



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

FIRST SECTION

CASE OF KOSITSYN v. RUSSIA

(Application no. 69535/01)

JUDGMENT

STRASBOURG

12 May 2010

FINAL

12/08/2010

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

In the case of Kositsyn 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,

Dean Spielmann,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 22 April 2010,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 69535/01) 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 Yevgeniy Viktorovich Kositsyn (“the applicant”), on 19 February 2001.

2. The applicant, who had been granted legal aid, was represented by Ms G. V. Guseva, a lawyer practising in Kaliningrad. 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 alleged, *inter alia*, that the conditions of his detention in remand prison IZ-39/1 of Kaliningrad had been inhuman.

4. By a decision of 19 October 2006, the Court declared the application partly admissible.

5. The Chamber decided after consulting the parties that no hearing on the merits was required (Rule 59 § 3 *in fine*). The applicant and the Government each filed further written observations (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born in 1962 and lives in Kaliningrad.

7. On 17 October 1999 the police arrested the applicant on suspicion of the murder of Ms M. On 20 October 1999 an investigating officer charged the applicant and detained him in remand prison IZ-39/1 in Kaliningrad. On 20 April 2000 the Central District Court of Kaliningrad found the applicant guilty of the murder of Ms M. The applicant was sentenced to fourteen years' imprisonment. On 22 August 2000 the Kaliningrad Regional Court upheld the conviction on appeal.

1. The applicant's account of detention conditions in the remand prison

8. The applicant was detained in remand prison IZ-39/1 from 20 October 1999 to 20 September 2000.

9. On his admission, he was put in a quarantine cell occupied by young offenders, some of whom had already been convicted. This cell measured 12-13 square metres and housed fourteen to sixteen prisoners. Of the eight available bunk beds, only six had bedding. The applicant was only able to sleep for three to four hours a day. The window was covered with metal shutters that let through neither light nor fresh air. The air inside was stuffy, the walls were damp. A 60-watt ceiling light stayed on day and night: too dim to read by, too bright to sleep under. The toilet had no flush or ventilation. It stood above the floor exposed to onlookers. Several prisoners had lice, tuberculosis or syphilis. The cell swarmed with cockroaches, bed bugs, ants and rats. Cleaning of the toilet was limited to sprinkling it with bleach.

10. After about a week, the prison administration moved the applicant to a cell meant for former policemen. This cell was located in the basement and measured seven square metres. It housed between eight and nineteen prisoners, even though there were only six bunk beds. The prisoners had to sleep in shifts of three to four hours a day. The window was covered with a metal shutter in which there were 1 cm holes; too small to let through either light or fresh air. There was no ventilation. The walls had a thick, dirty, wet concrete coating. A weak filament light stayed on day and night. In one corner of the cell, there was a toilet – a concrete cube raised above the floor. The toilet was not partitioned off from the cell, offered no privacy, and lacked a flush. Above it, there was a service water tap used for washing. The dining table stood one metre away from the toilet. The cell swarmed with cockroaches, bed bugs and ants.

11. In both cells, the applicant had to share bunk beds, and had no bedding, or toiletries. A fifteen-minute shower was available once every

fortnight. Because the cells were constantly overcrowded, and because many prisoners smoked, the applicant remained immobile in the stuffy air for long periods of time. Relief came from outside walks, but they were rare and short (thirty to forty minutes a day), and the yard was also overcrowded (seven to fourteen people in seven to eight square metres). There was no drinking water in the cells. The food was cold, tasteless and slovenly served. During his stay in the prison the applicant, who usually weighed sixty kilograms, lost ten kilograms in weight.

12. Along with his own description, the applicant submitted three witness statements by persons who had been detained in the prison at about the same time as him. Mr A. K. was detained in the prison from December 1998 to August 2000 and confirmed the applicant's description of the prison. Mr M. T. was detained in the prison from February 1996 to October 1999. He confirmed the applicant's description of the prison and added that the bunk beds in the cells were crudely made of sharp metal rods which caused injuries to the prisoners. Mr Y. V. was detained in the prison from August 1999 to May 2000 and confirmed the applicant's description of the prison.

2. The Government's account of detention conditions in the remand prison

13. During his detention in the prison the applicant, as a former policeman, was detained in two cells for former policemen. These cells measured 13.6 and 7.8 square metres. The prison administration provided the applicant with a bunk bed, bedding, and dishes. The cells were in a satisfactory sanitary condition, no prisoners had lice, tuberculosis, or other infectious diseases. The cells had central heating, running water, sewage, natural and artificial light, natural ventilation, two-storey beds, toilets and sinks. The average temperature in winter was 18°C, the average amount of light was 75-100 lux. The prison administration systematically disinfected the cells. Food met statutory requirements.

II. RELEVANT DOMESTIC LAW

14. 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 the sanitary and hygiene 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.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

15. The applicant complained, under Article 3 of the Convention, about the conditions of his detention from 20 October 1999 to 20 September 2000 in remand prison IZ-39/1. Article 3 of the Convention reads:

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

1. The parties' submissions

16. The Government informed the Court that they were unable to provide information on the number of people detained together with the applicant in the same cells because all the relevant records had been destroyed after the expiry of the statutory time-limits for keeping them. They admitted that the number of detainees in the remand prison could have “exceeded the fixed rates”. Nevertheless, they maintained that the applicant had been provided with an individual sleeping place. The Government asserted that prison overcrowding is a common problem for virtually all European countries. In the Russian Federation, that situation is caused by objective reasons, such as high criminality and limited capacity in detention facilities. Since 2000 measures have been taken in order to decrease the number of detainees in remand prison IZ-39/1 and improve conditions of detention there “in the light of the requirements of the Convention”. Thus, in 2003 a new pre-trial detention facility for one hundred and seventy detainees was opened. Furthermore, repair work was carried out in the remand prison. In particular, the lavatory was now separated from the cell by a curtain. The Government enclosed photographs of the cells after the renovation.

17. The Government further maintained that the applicant had never been detained with young offenders. Furthermore, he had never been detained in the basement because there are no cells in the basement of the prison.

18. The Government indicated that they were not in a position to comment on the statements of Mr M. T., Mr Y. V. and Mr A. K., (the applicant's co-detainees), because they had been released in 2000, 2002 and 2004 respectively.

19. The applicant insisted on his original submissions and claimed that his description of conditions in the remand prison was accurate.

2. *The Court's assessment*

(a) Establishment of facts

20. The parties agreed upon the size of the two cells in which the applicant had been detained. Furthermore, it is not disputed that the applicant was allowed outdoor activity for one or two hours a day; the rest of the time he was confined to his cell where he ate, slept and used the toilet together with his cellmates.

21. The Court notes that the parties have disputed certain aspects of the conditions of the applicant's detention in facility no. IZ-39/1 in Kaliningrad. However, there is no need for the Court to establish the veracity of each and every allegation because it finds a violation of Article 3 on the basis of facts presented to it, which the respondent Government did not dispute or failed to rebut.

22. The focal point for the Court's assessment is the living space afforded to the applicant in the remand prison. According to the applicant, the number of inmates there had considerably exceeded their design capacity. Thus, at best, in both cells, the inmates had less than one square metre of space per person. Sometimes, the overcrowding was even more severe. The number of bunk beds was significantly smaller than the number of detainees.

23. The Court further notes that the applicant's own account on this matter is corroborated by his cellmates' testimony. There is nothing in the case file or in the Government's submissions that might cast doubt on the credibility of their testimony.

24. Finally, the Court notes that it is already familiar with the situation in the prison in question, IZ-39/1. This same prison appeared in the case of *Mayzit v. Russia*, where the Court found a violation of Article 3 on account of the detention conditions, and, in particular, overcrowding (see *Mayzit v. Russia*, no. 63378/00, §§ 34-43, 20 January 2005.). Overcrowding in remand prison IZ-39/1 was also at the heart of another, more recent case – *Skorobogatykh v. Russia* (no. 4871/03, §§ 8 and 9, 22 December 2009, not yet final). Mr Skorobogatykh was detained in that prison from March to December 1998; Mr Mayzit was detained there from July 2000 to July 2001; the applicant was detained in that prison from October 1999 to September 2000. The findings of fact in *Mayzit* and *Skorobogatykh* are not decisive for establishing the facts in the present case. However, they are suggestive and the Court will take them into account.

25. The Court reiterates in this connection that Convention proceedings 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, such as those arising from the present application, 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).

26. The Government, on their side, claimed that there was no data available on the number of inmates detained together with the applicant. They informed the Court that the relevant records had been destroyed. The Court finds it extraordinary, however, that the authorities kept information about the exact temperature and amount of light in the cells (see paragraph 13 above for their account of the sanitary and hygiene conditions) while such basic information as the number of inmates had not been kept. Furthermore, even if the Court assumes that the relevant official documents have indeed been destroyed, as the Government suggested, it does not relieve the Government of their procedural obligation to rebut the applicant's allegations of overcrowding.

27. Having regard to the principle cited above, together with the fact that the Government did not submit any convincing relevant information, the Court will examine the issue concerning the number of inmates in remand prison no. IZ-39/1 on the basis of the applicant's submissions.

(b) The Court's analysis of facts

28. 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-X (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). More specifically, the Court reiterates that it recently found a violation of Article 3 on account of a criminal defendant's nine months' detention in overcrowded conditions in the same detention facility (see *Mayzit*, cited above, §§ 34-43). In *Mayzit*, where there had been less than two square metres of space per inmate, the Court concluded that the cells had been overcrowded, "something which in itself raises an issue under Article 3 of the Convention." In the present case, the applicant had even less personal space (less than one square metre) and was detained for a longer period of time (eleven months).

29. Irrespective of the reasons for the overcrowding, the Court reiterates 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 v. Russia*, no. 7064/05, § 63, 1 June 2006). As regards subsequent developments (refurbishment of the cells, opening of a new remand prison,

etc.), however positive they might be, they are irrelevant for the assessment of the applicant's complaints raised above.

30. 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. The Court notes that for eleven months the applicant was obliged to live, sleep and use the toilet in the same cell as many other inmates. That fact 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.

31. The Court finds, accordingly, that there has been a violation of Article 3 of the Convention, because the applicant was subjected to inhuman and degrading treatment on account of the conditions of his detention in facility no. IZ-39/1 in Kaliningrad.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

32. 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

33. The applicant claimed 300,000 roubles (RUB) in respect of non-pecuniary damage. At the moment when the claim was made, that amount corresponded to approximately 8,650 euro (EUR).

34. The Government considered the applicant's claim excessive and opined that, should the Court find a violation of the applicant's rights, the acknowledgment of a violation would constitute adequate just satisfaction.

35. The Court observes that it found a serious violation of the applicant's rights in the present case. The applicant spent eleven months in inhuman and degrading conditions. In these circumstances, the Court considers that the applicant's suffering and frustration cannot be compensated for by a mere finding of a violation. Making its assessment on an equitable basis, the Court finds the applicant reasonable and awards him EUR 8,650 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

36. The applicant also claimed compensation for translation costs incurred in the proceedings before the Court (RUB 43,804, about EUR 1,260 at the time) and compensation of the lawyer's fees (RUB 27,000, about EUR 780). He produced invoices from the translator.

37. The Government considered that the applicant had failed to demonstrate that the amount of RUB 27,000 had actually been paid by him to the lawyer. As to the legal costs (translation expenses) they considered them excessive.

38. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the amount of EUR 406 has already been paid to the applicant by way of legal aid. The applicant has failed to submit an agreement with his lawyer or any invoice from her. In such circumstances, the Court does not consider it necessary to make an award under this head.

39. As to the translation costs, the Court considers that the amount claimed by the applicant is excessive. Deciding on an equitable basis and having regard to the details of the claim submitted by the applicant, the complexity of the correspondence needing to be translated and other relevant factors, the Court awards the applicant the sum of EUR 350 together with any value-added tax that may be chargeable.

C. Default interest

40. 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. *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in the remand prison;
2. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 8,650 (eight thousand six

hundred fifty euros) in respect of non-pecuniary damage, as well as EUR 350 (three hundred fifty euros) for costs and expenses, to be converted into Russian roubles at the rate applicable on the date of settlement, plus any tax that may be chargeable to the applicant on those amounts;

(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;

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

Done in English, and notified in writing on 12 May 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President