

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

FIRST SECTION

CASE OF KULIKOV v. RUSSIA

(Application no. 48562/06)

JUDGMENT

STRASBOURG

27 November 2012

FINAL

27/02/2013

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



In the case of Kulikov v. Russia,

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

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Nina Vajić,
Anatoly Kovler,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 6 November 2012,

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

PROCEDURE

1. The case originated in an application (no. 48562/06) 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 Sergey Nikolayevich Kulikov ("the applicant"), on 24 October 2006.

2. The applicant, who had been granted legal aid, was represented by Ms Y. Yefremova, a lawyer practising in Moscow. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been detained in appalling conditions.

4. On 27 August 2009 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1983 and is serving a prison sentence in the Sverdlovsk Region.

6. On an unspecified date the applicant was charged with several counts of sexual abuse of two boys of minor age. On 31 March 2005 he was

arrested and remanded in custody. He was held in a temporary detention centre in Nizhniy Tagil. The cell where he was detained was allegedly overcrowded. On 20 May 2005 the applicant was released, pending trial, on his own recognisance.

A. Conditions of detention in remand prison no. IZ-66/1 in the Sverdlovsk Region

7. On 27 May 2006 the applicant was again placed in custody. He was held in remand prison no. IZ-66/1 in the Sverdlovsk Region, where he remained until 8 August 2006. The applicant was detained in cell no. 235 measuring 31.5 square metres.

1. The description provided by the Government

8. The Government provided the following description of the conditions of the applicant's detention in the remand prison. The number of the inmates held in the cell varied from 24 to 32 persons. The applicant was provided with an individual sleeping place and bedding. The cell was equipped with a water supply as well as heating and sewage systems. The ventilation in the cell was in good working order. The temperature maintained in the cell was 24^0C during the summer. The toilet was separated from the living area of the cell by a 1.1metre-high partition which ensured sufficient privacy for the person using it. It was located at a significant distance from the nearest bed and the dining table. The applicant was allowed to take a shower once a week.

9. In support of their observations, the Government submitted a copy of the remand prison population register and certificates prepared by the administration of the remand prison and correctional facility in September and October 2009.

2. The description provided by the applicant

10. According to the applicant, the cell where he was detained was constantly overcrowded. Its population varied from 27 to 37 - and on one occasion reached 40 - inmates. There were 14 beds in the cell, one of which was used as a table. The applicant was not provided with any bedding. The ventilation system did not work. The cell was very hot and stuffy. The electric lighting was weak and it was impossible to read. The cell was infested with bed bugs and cockroaches. The toilet was located some 1.5 metres from the nearest bed and some 2 metres from the dining table. It was separated from the living area of the cell by a 1 metre-high partition which provided no privacy to the person using the toilet. The applicant was permitted to take a shower once every two weeks.

11. In support of his own submissions, the applicant provided the Court with the written statement of inmate S. who had been detained in the same remand prison in 2010.

B. Conditions of detention in correctional facility no. IK-5 in the Sverdlovsk Region

12. Following the applicant's conviction, from 15 August 2006 to 19 August 2009 he served a prison sentence in correctional facility no. IK-5 in the Sverdlovsk Region. The correctional facility measured 10,650 square metres in total. The applicant was detained in units 9 and 11. The number of detainees housed in the facility during the period in question varied from 1,718 to 2,095.

1. The description provided by the Government

13. According to the Government, unit 9 measured 342.2 square metres (the living area measuring 191.5 square metres) and housed from 135 to 158 detainees. The sanitary area of the unit was equipped with nine wash basins and three toilets.

14. Unit 11 measured 345.6 square metres (with the living area measuring 180.1 square metres) and housed from 133 to 165 detainees. The sanitary area of the unit was equipped with eight wash basins and two toilets.

15. The applicant had been provided with underwear, clothes and shoes. He had received the necessary medical care. He had been allowed two family visits.

16. On several occasions in 2007 the applicant was placed in a disciplinary cell. The Government provided the following information as regards the number of inmates sharing the disciplinary cell from a copy of the relevant population register.

Period of detention	Cell no.	Cell surface area (sq. metres)	Number of beds	Number of detainees
From 5 to 10 February	10	8.3	4	2
4 June	8	8.0	4	3
From 5 to 21 June	14	13.0	6	2-5
From 4 to 7 July	7	8.9	4	2
3 August	4	8.0	4	3
From 4 to 13 August	34	10.8	4	3-4

From 22 to 30 October	14	13.0	6	2-5

17. The disciplinary cells were provided with a toilet located some 3 metres from the dinner table and separated from the living area of the cell by a 1 metre-high partition. The water supply and the sewage, ventilation and heating systems were in good working order. The average temperature in the disciplinary cells ranged from 18 to 22^0C.

18. All detainees, before being placed in a disciplinary cell were subjected to a full body search and were also searched (fully clothed) before and after each session of daily exercise. These searches were not monitored by video camera.

19. The applicant was allowed to use the shower facilities, which comprised twelve shower units.

2. The description provided by the applicant

20. According to the applicant, unit 9 measured 190 square metres and housed from 145 to 165 detainees. The sanitary area of the unit was equipped with four wash basins and three toilets. Unit 11 measured 180 square metres and housed from 145 to 165 detainees. The sanitary area of the unit was equipped with five wash basins and two toilets. Shower facilities were made available to the detainees once a week for two and a half hours during which time they were used by up to 150 inmates so each person had around one minute in which to take a shower. During the day, the inmates were allowed to move freely only within the unit they were assigned to and within an adjacent area of 300 square metres – together with the inmates assigned to two other units. There had been 450 inmates, in total, sharing the three units.

21. As regards the applicant's placement in a disciplinary cell, he provided the following information.

Period of detention	Cell no.	Cell surface area (sq. metres)	Number of detainees
From 5 to 22 February	10	8.0	3
From 4 to 5 June	8	8.0	3
From 5 to 21 June	14	13.0	5
From 4 to 7 July	7	9.0	3
From 3 to 4 August	4	8.0	8

From 4 to 13 August	34	10.0	4
From 22 to 30 October	14	13.0	4

22. While in detention in the disciplinary cells, the applicant had not been provided with his own bed and had to take turns with other inmates to sleep. The toilet was located some 1.5 metres away from the dining table and separated from the living area of the cell by a 1 metre-high partition, which offered no privacy to the person using it. The toilets were dirty and foul-smelling. The applicant had been subjected to a full body search twice a day before and after the outside exercise periods, when all the inmates were taken into the hallway and forced to undress. The searches were monitored by personnel through video cameras – on many occasions by female warders. In winter the temperature in the hallway did not exceed 18^0C. The disciplinary cells were infested with parasites. The food and medical care were of poor quality.

23. The applicant further provided a written statement by inmate Sl., who submitted that approximately 150 inmates had been assigned to each unit in the correctional facility and that each unit measured approximately 200-250 square metres. The bunk beds in the dormitories were arranged in three tiers. The shower facilities comprised ten shower units and some 40 to 60 inmates were allowed two and a half hours in which to use them.

C. Report prepared by the Office of the Prosecutor General of the Russian Federation

24. On 19 October 2009 the Office of the Prosecutor General of the Russian Federation prepared a report concerning the applicant's allegations regarding the conditions of his detention. The Head of the Department for the Supervision of Sentences summed up the results of the inquiry as follows:

> "In the course of the inquiry, the prosecution authorities established that [the applicant], while detained in cell no. 235 in [the remand prison] and also in [the correctional facility] had not been provided with the statutory personal space of 4 and 2 square metres respectively. However, this violation resulted from the overcrowding of the facilities caused by circumstances beyond the control of the administration. Accordingly, such conditions cannot be viewed as amounting to torture, inhuman or degrading treatment in contravention of Article 3 of the Convention."

II. RELEVANT DOMESTIC LAW

25. Section 23 of the Detention of Suspects Act of 15 July 1995 provides that detainees should be kept in conditions which satisfy sanitary and

hygienic requirements. They should be provided with their own 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.

26. Article 99 § 1 of the Penitentiary Code of 8 January 1997 provides for a minimum standard of two square metres of personal space for male prisoners in correctional colonies.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

27. The applicant complained of inhuman conditions in his detention in remand prison no. IZ-66/1 in Yekaterinburg from 27 May to 8 August 2006 and in correctional facility no. IK-5 in the Sverdlovsk Region from 15 August 2006 to 19 August 2009. He referred 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."

A. Admissibility

28. The Government claimed that the applicant had failed to bring his grievances to the attention of the national courts and considered that his complaint should be rejected for failure to comply with the requirements of Article 35 § 3 of the Convention. In particular, they asserted that it had been open to the applicant to challenge the lawfulness of the actions of the administration of a remand prison or a correctional facility or to institute criminal proceedings against them.

29. The applicant did not comment.

1. Conditions of the applicant's detention in the remand prison

30. As regards the applicant's complaint concerning the general conditions of his detention in the remand prison, the Court reiterates its earlier finding that, at present, the Russian legal system does not offer an effective remedy for the alleged violation or its continuation which could provide the applicant with adequate and sufficient redress for the allegedly inadequate conditions of detention. Accordingly, the Court dismisses the Government's objection as to the non-exhaustion of domestic remedies (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 100-19, 10 January 2012) in respect of this part of the application.

2. Conditions of the applicant's detention in the correctional facility

31. The Court observes that the applicant did not complain about the conditions of his detention in the correctional facility to any domestic authority. On the other hand, it also notes that the Government have not shown that a complaint to a court about the alleged unlawfulness of the actions of the administration of the correctional facility could, in fact, offer preventive or compensatory redress for poor conditions of detention. Nor have they demonstrated that if the applicant had complained to the authorities about his detention, this would have substantiated his allegation of a criminal offence attributable to a public official and thus have required, in the context of Article 3 of the Convention, a criminal investigation (see *Orlov v. Russia*, no. 29652/04, § 64, 21 June 2011). Accordingly, the Government's objection in this regard is dismissed.

3. Conclusion

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

B. Merits

33. The Government considered that the conditions of the applicant's detention in the remand prison had been in compliance with the standards set forth by Article 3 of the Convention.

34. The applicant maintained his complaint.

35. The Court reiterates that Article 3 enshrines one of the fundamental values of a 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, in the context of deprivation of liberty, the suffering and humiliation involved must in any event go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Although measures depriving a person of 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).

36. Turning to the facts of the instant case, the Court notes that the parties disputed certain 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. It can find a violation of Article 3, even on the assumption that the information provided by the Government is correct.

37. In this connection, the Court takes cognisance of the findings of the inquiry conducted by the Office of the Prosecutor General of the Russian Federation (see paragraph 24 above) whereby it was established that the personal space afforded to the applicant both during his detention in the remand prison and correctional facility had fallen short of the domestic statutory requirements and that the cells and dormitories where the applicant had been detained had been overcrowded. In particular, the applicant was afforded no more than 1.3 square metres of personal space while detained in the remand prison where he was confined to his cell for most of the day and 1.41 square metres of personal space during his detention in the correctional facility. Admittedly, as regards the applicant's detention in the correctional facility, the Court has previously held that the personal space afforded to the detainees in the dormitory of a correctional facility must be viewed in the context of the wide freedom of movement enjoyed by detainees during the daytime, which ensures that they have unobstructed access to natural light and air (see *Nurmagomedov v. Russia* (dec.), no. 30138/02, 16 September 2004). Nevertheless, in the circumstances of the present case, the Court considers that the level of privacy available to the applicant was insufficient to comply with the standards set forth in Article 3 of the Convention. For over three years, during the night, the applicant was housed in a dormitory with at least 135 other persons where he was afforded only 1.3 square metres of personal space. Furthermore, in the Court's view, the sanitary facilities available were not sufficient to accommodate the needs of the detainees. There were only eight to nine wash basins and two to three toilets available for at least 135 detainees. Lastly, the Court observes that on seven occasions the applicant was transferred to a disciplinary cell where he at times enjoyed more than 6 square metres of personal space. However, given the infrequency and the brevity of such periods of detention, the Court does not consider them to have alleviated the applicant's situation.

38. The Court takes cognisance of the fact that in the present case there is no indication that there was a positive intention on the part of the authorities to humiliate or debase the applicant but 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).

39. 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; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005; *Labzov v. Russia*, no. 62208/00, §§ 44 et seq., 16 June 2005; *Belevitskiy v. Russia*, no. 72967/01, §§ 75 et seq., 1 March 2007; and *Ananyev and Others*, cited above, § 166).

40. Having regard to the material 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.

41. There has therefore been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand prison no. IZ-66/1 from 27 May to 8 August 2006 and in correctional facility no. IK-5 from 15 August 2006 to 19 August 2009 in Sverdlovsk Region, which it considers inhuman and degrading within the meaning of this provision.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

42. Lastly, the applicant complained about the conditions of his detention in the temporary detention centre in Nizhniy Tagil from 31 March to 20 May 2005, the alleged unfairness of the criminal proceedings against him and the restrictions on visits made by his family and lawyers in the remand prison as well as the alleged opening of his correspondence by the administration of the correctional facility.

43. However, having regard to all the material in its possession, and in so far the complaints fall within its competence, the Court finds that there is no appearance of a violation of the rights and freedoms set out in the Convention. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

44. 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

45. The applicant claimed 30,000 euros (EUR) in respect of non-pecuniary damage.

46. The Government considered the applicant's claims in respect of non-pecuniary damage unsubstantiated and unreasonable. They further submitted that, given that the applicant's rights under the Convention had

not been infringed, his claims in respect of damage should be rejected in full. In any event, the Government considered the applicant's claims excessive.

47. The Court observes that the applicant spent more than three years in custody in inhuman and degrading conditions. Making its assessment on an equitable basis, it awards EUR 11,500 to the applicant, plus any tax that may be chargeable thereon.

B. Costs and expenses

48. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

49. The Court considers it appropriate that the default interest rate 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 remand prison no. IZ-66/1 from 27 May to 8 August 2006 and in correctional facility no. IK-5 from 15 August 2006 to 19 August 2009 in Sverdlovsk Region 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 prison no. IZ-66/1 from 27 May to 8 August 2006 and in correctional facility no. IK-5 from 15 August 2006 to 19 August 2009 in Sverdlovsk Region;

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 11,500 (eleven thousand five hundred euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
   (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 27 November 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President