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

THIRD SECTION

DECISION

Application no. 8460/10
Samit Tiflis ogly GASYMOV
against Russia

The European Court of Human Rights (Third Section), sitting on 31 October 2017 as a Committee composed of:

Branko Lubarda, *President,*
Pere Pastor Vilanova,
Georgios A. Serghides, *judges,*
and Stephen Phillips, *Section Registrar,*

Having regard to the above application lodged on 13 December 2009,

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

Having deliberated, decides as follows:

PROCEDURE

1. The applicant, Mr Samit Tiflis ogly Gasymov, is an Azeri national, who was born in 1982 and lives in the village of Mamusta, Azerbaijan. His application was lodged on 13 December 2009. He was represented before the Court by Mr E. Mezak, a human-rights defender from Syktyvkar.

2. The Russian Government ("the Government") were initially represented by Mr G. Matyushkin, the Representative of the Russian Federation to the European Court of Human Rights, and then by his successor at that post, Mr M. Galperin.

3. On 19 June 2012 the Registry of the Court gave notice of the application to the Azerbaijani Government to enable them to exercise their right to intervene as a third party for the purposes of Article 36 § 1 of the Convention and Rule 44 of the Rules of Court. The Government of Azerbaijan did not reply.

THE FACTS

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

5. On 13 February 2009 the applicant was found guilty of an administrative offence and was sentenced to a fine and administrative removal from the Russian Federation. Later on a supervisory review the court excluded administrative removal from the judgment.

6. On 18 April 2009 the applicant was placed, pending removal, to the detention centre for administratively arrested persons in Syktyvkar, as he had failed to voluntarily leave the Russian Federation. He was kept in the detention centre till 8 July 2009.

7. The applicant was detained in a cell which measured 12.2 square metres (sq.m). The in-cell sanitary facility occupied 1.23 sq.m. The applicant was detained with two other inmates. According to him, during the periods of midnight twilight the cell was excessively lit during the night; he could hear sounds from the hall, the menu was not diversified enough, and the daily walks were too short.

8. The applicant complained to a court about the authorities' failure to ensure adequate conditions of his detention in the detention centre. His complaint, filed under the Code of Civil Procedure of the Russian Federation, was dismissed on 13 July 2009. The dismissal was based on the fact that the complaint was inextricably linked to the administrative proceedings against the applicant and could not therefore be subject to the examination in civil proceedings.

9. The appeal court upheld the dismissal of the complaint on 13 August 2009, having explained that the applicant could state his complaints in an appeal against the judgment in the administrative proceedings against him.

10. According to the applicant, similar complaints filed under the Code of Civil Procedure by some of his acquaintances were accepted and examined on the merits by civil courts.

COMPLAINTS

11. The applicant complained under Articles 3 and 13 of the Convention about poor conditions of his detention, from 18 April to 8 July 2009, in the detention centre for administratively arrested persons in Syktyvkar and a lack of an effective remedy to complain about the inadequate conditions of his detention.

12. Under Article 6 of the Convention the applicant complained that the dismissal of his complaint about the conditions of his detention had breached his right of access to a court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 3 AND 13 OF THE CONVENTION

13. The applicant complained about the detention conditions and also argued that he had not had any effective remedies in this regard. Articles 3 and 13, to which the applicant referred, 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 [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

14. The Government argued that the conditions of the applicant's detention were adequate. The applicant maintained his complaints. The parties agreed on the surface of the cell in which the applicant had been detained but disagreed on the remaining conditions of detention.

15. The Court refers to the principles established in its case-law regarding inadequate conditions of detention (see, for instance, *Muršić v. Croatia* [GC], no. 7334/13, §§ 136-40, ECHR 2016; *Ananyev and Others v. Russia,* nos. 42525/07 and 60800/08, 10 January 2012; and *Butko v. Russia,* no. 32036/10, 12 November 2015).

16. The Court notes that the cell in which the applicant was detained measured 12.2 square metres (sq.m), the in-cell sanitary facility occupied 1.23 sq.m. Therefore, in order to calculate the personal space allocated to the applicant the Court will take into consideration the surface of 10.97 sq.m (see *Muršić*, cited above, § 114).

17. The applicant was detained with two other inmates, which means that he disposed of about 3.7 sq.m of personal space.

18. The Court observes that in cases where the personal space per inmate measures in the range of 3 to 4 sq.m, a violation of Article 3 will only be found if the space factor is coupled with other aspects of inappropriate physical conditions of detention (see *Muršić*, cited above, § 139).

19. The Court notes that the parties disputed other aspects of the detention conditions. The applicant failed to submit any evidence of his allegations. The Government only submitted certificates signed by the authorities of the detention centre. The Court cannot accept the certificate as sufficient and objective evidence. Therefore, it cannot establish such other aspects of the conditions of detention with sufficient clarity.

20. Nevertheless, even assuming that the applicant's description of the conditions of detention is exact and taking into account the cumulative effect of those conditions, the Court does not consider that they, although far from ideal, reached the threshold of severity required within the meaning of Article 3 of the Convention (see, for a similar reasoning, *Karmannikov v. Russia* [Committee], no. 2418/16, § 10, 8 June 2017).

21. It follows that the complaint under Article 3 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention. Accordingly, the applicant did not have an "arguable claim" of a violation of a substantive Convention provision and, therefore, Article 13 of the Convention is inapplicable to this part of the application. It follows that the complaint under Article 13 must also be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

22. The applicant complained that the dismissal of his complaint about the conditions of his detention by civil courts had breached his right of access to a court.

23. The Government argued that the dismissal had been justified, reasoned and in full compliance with the domestic rules of civil procedure.

24. The Court reiterates that it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation. This applies, in particular, to the interpretation of rules of a procedural nature. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see *Kolovangina v. Russia*, no. 76593/01, § 23, 11 December 2008).

25. Turning to the circumstances of the present case, the Court notes that the decisions of both courts were sufficiently reasoned; the purpose of the dismissal was the good administration of justice and respect for the scope of different proceedings (civil and administrative); the alleged acceptance of similar complaints from third persons has no bearing on the decisions in question as the course of those third parties' previous proceedings may have differed from the applicant's situation which could have brought the courts to a different conclusion.

26. Having regard to the domestic courts' decisions and the Government's observations, the Court notes that there is no sign of arbitrariness in the courts' decisions to dismiss the applicant's complaint about the conditions of his detention. Moreover, an alternative way of filing the complaint was explained to the applicant but he never availed himself of that venue.

27. Hence, in the Court's opinion, it cannot be said that the essence of the applicant's right of access to a court was impaired or that the proportionality principle was not respected in the present case.

28. It follows that the complaint under Article 6 is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 23 November 2017.

Stephen Phillips
Registrar

Branko Lubarda
President