



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

FIRST SECTION

CASE OF DANILIN v. RUSSIA

(Application no. 4176/03)

JUDGMENT

STRASBOURG

16 September 2010

FINAL

16/12/2010

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

In the case of Danilin v. Russia,

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

Christos Rozakis, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 26 August 2010,

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

PROCEDURE

1. The case originated in an application (no. 4176/03) 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 Zakhar Olegovich Danilin (“the applicant”), on 8 January 2003.

2. The applicant was represented by Mr Oleg Danilin, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mrs V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the conditions of his detention had been appalling, that his pre-trial detention had been unlawful, that the criminal proceedings against him had been unfair and the authorities had erred in application of the domestic law.

4. On 5 April 2007 the President of the First Section decided to communicate the complaint concerning the applicant's conditions of detention to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1979 and lives in Moscow.

A. Criminal proceedings against the applicant

6. In April 2000 the authorities brought criminal proceedings against the applicant on suspicion of robbery. During the trial the applicant was also accused of theft.

7. By a judgment of 20 July 2001 the Zelenogradskiy District Court ("the District Court") convicted the applicant on both counts.

8. The applicant appealed against the judgment and on 23 October 2001 the Moscow City Court ("the City Court") quashed the conviction on appeal and remitted the case for a fresh examination at the first instance.

9. On 4 June 2002 the District Court again convicted the applicant of robbery and theft and sentenced him to nine years' imprisonment.

10. The applicant's appeal against the judgment was dismissed by the City Court on 9 July 2002.

11. On 15 April 2004 the City Court, acting by way of supervisory review, upheld the judgment of 4 June and the decision of 9 July 2002 in part relating to the count of robbery and quashed the rest of the applicant's conviction.

12. The court established that there had been various irregularities in the criminal proceedings in so far as they related to the count of theft and, in particular, the fact that the applicant had not been given a reasonable opportunity to prepare his defence and state his case properly. The applicant was accordingly acquitted on this charge and the overall sentence was reduced to five years.

B. The applicant's conditions of detention prior to the criminal proceedings

13. The applicant was taken into custody by the authorities on 6 April 2000 and remained in pre-trial detention until 19 July 2002.

14. From 6 April 2000 to 26 July 2001 and from 22 November 2001 to 9 June 2002 the applicant was held in pre-trial detention centre IZ-77/5 in the city of Moscow ("SIZO no.5").

15. From 26 July to 22 November 2001 and from 9 June to 19 July 2002 the applicant was detained in pre-trial detention centre IZ-77/3 in the city of Moscow ("SIZO no. 3")

1. The applicant's account

16. The applicant submitted that throughout his detention the cells in SIZO no. 5 and SIZO no. 3 had been heavily overcrowded and that the prisoners had had to take turns to sleep.

17. In both prisons the cells were dirty and lacked ventilation. The applicant also submits that the food was of poor quality.

2. The Government's account

18. In respect of SIZO no. 5 the Government submitted that the applicant had been held in cells 205 (measuring 25.3 square metres and containing two windows and ten sleeping places), 303 (measuring 37.1 square metres and containing three windows and fourteen sleeping places), 312 (measuring 33.5 square metres, containing two windows and twelve sleeping places), 322 (measuring 27.4 square metres) and 403 (measuring 36.8 square metres, containing three windows and fourteen sleeping places).

19. The Government were unable to provide the Court with original documentation concerning numbers of prisoners detained in SIZO no. 5 along with the applicant. They relied on record no. 50/5-8 dated 31 March 2006 of the administration of SIZO no. 5 confirming the destruction of the relevant prison records in this respect.

20. As to SIZO no. 3, the Government submitted that the applicant had been detained in cells 213 (measuring 28.5 square metres, containing two windows and twenty-eight sleeping places) and 608 (measuring 32.7 square metres, containing two windows and thirty-two sleeping places.)

21. The Government submitted that there had been twenty-five to twenty-eight detainees in cell 213 along with the applicant and were unable to provide information in respect of detainees in cell no. 608. They relied on record no. 176 dated 16 February 2004 issued by administration of SIZO no. 3 and confirming the destruction of the relevant prison records.

22. The Government submitted that the applicant had been provided at all times with an individual sleeping place and bed linen. All cells had been naturally and artificially ventilated and lit. The cells had been equipped with heating devices and regularly cleaned with toilet facilities having been partitioned with a wall. The applicant underwent regular medical examinations.

II. RELEVANT DOMESTIC LAW

A. Rules on the prison regime in pre-trial detention centres (as approved by Ministry of Justice Decree no. 148 of 12 May 2000)

23. Rule 42 provided that all suspects and accused persons in detention had to be given, among other things: a sleeping place; bedding, including a mattress, a pillow and one blanket; bed linen, including two sheets and a pillow case; a towel; tableware and cutlery, including a bowl, a mug and a spoon; and clothes appropriate to the season (if the inmate had no clothes of his own).

24. Rule 44 stated that cells in pre-trial detention centres were to be equipped, among other things, with a table and benches to seat the number of inmates detained there, sanitation facilities, running water and lighting for use in the daytime and at night.

25. Rule 46 provided that prisoners were to be given three hot meals a day, in accordance with the norms laid down by the Government of Russia.

26. Under Rule 47 inmates had the right to have a shower at least once a week for at least fifteen minutes. They were to receive fresh linen after taking their shower.

27. Rule 143 provided that inmates could be visited by their lawyer, family members or other persons, with the written permission of an investigator or an investigative body. The number of visits was limited to two per month.

B. Order no. 7 of the Federal Service for the Execution of Sentences dated 31 January 2005

28. Order no. 7 of the Federal Service for the Execution of Sentences of 31 January 2005 deals with the implementation of the “Pre-trial detention centres 2006” programme.

29. The programme is aimed at improving the functioning of pre-trial detention centres so as to ensure their compliance with the requirements of Russian legislation. It expressly acknowledges the issue of overcrowding in pre-trial detention centres and seeks to reduce and stabilise the number of detainees in order to resolve the problem.

30. Amongst those affected, the programme mentions pre-trial detention centres SIZO no. 3 and SIZO no. 5. In particular, the programme states that on 1 July 2004 SIZO no. 3 had a capacity of 1,109 inmates and in reality housed 1,562 detainees, in other words, 48.9% more than the permitted number. The programme also mentions SIZO no. 5, stating that on 1 July 2004 the detention centre had a capacity of 1,117 inmates but actually housed 1,495 detainees, or 33.8% more than the permitted number.

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

31. The relevant extracts from the General Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the CPT”) read as follows:

Extracts from the 2nd General Report [CPT/Inf (92) 3]

“46. Overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of

overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.

47. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners ... [P]risoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature ...

48. Specific mention should be made of outdoor exercise. The requirement that prisoners be allowed at least one hour of exercise in the open air every day is widely accepted as a basic safeguard ... It is also axiomatic that outdoor exercise facilities should be reasonably spacious ...

49. Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment ...

50. The CPT would add that it is particularly concerned when it finds a combination of overcrowding, poor regime activities and inadequate access to toilet/washing facilities in the same establishment. The cumulative effect of such conditions can prove extremely detrimental to prisoners.

51. It is also very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends. The guiding principle should be the promotion of contact with the outside world; any limitations upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations ...”

Extracts from the 7th General Report [CPT/Inf (97) 10]

“13. As the CPT pointed out in its 2nd General Report, prison overcrowding is an issue of direct relevance to the Committee's mandate (cf. CPT/Inf (92) 3, paragraph 46). An overcrowded prison entails cramped and unhygienic accommodation; a constant lack of privacy (even when performing such basic tasks as using a sanitary facility); reduced out-of-cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff. This list is far from exhaustive.

The CPT has been led to conclude on more than one occasion that the adverse effects of overcrowding have resulted in inhuman and degrading conditions of detention ...”

Extracts from the 11th General Report [CPT/Inf (2001) 16]

“28. The phenomenon of prison overcrowding continues to blight penitentiary systems across Europe and seriously undermines attempts to improve conditions of

detention. The negative effects of prison overcrowding have already been highlighted in previous General Reports ...

29. In a number of countries visited by the CPT, particularly in central and eastern Europe, inmate accommodation often consists of large capacity dormitories which contain all or most of the facilities used by prisoners on a daily basis, such as sleeping and living areas as well as sanitary facilities. The CPT has objections to the very principle of such accommodation arrangements in closed prisons and those objections are reinforced when, as is frequently the case, the dormitories in question are found to hold prisoners under extremely cramped and insalubrious conditions ... Large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives ... All these problems are exacerbated when the numbers held go beyond a reasonable occupancy level; further, in such a situation the excessive burden on communal facilities such as washbasins or lavatories and the insufficient ventilation for so many persons will often lead to deplorable conditions.

30. The CPT frequently encounters devices, such as metal shutters, slats, or plates fitted to cell windows, which deprive prisoners of access to natural light and prevent fresh air from entering the accommodation. They are a particularly common feature of establishments holding pre-trial prisoners. The CPT fully accepts that specific security measures designed to prevent the risk of collusion and/or criminal activities may well be required in respect of certain prisoners ... [E]ven when such measures are required, they should never involve depriving the prisoners concerned of natural light and fresh air. The latter are basic elements of life which every prisoner is entitled to enjoy ...”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

32. The applicant complained that the conditions of his detention pending criminal proceedings had been deplorable. The Court will examine these grievances under Article 3, which provides as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A. Submissions of the parties

33. The Government submitted that the applicant had failed to exhaust available domestic remedies. According to them, he could have applied to the domestic courts with claims for compensation in respect of any non-pecuniary damage allegedly resulting from the conditions of his detention. The Government also considered that the conditions of detention in the prisons concerned had not been incompatible with Article 3 of the Convention.

34. The applicant disagreed, and maintained his complaints.

B. The Court's assessment

1. Admissibility

35. In as much as the Government claim that the applicant has not complied with the rule on exhaustion of domestic remedies, the Court finds that the Government have not specified with sufficient clarity the type of action which would have been an effective remedy in their view, nor have they provided any further information as to how such action could have prevented the alleged violation or its continuation or provided the applicant with adequate redress. Even if the applicant, who at the relevant time was still in detention pending trial, had been successful, it is unclear how the claim for damages could have afforded him immediate and effective redress. In the absence of such evidence and having regard to the above-mentioned principles, the Court finds that the Government have not substantiated their claim that the remedy or remedies the applicant allegedly failed to exhaust were effective ones (see, among other authorities, *Kranz v. Poland*, no. 6214/02, § 23, 17 February 2004, and *Skawinska v. Poland* (dec.), no. 42096/98, 4 March 2003). For the above reasons, the Court finds that this part of the application cannot be rejected for non-exhaustion of domestic remedies (see also *Popov v. Russia*, no. 26853/04, §§ 204-06, 13 July 2006; *Mamedova v. Russia*, no. 7064/05, §§ 55-58, 1 June 2006; and *Kalashnikov v. Russia* (dec.), no. 47095/99, ECHR 2001-XI (extracts)).

36. In the light of the parties' submissions, the Court finds that the applicant's complaints raise serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring them inadmissible have been established.

2. Merits

37. Having observed the documents submitted by the parties, the Court finds that the case file contains sufficient documentary evidence to confirm the applicant's allegations of severe overcrowding in pre-trial detention facilities SIZO no. 3 and SIZO no. 5 in Moscow, which is in itself sufficient to conclude that Article 3 of the Convention has been breached.

38. The Court would note that as regards both detention centres the existence of a deplorable state of affairs may be inferred from the information contained in Order no. 7 of the Federal Service for the Execution of Sentences of 31 January 2005 (see paragraphs 28 and 30

above), which expressly acknowledges the issue of overcrowding in these detention centres in 2004.

39. The Court also observes that in its judgments in the cases of *Belevitskiy v. Russia*, no. 72967/01, §§ 73-79, 1 March 2007; *Benediktov v. Russia*, no. 106/02, §§ 31-41, 10 May 2007; *Igor Ivanov v. Russia*, no. 34000/02, §§ 30-41, 7 June 2007; *Sudarkov v. Russia*, no. 3130/03, §§ 40-51, 10 July 2008; *Belashev v. Russia*, no. 28617/03, §§ 50-60, 4 December 2008; *Novinskiy v. Russia*, no. 11982/02, §§ 106-08, 10 February 2009; *Bychkov v. Russia*, no. 39420/03, §§ 33-43, 5 March 2009; and *Buzhinayev v. Russia*, no. 17679/03, §§ 26-36, 15 October 2009, it has previously examined the conditions of detention in SIZO no. 3 in 2000-2003 and found them to have been incompatible with the requirements of Article 3 of the Convention on account of severe overcrowding.

39. Since the Government did not support its own submissions with reference to any original documentation, the Court is prepared to accept the indications given as sufficient confirmation of the applicant's point that the overcrowding of cells was a problem in both detention facilities at the time the applicant was detained there.

40. The Court has frequently found a violation of Article 3 of the Convention on account of a lack of personal space afforded to detainees (see *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-X (extracts); *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; and *Peers v. Greece*, no. 28524/95, §§ 69 et seq., ECHR 2001-III).

41. Having regard to its case-law on the subject and the material submitted by the parties, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. Although in the present case there is no indication that there was a positive intention to humiliate or debase the applicant, the Court finds that the fact that the applicant had to spend two years, three months and thirteen days in overcrowded cells in SIZO no. 3 and SIZO no. 5 in Moscow was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and to arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.

42. There has therefore been a violation of Article 3 of the Convention as the Court finds the applicant's detention to have been inhuman and degrading within the meaning of this provision.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

43. In so far as the applicant also complained that his detention had been unlawful, the Court notes that these grievances have been brought too late. The applicant was convicted at first instance on 14 June 2002, whilst the application in this connection was introduced on 8 January 2003, which is more than six months later. In addition, the applicant failed to raise these complaints before the competent domestic authorities, as required by Article 35 § 1 of the Convention.

44. As regards the proceedings in his criminal case, the applicant complained that his trial had been unfair, that the courts had assessed the evidence and interpreted the domestic law wrongly and had used inadmissible evidence for his conviction. In this connection the Court reiterates that it is not its function to deal with errors of fact or of law allegedly committed by national courts unless and in so far as they may have infringed rights and freedoms protected by the Convention. While Article 6 guarantees the right to a fair hearing, it does not lay down any rules on the admissibility and assessment of evidence, which are primarily a matter for regulation under national law (see, among other authorities, *Khan v. the United Kingdom*, no. 35394/97, § 34, ECHR 2000-V). Furthermore, it is not the role of the Court to determine, as a matter of principle, whether a particular piece of evidence is necessary or essential to decide a case (see, for example, *Elsholz v. Germany* [GC], no. 25735/94, § 66, ECHR 2000-VIII) or, indeed, whether or not the applicant is guilty. The question which must be answered is whether the alleged defects impaired the fairness of the proceedings, taken as a whole. On the basis of the materials submitted by the applicant, the Court notes that he, personally and through his defence counsel, was fully able to present his case and contest the evidence that he considered false. Having regard to the facts as submitted by the applicant, the Court has not found any reason to believe that the proceedings did not comply with the fairness requirement of Article 6 of the Convention.

46. It follows that this part of the application should be rejected pursuant to Article 35 §§ 1, 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The applicant claimed compensation of 50,000 euros (EUR) in respect of non-pecuniary damage.

49. The Government submitted that this claim was unfounded and generally excessive.

50. The Court considers that the applicant must have sustained stress and frustration as a result of the violation found. Making an assessment on an equitable basis, the Court awards the applicant EUR 13,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

51. The applicant also claimed 5,650 United States dollars (USD) and 31,000 Russian roubles (RUB) for the legal costs incurred in the domestic proceedings before the Court.

52. The Government contested the applicant's claim.

53. 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. Having regard to the material in its possession, the Court considers it reasonable to award the applicant the sum of EUR 300 for the legal expenses incurred in relation to the proceedings before the Court, plus any tax that may be chargeable to the applicant on that amount.

C. Default interest

54. The Court considers it appropriate that the default interest 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 complaint concerning the conditions of the applicant's detention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *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 13,500 (thirteen thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage and EUR 300 (three hundred euros) in respect of legal costs, plus any tax that may be chargeable to the applicant, both sums to be converted into Russian roubles at the rate applicable on 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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 16 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President