



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

FIRST SECTION

CASE OF ALEKSANDR LEONIDOVICH IVANOV v. RUSSIA

(Application no. 33929/03)

JUDGMENT

STRASBOURG

23 September 2010

FINAL

11/04/2011

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

In the case of Aleksandr Leonidovich Ivanov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 2 September 2010,

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

PROCEDURE

1. The case originated in an application (no. 33929/03) 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 Aleksandr Leonidovich Ivanov (“the applicant”), on 10 September 2003.

2. The applicant was represented by Ms T. Ivanova, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Ms V. Milinchuk and then by Mr A. Savenkov, the then Representative and acting Representative of the Russian Federation at the European Court of Human Rights respectively.

3. On 7 January 2008 the President of the First Section decided to give notice of the application to the Government. It was decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1 of the Convention).

4. The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government's objection, the Court dismissed it.

THE FACTS

5. The applicant was born in 1981 and is serving a prison term in the Ryazan Region.

A. Criminal proceedings against the applicant

6. The applicant was a student of a State University, which trained law enforcement officers. On 3 March 2001 the applicant was arrested on suspicion of murder. By a judgment of 23 April 2002, the Omsk Regional Court convicted the applicant of theft and murder, and sentenced him to seventeen years' imprisonment. On 10 April 2003 the Supreme Court of the Russian Federation upheld the judgment.

B. Conditions of detention in the remand centre

1. The applicant's account

7. From 5 to 13 March 2001 the applicant was detained in a temporary detention centre in the town of Omsk. From 14 March 2001 to 10 June 2003 the applicant was detained in Omsk remand centre no. 55/1.

8. According to the applicant, he was kept in the remand centre in cell no. 163 (designed for eight persons) together with at least twenty other inmates. Owing to an insufficient number of beds, they had to sleep in shifts. The cell windows were covered with metal shutters that barred access to natural light and air. In 2003 the applicant was kept in the cell together with eight to ten other persons.

9. The applicant subsequently indicated that in 2001-02 he had been afforded less than two square metres of living space in the cell. The toilet was not separated from the living area. In the absence of any ventilation, the smell spread into the cell. He also alleged that on the days of court hearings in April 2001 he had to get up at 4 a.m. and was taken back at 8 p.m. without any food or drink.

2. The Government's account

10. The applicant was kept in the remand centre from 15 March 2001 to 10 June 2003. The applicant was placed in cell no. 163, which measured twenty-one square metres and had five beds. This cell was assigned to former law enforcement officers, who had to be kept separately from the other (potentially hostile) detainees. With reference to certificates issued in February 2008 by the acting director of the remand centre, the Government stated that this cell had accommodated three to five detainees during the relevant periods. In support of the above, the Government enclosed statements made in 2008 by three officers serving in the remand centre, who confirmed that the above information was correct and that the conditions of the applicant's detention during the relevant periods had been appropriate. The Government also enclosed a statement made in 2008 by a convict who had been detained in cell no. 163 from April to July 2001. This person

stated that during that period there had been five beds and only four detainees and that the material conditions had been acceptable. A similar statement was made in 2008 by another detainee who had been kept in that cell from December 2002 to February 2003.

11. From 30 August to 4 September 2002 the applicant was also kept in cell no. 53, which measured 4.8 square metres and had one bed.

12. According to the Government, the applicant was provided with an individual bed and bedding in both cells. He had access to a shower once a week. He had daily outdoor walks. The metal shutters on the cell window(s) were aimed at preventing inter-cell communication and did not impede access to natural light. The works for removing the shutters were carried out between November 2002 and March 2003.

13. On the days when investigative measures were carried out or hearings were held (June 2001 – September 2002), the applicant had had to get up 6 a.m. and was taken back to the cell before 10 p.m. On those days, he had been fed and had also been able to take food bought by him or received from next of kin.

14. As can be seen from the certificate submitted by the Government, the cell record cards for October 2000 – October 2002 were destroyed on 8 August 2004 after the expiry of the one-year retention period. The registers concerning the population of the remand centre between July 2001 and December 2003 were destroyed on 30 August 2004 after the expiry of the one-year retention period.

15. The following data is given on one of the certificates submitted by the director of the remand centre. The “maximum design capacity” of the remand centre was 1,025 detainees. Between December 2002 and 2004 the design capacity went up to 1,515 detainees owing to the construction of new buildings. As can be seen from another certificate, in 2001 the remand centre accommodated an average of 2,685 persons (to 2,887 beds); in 2002 the figure was 1,999 persons (to 2,305 beds) and in 2003 there were 1,905 persons (to 2,305 beds).

3. Complaints to national authorities

16. The applicant complained to the prosecutor's office of the Omsk Region alleging that he had been ill-treated at the temporary detention centre and that his state of health had deteriorated while in detention. On 11 April 2001 the prosecutor's office rejected his complaints as unfounded. By a letter of 18 December 2003, the prosecutor's office rejected the applicant's further complaint concerning conditions of detention and stated, in particular, that his state of health had been satisfactory, except for a slight deterioration of his eyesight.

17. In February 2004 the applicant complained to the Regional Department for the Execution of Sentences about the allegedly degrading conditions of his detention, referring in particular to the overpopulation in

the remand centre and lack of access to natural light and airflow in the cells. By a letter of 2 March 2004, the Penitentiary Office acknowledged the overpopulation problem in “certain cells” in the remand centre in 2001 and 2002 and stated that in 1999 the metal shutters had been partly removed from the cell windows and had been completely removed in March 2003.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

18. The applicant complained that the conditions of his detention in Omsk remand centre no. 55/1, where he had been detained from March 2001 to June 2003, had been in breach of Article 3 of the Convention, which reads as follows:

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

A. Admissibility

19. The Government considered that only the period of detention from 10 March to 10 June 2003 fell within the scope of the six-month rule under Article 35 § 1 of the Convention. They also submitted that the applicant, who was at the time assisted by a lawyer, should have exhausted domestic remedies by lodging a complaint before a prosecutor's office or a civil action for compensation in respect of pecuniary and/or non-pecuniary damage caused by the conditions of detention.

20. The applicant made no specific comment.

21. As to the exhaustion of domestic remedies, the Court first observes that the applicant did raise his grievance about the conditions of detention before various national authorities (see paragraphs 16 and 17 above). As to a complaint to a prosecutor's office or an eventual civil action for damages, the Court has already examined the same argument by the Russian Government and dismissed it in a number of cases (see, among others, *Benediktov v. Russia*, no. 106/02, § 30, 10 May 2007, and *Matyush v. Russia*, no. 14850/03, § 47, 9 December 2008). Nothing in the Government's submissions in the present case persuades the Court to depart from that finding. It therefore concludes that this complaint cannot be rejected for failure to exhaust domestic remedies.

22. Moreover, given that the applicant was kept in the remand centre from March 2001 to June 2003, he should be considered as having complied

with the six-month rule by lodging on 10 September 2003 a complaint before the Court about conditions of detention there.

23. The Court concludes that this complaint 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.

B. Merits

1. The parties' submissions

24. The Government argued that the applicant had failed to provide any *prima facie* evidence, for instance statements from cellmates in support of his allegations of appalling conditions of detention, in particular on account of the alleged overcrowding problem. The applicant had been detained most of the time in a cell assigned to former law enforcement officers. The admission made by the Penitentiary Office did not specifically concern the cell(s) in which he had been detained (see paragraph 17 above). For their part, the Government had substantiated their refutation of the above allegations with reference to statements made by public officials issued in the domain of their competence and being aware of criminal liability for forgery of official documents (see paragraphs 10 - 14 above). There was no legitimate reason to doubt their authenticity or credibility. The Government also explained that the relevant logbooks or registers of the remand centre had already been destroyed owing to the expiry of their retention period(s).

25. The applicant maintained his complaint.

2. The Court's assessment

(a) General principles

26. The Court reiterates that for treatment to be regarded as degrading or inhuman for the purposes of Article 3 of the Convention it must attain a minimum level of severity (see *Price v. the United Kingdom*, no. 33394/96, § 24, ECHR 2001-VII). When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as the specific allegations made by the applicant. This being so, the Court cannot decide, once and for all, how much personal space should be allocated to a detainee in terms of the Convention (see *Trepashkin v. Russia*, no. 36898/03, § 92, 19 July 2007).

27. The Court further reiterates that allegations of ill-treatment must be supported by appropriate evidence. In assessing evidence, the Court has generally applied the standard of proof “beyond reasonable doubt” (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25).

However, such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact. Convention proceedings, such as those arising from the present application, do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), as in certain instances the respondent Government alone have access to information capable of corroborating or refuting allegations. Failure on a Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of the applicant's allegations (see *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

(b) Application of the principles in the present case

28. The Court observes that the applicant did not maintain any particular allegations concerning cell no. 53. As to cell no. 163, apparently assigned at the time to former law enforcement officers, the Court observes that the parties are in disagreement as to the conditions of detention, but not regarding the cell size (twenty-one square metres).

29. It can be seen from the Government's submissions that the applicant was afforded no less than four square metres of the cell space, given that the cell population never exceeded five persons. The applicant, however, insisted that the cell population, especially in 2001 and 2002, had varied between eight and twenty persons, so that he had normally not been afforded more than two square metres of cell space.

30. The Court first reiterates that the national authorities acknowledged that some unspecified cells in 2001 and 2002 were overpopulated by national standards (see paragraph 17 above). The applicant relied on the above information when he raised the related complaint before this Court.

31. The Court further notes that, in their turn, the Government submitted that the primary evidence concerning the number of inmates in the cells had been destroyed owing to the expiry of the retention period (see paragraph 14 above). While it has not been alleged that the relevant registers were destroyed in breach of the time limits set in the national legislation, it was not explained why the register concerning the year 2003 had been destroyed already in August 2004 (see paragraph 14 above).

32. Furthermore, in their plea concerning the number of detainees, the Government relied on statements by the facility's acting director indicating the number of the applicant's fellow inmates. While accepting that the facility's registers had been destroyed, the Court considers it extraordinary that years after the applicant's detention in that facility had come to an end, the prison staff were able to recollect the exact number of inmates that had been detained there with the applicant. In view of the above, the prison staff's certificates are therefore of little evidential value for the Court (see,

for a similar approach, *Vlasov v. Russia*, no. 78146/01, § 93, 12 June 2008, and *Kokoshkina v. Russia*, no. 2052/08, § 60, 28 May 2009).

33. At the same time, it cannot be overlooked that despite the unavailability of the relevant registers the Government were able in 2008 to identify the applicant's co-inmates at the time and to produce their written statements in support of the Government's position concerning the conditions of detention in 2001-2003. Those persons stated that the conditions of detention had been acceptable and that there had been no problem of limited living space in the cell or any shortage of individual beds.

34. The applicant made no specific comment on the authenticity and reliability of those statements. It is also noted that there is no indication that, during the relevant period of detention or later, the applicant, who was assisted by a lawyer, sought to obtain any witness statements in support of his allegations of unsatisfactory conditions of detention. However, making a global assessment of all the available information, in particular that referred to in paragraph 15 above, the Court cannot overlook that in 2004 the national authorities acknowledged the existence of the overpopulation problem in the remand centre during 2001 and 2002 (see also *Matyush*, cited above, §§ 51-59, concerning the same detention facility during the relevant periods). Various certificates and reports supplied by the Government furnish contradictory information as to whether or not the actual population of the remand centre exceeded its design capacity by national standards or the number of beds (see paragraph 15 above). Thus, as the Government have not adduced appropriate and conclusive evidence, the Court considers that the applicant was affected by the general overpopulation problem in the remand centre.

35. In view of the foregoing assessment, having regard to the applicant's allegations, the Court finds that during the major part of his detention in the remand centre he was afforded at times less than two square metres of cell space. In addition, while there is insufficient evidence that the deterioration of his eyesight was due to the conditions of detention, the Court accepts that the applicant endured certain inconveniences owing to the presence of metal shutters on the window(s) of the cell.

36. The Court reiterates that in a number of cases the lack of personal space afforded to detainees in Russian remand centres was so extreme as to justify, in itself, a finding of a violation of Article 3 of the Convention. In those cases applicants were usually afforded less than three square metres of personal space (see, for example, *Lind v. Russia*, no. 25664/05, § 59, 6 December 2007; *Kantyrev v. Russia*, no. 37213/02, §§ 50-51, 21 June 2007; *Andrey Frolov v. Russia*, no. 205/02, §§ 47-49, 29 March 2007; *Labzov v. Russia*, no. 62208/00, § 44, 16 June 2005; and *Mayzit v. Russia*, no. 63378/00, § 40, 20 January 2005).

37. The foregoing considerations are sufficient to enable the Court to conclude that the conditions of the applicant's detention between March 2001 and June 2003 amounted to inhuman and degrading treatment. There has accordingly been a violation of Article 3 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

38. The applicant also complained under Article 3 of the Convention that he had been detained in the temporary detention centre with persons who were hostile to law enforcement officers and that he had been beaten up by police officers or interrogators. He complained that he had had to study the case file over three days without rest or food, in the presence of the investigator and convoy officers. He alleged that the length of the criminal proceedings and his pre-trial detention had been in breach of Article 3. The applicant also complained under Article 5 of the Convention about his detention until in April 2002. Lastly, he complained mainly under Article 6 of the Convention of a number of alleged irregularities, which, in his view, had made his trial unfair.

39. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. 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

41. Referring to the unfairness of his trial, the applicant claimed 10,000 euros (EUR) for each month of his detention since 5 March 2001 and EUR 300,000 in respect of non-pecuniary damage.

42. The Government contested these claims.

43. The Court first observes that the majority of the applicant's complaint has been declared inadmissible. It also observes that, besides being unsubstantiated, the first claim is not related to the violation found under Article 3 of the Convention. Having regard to the nature of the

violation found and making its assessment on an equitable basis, the Court awards the applicant EUR 9,000 in respect of non-pecuniary damage, plus any tax that may be chargeable to the applicant.

B. Costs and expenses

44. The applicant claimed reimbursement of unspecified lawyers' fees and translation costs.

45. The Government contested the claims.

46. 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. The applicant has not provided any documentary proof in support of his claims. The Court rejects them as unsubstantiated.

C. Default interest

47. 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 conditions of detention in Omsk remand centre no. 55/1 from March 2001 to June 2003 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 9,000 (nine thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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 23 September 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President