



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

FIRST SECTION

**CASE OF OVCHINNIKOV v. RUSSIA**

*(Application no. 9807/02)*

JUDGMENT

This version was rectified on 5 August 2010  
under Rule 81 of the Rules of Court

STRASBOURG

17 June 2010

**FINAL**

*17/09/2010*

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



**In the case of** Ovchinnikov v. Russia,

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

Christos Rozakis, *President*,

Nina Vajić,

Anatoly Kovler,

Khanlar Hajiyeu,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni, *judges*,

and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 27 May 2010,

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

## PROCEDURE

1. The case originated in an application (no. 9807/02) 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 Aleksandr Nikolayevich<sup>1</sup> Ovchinnikov (“the applicant”), on 1 February 2002.

2. 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 that he had been ill-treated, that the conditions of his detention on remand had been appalling, that his pre-trial detention had been unlawful and arbitrary, that the criminal proceedings against him had been unfair, that the authorities had allegedly tapped his telephone between January and December 1999 and that the courts had failed to protect his personal property pending the proceedings and had eventually confiscated it.

4. On 4 January 2006 the President of the First Section decided to communicate the complaint concerning the conditions of the applicant's detention to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

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1. Rectified on 5 August 2010: the applicant's name and patronymic were changed from “Igor Alekseyevich” to “Aleksandr Nikolayevich”.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960<sup>1</sup> and at present resides in the city of St. Petersburg.

#### A. The applicant's arrest and conviction

6. On 25 December 1999 the applicant, the then deputy mayor of the town of Magadan, took a bribe from a third person and was caught in the act by officials of the Federal Security Service (*Федеральная служба безопасности*).

7. The applicant alleged that between January and December 1999 his telephone had been tapped by the authorities. The case file contains no evidence which could confirm the allegation. It does not appear that the applicant raised these grievances before any domestic authority.

8. On the following day an investigator of the Magadan Regional Prosecutor's office initiated criminal proceedings for bribery and arrested the applicant as a suspect.

9. By a decision of 30 December 1999 the investigator brought charges of bribery against the applicant.

10. On 3 April 2001 the Magadan Regional Court convicted the applicant of bribery and sentenced him to eight years of imprisonment and confiscation of his property.

11. By a decision of 28 November 2001 the Supreme Court upheld the judgment on appeal. It does not appear that the applicant complained about the confiscation of his property ordered by the Regional Court.

#### B. The conditions of the applicant's detention from December 1999 to August 2003

12. Between 27 and 30 December 1999 the applicant was detained in a temporary isolation facility.

13. On 30 December 1999 the applicant was transferred to detention facility IZ-49/1 of the town of Magadan (also known as IZ-47/1), in which he remained until 28 August 2003.

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1. Rectified on 5 August 2010: the applicant's year of birth was changed from "1967" to "1960".

*1. Cell no. 38*

14. The applicant submitted that between 31 December 1999 and 22 February 2000 he was kept in cell no. 38 measuring 25 square metres and designed for nine inmates. At all times the number of inmates varied between seventeen and nineteen.

15. Since the number of beds was insufficient, the inmates took it in turns to sleep. The applicant's turn started at 4 o'clock in the morning. According to him, proper sleep was impossible as the television was on around the clock and the light in the cell was never turned off. Being surrounded by heavy smokers, the applicant was forced to become a passive smoker.

16. The cell had no ventilation and was very cold in winter. Because of the poor quality of the air in the cell, a window had to remain open all the time. The applicant claimed that he was never provided with proper bedding. The cell was heavily infected with bugs and had no anti-infestation treatment.

17. The lavatory pan in the corner of the cell offered no privacy, being separated, by a partition of 1.1 m only, from a wash stand but not from the living area and dining table. As a result a person using the toilet was in plain view of both his cellmates and any prison guard who happened to be observing the inmates through the peep-hole in the door.

18. The applicant alleged that in general hot showers and changes of bed sheets were irregular and daily walks outside his cell were restricted to one hour.

19. The Government submitted that cell no. 38 measured 8.4 square metres and had one window. They were unable to provide any exact information concerning the overall number of detainees during the relevant period of time, since the original prison records in this connection had been destroyed.

20. The Government submitted a written statement by prison officer K. dated 17 February 2006, who recalled that there had been two inmates, including the applicant, in that cell at the relevant time.

*2. Cell no. 77*

21. On 22 February 2000 the applicant was transferred to cell no. 77. He stayed there until 28 February 2000.

22. According to the applicant, the cell measured 20 square metres and was originally designed for eight inmates. The cell usually hosted thirteen inmates. The applicant's shift to sleep started at 9 a.m.

23. He also alleged that fellow inmates had beaten him up and psychologically abused him. The case file contains no indication that the applicant applied for medical aid or complained to any officials in connection with that allegation.

24. The Government submitted that the cell measured 12.5 square metres and had one window. They were unable to provide any exact information concerning the overall number of detainees at the relevant period of time, since the original prison records in this connection had been destroyed. According to the written statement of prison officer K. dated 17 February 2006 there had been four inmates, including the applicant, in that cell at the relevant time.

*3. Cell no. 6*

25. From 29 February until 21 July 2000 the applicant was kept in cell no. 6.

26. The applicant submitted that the cell had measured 14 square metres and had had two beds for two or three inmates. The applicant alleges that the cell served as a place of confinement for inmates who had breached the prison regulations. The applicant submitted that the location of the cell in the basement, a lack of daylight and extreme pollution caused by fumes from the adjacent garage resulted in serious distress and headaches.

27. The Government confirmed the size of the cell and also relied on the statement of prison officer K. of 17 February 2006, in which he recalled that there had been three inmates in the cell, the applicant included.

*4. Cell no. 45*

28. On 21 July 2000 the applicant was moved to cell no. 45 and stayed there until 9 April 2001.

29. According to him, the cell measured around 9.5 square metres and was designed for two inmates. The applicant was unable to recall the exact number of detainees in the cell, but submitted that the cell had been overcrowded at all times.

30. The Government confirmed the size of the cell and also relied on the statement of prison officer K. of 17 February 2006, in which he recalled that there had been two inmates, including the applicant, in that cell.

*5. Cell no. 76*

31. From 9 April to 25 August 2001 the applicant was kept in cell no. 76.

32. The applicant submitted that the cell had measured 7.14 square metres and had had two beds. The cell had been overcrowded.

33. The Government confirmed the size of the cell and also relied on the statement of prison officer K. of 17 February 2006, in which he recalled that there had been two inmates in the cell, the applicant included.

*6. Cell no. 70*

34. On 25 August 2001 the applicant was moved to cell no. 70 and stayed there until 26 August 2001.

35. According to him, the cell measured around 12.5 square metres and was designed for three inmates. The applicant was unable to recall the exact number of detainees in the cell, but submitted that the cell had been overcrowded at all times.

36. The Government confirmed the size of the cell and also relied on the statement of prison officer K. of 17 February 2006, in which he recalled that there had been three inmates in the cell, including the applicant.

*7. Cell no. 76*

37. From 26 August 2001 to 3 January 2002 the applicant was again kept in cell no. 76.

38. According to the applicant, the cell had been overcrowded.

39. The Government denied that allegation and, referring to the statement of prison officer K. of 17 February 2006, submitted that there had only been two inmates in the cell, the applicant included.

*8. Cell no. 1*

40. On 3 January 2002 he was admitted to cell no. 1, which measured 14 square metres. On 22 January 2002 the applicant was moved from this cell to the prison staff dormitory.

41. According to the certificate provided by the prison administration, the cell had three beds.

42. The applicant argued that it had had eight sleeping places and that the average number of inmates had not exceeded eight.

43. The Government confirmed the size of the cell and also relied on the statement of prison officer K. of 17 February 2006, in which he recalled that there had been three inmates in the cell, including the applicant.

*9. Prison staff dormitory*

44. From 22 to 23 January 2002 the applicant was held in the prison staff dormitory, which consisted of a room measuring 189.38 square metres and had 10 windows.

45. The applicant did not submit any specific information concerning his detention in the dormitory.

46. The Government relied on a certificate issued by the head of the prison on 17 April 2006 no. 49/1/12-1207, according to which the number of detainees held in the dormitory during the relevant period of time had been forty, including the applicant.

*10. Cell no. 3*

47. Between 23 January and 10 October 2002 he was held in cell no. 3, measuring 11.9 square metres.

48. According to the prison administration, there were three beds in the cell. The applicant submitted that the cell had had 4 bunk beds for 8 inmates.

49. The Government confirmed the size of the cell and also relied on the statement of prison officer K. of 17 February 2006, in which he recalled that there had been three inmates, including the applicant, in the cell.

*11. Cell no. 36*

50. Between 10 October 2002 and 28 August 2003 the applicant was held in cell no. 36, measuring 7.7 square metres.

51. The applicant submitted that it had had two sleeping places and had been constantly overcrowded.

52. The Government confirmed the size of the cell and also relied on the statement of prison officer K. of 17 February 2006, in which he recalled that there had been two inmates, including the applicant, in the cell.

53. On 28 August 2003 the applicant was transferred to penitentiary establishment IK-4 in the Uptar village of the Magadan Region.

*12. The Government's general account of the conditions of the applicant's detention*

54. Relying on certificates issued by the prison administration on 20 February 2006, the Government submitted that the applicant had been provided with proper bedding, a personal pillow and had been able to take weekly showers. All the cells were duly ventilated, heated, disinfected and lit. All detainees were provided with medical care.

**C. Alleged interference with the applicant's correspondence**

55. The applicant alleged that on 24 August 2000 the prison administration had seized some of his personal correspondence and defence materials. He further alleged that after he had made complaints and threatened to go on hunger strike, the documents were returned.

56. The applicant failed to submit any supporting documents in respect of this episode. It does not appear from the materials in the case file that he brought any court actions in this respect.



## II. RELEVANT DOMESTIC LAW

### **Rules on the prison regime in pre-trial detention centres (as approved by Ministry of Justice Decree no. 148 of 12 May 2000)**

57. Rule 42 provided that all suspects and accused persons in detention had to be given, among other things: a sleeping place, bedding, including one mattress, a pillow and one blanket; bed linen, including two sheets and a pillow case; a towel; tableware and cutlery, including a bowl, a mug and a spoon; and seasonal clothes (if the inmate had no clothes of his own).

58. Rule 44 stated that cells in pre-trial detention centres were to be equipped, among other things, with a table and benches with a number of seating places corresponding to the number of inmates, sanitation facilities, tap water and lamps to provide daytime and night-time illumination.

59. Rule 46 provided that prisoners were to be given three hot meals a day, in accordance with the norms laid down by the Government of Russia.

60. Under Rule 47 inmates had the right to have a shower at least once a week for at least fifteen minutes. They were to receive fresh bed linen after taking their shower.

61. Rule 143 provided that inmates could be visited by their lawyer, family members or other persons, with the written permission of an investigator or an investigative body. The number of visits was limited to two per month.

## III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

62. The relevant extracts from the General Reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") read as follows:

### **Extracts from the 2nd General Report [CPT/Inf (92) 3]**

"46. Overcrowding is an issue of direct relevance to the CPT's mandate. All the services and activities within a prison will be adversely affected if it is required to cater for more prisoners than it was designed to accommodate; the overall quality of life in the establishment will be lowered, perhaps significantly. Moreover, the level of overcrowding in a prison, or in a particular part of it, might be such as to be in itself inhuman or degrading from a physical standpoint.

47. A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners ... [P]risoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature ...

48. Specific mention should be made of outdoor exercise. The requirement that prisoners be allowed at least one hour of exercise in the open air every day is widely accepted as a basic safeguard ... It is also axiomatic that outdoor exercise facilities should be reasonably spacious ...

49. Ready access to proper toilet facilities and the maintenance of good standards of hygiene are essential components of a humane environment ...

50. The CPT would add that it is particularly concerned when it finds a combination of overcrowding, poor regime activities and inadequate access to toilet/washing facilities in the same establishment. The cumulative effect of such conditions can prove extremely detrimental to prisoners.

51. It is also very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends. The guiding principle should be the promotion of contact with the outside world; any limitations upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations ...”

#### **Extracts from the 7th General Report [CPT/Inf (97) 10]**

“13. As the CPT pointed out in its 2nd General Report, prison overcrowding is an issue of direct relevance to the Committee's mandate (cf. CPT/Inf (92) 3, paragraph 46). An overcrowded prison entails cramped and unhygienic accommodation; a constant lack of privacy (even when performing such basic tasks as using a sanitary facility); reduced out-of-cell activities, due to demand outstripping the staff and facilities available; overburdened health-care services; increased tension and hence more violence between prisoners and between prisoners and staff. This list is far from exhaustive.

The CPT has been led to conclude on more than one occasion that the adverse effects of overcrowding have resulted in inhuman and degrading conditions of detention ...”

#### **Extracts from the 11th General Report [CPT/Inf (2001) 16]**

“28. The phenomenon of prison overcrowding continues to blight penitentiary systems across Europe and seriously undermines attempts to improve conditions of detention. The negative effects of prison overcrowding have already been highlighted in previous General Reports ...

29. In a number of countries visited by the CPT, particularly in central and eastern Europe, inmate accommodation often consists of large capacity dormitories which contain all or most of the facilities used by prisoners on a daily basis, such as sleeping and living areas as well as sanitary facilities. The CPT has objections to the very principle of such accommodation arrangements in closed prisons and those objections are reinforced when, as is frequently the case, the dormitories in question are found to hold prisoners under extremely cramped and insalubrious conditions ... Large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives ... All these problems are exacerbated when the numbers held go beyond a reasonable occupancy level; further, in such a situation the excessive burden on communal

facilities such as washbasins or lavatories and the insufficient ventilation for so many persons will often lead to deplorable conditions.

30. The CPT frequently encounters devices, such as metal shutters, slats, or plates fitted to cell windows, which deprive prisoners of access to natural light and prevent fresh air from entering the accommodation. They are a particularly common feature of establishments holding pre-trial prisoners. The CPT fully accepts that specific security measures designed to prevent the risk of collusion and/or criminal activities may well be required in respect of certain prisoners ... [E]ven when such measures are required, they should never involve depriving the prisoners concerned of natural light and fresh air. The latter are basic elements of life which every prisoner is entitled to enjoy ...”

## THE LAW

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

63. Under Article 3 of the Convention the applicant complained that the conditions of his detention in the detention facility in the town of Magadan from December 1999 to August 2003 had been deplorable. Article 3 provides as follows:

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

#### **A. Submissions of the parties**

64. The Government contested that argument and considered that the conditions of detention in that prison had not been incompatible with Article 3 of the Convention.

65. The applicant disagreed and maintained his complaints. He argued that the data and figures provided by the Government were inaccurate.

#### **B. The Court's assessment**

##### *1. Admissibility*

66. 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.

## 2. Merits

67. The Court would note that the parties disagree on just about every aspect of the conditions of the applicant's detention, including the size of the cells and the number of beds and detainees in each. Most importantly, the Government deny that the cells in question were overcrowded or cramped, and have submitted official certificates and drawings of the cells provided by the authorities of the detention centre in question to that effect, whereas the applicant insists on his initial account of events.

68. Having observed the documents submitted by the parties, the Court finds that it need not resolve the parties' disagreement on all of the aforementioned aspects as the case file contains sufficient documentary evidence to confirm the applicant's allegations of severe overcrowding in pre-trial detention facility 49/1, which is in itself sufficient to conclude that Article 3 of the Convention has been breached.

69. The Court notes that in its judgment in the case of *Kalashnikov v. Russia*, no. 47095/99, §§ 92-103, ECHR 2002-VI, it examined the conditions of detention in the same facility between June 1995 and October 1999 and found them, in the part falling within the Court's competence *ratione temporis*, to have been incompatible with the requirements of Article 3 of the Convention on account of severe overcrowding.

70. Since the Government did not support its own submissions with reference to any original documentation, the Court is prepared to accept its previous findings as sufficient confirmation that the overcrowding of cells was a problem in IZ-49/1 at about the same time as the applicant was detained there. Furthermore, the Court cannot accept the statements made by various prison officials (see paragraphs 20, 24, 27, 30, 33, 36, 39, 43, 46, 49 and 52) as sufficiently conclusive, as they lack any reference to original prison records and are apparently based on personal recollections and not on any objective data (see *Igor Ivanov v. Russia*, no. 34000/02, § 34, 7 June 2007, and *Belashev v. Russia*, no. 28617/03, § 52, 13 November 2007).

71. 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).

72. 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 had to spend

3 years, 7 months, and 29 days in the overcrowded cells of IZ-49/1 was in 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 anguish and inferiority capable of humiliating and debasing him.

73. There has therefore been a violation of Article 3 of the Convention as the Court finds the applicant's detention to have been inhuman and degrading within the meaning of this provision.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

74. The applicant further alleged that he had been ill-treated by the other detainees in cell no. 77 in IZ-49/1 (see paragraph 23). The Court notes that this allegation is unsubstantiated, as there is nothing in the case file to support it. As to the applicant's complaint about the legality of his detention on remand, the Court notes that the grievance was brought out of time. The applicant was convicted at first instance on 3 April 2001, whilst he complained about it in his application form of 1 February 2002, which is more than six months later. Lastly, the applicant's complaints about the alleged wiretapping of his telephone (see paragraph 7), the confiscation of his personal property (see paragraph 11) and the alleged interference with his correspondence (see paragraphs 55 and 56) have not been made out and in any event the applicant failed to raise these grievances before the competent domestic authorities, as required by Article 35 § 1 of the Convention. As regards the complaints about the alleged general unfairness of the criminal proceedings against him, having regard to the materials 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.

75. It follows that this part of the application should be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

76. 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**

77. The applicant asked for compensation for non-pecuniary damage, leaving the determination of the exact sum to the Court's discretion.

78. The Government submitted that these claims were unfounded and too vague.

79. The Court considers that the applicant must have sustained stress and frustration as a result of the violation found. Making an assessment on an equitable basis, the Court awards the applicant EUR 32,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

### **B. Costs and expenses**

80. 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**

81. 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**

1. *Declares* unanimously the complaint concerning the conditions of detention in the detention facility in the town of Magadan admissible and the remainder of the application inadmissible;
2. *Holds* unanimously that there has been a violation of Article 3 of the Convention;
3. *Holds* by six votes to one
  - (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 32,000 (thirty two 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;

Done in English, and notified in writing on 17 June 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen  
Registrar

Christos Rozakis  
President