

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

THIRD SECTION

DECISION

Application no. 28304/10
Yevgeniy Viktorovich IVANOV
against Russia

The European Court of Human Rights (Third Section), sitting on 8 March 2016 as a Chamber composed of:

Luis López Guerra, *President*
Helena Jäderblom,
Helen Keller,
Johannes Silvis,
Dmitry Dedov,
Branko Lubarda,
Pere Pastor Vilanova, *judges*,
and Stephen Phillips, *Section Registrar,*

Having regard to the above application lodged on 29 March 2010,

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

1. The applicant, Mr Yevgeniy Viktorovich Ivanov, is a Russian national who was born in 1982 and lives in Moscow. He was represented before the Court by Mr M. I. Trepashkin, a lawyer practising in Moscow.

2. The Russian Government ("the Government") were represented by Mr G. O. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

A. The circumstances of the case

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

4. In June 2009 the applicant, a former policeman, was committed to the Kapotnya detention centre (*Следственный изолятор № 7 Капотня*) on bribery charges.

5. The applicant was visited nine times by his lawyer before his release on 12 November 2009. During the visits, the applicant was locked inside a metal enclosure which he interchangeably called a partition or a cage, but which the Government called a partition. Two photographs of the visiting area taken by the lawyer,[1] which were not disputed by the Government, show an empty room lit with fluorescent lights, with tiles on the floor and one wall. Against that wall stands an upright, three-sided enclosure about one and a half times a man's height and 1 by 1.5 m at the base. Its panels are made of finger-thick iron rods crossing at right angles. Mounted on the centre panel is a door secured with a lock. There is a stool inside.

6. The applicant's lawyer protested against this manner of detaining his client, but the prison guards justified their actions by saying that they were acting on the instructions of the prison governor.

B. Relevant domestic law

7. Rules for prison visiting areas are regulated by the Ministry of Justice. The Regulations on Remand Prisons (*Правила внутреннего распорядка следственных изоляторов уголовно-исполнительной системы, утверждены приказом Минюста РФ от 14 октября 2005 г. № 189*) allow an inmate to meet his lawyer one-on-one, with no partition between them. A prison guard may supervise the meeting but may not listen to the participants (§ 145).

8. At the material time, Chapter 25 of the Code of Civil Procedure allowed for judicial review of the acts of executive authorities which impinged on individual rights (Article 254). A court also had the power to order the executive authority to remedy any breaches (Article 258).

COMPLAINT

9. The applicant complained under Article 3 of the Convention that his caging during the visits in jail by his lawyer had been degrading.

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1. M. I. Trepashkin, *В Капотненском СИЗО грубо нарушают права подследственных* (The rights of inmates are being trampled upon in the Kapotnya detention centre, *Civitas*, 26 August 2009, http://vestnikcivitas.ru/news/806), accessed 1 December 2015.

THE LAW

10. Article 3 of the Convention reads:

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

11. The Government rejected the complaint. They first argued that the applicant had acted contrary to Article 35 § 1 of the Convention by failing to exhaust domestic remedies. The Government submitted that the applicant could have made a verbal or written complaint to duty officers on their daily rounds. He could have complained of a breach of the Regulations on Remand Prisons to the prison governor, a prosecutor, or a court. The Government further suggested that the applicant might have missed the six-month time-limit for applying to the Court. At any rate, the complaint was manifestly ill-founded as the restraining measure in question had not hurt the applicant physically or emotionally. It was a partition, not a cage. Unlike the case of *Svinarenko and Slyadnev v Russia* ([GC], nos. 32541/08 and 43441/08, ECHR 2014 (extracts)), where the applicants had been caged in a courtroom for all to see, the applicant and his lawyer had talked face-to-face in the seclusion of the prison visiting area.

12. The applicant maintained his view that his complaint was admissible. The remedies suggested by the Government would have been futile. The applicant had seen no point in complaining to the prison administration because the visiting area had been in high demand for years and the prison administration would not have been prepared to deal with the problems involved in rebuilding it. Furthermore, the applicant feared that he would suffer retribution from the authorities. His lawyer's official complaints had failed and the lawyer had had to resort to seeking publicity and help online (see paragraph 5). He had complied with the six-month time-limit. The cage had angered him because he had been exhibited like an animal to other inmates and lawyers in the visiting area. He had also been caged during his trial.

13. To start with, the Court considers that the applicant's complaint of being held in a cage in the courtroom cannot be examined as it did not emerge until the applicant's observations (see *Shtukaturov v. Russia*, no. 44009/05, § 127, ECHR 2008).

14. The applicant has also failed to exhaust domestic remedies in respect of the cage in the visiting area, as required by Article 35 § 1 of the Convention. That Article highlights the Court's secondary role and aims to let States mend any breaches before the Court becomes involved. Applicants must first use remedies that are available, accessible, relevant, effective, and adequate (*Kalashnikov v. Russia* (dec.), no. 47095/99, ECHR 2001-XI (extracts); *Znamenskaya v. Russia* (dec.), no. 77785/01, 25 March 2004; *Trubnikov v. Russia* (dec.), no. 49790/99, 14 October 2003; *Vučković*

and Others v. Serbia (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 73–74, 25 March 2014).

15. The Court finds that the applicant sought to employ remedies which were not appropriate to the situation in which he found himself.

16. Firstly, the Court considers that the applicant should have made a formal notification of his dissatisfaction with the conditions of his interviews with his lawyer to the prison governor, who had the power to stop him being put in the cage. To deal with the applicant's complaint, it would have been enough for prison guards to refrain from shutting him in, without there being any need to rebuild the room. The applicant submitted that his lawyer had complained to the governor, but there is no trace in the case file of such complaints. Nor has he explained his fear of reprisal.

17. Secondly, if the applicant's complaint had been dismissed, he could have sought judicial review of the prison's visiting arrangements under Chapter 25 of the Code of Civil Procedure. That remedy was within the applicant's reach, and was independent from the executive. It was adversarial and would have been binding on the prison governor. Of course, had the caging been lawful and standard practice as, for example, in the country's courtrooms, a judicial review would have been ineffective (see *Svinarenko and Slyadnev*, cited above, § 87). But the Regulations on Remand Prisons did ban barriers between inmates and visiting lawyers, and so a court could have ordered the governor of the Kapotnya detention centre to conform to that law.

18. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 31 March 2016.

Stephen Phillips
Registrar

Luis López Guerra
President