



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

FIRST SECTION

CASE OF IGOR IVANOV v. RUSSIA

(Application no. 34000/02)

JUDGMENT

STRASBOURG

7 June 2007

FINAL

30/01/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Igor Ivanov v. Russia,

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

Mr C.L. ROZAKIS, *President*,

Mr L. LOUCAIDES,

Mrs N. VAJIĆ,

Mr A. KOVLER,

Mrs E. STEINER,

Mr S.E. JEBENS,

Mr G. MALINVERNI, *judges*,

and Mr S. NIELSEN, *Section Registrar*,

Having deliberated in private on 15 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 34000/02) 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 Igor Sergeyevich Ivanov (“the applicant”), on 5 August 2002.

2. The Russian Government (“the Government”) were represented by Mr P. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 4 November 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

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

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1963 and lives in the village of Savvino in the Moscow Region.

A. The criminal proceedings against the applicant

6. On 26 December 2000 the applicant was arrested on suspicion of aggravated robbery, extortion and abuse of position. He was remanded in custody three days later.

7. On 23 January 2002 the Kuzminskiy District Court of Moscow found the applicant guilty of aggravated robbery and abuse of position, acquitted him of the remainder of the charges and sentenced him to eleven years' imprisonment. The judgment became final on 23 April 2002 when the Moscow City Court upheld it on appeal.

8. On 6 November 2003 the Presidium of the Moscow City Court, acting on a request from the applicant in supervisory review proceedings, amended the judgments of 23 January and 23 April 2002, reducing the sentence to six years' imprisonment. The applicant was released on parole on 25 March 2005.

B. Conditions of the applicant's detention

9. From 29 December 2000 to 28 June 2002 the applicant was detained in facilities nos. IZ-77/1 and IZ-77/3 in Moscow.

1. Facility no. IZ-77/1

(a) Number of inmates per cell

10. According to certificates issued on 21 December 2005 by the acting director of the facility and produced by the Government, the applicant was kept in cell no. 402, which measured 23.4 square metres. According to the Government, the information on the number of inmates in the cell was not available as the documents had been destroyed. At the same time the Government noted that warders working in the facility while the applicant was detained there had stated that the applicant had shared the cell with five or six other detainees. The Government, relying on the certificates of 21 December 2005, further submitted that the applicant had had an individual bunk and bedding at all times.

11. The applicant did not dispute the cell measurements. However, he alleged that the cell had had twelve bunks and had accommodated 25 inmates. Given the lack of beds, inmates had slept in shifts.

(b) Sanitary conditions, installations and food

12. The Government, relying on the information provided by the acting director of the facility, submitted that the cell received natural light and ventilation through the two windows, which were glazed and measured 0.75 metres in width and 1.1 metres in height. The facility authorities

inspected the cell on a daily basis. The Government further argued that the temperature in the cell was maintained at normal levels. The cell was equipped with lamps which functioned day and night. The cell was disinfected once a week. It was equipped with a lavatory pan, a sink and a tap for running water. The pan was separated from the living area by a one-metre-high brick wall. Inmates were allowed to take a shower once a week. The Government, relying on the information provided by the Office of the Prosecutor General of the Russian Federation, further stated that the applicant was provided with food three times a day “in accordance with the established norms”. Medical personnel at the facility checked the quality of the food three times a day and made entries in registration logs. The Government submitted copies of the registration logs for certain months in 2001 and 2002. According to the Government, detainees had made no complaints about the quality of the food.

13. The applicant disagreed with the Government's description and submitted that the sanitary conditions had been unsatisfactory. There were rats in the cell, which was only dimly lit. The windows were not glazed and the food was of extremely poor quality and in scarce supply.

(c) Medical assistance

14. On his admission to the detention facility the applicant was examined by a doctor, who noted that the applicant was healthy. On 31 January 2001 the applicant complained to the prison doctor of muscle pain. The doctor diagnosed myositis and prescribed treatment. From 22 to 24 May 2001 the applicant was treated for a common cold, a mild viral infectious disease of the upper respiratory system. On 26 October 2001 the applicant complained of back pain and was diagnosed with disseminated pyoderma, a bacterial skin infection. He was transferred to the genito-urinary dermatology department of the facility hospital, where he stayed until 15 November 2001. The Government gave a detailed description of the treatment administered to the applicant, including the type of medicine, dose and frequency. They also furnished a copy of the applicant's medical record and medical certificates.

15. The applicant argued that the appalling conditions of his detention had resulted in a serious deterioration of his health. He had contracted several skin and infectious diseases and had not been adequately treated.

2. Facility no. IZ-77/3

16. On 28 January 2002 the applicant was transferred to facility no. IZ-77/3 and placed in cell no. 524, measuring 32.74 square metres. The Government, relying on a certificate issued by the director of the facility on 20 December 2005, argued that the cell housed seven or eight inmates. However, it is clear from the certificate that the applicant was detained together with at least seven or eight other inmates. The Government also

included certificates issued in 2004 indicating that the documents showing the number of inmates had been destroyed.

17. The Government further provided a description of the conditions of the applicant's detention in facility no. IZ-77/3 which was similar to the description of conditions in facility IZ-77/1 except for two aspects: (i) the cell windows measured 0.89 metres in width and 0.94 metres in height and (ii) the applicant did not request medical assistance in facility no. IZ-77/3.

18. The applicant submitted that cell no. 524 had accommodated 38 inmates. He further described the conditions of his detention in facility no. IZ-77/3 as "identical" to those in facility no. IZ-77/1, with one difference: the authorities in facility no. IZ-77/3 had been "respectful and kind".

3. Complaints about the conditions of the applicant's detention

19. According to the applicant, he had complained to various domestic authorities about the appalling conditions of his detention. He had received no response.

20. The Government submitted that the applicant had not complained to a prosecutor or to a higher-ranking official of the Federal Service for the Execution of Sentences.

II. RELEVANT DOMESTIC LAW

21. Section 22 of the Detention of Suspects Act (Federal Law no. 103-FZ of 15 July 1995) provides that detainees should be given free food sufficient to maintain them in good health according to standards established by the Government of the Russian Federation. Section 23 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.

III. RELEVANT INTERNATIONAL DOCUMENT

22. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited the Russian Federation from 2 to 17 December 2001. The section of its Report to the Russian Government (CPT/Inf (2003) 30) dealing with the conditions of detention in remand establishments and the complaints procedure reads as follows:

“45. It should be stressed at the outset that the CPT was pleased to note the progress being made on an issue of great concern for the Russian penitentiary system: overcrowding.

When the CPT first visited the Russian Federation in November 1998, overcrowding was identified as the most important and urgent challenge facing the prison system. At the beginning of the 2001 visit, the delegation was informed that the remand prison population had decreased by 30,000 since 1 January 2000. An example of that trend was SIZO No 1 in Vladivostok, which had registered a 30% decrease in the remand prison population over a period of three years.

...

The CPT welcomes the measures taken in recent years by the Russian authorities to address the problem of overcrowding, including instructions issued by the Prosecutor General's Office, aimed at a more selective use of the preventive measure of remand in custody. Nevertheless, the information gathered by the Committee's delegation shows that much remains to be done. In particular, overcrowding is still rampant and regime activities are underdeveloped. In this respect, the CPT reiterates the recommendations made in its previous reports (cf. paragraphs 25 and 30 of the report on the 1998 visit, CPT (99) 26; paragraphs 48 and 50 of the report on the 1999 visit, CPT (2000) 7; paragraph 52 of the report on the 2000 visit, CPT (2001) 2).

...

125. As during previous visits, many prisoners expressed scepticism about the operation of the complaints procedure. In particular, the view was expressed that it was not possible to complain in a confidential manner to an outside authority. In fact, all complaints, regardless of the addressee, were registered by staff in a special book which also contained references to the nature of the complaint. At Colony No 8, the supervising prosecutor indicated that, during his inspections, he was usually accompanied by senior staff members and prisoners would normally not request to meet him in private 'because they know that all complaints usually pass through the colony's administration'.

In the light of the above, the CPT reiterates its recommendation that the Russian authorities review the application of complaints procedures, with a view to ensuring that they are operating effectively. If necessary, the existing arrangements should be modified in order to guarantee that prisoners can make complaints to outside bodies on a truly confidential basis.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

23. The applicant complained that his detention from 29 December 2000 to 28 June 2002 in appalling conditions was 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

24. The Government argued that the applicant had not exhausted the domestic remedies available to him. In particular, he had not complained about the conditions of his detention to a prosecutor or an official of the Federal Service for the Execution of Sentences.

25. The applicant submitted that he had complained unsuccessfully to various domestic authorities about the appalling conditions of his detention.

26. The Court observes that it has already on a number of occasions examined the same objection by the Russian Government and dismissed it. In particular, the Court held in the relevant cases that the Government had not demonstrated what redress could have been afforded to the applicant by a prosecutor, a court or other State agency, bearing in mind that the problems arising from the conditions of the applicant's detention were apparently of a structural nature and did not concern the applicant's personal situation alone (see *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004; *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001; and, most recently, *Mamedova v. Russia*, no. 7064/05, § 57, 1 June 2006). The Court sees no reason to depart from that finding in the present case and therefore considers that this complaint cannot be rejected for failure to exhaust domestic remedies.

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

B. Merits

1. The parties' submissions

28. The Government submitted that the applicant had been detained in satisfactory sanitary conditions. The food met the applicable standards. The applicant had been provided with adequate medical assistance. The

Government further submitted that they were not in possession of any documents showing the number of inmates in the cells in which the applicant had been detained because those documents had been destroyed. However, they considered that the fact that the applicant might have been detained in overcrowded cells could not by itself serve as a basis for finding a violation of Article 3 of the Convention, as the remaining aspects of the applicant's detention had been satisfactory. The Government pointed out that overcrowding was a general problem in many member States of the Council of Europe.

29. The applicant challenged the Government's description of the conditions in the detention facility as factually inaccurate. He maintained his complaints.

2. The Court's assessment

30. The Court observes that the continuous nature of the applicant's detention on remand and the parties' identical descriptions of the general conditions of the applicant's detention in both facilities warrant examining his detention from 29 December 2000 to 28 June 2002 without dividing it into separate periods.

31. The parties disagreed as to the specific conditions of the applicant's detention. However, there is no need for the Court to establish the truthfulness of each and every allegation, as it finds that there has been a violation of Article 3 on the basis of the facts which have been presented and which the respondent Government have failed to refute.

32. The main characteristic which the parties did agree upon was the size of the cells. However, the applicant claimed that the cell population considerably exceeded the capacity for which the cells had been designed. The Government, relying on the information provided by the warders of facility no. IZ-77/1 (see paragraph 10 above) and the certificate issued by the director of facility no. IZ-77/3 (see paragraph 16 above), argued that the applicant had been detained together with five or six other inmates in the first facility and with no more than eight other inmates in the second facility. The Government further submitted that the relevant documents indicating the exact number of inmates in the cells had been destroyed.

33. In this connection the Court observes that Convention proceedings, such as 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. A 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).

34. Turning to the facts of the present case, the Court notes that the Government, in their plea concerning the destruction of the relevant documents, cited the statements by the warders and the facility's director indicating the number of the applicant's fellow inmates. However, the Court finds it extraordinary that in December 2005, that is, more than three years after the applicant's detention in those facilities had come to an end and in the absence of any documentary evidence, the officials were able to recollect the exact number of inmates who had been detained together with the applicant. The Court further observes that the Government misinterpreted the certificate of 20 December 2005 issued by the director of facility no. IZ-77/3 (see paragraph 16 above). The Government argued that the applicant had been detained together with seven or eight other inmates. However, it is clear that the certificate in question indicated the minimum number of inmates in the applicant's cell without providing any information on the maximum possible number of detainees.

35. Having regard to the principles indicated in paragraph 33 above, together with the fact that the Government did not submit any convincing relevant information and that they agreed in principle that the cells might have been overcrowded (see paragraph 28 above), the Court will examine the issue concerning the number of inmates in the cells on the basis of the applicant's submissions.

36. According to the applicant, the occupants of the cells in both detention facilities were afforded less than 1 sq. m of personal space. The number of detainees was greater than the number of available bunks. It follows that the detainees, including the applicant, had to share the sleeping facilities, taking turns to rest. Hence, for approximately a year and a half the applicant was confined to his cell day and night.

37. Irrespective of the reasons for the overcrowding, the Court considers that it is incumbent on the respondent Government to organise its penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova*, cited above, § 63).

38. The Court has frequently found a violation of Article 3 of the Convention on account of lack of personal space afforded to detainees (see *Khudoyorov v. Russia*, no. 6847/02, § 104 et seq., ECHR 2005-... (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).

39. 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 was obliged to live, sleep and use the toilet in the same cell as so many other inmates for almost eighteen months 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.

40. In addition, the Court observes that the applicant was diagnosed with a serious skin disease in facility no. IZ-77/1 and that it appears most likely that he was infected while in detention. Although this fact in itself does not imply a violation of Article 3 given, in particular, the fact that the applicant received treatment (see *Alver v. Estonia*, no. 64812/01, § 54, 8 November 2005 and, *mutatis mutandis*, *Khokhlich v. Ukraine*, no. 41707/98, 29 April 2003) and that he fully recovered, the Court considers that these aspects, while not in themselves capable of justifying the notion of “inhuman” treatment, are relevant in addition to the pivotal factor of severe overcrowding in demonstrating that the applicant's conditions of detention went beyond the threshold tolerated by Article 3 of the Convention (compare *Novoselov*, cited above, § 44).

41. There has therefore been a violation of Article 3 of the Convention because the applicant was subjected to inhuman treatment on account of the conditions of his detention from 29 December 2000 to 28 June 2002 in facilities nos. IZ-77/1 and IZ-77/3.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

42. Relying on Article 5 of the Convention, the applicant complained of the unlawfulness and excessive length of his detention on remand. Article 5, in so far as relevant, reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within

a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

43. As regards the applicant's complaints, the Court is not required to decide whether or not they disclose an appearance of a violation of the Convention. The Court reiterates that, according to Article 35 of the Convention, the Court may only deal with the matter within a period of six months from the date on which the final decision was taken. It observes that the applicant was convicted on 23 January 2002 and that after that date his detention no longer fell within the ambit of Article 5 § 1 (c) but within the scope of Article 5 § 1 (a) of the Convention (see, for instance, *Fedosov v. Russia* (dec.), no. 42237/02, 25 January 2007, with further references). The applicant lodged his application before the Court on 5 August 2002, that is, more than six months after his detention on remand had ended.

44. It follows that the present complaint was introduced out of time and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

45. The applicant complained under Article 6 of the Convention that the courts had incorrectly assessed evidence and incorrectly applied the domestic law, that they had not thoroughly considered his arguments and that the authorities had forged documents in the case file and had not provided him with a copy of the final judgment.

46. Having regard to all the material in its possession, and in so far as these complaints fall within its competence *ratione materiae*, the Court finds that the evidence discloses 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.

IV. 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.”

48. The Court points out that under Rule 60 of the Rules of Court any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, “failing which the Chamber may reject the claim in whole or in part”.

49. On 2 February 2006 the Court invited the applicant to submit his claims for just satisfaction. He did not submit any such claims within the required time-limits.

50. In such circumstances the Court would usually make no award. In the present case, however, the Court has found a violation of the applicant's right not to be subjected to inhuman treatment. Since this right is of absolute character, the Court finds it possible to award the applicant 5,000 euros (EUR) by way of non-pecuniary damage (compare *Mayzit v. Russia*, no. 63378/00, §§ 87-88, 20 January 2005), plus any tax that may be chargeable.

51. 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 from 29 December 2000 to 28 June 2002 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 5,000 (five thousand euros) in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of the 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.

Done in English, and notified in writing on 7 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Registrar

Christos ROZAKIS
President