



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

FIRST SECTION

CASE OF BYCHKOV v. RUSSIA

(Application no. 39420/03)

JUDGMENT

STRASBOURG

5 March 2009

FINAL

05/06/2009

This judgment may be subject to editorial revision.

In the case of Bychkov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Elisabeth Steiner,

Khanlar Hajiyev,

Dean Spielmann,

Sverre Erik Jebens, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 12 February 2009,

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

PROCEDURE

1. The case originated in an application (no. 39420/03) 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 Pavel Viktorovich Bychkov (“the applicant”), on 21 October 2003.

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

3. The applicant complained, in particular, that the conditions of his pre-trial detention had been appalling.

4. On 4 January 2006 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1975. He is currently serving a prison sentence.

A. Criminal proceedings against the applicant

6. On 31 May 2000 the applicant, a tax police officer, was arrested. He was later remanded in custody on suspicion of banditry, robbery and abuse of power. His detention was subsequently extended on several occasions.

7. The proceedings against the applicant and co-accused were surrounded by an extensive media campaign. In particular, on 6 June 2000 the *Segodnia* daily newspaper published an article which contained a detailed description by a journalist of the charges against the applicant and co-accused. According to the applicant's submissions, similar statements were repeated in other Moscow newspapers («*Московский Комсомолец*») in June 2000. The applicant asserted that the prosecutor had included these articles in the case file as evidence against him.

8. In April 2001 the pre-trial investigation was completed and the case was referred to the Moscow City Court.

9. On 8 May 2002 the Moscow City Court convicted the applicant as charged and sentenced him to thirteen years' imprisonment. The court relied on statements of many witnesses, including co-defendants and victims, and forensic expert reports.

10. On 1 October 2002 the Supreme Court of Russia, acting on appeal, quashed the judgment due to procedural defects and remitted the case for a fresh examination.

11. On 19 February 2003 the Moscow City Court convicted the applicant as charged and sentenced him to twelve years and six months' imprisonment. During the trial the defendants, relying on their right to silence, refused to testify. The court based its findings on numerous witnesses' depositions and submissions by the defendants during the pre-trial investigation.

12. According to the applicant, on 9 June 2003 another Moscow newspaper («*Российский Курьер*») published an article discussing the applicant's criminal case.

13. On 29 July 2003 the Supreme Court of Russia, acting on appeal, upheld the judgment with minor changes.

B. Conditions of detention

14. From 5 June 2000 to 9 September 2003 the applicant was detained in facilities nos. IZ-77/2 and IZ-77/3 in Moscow.

*1. Number of inmates per cell***(a) Facility no. IZ-77/2**

15. According to certificates issued on 15 February 2006 by the acting facility director, and produced by the Government, the applicant was kept in eight cells. From 5 June to 27 October 2000 he was detained in cells nos. 314, 501, 146 and 218. According to the Government, the information on the number of inmates during the above period was not available as the documents had been destroyed.

16. Further, the Government submitted that from 27 October 2000 to 22 January 2002 there had been fifteen detainees on average together with the applicant in cell no. 501, which was designed for thirty-eight persons. From 22 January to 12 February 2002 there were four detainees on average in cell no. 27, which was designed for six persons. From 12 February to 17 April 2002 there were ten detainees on average in cell no. 51, which was designed for eight persons. From 17 April to 17 May 2002 there were twenty-five detainees on average in cell no. 140, which was designed for twenty-two persons. There were fifty-one detainees on average in the same cell from 28 October 2002 to 16 February 2003. From 17 to 30 May 2002 there were two detainees on average in cell no. 37, which was designed for six persons. From 16 February to 28 June 2003 there were twenty-eight detainees on average in cell no. 146, which was designed for twenty persons. Finally, from 28 June to 14 August 2003 there were twenty detainees in cell no. 2, which was designed for twenty-two persons.

17. The Government supported their assertions with copies of extracts from registration logs showing the number of detainees on 1 December 2001, 12 and 13 February, 1 and 2 April, 14 and 15 April, 18 and 19 May, 30 and 31 October 2002, 12 and 13 June, and 2 and 3 August 2003. The registration logs did not include the detainees' names. The Government did not provide the Court with information on the cell measurements.

18. The applicant contested this information in part. He stated that from 9 to 19 July 2000 he had shared cell no. 146, which measured 48 sq. m, with up to seventy detainees. There were thirty-eight detainees in the same cell as the applicant from 15 February to 31 March 2002 and from 15 February 2003 to 16 August 2003, and they had to sleep in shifts. Further, according to the applicant, cell no. 501 measuring 36 sq. m, in which he was kept from 19 July to 24 August 2000 and from 24 September 2000 to 18 January 2001, housed thirty-eight detainees. From 4 October 2002 to 15 February 2003 the applicant was kept in cell no. 140, measuring 48 sq. m, with at least thirty-seven other detainees.

(b) Facility no. IZ-77/3

19. From 30 May to 29 October 2002 and from 14 August to 9 September 2003 the applicant was kept in detention facility no. IZ-77/3 in Moscow, in cells nos. 524 and 523 respectively. According to the Government, in cell no. 524 he was kept at different periods with twenty-one to thirty-four other detainees; and in cell no. 523 with twenty-one to twenty-four detainees.

20. The applicant stated that both cells measured 30 sq. m and there were thirty persons there with him.

2. Sanitary conditions, installations and temperature

21. The Government, relying on the information provided by the Federal Service for the Execution of Sentences, submitted, with respect to both facilities, that the cells had been ventilated naturally through the windows. Each cell also had a ventilation shaft. The cells had natural light and the metal shutters (“eyelashes”) were removed on 25 November 2002 following a relevant directive of the Ministry of Justice. Furthermore there were twenty-four-hour artificial lights, as well as security lights. The partition around the toilet offered sufficient privacy.

22. The applicant disagreed with the Government’s description and submitted that the sanitary conditions had been unsatisfactory. The windows of the cells let almost no daylight in as they were covered with “eyelashes”, and due to insufficient daylight the applicant’s eyesight deteriorated significantly during the period of detention. Toilet facilities were not separated from the living area, the cells had no ventilation and the air was always stuffy. Smoking was not restricted in the cells, which exposed the applicant, who is a non-smoker, to heavy tobacco smoke and made him feel sick. The cells were infected with bed-bugs and lice but the administration did not provide any insecticides.

23. The applicant produced written statements by Mr M., who had been detained in cell no. 501 in detention facility IZ-77/2 in 2000-2002, and Mr V. who had been detained together with the applicant from 17 November 2002 to 15 February 2003 in cell no. 140 and from 15 February to 16 August 2003 in cell no. 146 in detention facility IZ-77/2. They confirmed the applicant’s account of the conditions of detention there, including information on cell measurements, number of detainees and sanitary conditions.

II. RELEVANT DOMESTIC LAW

24. Section 23 of the Detention of Suspects Act (Federal Law no. 103-FZ 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. According to section 24, administration of detention facilities shall meet the sanitary and hygienic requirements which secure the detainees' health.

III. RELEVANT INTERNATIONAL DOCUMENTS

25. Relevant international documents and reports concerning the conditions in Russian penitentiary establishments can be found in the judgment of 25 October 2005 in the case of *Fedotov v. Russia*, (no. 5140/02, §§ 54-55), judgment of 10 May 2007 in the case of *Benediktov v. Russia*, (no. 106/02, § 21) and judgment of 8 November 2005 in the case of *Khudoyorov v. Russia* (no. 6847/02, §§ 97-98).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF THE APPLICANT'S DETENTION

26. The applicant complained that the conditions of his detention in facilities nos. IZ-77/2 and IZ-77/3 of Moscow had been inhuman and degrading 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. Submissions by the parties

27. The Government stated that the application should be rejected for being out of time. They considered that the applicant had first raised this complaint on 19 August 2004, according to the Court's stamp on the application form. The Government also argued that the applicant had not exhausted the domestic remedies available to him. In particular, he had not lodged any complaint about his conditions of detention.

28. The Government further submitted that detention conditions in facilities nos. IZ-77/2 and IZ-77/3 had been adequate. They relied on certificates issued by the Federal Service for the Execution of Sentences confirming that the applicant had been provided with an individual sleeping place and that the sanitary, hygienic and temperature conditions had been

satisfactory. According to them, the mere fact that the applicant had been detained in overcrowded cells cannot serve as a basis for finding a violation of Article 3 of the Convention.

29. The applicant challenged the Government's description of the conditions in detention facilities nos. IZ-77/2 and IZ-77/3 and insisted that they had been unacceptable. He submitted that the cells had at all times been severely overcrowded and the cell area per detainee had been insufficient, that the toilet offered no privacy, and that the lighting had been dim.

B. The Court's assessment

1. Admissibility

30. The Court notes at the outset that the applicant was transferred from pre-trial detention facilities to a correctional colony on 9 September 2003. In his letter of 21 October 2003, which set out a summary of the relevant facts, the applicant explicitly informed the Court that he wished to complain, *inter alia*, of a violation of Article 3 of the Convention with respect to the conditions of his pre-trial detention. The Court received this letter on 4 November 2003. The Court reiterates that an application is lodged on the date of the applicant's first letter, provided the applicant has sufficiently indicated the purpose of the application (see *Papageorgiou v. Greece*, judgment of 22 October 1997, *Reports of Judgments and Decisions* 1997-VI, § 32). Therefore, the Government's argument should be dismissed.

31. The Court also notes, as far as exhaustion of domestic remedies is concerned, that it is true that the applicant did not lodge complaints with the courts or prosecutor's offices about his detention conditions. However the Government did not demonstrate what redress could have been afforded to the applicant by such a measure, taking into account that the problems arising from the conditions of his detention were apparently of a structural nature and did not only concern his personal situation (see *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001, *Mamedova v. Russia*, no. 7064/05, § 57, 1 June 2006; and *Benediktov*, cited above, §§ 29-30). The Court therefore finds that this complaint cannot be rejected for failure to exhaust domestic remedies.

32. The Court further finds that this complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 of the Convention nor inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

33. An outline of the Court's case-law under Article 3 of the Convention on account of the conditions of detention can be found in a number of

judgments concerning Russia (see, in particular, *Kalashnikov v. Russia*, no. 47095/99, §§ 95 et seq., ECHR 2002-VI, and *Mayzit v. Russia* no. 63378/00, §§ 34 et seq., 20 January 2005).

34. The Court notes at the outset that the continuous nature of the applicant's detention in facilities nos. IZ-77/2 and IZ-77/3 and his identical descriptions of the conditions of the detention warrant the examination of the applicant's detention from 5 June 2000 to 9 September 2003 without dividing it into separate periods (see, for similar reasoning, *Benediktov*, cited above, § 31).

35. The Court observes that the parties disagreed as to the specific conditions of the applicant's detention. There is also a divergence in their submissions with respect to periods of time during which the applicant was detained in particular cells. However, there is no need for the Court to establish the truth of each and every allegation, since it considers that those facts that are not in dispute give it sufficient grounds to make substantive conclusions on whether the conditions of the applicant's detention amounted to treatment contrary to Article 3 of the Convention.

36. The Court notes that the Government did not submit any information on the measurements of the cells. It also notes that whilst the Government agreed that on several occasions the number of inmates exceeded the cells' designed capacity (see paragraphs 16 and 28 above), in their plea concerning the number of detainees they only indicated the average occupancy rate for each cell. The statements indicating the average number of the applicant's fellow inmates were supported by extracts from the registration logs showing the number of detainees for certain dates: one date in respect of each cell where the applicant had been detained (see paragraph 17 above). The Court finds it unconvincing that the Government preferred to submit the extracts for certain dates only and failed to refer to any source of information on the basis of which they had made the assertion on the average numbers of inmates in the cells. Neither have they submitted any documents on the basis of which their assertion could be verified. In the absence of such information, the extracts from the logs are of little evidential value for the Court. The Court further notes that the Government were unable to indicate the exact number of inmates in the cells from 5 June to 27 October 2000, alleging that the relevant documents had been destroyed.

37. In this respect, 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) because in certain instances the respondent Government alone have access to information capable of corroborating or refuting these 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, among other authorities, *Fadeyeva v. Russia*, no. 55723/00, § 79, ECHR 2005-IV, and *Ahmet Özkan and Others v. Turkey*, no. 21689/93, § 426, 6 April 2004).

38. Having regard to the above-mentioned principles, in the absence of sufficient official data as to the number of detainees, the Court will examine the issue concerning the number of inmates in the cells and the cell measurements on the basis of the applicant's submissions, confirmed by his former cell-mates Mr M. and Mr V.

39. It follows from the applicant's submissions concerning cell measurements and number of inmates per cell (see paragraphs 18 and 20 above) that the living area per inmate varied from 0.65 to 1.3 sq. m. Furthermore, as the number of detainees exceeded the number of beds, the applicant had to share the bed with other detainees, taking turns to sleep.

40. Irrespective of the reasons for the overcrowding, the Court considers that it is incumbent on the respondent Government to organise its prison 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).

41. The Court has frequently found a violation of Article 3 of the Convention on account of a lack of personal space afforded to detainees (see *Khudoyorov v. Russia*, no. 6847/02, § 104 et seq., ECHR 2005-... (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*, cited above, § 39 et seq.; and *Kalashnikov v. Russia*, cited above, § 97 et seq.). More specifically, the Court has recently found a violation of Article 3 on account of an applicant's detention in overcrowded conditions in the same detention facilities and approximately at the same time (see *Benediktov*, cited above, §§ 31-41, *Igor Ivanov v. Russia*, no. 34000/02, §§ 16-18, and §§ 30-41, 7 June 2007; and *Sudarkov v. Russia*, no. 3130/03, §§ 40-51, 10 July 2008).

42. 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 an explicit 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 with so many other inmates for about three years and three months was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him. The applicant's situation was, furthermore, aggravated by the lack of natural light in the cell, as the cell windows had been covered with metal shutters which

blocked access to fresh air and natural light and which, according to the Government, were removed only in November 2002.

43. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in the detention facilities nos. IZ-77/2 and IZ-77/3, Moscow, which must be considered as inhuman within the meaning of this provision.

II. ALLEGED VIOLATION OF ARTICLE 5 § 1 OF THE CONVENTION

44. The applicant further complained that his detention had not been compatible with the requirements of Article 5 § 1 of the Convention as there had been no legal basis for it after 1 October 2002. 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...;

45. The Government contested that argument and pointed out that the complaint under Article 5 was outside the six-month time-limit.

46. The Court reiterates that, according to Article 35 of the Convention, it 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's pre-trial detention ended on 19 February 2003 when the Moscow City Court sentenced him to imprisonment. 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 as the lawful detention after conviction by a competent court; (see *B. v. Austria*, judgment of 28 March 1990, Series A no. 175, pp. 14-16, §§ 36-39). The applicant lodged his application with the Court on 21 October 2003, which was more than six months after his pre-trial detention had ended.

47. It follows that this part of the application was lodged 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

48. The Court has examined the other complaints submitted by the applicant under Articles 3, 5 and 6 of the Convention. However, having regard to all the material in its possession, the Court finds that they do not

disclose any 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

49. 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

50. The applicant claimed 140,400 euros (EUR) in respect of pecuniary damage. He submitted that that sum represented capital losses accrued during his detention. The applicant argued that he had not been able to work during the criminal proceedings, his relatives had to support him during the whole period of his detention. He further claimed EUR 1,260,000 in respect of non-pecuniary damage.

51. The Government contested the existence of a causal link between the alleged violation and the pecuniary loss alleged by the applicant. They further argued that the applicant's claim pertaining to non-pecuniary damage was excessive and unsubstantiated. In any event, a finding of a violation would constitute sufficient just satisfaction.

52. The Court notes that the decision to prefer criminal charges against the applicant was not the subject of its review in the present case. It shares the Government's view that there is no causal link between the violations found and the pecuniary damage claimed (see *Nakhmanovich v. Russia*, no. 55669/00, § 102, 2 March 2006). The Court finds no reason to award the applicant any sum under this head. Nevertheless, the Court accepts that the applicant suffered humiliation and distress because of the inhuman and degrading conditions of his detention, which cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, and taking into account in particular, the length of the applicant's detention, it awards the applicant EUR 15,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

53. As the applicant did not claim costs and expenses, the Court makes no award under this head.

C. Default interest

54. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the conditions of the applicant's detention in facilities nos. IZ-77/2 and IZ-77/3 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 15,000 (fifteen 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 5 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President