



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

FIRST SECTION

CASE OF USHAKOV v. RUSSIA

(Application no. 10641/09)

JUDGMENT

STRASBOURG

25 October 2011

FINAL

25/01/2012

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

In the case of Ushakov v. Russia,

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

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 4 October 2011,

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

PROCEDURE

1. The case originated in an application (no. 10641/09) 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 Sergey Yuryevich Ushakov (“the applicant”), on 13 January 2009.

2. The applicant, who had been granted legal aid, was represented by Mr P. Finogenov, a lawyer practising in Moscow. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been detained in appalling conditions in a remand prison and correctional colony.

4. On 17 November 2009 the President of the First Section decided to give notice of the application to the Government and granted priority treatment to it under Rule 41 of the Rules of Court. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1977 and is serving a prison sentence in the Samara Region.

A. The applicant's detention in remand prison no. IZ-63/2

6. From 11 July to 22 October 2008 the applicant was held in remand prison no. IZ-63/2 of Syzran in the Samara Region pending criminal proceedings against him.

7. The Government and the applicant provided differing descriptions of the conditions of the applicant's detention.

1. The Government's description of the conditions of detention

8. The Government submitted extracts from the register of the remand prison population. They further submitted data concerning the size of the cells based on statements made by the remand prison officers. In particular, they provided the following information:

Cell no.	Period of detention	Surface area (in square metres)	Number of inmates	Number of beds
2	From 11 to 14 July	37.9	8-9	9
122	From 14 to 17 July	30.8	7	7
122	From 21 to 25 July		7	
144	From 29 July to 4 August	30.1	6-7	7
	From 6 to 14 August			
	From 28 to 28 August			
	From 1 to 9 September			
	From 11 to 18 September		7	
	From 30 September to 3 October		5-7	
113	From 3 to 10 October	32.1	7	8
119	From 10 to 16 October	31.3	7	7
122	From 16 to 22 October	30.8	6-7	7

9. The applicant spent a considerable amount of time outside the prison cells. He participated in questioning and other investigative activities, and

met with his lawyer, relatives and other persons. He was allowed at least an hour-long daily walk in a specially equipped prison yard and weekly showers. During inspections and cleaning of the cells the inmates, including the applicant, were taken outside the cells as well.

10. All the cells of the remand prison were equipped with natural and artificial ventilation which was in a good working order. The windows were covered with metal bars which did not prevent daylight coming through. The artificial day lighting in the cells was in compliance with the applicable specifications and was on from 6 a.m. to 10 p.m. At night low-voltage bulbs were used to maintain lighting for surveillance and practical reasons (for example, to provide lighting in the toilet area).

11. Each cell was equipped with a toilet and a sink located in the corner. The distance between the table and the toilet was at least 1.5 m and the distance between the toilet and the nearest bed was at least 1.2 m. The toilet was separated from the living area of the cell by a partition measuring at least one metre in height.

2. The applicant's description of the conditions of detention

12. The applicant contested the description of the conditions of his detention in the remand prison provided by the Government. In particular he provided the following information:

Cell no.	Period of detention	Surface area (in square metres)	Number of inmates	Number of beds
122	From 13 to 17 July	26.6	Up to 23	10
144	From 19 July to 2 October	25.4	Up to 19	10
113	From 2 to 11 October	26.6	Up to 21	10
114	From 11 to 18 October	28.8	8	8
122	From 18 to 21 October	26.6	Up to 23	10

13. While it was true that on several occasions the applicant was transported to the courthouse to attend hearings, the rest of the time he was confined to his cell. He was allowed to see his lawyer only once. That meeting lasted no longer than one hour. The meetings with the officers of the remand prison which took place outside his cell did not exceed thirty minutes.

14. The applicant was provided with an individual bed only when detained in cell no. 114. For the rest of the time he had to share the bed with two to three other inmates.

15. The ventilation did not function properly and was insufficient due to the overcrowding of the cells. The air was stuffy and humid. It was filled with tobacco smoke. Dirty condensation accumulated on the walls and the ceiling and then trickled down. The light was constantly on. Low-voltage bulbs were not used. The windows were covered with metal bars both on the inside and outside.

16. The flushing system in the toilet did not provide a sufficient amount of water to keep the toilet clean. The odour emanating from the toilet was very bad and the inmates had to burn paper to mask it. The distance between the toilet and the dinner table was 1.8 metres in cells nos. 113, 122, 144. In cell no. 114 the toilet was located some 1.2 metres away from the dinner table.

17. In his submissions of 1 June 2010, the applicant alleged that on the days of the trial hearings he had been transported to and from the courthouse in appalling conditions. The vans were overcrowded and each trip lasted over two hours.

B. The applicant's detention in correctional colony no. IK-13

18. On 29 September 2008 the applicant was convicted of another drug-related offence and sentenced to six years and six months' imprisonment in a high-security colony. He was sent to serve a prison sentence in correctional colony no. IK-13 in the Samara Region.

19. The applicant was held in the colony from 21 January to 11 July 2009.

1. The description provided by the Government

Dormitory no.	Period of detention	Surface area (in square metres)	Number of inmates	Number of beds
Quarantine	From 21 to 26 January	176.04		56
2	From 27 January to 8 February	356.5		132
Disciplinary cell no. 2	From 9 February to 7 July	8.8	4	4

20. The applicant was provided with an individual bed, bedding and cutlery. While he was held in the disciplinary cell he was allowed a daily walk which lasted at least an hour in a specially equipped yard. He also spent time outside the cell when taking a shower. He was invited to meetings with the administration of the correctional colony.

21. The dormitories and the disciplinary cell were equipped with artificial and natural ventilation. The dormitories had at least ten windows and nine lamps. The disciplinary cell had a window measuring 0.9 by 1.0 sq. m. It was reinforced with metal bars which did not prevent daylight coming into the cell. The cell was provided with two daylight lamps. At night low-voltage bulbs were used to light the cells for surveillance and practical reasons.

22. The dormitories had separate restrooms ensuring sufficient privacy. The toilet in the disciplinary cell was placed in the corner one metre away from the dinner table. The distance between the toilet and the nearest bed was 0.6 m.

2. The applicant's description of the conditions of detention

23. The applicant contested the description of the conditions of his detention in the colony. In particular he provided the following information:

Dormitory no.	Period of detention	Surface area (in square metres)	Number of inmates	Number of beds
Quarantine	From 21 to 26 January	176.04		56
2	From 27 January 6 February	356.5		132
Disciplinary cell no. 2	From 6 February to 29 April	6.77	4	4
Disciplinary cell no. 3	From 29 April to 29 May	8.8		
Disciplinary cell no. 2	From 29 May to 7 July	6.77	4	4

24. There was no artificial ventilation in disciplinary cell no. 2. The opening of a window pane measuring 0.2 by 0.3 m was insufficient to ensure the proper ventilation of the cell. The lighting was dim and insufficient. The toilet was not cleaned and reeked. It was located some 0.85 metres and 1.2 metres away from the dinner table. The windows were covered with two rows of metal bars inside and outside.

25. For the whole time the applicant was detained in the disciplinary cell he was never taken for a walk outside.

C. The applicant's correspondence with his representative before the Court

26. On 1 February and 5 April 2010 the administration of correctional colony no. IK-29 allegedly opened the applicant's letters addressed to his representative before the Court.

27. The applicant's letter dispatched on 2 April 2010 did not reach his representative.

28. The applicant's letters of 4 and 19 May 2010 addressed to his representative were allegedly dispatched with a delay of thirteen and six days respectively.

II. RELEVANT DOMESTIC LAW

29. Section 23 of the Detention of Suspects Act of 15 July 1995 provides that detainees should be kept in conditions which satisfy sanitary and hygienic requirements. They should be provided with an individual sleeping place and given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell.

30. Article 99 § 1 of the Penitentiary Code of 8 January 1997 provides for a minimum standard of two square metres of personal space for male prisoners in correctional colonies.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

31. The applicant complained that his detention in remand prison no. IZ-63/2 and in disciplinary cell no. 2 in correctional colony no. IK-13 in the Samara Region had been in contravention 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

32. The Government noted that the applicant had failed to bring his grievances to the attention of Russian courts and considered that his complaint should be rejected for failure to comply with the requirements of Article 35 § 1 of the Convention. They submitted copies of judgments

delivered by the Syzran Town Court of the Samara Region on 15 February 2008 and 17 September 2009. The Town Court considered complaints about the conditions of the detention filed by Kor. and Kon., inmates who had been detained in remand prison no. IZ-63/2 of Syzran. In both cases the Town Court found in part for the claimants. It established that the hygienic conditions in the cells where they had been detained had been inadequate. In particular, the toilet had not been sufficiently isolated from the living area of the cell and it had been placed too close to the dining table. The Town Court awarded the plaintiffs RUB 300 and 100 respectively. Each of them was ordered to pay RUB 100 as a court fee.

33. The applicant contested that argument. With reference to the Court's case-law (see *Kalashnikov v. Russia* (dec.), no. 47095/99, ECHR 2001-XI; *Moiseyev v. Russia*, (dec.), no. 62936/00, 9 December 2004; *Mamedova v. Russia*, no. 7064/05, § 57, 1 June 2006; and *Benediktov v. Russia*, no. 106/02, § 29, 10 May 2007), he asserted that the Government had failed to prove that an effective remedy in fact existed in Russia in respect of the complaint about the conditions of his detention. He further noted that the compensation awarded by the Town Court to the claimants in the cases cited by the Government had been too low to be considered as adequate redress within the meaning of the Convention's case-law.

34. The Court observes that in a significant number of previous cases, in comparable circumstances, it found that the Government had failed to demonstrate what redress could have been afforded to the applicant by the competent domestic authorities, taking into account that the problems arising from the conditions of the applicant's detention had apparently been of a structural nature and had not concerned the applicant's personal situation alone (see, for example, *Benediktov*, cited above, §§ 29-30). Nor can the Court accept, without going into further detail with regard to the adequacy of the compensation awarded by the domestic courts, that the two cases cited by the Government suffice to show the existence of settled domestic practice that would prove the effectiveness of the remedy (see, *mutatis mutandis*, *Aleksandr Makarov v. Russia*, no. 15217/07, § 87, 12 March 2009).

35. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

36. The Government considered that the conditions of the applicant's detention both in the remand prison and the correctional colony were in

compliance with the standards prescribed by Article 3 of the Convention. At no time was the applicant held in overcrowded cells. The cells were regularly cleaned and disinfected. The Government relied on copies of the daily registers of the remand prison population and statements made by prison officers in December 2009. They further provided statements by the administration of the correctional colony where the applicant had been detained. They also submitted hand-drawn plans of the cells of the remand prison to substantiate their submissions concerning the layout of the prison cells and disciplinary cell no. 2 in the correctional colony. The plans were signed and stamped by the remand prison administration, but contained no measurements indicating the size of the cells.

37. The applicant maintained his complaint. He reiterated that he had been detained in severely overcrowded cells where he was afforded no more than 1.7 sq. m of personal space. The number of beds in the remand prison and disciplinary cells of the correctional colony was insufficient and the inmates had to take turns to sleep. It was hot and stuffy in the cells. The overcrowding made it impossible for the inmates to rest and provoked conflicts between them. As a result of his detention in these appalling conditions, the applicant lost 15 kg and developed shortness of breath. He coughed incessantly, had headaches and hypertension, and his body was covered in pimples.

2. The Court's assessment

38. The Court reiterates that Article 3 enshrines one of the fundamental values of a democratic society. The Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances or the victim's behaviour (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Although measures depriving a person of liberty may often involve such an element, in accordance with Article 3 of the Convention the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention (see *Kudła v. Poland* [GC], no. 30210/96, § 92-94, ECHR 2000-XI).

39. Turning to the facts of the instant case, the Court notes that the parties disagreed as to most aspects of the conditions of the applicant's detention. However, there is no need for the Court to establish the veracity of each and every allegation, because it can find a violation of Article 3 on the basis of the facts presented to it by the applicant which the respondent

Government failed to refute (see *Grigoryevskikh v. Russia*, no. 22/03, § 55, 9 April 2009).

40. In particular, the Court observes that the Government were unable to substantiate their allegations as regards the measurements of the cells where the applicant had been detained. The Government submitted hand-drawn plans of the cells' layout without indicating their sizes. Their assertions concerning the measurements of the cells were based on the statements of the penitentiary establishments' authorities and were not supported by any official documentation. The fact that the documents submitted by the Government were signed and stamped is of no significance.

41. In such circumstances the Court considers that a failure on the Government's part to submit reliable information concerning the measurements of the cells where the applicant had been detained without any 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). Accordingly, the Court will examine the issue on the basis of the applicant's submissions as regards the cells' measurements.

42. Even accepting the cell population figures submitted by the Government, the personal space afforded to the applicant was below the 4 sq. m prescribed by national legislation. On certain occasions it was as low as 2.9 sq. m in the remand prison and 1.7 sq. m all the time the applicant was detained in disciplinary cell no. 2 in the correctional colony. Furthermore, part of the cell surface was occupied by beds, a dinner table and a toilet. As it appears even from the hand-drawn plans of the cells submitted by the Government, such arrangement left inmates with literally no free space in which they could move.

43. The Court further notes that the applicant was allowed no more than an hour of exercise outside the cell per day. He remained confined to his cell practically all day for approximately seven and a half months. The infrequent meetings the applicant had taken part in outside the cell and referred to by the Government hardly had any impact on his situation.

44. It is also of a particular concern to the Court that the toilet was placed very close to the dinner table. Besides, the partition separating the toilet from the living area of the cell was no higher than one metre and, consequently, did not offer sufficient privacy to a detainee using it.

45. Having regard to the cumulative effect of those factors, the Court finds that, having been afforded no privacy and experiencing a lack of personal space for more than seven months, the applicant must have been subjected to distress and hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, which aroused in him feelings of anguish and inferiority capable of humiliating and debasing him.

46. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand prison

no. IZ-63/2 from 13 July to 22 October 2009 and in disciplinary cell no. 2 in correctional colony no. IK-13 from 6 February to 29 April and from 29 May to 7 July 2010, which it considers were inhuman and degrading within the meaning of this provision.

47. In view of the above finding, the Court does not consider it necessary to examine the remainder of the parties' submissions concerning other aspects of the conditions of the applicant's detention during the periods indicated above.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

48. Lastly, the applicant complained that the criminal proceedings against him were unfair. He referred to Articles 6, 8, 13 and 14 of the Convention. He also alleged that the correspondence between him and his representative before the Court was interfered with in a manner which amounted to a violation of Articles 8 and 34 of the Convention.

49. However, having regard to all the material in its possession, 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

50. 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

51. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

52. The Government submitted that the applicant's allegations should not give rise to an award of compensation for non-pecuniary damage. In any event, they considered the applicant's claims excessive and suggested that the acknowledgment of a violation would constitute sufficient just satisfaction.

53. The Court accepts that the applicant suffered humiliation and distress because of the inhuman and degrading conditions of his detention. In these circumstances, the Court considers that the applicant's suffering cannot be compensated for by a mere finding of a violation. Making its

assessment on an equitable basis, it awards him EUR 9,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

54. The applicant did not submit a claim for costs and expenses. Accordingly, the Court considers that there is no call to award him any sum on that account.

C. Default interest

55. 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 in remand prison no. IZ-63/2 from 13 July to 22 October 2009 and in the disciplinary cell in correctional colony no. IK-13 from 6 February to 29 April and from 29 May to 7 July 2010 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 from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 9,000 (nine thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (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 25 October 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Nina Vajić
President