CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 66802/01
by Gennadiy Valentinovich DOROKHOV
against Russia

The European Court of Human Rights (Third Section), sitting on 30 June 2005 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr C. BÎRSAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr A. KOVLER,
Ms R. JAEGER,
Mr E. MYJER, *judges*,
and Mr V. BERGER, *Section Registrar,*

Having regard to the above application lodged on 21 July 2000,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Gennadiy Valentinovich Dorokhov, is a Russian national, who was born in 1967 and lives in Moscow. The respondent Government are represented by Mr P. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

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

1. Criminal investigation and detention

The applicant used to work as a public prosecutor. In 1998, the police charged him with blackmail and abuse of office. They alleged that the applicant had extorted a car from managers of a car repair shop, threatening to harass their business with criminal investigations.

On 2 October 1998, the police arrested the applicant and detained him in remand prison IZ–48/1, Matrosskaya Tishina, in Moscow. On his admission to the prison, the applicant was put in Cell 210. The rest if the time he spent in four other cells.

2. Cell 212

On 8 February 1999, the applicant was moved to Cell 212. The parties' descriptions of this cell differ.

According to the applicant, the microclimate in this cell was so poor that he caught skin rash.

According to the Government, this cell measured 18.8 m² and had 6 bunk beds. The cell had cold running water, a sink, and a toilet partitioned off the rest of the cell. Prisoners' food met statutory standards of quality. There was no infection in the cell. Daily, the prisoners had an hour-long walk. Once a week, they had a bath and received fresh bedding.

3. Cell 260

On 11 February 1999, the applicant was moved to Cell 260. The parties' descriptions of this cell differ too.

According to the applicant, this cell measured about 30 m² and housed 25 prisoners. Since the cell was overcrowded, during seven months the applicant had to share his bunk bed with other prisoners. But even when lucky to have the bed for himself, he could not fall asleep because lights and a TV always stayed on, ventilation always stayed off, and the prisoners buzzed day and night. Metal shutters covered both windows and cut fresh air off. Toilet was not partitioned off the rest of the cell and stood in front of guards' peephole.

According to the Government, this cell measured 38.9 m² and had 18 bunk beds. The cell had cold running water, a sink, and a toilet partitioned

off the rest of the cell. The prisoners' food met statutory standards of quality. There was no infection in the cell. Daily, the prisoners had an hour-long walk. Once a week, they had a bath and received fresh bedding.

4. Cells 739 and 740

On 19 May 1999, the applicant was moved to Cell 739, then to Cell 740. These were hospital cells, and the applicant was put there to treat a broken leg.

According to the applicant, even though the prison administration knew that he was a former prosecutor, he had to share these cells with ordinary criminals. His leg broken, the applicant would have been helpless, had the criminals wished to mistreat him in revenge.

According to the Government, the applicant was detained apart from ordinary criminals.

On 7 June 1999, the applicant was returned to Cell 260, where he stayed until his removal from the prison on 4 February 2000.

5. Trial

The investigation over, the prosecution submitted its files to the Zamoskvoretskiy District Court of Moscow for trial.

On 9 June 1999, the applicant requested the court to summon two witnesses, V. and G., who had seen him pay for the allegedly extorted car, and therefore could arguably acquit him.

On 18 June 1999, the court held a preparatory hearing and found the case ready for trial. The parties disagree whether the applicant's request to call V. and G. had reached the court by that date: according to the Government, the request reached the court only on 23 June 1999; according to the applicant, it must have reached the court well before 18 June 1999.

At the trial, the court asked the applicant whether he wished to call additional witnesses. The parties disagree whether the applicant used this opportunity to call V. and G.: according to the Government, he did not; according to the applicant, he did.

On 15 November 1999, the court convicted the applicant and sentenced him to seven years' imprisonment.

After the trial, on 20 December 1999, the applicant asked the court to correct the hearing record because his request to call V. and G. had been omitted from it. On 17 January 2000, the court refused to change the record because it was true as it was.

On 1 March 2000, the Moscow City Court upheld the conviction on appeal.

COMPLAINTS

1. The applicant complained under Article 3 of the Convention that the conditions in the remand prison had been inhuman.

2. The applicant complained under Article 6 § 3 (d) of the Convention that the court had not questioned V. and G. – crucial witnesses on his behalf.

3. The applicant complained under Article 5 §§ 1 (a) and (c) of the Convention that his arrest and detention had been unlawful because he was innocent and would not run away.

4. The applicant complained under Article 6 §§ 1 and 2 of the Convention that the proceedings had been unfair because the court had taken the prosecution's arguments at face value.

5. The applicant complained under Article 8 of the Convention that the courts had accepted as evidence unlawful telephone taps.

6. The applicant complained under Article 1 of Protocol No. 1 that during the investigation the police had unlawfully seized his car and other property.

THE LAW

1. The applicant complained under Article 3 of the Convention that the conditions in the remand prison had been inhuman. Article 3 reads as follows:

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

The Government submitted, referring to their description of the cells, that the prison conditions were satisfactory. The prison was indeed overcrowded, but not worse than any other Russian prison in those years. The applicant did not complain about the conditions of his detention, and the authorities had no intent to make him suffer. Furthermore, in recent years the conditions in the prison had significantly improved.

The applicant insisted, referring to his description of the cells, that the prison conditions were unsatisfactory. His case was not unique: the Court knew from other cases that conditions in Russian prisons were very poor. The applicant did complain about the conditions of his detention. The authorities had intent to make him suffer because they had deliberately placed him in one cell with ordinary criminals. Furthermore, the recent improvements of the prison were of no consequence.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court

concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant complained under Article 6 § 3 (d) of the Convention that the court had not questioned crucial witnesses on his behalf. Article 6 § 3, as far as relevant, reads as follows:

> "Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him...."

The Government rejected this complaint as manifestly ill-founded for the following reasons. First, requests to call witnesses were usually examined at preparatory hearings. But the court could not examine the applicant's request because it came after the preparatory hearing. Second, since the applicant did not repeat the request in the main hearing, the court had no reason to call V. and G.

The applicant insisted on his complaint for the following reasons. First, for a careful reader of the prosecution files the necessity to call V. and G. was self-evident. Second, the request must have reached the court well before the preparatory hearing, because the prison administration usually passed prisoners' mail within one day of despatch. Third, even if the request did reach the court late, the court should have answered it as soon as it came. Fourth, the applicant did repeat the request in the main hearing, in his last plea, and in his appeal.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

3. The applicant also made many other complaints under Articles 5, 6, and 8 of the Convention, and under Article 1 of Protocol No. 1.

However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, 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.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaints concerning the conditions of his detention and the refusal of hearing witnesses;

Declares the remainder of the application inadmissible.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President