

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

THIRD SECTION

CASE OF PESTRIKOVA v. RUSSIA

(Application no. 52548/17)

JUDGMENT

STRASBOURG

23 June 2022

This judgment is final but it may be subject to editorial revision.



In the case of Pestrikova v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Darian Pavli, *President,*
Andreas Zünd,
Mikhail Lobov, *judges,*

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 2 June 2022,

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

PROCEDURE

1. The case originated in an application against Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 3 July 2017.

2. The Russian Government ("the Government") were given notice of the application.

THE FACTS

3. The applicant's details and information relevant to the application are set out in the appended table.

4. The applicant complained of the inadequate conditions of her detention, which were incompatible with her disabilities and that there was no effective remedy in that regard. She also raised other complaints under the provisions of the Convention.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION RELATED TO CONDITIONS OF DETENTION

5. The applicant complained principally about the poor conditions of her detention, aggravated by the seriousness of her medical problems and that she had no effective remedy in this connection. She relied on Articles 3 and 13 of the Convention, which read as follows:

Article 3

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

Article 13

"Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority ..."

6. The Court notes that the applicant who suffer from a disability, was kept in detention in poor conditions which did not satisfy her special needs. The details of the applicant's detention are indicated in the appended table. The Court refers to the principles established in its case-law regarding conditions of detention of disabled inmates (see, for instance, *Topekhin v. Russia*, no. 78774/13, §§ 78-81, 10 May 2016, and *Butrin v. Russia*, no. 16179/14, §§ 46-51, 22 March 2016). It reiterates in particular, that where the authorities decide to place and keep a disabled person in detention, they should demonstrate special care in securing detention conditions which correspond to the special needs resulting from his disability (see *Butrin*, cited above § 49; *Semikhvostov v. Russia*, no. 2689/12, § 72, 6 February 2014; *Zarzycki v. Poland*, no. 15351/03, § 102, 12 March 2013; and *Farbtuhs v. Latvia*, no. 4672/02, § 56, 2 December 2004)

7. In the cases of *Topekhin*, *Butrin* and *Semikhvostov* (all cited above), the Court already found a violation in respect of issues similar to those in the present case.

8. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the conditions of the applicant's detention, exacerbated by her physical impairments, amount to "inhuman and degrading treatment" within the meaning of the Convention.

9. The Court further notes that the applicant did not have at her disposal an effective remedy in respect of these complaints (see, among other authorities, *Butrin,* cited above, §§ 43-45, and *Semikhvostov,* cited above, §§ 61-68).

10. These complaints are therefore admissible and disclose a breach of Articles 3 and 13 of the Convention.

II. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

11. The applicant submitted other complaints which also raised issues under the Convention, given the relevant well-established case-law of the Court (see appended table). These complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other ground. Accordingly, they must be declared admissible. Having examined all the material before it, the Court concludes that they also disclose violations of the Convention in the light of its findings in *Idalov v. Russia* [GC], no. 5826/03, §§ 103-08, 22 May 2012.

III. REMAINING COMPLAINTS

12. The applicant also raised other complaints under various Articles of the Convention.

13. The Court has examined the application and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

14. It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. 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."

16. Regard being had to the documents in its possession and to its case-law (see, in particular, *Butrin,* cited above, §§ 72-74 and *Semikhvostov,* cited above, §§ 88-90), the Court considers it reasonable to award the sum indicated in the appended table.

17. The Court further 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 complaints concerning the conditions of detention of the applicant, a disabled inmate, the lack of any effective remedy in domestic law and the other complaints under well-established case-law of the Court, as set out in the appended table, admissible, and the remainder of the application inadmissible;

2. *Holds* that these complaints disclose a breach of Articles 3 and 13 of the Convention on account of the applicant's detention in poor conditions and the lack of an effective remedy in that connection;

3. *Holds* that there has been a violation of the Convention as regards the other complaints raised under well-established case-law of the Court (see appended table);

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the amount indicated in the appended table, to be converted into the currency of the respondent State 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 during the default period plus three percentage points.

Done in English, and notified in writing on 23 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Darian Pavli
Acting Deputy Registrar	President

APPENDIX

Application raising complaints under Article 3 and Article 13 of the Convention (conditions of detention of disabled inmates and lack of any effective remedy in domestic law)

Application no. Date of introduction	Applicant's name Year of birth	Type of disability	Detention with disability: facility and periods	Specific grievances	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros)[1]
52548/17 03/07/2017	**Anastasiya Aleksandrovna PESTRIKOVA** 1986	paralysis (wheelchair user)	IZ-54/1, Novosibirsk 13/04/2017 to 12/10/2017 6 month(s)	lack of nursing assistance; lack of wheelchair ramps; hampered access to the walking yard; the sink level is too high; the toilet has no chair for wheelchair users; rooms for visits have no special equipment	Art. 3 - inadequate conditions of detention during transport: (i) van: the car is not equipped for transport of wheelchair users; from 25/04/2017 to 12/10/2017; (ii) transit cell: the toilet has no chair for wheelchair users; from 25/04/2017 to 12/10/2017; Art. 13 - lack of effective remedy to complain of the conditions of transport	16,000

[1] Plus any tax that may be chargeable to the applicant.