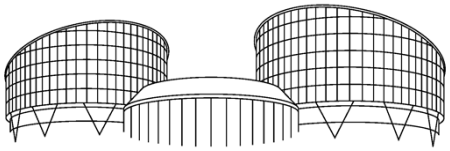

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF VALYUZHENICH v. RUSSIA

(Application no. 10597/13)

JUDGMENT

STRASBOURG

26 March 2019

FINAL

26/06/2019

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

In the case of Valyuzhenich v. Russia,

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

Vincent A. De Gaetano, *President,*
Branko Lubarda,
Helen Keller,
Dmitry Dedov,
Georgios A. Serghides,
Jolien Schukking,
María Elósegui, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 5 March 2019,

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

PROCEDURE

1. The case originated in an application (no. 10597/13) 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 Mikhail Aleksandrovich Valyuzhenich ("the applicant"), on 5 February 2013.

2. The applicant was represented by Mr M. Valeyev, a lawyer practising in St Petersburg. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. The applicant alleged, in particular, that his confinement in a metal cage during the criminal proceedings against him had amounted to degrading treatment and rendered the proceedings unfair, and that he had not had an effective domestic remedy in respect of the first grievance.

4. On 26 November 2014 notice of the above complaints was given to the Government under Articles 3 and 13 and Article 6 §§ 1, 2 and 3 (b) and (c) of the Convention and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1985 and is currently detained in St Petersburg.

6. He was suspected of involvement in large-scale drug dealing.

7. On 2 February 2011 he was arrested. He remained in custody pending the investigation and trial.

8. On 6 October 2011 the Sovetskiy District Court of Kazan ("the District Court") received the case file and set the trial date for 19 October 2011.

9. On 19 March 2012 the District Court found the applicant guilty as charged and sentenced him to nine and a half years' imprisonment.

10. During the trial, which consisted of sixteen hearings, the applicant was confined in a metal cage in the courtroom. There was no desk inside the cage, only a wooden bench, which made it impossible for him to take notes during the hearings. Armed security guards remained beside the cage dock. The applicant's lawyer could only approach him with the court's permission. Any conversations between them had to take place in the presence of the guards.

11. On 10 August 2012 the Supreme Court of the Tatarstan Republic upheld the applicant's conviction on appeal. The applicant participated in the hearing by videoconference. He was placed behind a floor-to-ceiling metal partition on the premises of the remand prison SIZO-3 of the Tatarstan Republic where he was detained and communicated with the judges via a video link.

II. RELEVANT DOMESTIC LAW

A. Metal cages in courtrooms

12. For a summary of relevant domestic law and practice and relevant international material and practice, see *Svinarenko and Slyadnev v. Russia* ([GC], nos. 32541/08 and 43441/08, §§ 53-66 and §§ 70-76, ECHR 2014 (extracts)).

B. Metal cages in remand prisons for participation in court hearings via a video link

13. Remand prisons are equipped with videoconferencing systems within the framework of the Federal Targeted Programme "The Development of the Judicial System in Russia for 2013-2020".

14. In accordance with the Programme, on 18 April 2014 the Supreme Court of the Russian Federation, the Administrative Office of Courts at the Supreme Court of the Russian Federation and the Federal Prison Service concluded an agreement concerning their use of videoconferencing systems. Annex 2 to that agreement provided for the installation of metal partitions in remand prisons equipped with videoconferencing systems to secure the videoconferencing equipment while inmates participated in court hearings via a video link.

THE LAW

I. ALLEGED VIOLATIONS OF ARTICLES 3 AND 13 OF THE CONVENTION

15. The applicant complained that his confinement in a metal cage during the criminal proceedings against him had amounted to treatment proscribed by Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

He further complained that he had not had an effective domestic remedy in respect of his grievance under Article 3, contrary to Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. Admissibility

16. The Government considered that the applicant's confinement in a metal cage in the courtroom during the trial which had ended on 19 March 2012 and his placement behind a metal partition in the remand prison five months later, on 10 August 2012, for the purposes of participating, via a video link, in the appeal hearing of his criminal case did not give rise to a "continuing situation" and that therefore the part of the complaint under Article 3 of the Convention concerning his caging during the trial should be rejected for failure to comply with the six-month time-limit provided for by Article 35 § 1 of the Convention.

17. The applicant argued that the sixteen hearings of his case by the trial court between 19 October 2011 and 19 March 2012 and the hearing of his case on appeal on 10 August 2012 should be viewed as a "continuing situation", which had only ended on the latter date with the last instance of

his having been confined in the metal cage during the criminal proceedings against him.

18. The Court reiterates that, as a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset however that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant. In cases featuring a continuing situation, the six-month period runs from the cessation of that situation. The concept of a "continuing situation" refers to a state of affairs which operates by continuous activities by or on the part of the State to render the applicant a victim (see *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 86, ECHR 2014 (extracts), and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 72 and 75, 10 January 2012, with further references).

19. The Court has previously found that the applicants' repetitive confinement in a metal cage in the courtroom during the trial amounted to a "continuing situation" in the absence of any marked variation in the way they appeared before the trial court (see *Svinarenko and Slyadnev*, cited above, § 86). However, in a situation where the applicant appeared before the trial court first in a metal cage and subsequently in a glass cage, the Court has held that the significant change in material conditions of the applicant's appearance before the trial court prevented it from regarding the situation as "continuous" for the purpose of calculating the six-month time-limit set forth in Article 35 § 1 of the Convention (see *Yaroslav Belousov v. Russia*, nos. 2653/13 and 60980/14, § 114, 4 October 2016).

20. Turning to the circumstances of the present case, the Court observes that the applicant was confined in a metal cage in the courtroom on sixteen occasions between 19 October 2011 and 19 March 2012 when his criminal case was being examined by the trial court and on one occasion, on 10 August 2012, in the remand prison during the examination of his case on appeal via a video link. The Court notes the absence of any significant change in the way the applicant appeared before the trial and appellate courts for as long as the proceedings lasted – on each occasion he found himself behind metal bars. The Court concludes, therefore, that regardless of an almost five-month time gap between the end of the applicant's trial on 19 March 2012 and the examination of his case on appeal on 10 August 2012, his confinement in a metal cage created a "continuous situation" for the purpose of calculating the six-month time-limit set forth in Article 35 § 1 of the Convention. Since the application was lodged on 5 February 2013, the applicant has thus complied with the six-month rule and the Government's objection should therefore be dismissed.

21. The Court notes that the applicant's complaints under Articles 3 and 13 of the Convention are not manifestly ill-founded within the meaning of

Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

22. The Government submitted that the applicant's confinement in a metal cage in the courtroom during the trial and behind a metal partition during the examination of the case on appeal had been in compliance with the domestic law and regulations in force at the material time (see paragraphs 12-14 above). The practice of placing defendants in metal cages in the courtroom was an ordinary security measure applied to all defendants detained on remand. Introduced over twenty years ago, it was perceived as customary by the parties to the criminal proceedings and third parties alike and *a priori* was not aimed at humiliating those to whom it was applied. The "feelings of humiliation, inferiority, shame and helplessness" allegedly suffered by the applicant resulted not from his placement in a metal cage, but rather from a natural reaction to the negative consequences of his unlawful actions. There were no grounds for believing that the parties to the proceedings and third parties had had a biased or hostile attitude towards the applicant on account of his confinement in a metal cage. In any event, the case had not been of any heightened public or media interest. Furthermore, placement in a metal cage served the purpose of protecting a person from any possible attack by victims while at the same time allowing him or her to choose a comfortable posture and move behind the barriers freely. The Government further argued that the applicant's confinement behind a metal partition in the remand prison during his participation in the hearing of his case on appeal via a video link could not have caused him any negative feelings since, in any event, the remand prison was a place of social isolation where detainees spent most of their time on premises equipped with various safety facilities. The Government concluded, therefore, that there had been no violation of Article 3 of the Convention in the present case. They made no submissions on the merits of the applicant's complaint under Article 13 of the Convention.

23. The applicant argued that the domestic regulations referred to by the Government were of restricted use and therefore unavailable in any official sources of legal information. He had had no criminal record, had been charged with non-violent crimes and had demonstrated orderly behaviour throughout the proceedings. His placement in the cage could not therefore have been justified. Furthermore, the proceedings had been followed by several journalists and several television channels had released news reports on the trial. For example, the "KZN" television channel had released a news

report entitled "Sentence to Drug Dealers" showing him in a metal cage. This report had been viewed by several thousands of people even before the conviction had become final. Showing him in a cage had created an image of an extremely dangerous criminal, which had caused him feelings of shame and helplessness. The applicant further submitted that, contrary to the Government's assertions, he had not been free to choose a comfortable position or move around the cage: he could not stand up or have any exchange with other participants of the proceedings unless authorised by the presiding judge. Besides, as could be seen from the photographs provided by the Government, the cage had been very limited in size, which had made it impossible to get into a comfortable position. Lastly, the applicant submitted that his confinement behind a metal barrier in the remand prison for his participation via a video link in the examination of his case on appeal had not been warranted by any security risks or courtroom order issues. The applicant further maintained his complaint under Article 13 of the Convention taken in conjunction with Article 3 of the Convention.

2. *The Court's assessment*

(a) Article 3 of the Convention

24. For a summary of the relevant general principles, see *Svinarenko and Slyadnev* (cited above, §§ 113-18).

25. The Court reiterates its earlier findings, where it came to the conclusion that holding a person in a metal cage in the courtroom constituted in itself – having regard to its objectively degrading nature, which is incompatible with the standards of civilised behaviour that are the hallmark of a democratic society – an affront to human dignity, and amounted to degrading treatment in violation of Article 3 of the Convention. The Court's conclusions concerned both the applicants' confinement in metal cages in courtrooms during their personal attendance at court hearings (see *Svinarenko and Slyadnev*, cited above, §§ 122-39; *Urazov v. Russia*, no. 42147/05, §§ 82-83, 14 June 2016; and *Vorontsov and Others v. Russia*, nos. 59655/14 and 2 others, § 31, 31 January 2017), and their confinement in metal cages at remand prisons for the purposes of their participation in court hearings carried out via a video link (see *Karachentsev v. Russia*, no. 23229/11, §§ 50-54, 17 April 2018).

26. Turning to the present case and having examined the parties' arguments, the Court does not see any reason to depart from its findings in the cases cited above in this regard. It follows, therefore, that the applicant's confinement in a metal cage in the courtroom during the trial and at the remand prison for the purposes of his participation via a video link in the judicial examination of his criminal case on appeal amounted to degrading treatment prohibited by Article 3 of the Convention. There has accordingly been a violation of that provision.

(b) Article 13 of the Convention

27. The Court considers that in view of its reasoning and findings under Article 3 of the Convention (see paragraphs 24-26 above), there is no need to deal separately with the applicant's complaint under Article 13 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

28. The applicant complained that his confinement in a metal cage during the trial had rendered the criminal proceedings against him unfair. In particular, he alleged that the principle of the presumption of innocence had not been respected and that he had not been afforded an opportunity to take notes and to confer with his lawyer in private. He relied on Article 6 §§ 1, 2 and 3 (b) and (c) of the Convention, which, in so far as relevant, reads as follows:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair and public hearing ...
>
> 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
>
> 3. Everyone charged with a criminal offence has the following minimum rights ...
>
> (b) to have adequate time and facilities for the preparation of his defence;
>
> (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require ..."

A. Admissibility

29. The Government argued that the applicant had failed to exhaust the available domestic remedies with regard to his complaints under Article 6 §§ 1 and 3 (b) and (c) of the Convention. They noted, in particular, that he had not raised these issues either in the course of the trial or before the appellate court.

30. The Court has previously held in a similar context that the appeal instance was capable of providing an effective remedy for the alleged violation of Article 6 §§ 1 and 3 (b) and (c) of the Convention (see *Stepan Zimin v. Russia*, no. 63686/13, 60894/14, § 62, 30 January 2018, and *Yaroslav Belousov v. Russia*, nos. 2653/13 and 60980/14, § 141, 4 October 2016). It notes, however, that the applicant did not include these complaints in his points of appeal as grounds for his application to reverse the first-instance judgment. Accordingly, he did not provide the domestic courts with the opportunity to address the particular Convention violations alleged against the State. These complaints must therefore be declared inadmissible, in accordance with Article 35 §§ 1 and 4 of the Convention.

31. The Court notes that the applicant's complaint under Article 6 § 2 of the Convention 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 and must therefore be declared admissible.

B. Merits

32. The Government reiterated their argument to the effect that the safety barrier was a common security measure introduced over twenty years ago and applied to each and every detainee appearing before a court. The applicant's placement behind the metal bars could not therefore have had any impact on the court's position and affected the presumption of innocence.

33. The applicant maintained his complaint.

34. The Court notes that in the present case it has examined the main legal question raised in connection with the applicant's confinement in a metal cage under Article 3 of the Convention (see paragraphs 24-26 above), which subsumed the issue of the presumption of innocence under Article 6 § 2 of the Convention (see *Urazov*, cited above, §§ 91-92, and *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, §§ 743-44, 25 July 2013).

35. The Court considers, therefore, that it is not necessary to examine the applicant's complaint under Article 6 § 2 of the Convention separately.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

36. 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

37. The applicant claimed 60,000 euros (EUR) in respect of non-pecuniary damage.

38. The Government considered this claim to be excessive and not corresponding to the Court's case-law.

39. Having regard to the violation of the Convention found and making its assessment on an equitable basis, the Court awards the applicant EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable on this amount.

B. Costs and expenses

40. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

41. The Court considers it appropriate that the default interest rate 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 complaints under Article 3, Article 6 § 2 and Article 13 of the Convention concerning the applicant's confinement in a metal cage during the criminal proceedings against him admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;

4. *Holds* that there is no need to examine separately the complaint under Article 6 § 2 of the Convention;

5. *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 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at 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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 March 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Vincent A. De Gaetano President