



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

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1959 · 50 · 2009

FIRST SECTION

**CASE OF BUZHINAYEV v. RUSSIA**

*(Application no. 17679/03)*

JUDGMENT

STRASBOURG

15 October 2009

**FINAL**

*15/01/2010*

*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 Buzhinayev 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 Hajiyeu,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 24 September 2009,

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

**PROCEDURE**

1. The case originated in an application (no. 17679/03) 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 Aleksey Anatolyevich Buzhinayev (“the applicant”), on 5 May 2003.

2. The applicant was represented by Mr A. Bazarov, a lawyer practising in Ulan-Ude. The Russian Government (“the Government”) were represented by Mr P. Laptev and Ms V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged in particular that he had been detained in inhuman and degrading conditions, that the criminal proceedings against him had been unreasonably long and that he did not have an effective remedy in respect of his complaint about the length of the proceedings in question.

4. On 7 November 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).

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

## THE FACTS

6. The applicant was born in 1974 and lives in Barguzin, Republic of Buryatiya.

### A. Criminal proceedings against the applicant

7. On 1 April 1998 the applicant was arrested on suspicion of robbery. On 3 April 1998 the Prosecutor's Office of the Oktyabrskiy District of Ulan-Ude authorised his pre-trial detention. The applicant remained in custody pending investigation and trial.

8. Upon completion of the investigation in December 1998, the prosecutor's office forwarded the case file in respect of the applicant and six other defendants to the Supreme Court of the Republic of Buryatiya. The Supreme Court found, however, that the case should be remitted to the prosecutor's office in view of the incomplete investigation. The relevant decision was issued on 26 January 1999. Subsequently the Supreme Court remitted the matter for additional investigation on 15 June 1999 and 31 March and 4 July 2000.

9. The opening of the trial was scheduled by the Supreme Court on 8 December 2000.

10. On 8 and 14 December 2000 the hearing was adjourned due to the absence of the interpreter.

11. Between 19 January and 17 April 2001 the Supreme Court scheduled and adjourned seventeen hearings. The Government submitted the information concerning the reasons for the adjournment as follows. On one occasion the applicant's lawyer failed to appear. On four occasions the court could not proceed due to the absence of one of the legal counsel representing other defendants. Three times the interpreter failed to appear due to his illness or business trips. Once the hearing was adjourned pending the completion of an additional forensic medical examination. The court also went into recess for two days on one occasion to prepare its ruling in response to the submissions made by the parties.

12. On 18 May 2001 the Supreme Court found the applicant guilty as charged and sentenced him to eight years' imprisonment.

13. On 5 December 2002 the Supreme Court of Russia upheld the applicant's conviction on appeal. The applicant's representative was present; the applicant participated in the hearing by video link.

### B. Conditions of the applicant's detention

14. From 6 April 1998 to 16 May 2002 the applicant was detained at remand prison IZ-4/1 in Ulan-Ude. According to the Government, from 6 April 1998 to 3 April 2001 the applicant was held in cell no. 170, which

measured 45.6 sq. m and housed 14-16 inmates. From 3 April to 28 November 2001 the applicant was held in cell no. 117, which measured 46.02 sq. m and housed 7-9 inmates. From 28 November 2001 to 16 May 2002 the applicant was held in cell no. 44, which measured 57.76 sq. m and housed 16-19 inmates.

15. On 16 May 2002 the applicant was taken to Moscow and placed in remand prison no. IZ-77/3 where he was detained pending an appeal hearing until 21 December. According to the Government, the applicant was held in cell no. 212, which measured 28.5 sq. m and housed seven inmates.

16. On 23 January 2003 the applicant was returned to remand prison IZ-4/1, where he was placed in cell no. 48 which, according to the Government, measured 74.86 sq. m and housed 23-26 inmates. On 28 January 2003 the applicant was transferred to a penitentiary facility to serve his prison sentence.

17. Without disputing the information submitted by the Government concerning the size of the cells, the applicant claimed that all of them had been overcrowded. The number of bunk beds was insufficient and the inmates had to take turns to sleep. The cells did not have any ventilation and were stiflingly hot in summer. The cells were infested with cockroaches. The light was never switched off. There was little access to fresh air. The toilet offered no privacy. The meals were of poor quality. The inmates were allowed to take a shower once or twice a month. As a result of the poor hygiene the applicant contracted scabies and fungus infection.

18. According to the Government the conditions of the applicant's detention were satisfactory. The cells were ventilated and had central heating, water supply, sewage, natural and electric lighting and sanitary equipment. The toilet was separated by a partition from the living area of the cell. In remand prison IZ-1/4 that partition was 1.8 m high. In remand prison IZ-77/3 it was 1 m high. The average temperature in the cells was 22°C in the winter and 18-26°C in the summer. The electric lighting was constantly on for surveillance and safety reasons. At night lower-voltage bulbs were used. The cells were disinfected at least once a month. The applicant was provided with an individual bed, mattress, pillow and bed linen. No parasitic insects had ever been detected in the cells.

19. On 2 April 2001 the applicant was diagnosed with tuberculosis and transferred to a medical unit at the remand centre. He underwent medical treatment and was released from the medical unit on 31 August 2001. Upon discharge, his condition was described as "clinically curable tuberculosis pertaining to the third group for preventive monitoring" ("клинически излечимый туберкулез, III группа диспансерного учета»). According to the Government, the applicant received necessary and proper medical assistance.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

20. The applicant complained that he had been detained in appalling conditions contrary to Article 3 of the Convention, which reads as follows:

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

21. The Government contested that argument. They claimed that the conditions of the applicant's detention in the remand prisons were satisfactory and in compliance with applicable domestic norms and standards. They provided copies of the inspections conducted in January and July 2001 stating that the average temperature in the cells was 22°C in the winter and 26.5°C in the summer. They also submitted a copy of the report dated 30 January 2001 concerning the lighting in cell no. 44. The Government also presented a copy of the applicant's registration card from remand prison IZ-4/1 listing the individual bedding items and cutlery the applicant had been provided with. The information provided by the Government with regard to the surface area of the cells and the number of inmates detained with the applicant was based on the certificates issued by the remand prisons' administration in December 2006 and on colour photos taken at remand prison IZ-4/1 at the same time. Without disputing the applicant's allegations that he had contracted scabies and fungus infections while in detention, the Government further submitted that the applicant's file containing his medical history for 2001-2003 had been lost. As regards the fact that the applicant had developed tuberculosis in April 2001, they speculated that this fact alone was not sufficient to prove that the applicant had indeed contracted tuberculosis at the material time. The possibility that the applicant had been infected with tuberculosis some years before and that TB bacteria had remained dormant until April 2001 should not be excluded. Lastly, they observed that the applicant had failed to complain about the conditions of his detention either to the prosecutor or the court and that his complaint should be dismissed in accordance with Article 35 § 1 of the Convention.

22. The applicant maintained his complaint.

#### A. Admissibility

##### *1. Global assessment of the conditions of the applicant's detention*

23. The Court notes from the outset that even though the applicant has been detained in two different remand prisons, in Ulan-Ude and Moscow, it

will nevertheless examine the issue of the conditions of the applicant's detention from 6 April 1998 to 28 January 2003, in so far it is within the Court's competence *ratione temporis*, without dividing it into separate periods, given the continuous nature of the alleged violation and the identical description of the general conditions of the detention (see, *mutatis mutandis*, *Guliyev v. Russia*, no. 24650/02, §§ 31-33, 19 June 2008).

## 2. Exhaustion of domestic remedies

24. As to the Government's objection of non-exhaustion, the Court observes that it has previously found that an application to a prosecutor or a court with a view of obtaining redress for the allegedly inhuman and degrading conditions of detention cannot be regarded as an effective domestic remedy (see, for example, *Aleksandr Makarov v. Russia*, no. 15217/07, §§ 76-91, 12 March 2009). Having regard to the materials submitted by the Government, the Court notes that they have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case. The Court therefore dismisses the Government's objection as to the applicant's failure to exhaust domestic remedies.

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

## B. Merits

26. Article 3, as the Court has observed on many occasions, enshrines one of the fundamental values of 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 that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Although measures depriving a person of his 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).

27. Turning to the facts of the instant case the Court notes 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).

28. In particular, the Court observes that even though the applicant did not directly contest the information provided by the Government concerning the surface area of the cells where he had been detained, he maintained his assertion that the cells had been overcrowded and that he had not been provided with an individual bed and had had to take turns with other inmates to sleep.

29. As to the Government's reliance on the certificates and photographs made by the remand prisons' administration in December 2006, the Court observes that those documents were prepared approximately four years after the applicant's detention ended. No copies of the original records specifying the allocation of inmates to the cells were submitted. Nor does the Court lose sight of the fact that the information contained in the certificates is inconsistent to a certain extent with the remainder of the Government's submissions. In particular, the Government claimed that from 3 April to 28 November 2001 the applicant was detained in cell no. 117 (see paragraph 14). At the same time, the Government indicated that from 2 April to 31 August 2001 the applicant was placed in a medical unit (see paragraph 19).

30. The Court observes that it has earlier held that documents prepared by the authorities after a considerable period of time cannot be viewed as sufficiently reliable given the time that has passed (see, among recent authorities, *Novinskiy v. Russia*, no. 11982/02, § 105, 10 February 2009). The Court opines that these considerations hold true in the present case in respect of the certificates prepared by the remand prisons' administration and submitted by the Government to substantiate their submissions on the issue.

31. In this connection the Court reiterates 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 *Timurtaş v. Turkey*, no. 23531/94, § 66 *in fine*, ECHR 2000-VI).

32. Having regard to the principles cited above and the fact that the Government did not submit any convincing relevant data, the Court accepts

the applicant's argument that the cells where he had been detained for over four years and nine months had been overcrowded.

33. The Court reiterates that irrespective of the reasons for the overcrowding it is incumbent on the respondent Government to organise their custodial system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006, and *Benediktov v. Russia*, no. 106/02, § 37, 10 May 2007).

34. The Court has frequently found a violation of Article 3 of the Convention on account of the lack of personal space afforded to detainees (see, among other authorities, *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., ECHR 2005-X; *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; and *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005).

35. Having regard to its case-law on the subject and the materials in its possession, 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.

36. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand prisons IZ-4/1 in Ulan-Ude and IZ-77/3 in Moscow between 5 May 1998 and 28 January 2003.

## II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

37. The applicant further complained that the length of the criminal proceedings in his case had been in breach of the reasonable time requirement set out in Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

“In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

38. The Government submitted that the numerous delays in the criminal proceedings, including the absence of the interpreter due to his illness or business trips, the absence of legal counsel representing the defendants and commissioning of a forensic expert examination, had not been attributable to the authorities. Besides, the length of the proceedings had been accounted for by the complexity of the case, which involved consideration of the criminal charges against seven defendants, one of whom was a Chinese national, and seven volumes of case file materials.

39. The applicant maintained his complaint. He submitted that the preliminary investigation had not been conducted promptly. He further disputed the Government's assertion as to the complexity of the case.

### A. Admissibility

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

### B. Merits

41. The Court reiterates that the period to be taken into consideration in determining the length of criminal proceedings begins with the day on which a person is “charged” within the autonomous and substantive meaning to be given to that term (see, among other authorities, *Corigliano v. Italy*, 10 December 1982, § 34, Series A no. 57, and *Imbrioscia v. Switzerland*, 24 November 1993, § 36, Series A no. 275). It ends with the day on which a charge is finally determined or the proceedings are discontinued.

42. The applicant was arrested on 1 April 1998. However, the period to be taken into consideration began only on 5 May 1998, when the Convention entered into force in respect of Russia. Nevertheless, in assessing the reasonableness of the length of the criminal proceedings against the applicant, the Court will take into account the state of proceedings existing on the material date. The proceedings in question ended on 5 December 2002 when the applicant's conviction was upheld on appeal. Overall the period under consideration lasted over four years and eight months, of which four years and seven months fall within the Court's competence *ratione temporis*. During that time the authorities conducted a criminal investigation against the applicant and reviewed his case in court at two levels of jurisdiction.

43. The Court reiterates that the reasonableness of the length of the proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicant's conduct and the conduct of the competent authorities (see, among many other authorities, *Nakhmanovich v. Russia*, no. 55669/00, § 95, 2 March 2006).

44. The Court concedes that the involvement of several co-defendants in the proceedings and the seriousness of the charges brought against them rendered the proceedings complex. However, in the Court's view, the complexity of the case alone does not suffice to account for the length of the proceedings in the instant case.

45. The Court notes that apart from one adjournment caused by the failure of the applicant's counsel to appear, the former did not cause any delays in the proceedings. Moreover, the fact that he was held in custody required particular diligence on the part of the authorities dealing with the

case to administer justice expeditiously (see, among other authorities, *Korshunov v. Russia*, no. 38971/06, § 71, 25 October 2007).

46. The Court further notes that, even though on certain days the hearing was adjourned due to the failure of the lawyers representing other defendants to appear, nevertheless the trial lasted five months, and those delays have not significantly contributed to the overall length of the criminal proceedings against the applicant.

47. However, the Court observes that a one-year delay in the proceedings was caused by the failure of the prosecutor's office to conduct a comprehensive investigation into the charges against the applicant and other defendants. The trial court was unable to start the hearing of the case due to the deficiency in the investigation and had to remit the matter back to the prosecutor's office four times.

48. Having regard to the foregoing, and given that the applicant had been in custody throughout the whole period in which the proceedings were pending, the Court considers that the length of the proceedings in the present case did not satisfy the "reasonable time" requirement.

49. There has accordingly been a breach of Article 6 § 1 of the Convention.

### III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

50. The applicant further claimed that he had had no effective remedy at his disposal for the excessive length of the proceedings as required by Article 13 of the Convention, which provides 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."

51. The Government contested that argument. They submitted that the applicant could challenge the trial court's decisions, including those concerning the remittal of the matter for additional investigation.

52. The applicant maintained his complaint.

#### A. Admissibility

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

## B. Merits

54. The Court reiterates that Article 13 guarantees an effective remedy before a national authority for an alleged breach of the requirement under Article 6 § 1 to hear a case within a reasonable time (see *Kudla*, cited above, § 156). It notes that the Government did not indicate any remedy that could have expedited the determination of the applicant's case or provided him with adequate redress for delays that had already occurred (see *Sidorenko v. Russia*, no. 4459/03, § 39, 8 March 2007, and *Klyakhin v. Russia*, no. 46082/99, § 100-01, 30 November 2004). In particular, the Government did not explain how an appeal against the trial court's decision to remit the matter for additional investigation in order to rectify the earlier deficiencies could have expedited those proceedings.

55. Accordingly, the Court considers that in the present case there has been a violation of Article 13 of the Convention on account of the lack of a remedy under domestic law whereby the applicant could have obtained a ruling on his right to have his case heard within a reasonable time, as set forth in Article 6 § 1 of the Convention.

## IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

56. Lastly, the applicant complained about the conditions of his transport from one remand prison to the other, that his pre-trial detention had been unlawful and unreasonable, and that the criminal proceedings against him had overall been unfair. He relied on Articles 5 and 6 of the Convention respectively.

57. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence *ratione temporis*, 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.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

58. 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

59. The applicant claimed 108,000 euros (EUR) in respect of non-pecuniary damage.

60. The Government opined that the applicant's allegations should not give rise to an award of any compensation of non-pecuniary damage. In any event, they considered the applicant's claim excessive.

61. The Court considers that the applicant suffered frustration, distress and humiliation caused by inhuman and degrading conditions of his detention, excessive length of the criminal proceedings against him and lack of an effective remedy against it. However, the Court accepts the Government's argument that the particular amount claimed appears excessive. Making its assessment on an equitable basis, it awards the applicant EUR 7,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

### B. Costs and expenses

62. 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

63. 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 complaints concerning the conditions of the applicant's detention at remand prisons IZ-4/1 in Ulan-Ude and IZ-77/3 Moscow between 5 May 1998 and 28 January 2003, the length of the criminal

proceedings against the applicant and the lack of an effective remedy against it admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand prisons IZ-4/1 in Ulan-Ude and IZ-77/3 in Moscow between 5 May 1998 and 28 January 2003;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the criminal proceedings against the applicant;
4. *Holds* that there has been a violation of Article 13 of the Convention on account of the lack of effective remedy for the applicant's complaint about the excessive length of the criminal proceedings against him;
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 7,000 (seven thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable 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 15 October 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach  
Deputy Registrar

Christos Rozakis  
President