greece, No 30696/09, Judgment of 21 January 2011, paras 251-263

9. R.R. v Poland, No 27617/04, Judgment of 26 May 2011, para 151; Opuz v Turkey, No 33401/02, Judgment of 9 June 2009, para 162

10. Kiyutin v Russia, No. 2700/10 Judgment of 10 March 2011, para 57

11. Kiyutin v Russia, para 64

12. Russian submission 150302, page 55

13. Human rights violations arising from national drug policies have been considered tangentially in the context of due process rights in relation to the conduct of arrest and trial proceedings in cases including Vanyan v Russia, no 53203/99, Judgment of 15 December 2005; Khudobin v Russia, 59696/00, Judgment of 26 June 2006; and Denis Mateyev v Russian Federation, Working Group on Arbitrary Detention, Opinion No. 8/2013, U.N. Doc. A/HRC/WGAD/2013/8 (2013).

May 2016

Annex: Case Timeline

May 2014	<p>The ECtHR joined the three cases and formally communicated the cases to Russia with two substantive questions:</p> <ol style="list-style-type: none">1. Was there a violation of the applicants' right to respect for their private life guaranteed by Article 8 of the Convention? In particular:<ul style="list-style-type: none">» Does the absolute ban on drug addiction treatment by substitution therapy using methadone and buprenorphine in the Russian Federation provide for fair balance between the State's obligation to protect the life and health of the persons under its jurisdiction, by way of regulation of access to narcotic substances, on the one part, and the applicants' interest in access to the medicines which could help their cure of drug addiction, on the other part» What were the reasons for absolute ban on substitution therapy treatment method in the Russian Federation?2. Were the applicants subjected to discrimination in connection with their health state in violation of Article 14 of the Convention, taken in conjunction with Article 8 of the Convention, in connection with a ban on drug addiction treatment using methadone and buprenorphine?
October 2014	<p>Third party interventions and evidence submitted in support of the applicants including from:</p> <ul style="list-style-type: none">» United Nations Special Rapporteur on Torture, Juan Mendez» European Opiate Addiction Treatment Association (EUROPAD)» Canadian HIV/AIDS Legal Network, Harm Reduction International and Eurasian Harm Reduction Network» Human Rights Watch» International Doctors for Healthier Drug Policies» Joint UN Programme on HIV/AIDS (UNAIDS); and» UN Secretary-General's Special Envoy on HIV/AIDS in Eastern Europe and Central Asia.
December 2014	<p>The Russian government responded to the ECtHR</p>
February 2015	<p>The applicants responded to rebut the factual inaccuracies in the Russian government's response.</p>
September 2014	<p>The applicants also provided additional information in relation to breaches of Article 34 of the ECHR. Article 34 allows individuals to bring a claim to the ECtHR and requires a State party to the ECHR to not hinder that right. Following the applications by Abdyusheva and Anoshkin both have been subject to negative treatment from the Russian authorities including unwarranted arrest and detention and unwarranted investigation of their place of employment respectively. The applicant's argued that these practices were an attempt to intimidate them into dropping their cases.</p>
March 2015	<p>The Russian Government responded to the third party interventions.</p>
October 2015 – February 2016	<p>Third party interventions and evidence was submitted to the ECtHR in support of the Russian Government from four Russian NGOs: Independent Narcological League, Rehabilitation Centers of North Caucasus, Rehabilitation Centers "Healthy Stavropolie", St. John of Kronshtadt Metropolitan rehabilitation centre "Voskresenie". All interveners opposed OST in favor of abstinence-based treatment).</p>
February 2016	<p>ECtHR agreed to consider a third party intervener's status to the International Congress of drug free rehabilitation centers – an NGO which was formed with the government's financial support in Moscow on December 2, 2015 as well as another NGO founded by the government's former Chief Drug Treatment Doctor.</p>
March 2016	<p>The European Court notified the applicants that the European Court refused to grant status to the proposed interveners and the cases are now, once again, closed for communications.</p>