



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

Communicated on 7 January 2014

FIRST SECTION

Application no. 18255/10
Aleksy Gennadyevich TOMOV
against Russia
lodged on 15 March 2010

STATEMENT OF FACTS

The applicant, Mr Aleksy Gennadyevich Tomov, is a Russian national. He is represented before the Court by Mr E. Mezak, a lawyer practising in Syktyvkar in the Komi Republic of the Russian Federation.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

In 2004-2009 the applicant had served a custodial sentence in a high-security correctional facility IK-22 in Vorkuta. In August 2009, the Vorkuta Town Court of the Komi Republic amended his sentence, replacing a high-security institution with a correctional settlement. Accordingly, the penitentiary authorities decided to transfer the applicant into the KP-52 settlement located in the Vetyu village in the Knyazhpogostskiy district of the Komi Republic. The nearest city is the city of Yemva which is separated from Vorkuta by a distance of approximately 900 kilometres. A direct railway line connects Vorkuta with Yemva.

At about 2 p.m. on 19 September 2009 the applicant's transfer to Yemva began. The applicant and three other detainees were loaded onto a prison van GAZ-3307. The van featured three compartments: two compartments measured 3.4 sq. m and were designed for transporting up to ten persons, and the third compartment was designed for solitary confinement. The applicant and the other prisoners were placed in one of the large compartments.

On the way to the railway station the van called at the Vorkuta remand prison where more prisoners were seated in the applicant's compartment up to a total number of ten persons. All of them carried bulky bags with their personal belongings and food supplies.

In total, the journey to the station took approximately three hours. No one was allowed to leave the van and the van heating was off.

The prisoner carriage travelled by railway along the following route:

(a) between 5 p.m. on 19 September 2009 and 3.30 a.m. on 20 September 2009: from Vorkuta to Pechora, coupled to passenger train 375 Vorkuta-Moscow;

(b) between 3.30 and 7.35 a.m.: stop at Pechora;

(c) between 7.35 and 11.30 a.m.: from Pechora to Usinsk, coupled to passenger train 616 Pechora-Usinsk;

(d) between 11.30 a.m. and 4.10 p.m.: stop at Usinsk;

(e) between 4.10 and 8.00 p.m.: from Usinsk to Pechora, coupled to passenger train 615 Usinsk-Pechora;

(f) between 8.00 p.m. and 1.55 a.m. on 21 September 2009: stop at Pechora;

(g) between 1.55 a.m. and 12.45 a.m.: from Pechora to Yemva, coupled to passenger train 635 Pechora-Syktyvkar.

On the section between Vorkuta and Usinsk the applicant shared a six-place compartment with nine other prisoners. The compartment measured 3.6 sq. m and was equipped with six berths, three on the left wall and three on the right wall, plus one additional removable berth that could be fitted between two berths at mid-level. It was shorter than the normal berths and only measured 1.2 metre in length.

After the stop at Usinsk and until his arrival at the destination the applicant shared a three-place compartment with three other persons. It measured 2 sq. m and was fitted with three berths on one wall.

Prisoners were allowed to visit the toilet two or three times a day. Using the toilet at stops was prohibited.

B. Relevant domestic law and practice

A joint order of the Ministry of Justice and the Ministry of the Interior of 24 May 2006 (no. 199dsp/369dsp), approving the Instruction on professional activities of special departments of the penitentiary system in charge of conveyance (the “Conveyance Instruction”), has not been officially published and its text is not available. However, it can be understood from various judicial decisions that point 167 of the Conveyance Instruction provided as follows:

(1) the normative occupancy rate in a railway carriage must not exceed twelve persons in a large compartment or five persons in a small compartment;

(2) if the transfer time is below four hours, it is permissible to place up to sixteen persons in a large compartment or up to six persons in a small compartment;

(3) a prison van with the carrying capacity of up to 2 tons may carry up to 13 prisoners, up to 3 tons – up to 21 prisoners, 4 tons – up to 36 prisoners.

By judgment of 13 October 2011, as upheld on appeal on 27 December 2011, the Supreme Court of the Russian Federation rejected a legal challenge to paragraph 1 of point 167 of the Conveyance Instruction (case no. ГКПИ11-1143). It found that the normative occupancy rate

corresponded to the technical specifications of the carriage and to the sanitary regulations and that there was no indication of torture or inhuman treatment.

On 24 January 2012 the Supreme Court of the Russian Federation granted in part a subsequent legal challenge to paragraphs 2 and 3 of point 167 of the Conveyance Instruction (case no. ГКП11-1774, judgment upheld on appeal on 17 April 2012). The court found as follows:

“It has been established that remand and convicted prisoners are transported by railways in carriages that are a modified version of a standard-issue passenger carriage. Carriages for prisoners can have either nine compartments (5 large and 4 small), or eight compartments (5 large and 3 small). A large compartment is fitted with six berths and one removable berth; its design capacity is five sleeping and eight sitting places, with four persons sitting on each of the lower berths. A small compartment is fitted with three berths designed for two sleeping and four sitting persons.

Since 2004, the TsMV61-4500 carriage has been used for transporting prisoners. According to its technical specifications, the carriage has eight compartments (5 large and 3 small) and a seating capacity of 85 places (10 places for warders and 75 places for prisoners); it has ventilation and air conditioning, lighting, heating and a toilet; all windows are fitted with bars which do not block the opening of windows for ventilation by pulling the window frame down. Compartments have no windows but only metal bars and a door with bars, rather than a solid wall, separate compartments from the corridor, forming a single space ...

According to the technical specifications, the large compartment measures 205 by 150.9 cm, the small one 205 by 100 cm; a berth is 205 cm long; the passage between berths is 47 cm wide.

Accommodating six prisoners in a small compartment ... does not exceed the design capacity and is compatible with the international and federal law.

The representative of the Penitentiary Service explained to the court that sixteen prisoners are accommodated in the large compartment in the following manner: five prisoners on each of the lower berths, one prisoner on each of the upper berths, four persons on the middle berths with the removable berth installed between them.

Having regard to the size of the berths and the width of the removable berth (no more than 47 cm), the court considers that placing sixteen prisoners into a large compartment that has five sleeping and eight sitting places must be excessively uncomfortable for them and is incompatible with the Standard Minimum Rules for the Treatment of Prisoners. Accordingly, paragraph 2 of point 167 of the Instruction must be declared invalid in the relevant part.

...

In accordance with the Industry standard PR 78.01.0024-2010 ‘Operative and service vans for transporting suspects and defendants’, adopted on 14 October 2010 (which replaced the standard 78.01.0002-99 of 1 June 1999), prison vans are manufactured on the chassis of trucks, passenger cars, vans or buses; they may only transport seated persons; they are equipped with heating, ventilation, lighting and composting toilets (for more than seven prisoners) (points 4.3, 4.5, 5.4, 5.8, 5.9, 5.10); they feature one or two multi-occupancy cells and solitary-confinement cells that are equipped with benches; a multi-occupancy bench must provide at least 45 cm per person, a single seat should be at least 42 cm wide; the minimum dimensions for a solitary-confinement cell are 50 by 65 cm ...

Thus, the type-approval of a prison van on the GAZ-3307 chassis provides for two multi-occupancy and one single-confinement cells to a total passenger capacity of 25 persons, of which 21 are prisoners. The type-approval of the KAMAZ-4308 prison van indicates the capacity of 37 persons, of which 6 persons are warders and 31 prisoners.

It follows that the normative seating capacity, as it established in paragraph 3 of point 167 of the Conveyance Instruction, is compatible with the technical specifications of the said vehicles. The regulation is not in breach of Article 3 of the European Convention ... [because] the transfer of prisoners by a van in compliance with the normative seating capacity set out in paragraph 3 of point 167 of the Instruction is not, in itself, constitutive of torture, cruel or inhuman treatment.”

C. Relevant international material

The Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, provide, in particular, as follows:

Removal of prisoners

“45. (1) When the prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.

(2) The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.

(3) The transport of prisoners shall be carried out at the expense of the administration and equal conditions shall obtain for all of them.”

COMPLAINT

The applicant complains under Article 3 of the Convention that the conditions of transport in a prison van and in a railway carriage amounted to inhuman and degrading treatment.

QUESTIONS TO THE PARTIES

1. The Government are requested to submit to the Court a copy of:
 - (a) the Conveyance Instruction (approved by a joint order of the Ministry of Justice and the Ministry of the Interior of 24 May 2006, no. 199dsp/369dsp) in the part concerning the conditions of transfer of prisoners;
 - (b) technical standards and specifications of prison vans and railway carriages used for transporting prisoners;
 - (c) judgments and decisions of Russian courts concerning transfer of prisoners in the conditions that were similar to those obtaining in the applicant's case.
2. Was there a violation of Article 3 of the Convention as regards the conditions of the applicant's transfer:
 - (a) by a prison van from the correctional facility to the railway station?
 - (b) by a railway carriage from Vorkuta to Yemva?