

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

THIRD SECTION

DECISION

Application no. 54071/17
Andrey Viktorovich LOZHKIN against Russia
and 17 other applications
(see appended table)

The European Court of Human Rights (Third Section), sitting on 5 November 2020 as a Committee composed of:

Darian Pavli, *President,*
Dmitry Dedov,
Peeter Roosma, *judges,*

and Liv Tigerstedt, *Acting Deputy Section Registrar,*

Having regard to the above applications lodged on the various dates indicated in the appended table,

Having regard to the observations and information submitted by the respondent Government,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The list of applicants is set out in the appended table.

The applicants complained under Article 3 of the Convention about the inadequate conditions of their detention (see the appended table for details). Some applicants also argued under Article 13 of the Convention that they did not have an effective remedy to complain about poor conditions of their detention. These complaints were communicated to the Russian Government ("the Government").

THE LAW

A. Joinder of the applications

Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

B. Complaints under Article 3 of the Convention (inadequate conditions of detention) and under Article 13 of the Convention (lack of an effective remedy for conditions of detention)

In the present applications, the applicants complained of conditions of post-conviction detention in violation of the national requirements during periods which had already come to an end (for further details see the appended table). Some of them also argued that they did not have an effective domestic remedy to complain about those conditions at the national level. Articles 3 and 13 read:

Article 3
Prohibition of torture

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

Article 13
Right to an effective remedy.

"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."

In its recent decision of *Shmelev and Others v. Russia* ((dec.), no. 41743/17 and 16 others, 17 March 2020), the Court has examined similar applications lodged by Russian applicants and declared them inadmissible for non-exhaustion of domestic remedies. In particular, the Court took into account that on 27 January 2020 the new Compensation Act entered into force in Russia. It noted that the Act provides that any detainee who alleges that his or her conditions of detention are in breach of national legislation or international agreements of the Russian Federation can apply to a court. The novelty of the Act is that a (former) detainee can claim, at the same time, a finding of a violation of inadequate detention conditions and financial compensation for such breach.

In that decision, the Court further held as follows:

"122. The Court reiterates that, where the detention is over, a compensatory remedy can suffice to provide the applicants with fair redress for the alleged breach of Article 3 (see case-law cited above in paragraph 87). Accordingly, it is sufficient to examine whether the applicants concerned can be required to exhaust the compensatory remedy.

123. As mentioned above, the Court may examine the effectiveness of a newly introduced domestic remedy even if it was not available at the time of lodging of applications, where such remedy is introduced at a later stage in response to the Court's finding of a systemic problem (see paragraph 106 above and the case-law cited therein).

124. The Court has concluded that the Compensation Act presents, in principle, an adequate and effective avenue for compensatory redress in cases raising issues of

improper conditions of pre-trial detention. It has found that it is directly accessible to the persons concerned, is furnished with the requisite procedural guarantees associated with judicial adversarial proceedings, that there are no reasons to expect that such claims would not be processed within a reasonable time, or that the compensation would not be paid promptly. It also concluded that the system offers reasonable prospects of success to the applicants in terms of the compensation awards.

125. The Compensation Act is equipped with transitional provisions, so that any person whose complaint about inadequate conditions of detention was pending with this Court at the time of the Act's entry into force can apply within 180 days after that date (see paragraph 63 above). The same would apply to those whose complaints would be declared inadmissible by this Court in view of the Act coming into force.

126. The Court accepts that the domestic courts have not yet been able to establish any practice under the Compensation Act. However, the Court has already found that doubts about the prospects of a remedy, which appears to offer a reasonable possibility of redress, are not a sufficient reason to eschew it (see *Shtolts and Others*, cited above, § 111).

127. Accordingly, even though the domestic remedy was not available to the applicants at the time when they applied to the Court, the situation justifies a departure from the general rule on exhaustion and requires the applicants in question to seek compensation under the Compensation Act.

128. The Court accepts that the outcome of the applicants' claims under the new provisions cannot at present be ascertained. However, as the Court has already noted on similar occasions, it would remain open for the applicants to lodge fresh complaints should their claims to the domestic courts prove unsuccessful, for one reason or another. The Court's ultimate supervisory jurisdiction remains in respect of any complaints lodged by the applicants who, in conformity with the principle of subsidiarity, have exhausted available avenues of redress (see *Domján*, § 37; and *Shtolts and Others*, §§ 112-113, both decisions cited above). The Court will remain free to assess the compliance of application of the domestic practice with the pilot judgment and the Convention standards in general, including in respect of the standard of evidence employed by the domestic courts (see the summary of the relevant case-law in paragraph 82 above).

129. Finally, the Court does not lose sight of a number of positive developments related to the situation with pre-trial detention in Russia ..."

Having thus considered that there exists an effective remedy in Russia for cases where applicants complain about a breach of Article 3 in respect of past pre-trial detention, and having dismissed the applications by such applicants for non-exhaustion, the Court declared that it will apply that approach to all similar applications (*Shmelev and Others*, (dec.), cited above, § 130).

The Court also found that applicants who complained about their detention in overcrowded conditions of post-conviction facilities in violation of the national statutory norm of two square metres per person, and where their detention in such conditions was already over, found themselves in a situation similar to that of persons whose past pre-trial detention had been in breach of the applicable national standards. The Court stressed that for them, as well as for other persons in similar situation, the

new Compensatory Act presents, in principle, an adequate and effective avenue of obtaining compensatory redress, and offers reasonable prospects of success (*Shmelev and Others*, (dec.), cited above, § 154). It thus also rejected for non-exhaustion of domestic remedies applications where applicants complained about post-conviction detention in violation of the national statutory standard and decided that actual or potential applicants finding themselves in a similar situation – i.e. where the complaint concerns past correctional detention in conditions in breach of the applicable domestic standards – are also expected to first make use of the compensatory remedy introduced in January 2020 (*Shmelev and Others*, (dec.), cited above, §§ 155-156).

Turning to the circumstances of the present cases and 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 of these complaints. In particular, the Court notes that some applicants complained about the conditions of their detention in colony IK-56 in the Sverdlovsk Region. In addition to the specific grievances listed in the appended table, the applicants provided similar description of the general conditions. While not arguing that they lacked personal space as such, the applicants nevertheless complained about degrading treatment relating to the lack of water-supply and sewage systems in IK-56 colony, and the absence of proper sanitary installations in the cells. The treatment they complained of consisted of the necessity to relieve themselves in a bucket, often in the presence of another inmate, and to endure difficulties as a result of the lack of sanitary facilities, such as the unpleasant odour in the cells, poor hygiene and the daily obligation to empty and clean the bucket. Those conditions in IK-56 of the Sverdlovsk Region were already the subject of the Court's criticism, when it held that the lack of access to proper sanitary facilities run counter to the guarantees of Article 3 of the Convention (see *Gorbulya v. Russia*, no. 31535/09, § 94, 6 March 2014). The Court in this respect does not lose sight of the parties' submissions that the Russian authorities decided to close the facility and that by the summer 2018 all inmates were transferred from it. It is clear that the conditions in IK-56 colony ran counter to the domestic legal requirements. It thus follows that the applicants who complained about the conditions of their detention in IK-56 colony in Sverdlovsk Region were in the same position as applicants who complained about their detention in overcrowded conditions of post-conviction facilities in violation of the national statutory norm of two square metres per person (see *Shmelev and Others*, (dec.), cited above, § 154).

To sum up, the Court considers that in so far as the applicants have lodged *prima facie* well-founded complaints about breach of their rights by improper conditions of their detention, as described in the appended table, the Compensation Act affords them an opportunity to obtain compensatory

redress. Accordingly, the applicants should exhaust this remedy before their complaints can be examined by the Court. It follows that their complaints, as listed in the appended table, under Articles 3 and 13 should be declared inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 26 November 2020.

Liv Tigerstedt	Darian Pavli
Acting Deputy Registrar	President

APPENDIX

List of applications raising complaints under Article 3 of the Convention

(inadequate conditions of detention)

No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Facility Start and end date Duration	Inmates per brigade Sq. m per inmate Number of toilets per brigade	Specific grievances
1.	54071/17 31/08/2017	**Andrey Viktorovich LOZHKIN** 1985		IK-56 Sverdlovsk Region 13/07/2010 to 05/01/2018 7 year(s) and 5 month(s) and 24 day(s)		Lack of or insufficient physical exercise in fresh air, lack of or inadequate hygienic facilities, poor quality of potable water, no or restricted access to running water, no or restricted access to warm water, no or restricted access to shower, lack of privacy for toilet, lack of fresh air, lack of or insufficient natural light, lack of sewage system in the colony; need to take a bucket with human waste on the daily basis.
2.	65758/17 01/09/2017	**Aleksandr Valeryevich GLADKOV** 1973		IK-2 Zabaykalskiy Region 22/11/2012 to 30/06/2020 7 year(s) and 7 month(s) and 9 day(s)	1.3 m²	Overcrowding, no or restricted access to toilet, lack of fresh air, inadequate temperature, no or restricted access to warm water, lack of or restricted access to leisure or educational activities, lack of privacy for toilet, infestation of cell with insects/rodents, bad odour in cell.
3.	73033/17 10/10/2017	**Umrbek Durdiyevich IBRAGIMOV** 1992		IK-56 Sverdlovsk Region 12/03/2016 to 03/09/2017 1 year(s) and 5 month(s) and 23 day(s)		Lack of fresh air, lack of or inadequate hygienic facilities, lack of or insufficient electric light, lack of or insufficient natural light, lack of or insufficient physical exercise in fresh air, lack of toiletries, no or restricted access to potable water, no or restricted access to running water, no or restricted access to shower, no or restricted access to toilet, poor quality of food.
4.	74335/17 05/04/2018	**Vladimir Alekseyevich SVISTUNOV** 1970		IK-9 Kirov Region 23/07/2013 to 14/01/2020 6 year(s) and 5 month(s) and 23 day(s)	80 inmate(s) 1.9 m²	Mouldy or dirty cell, overcrowding, poor quality of food, sharing cells with inmates infected with contagious disease, lack of or inadequate hygienic facilities, inadequate temperature, lack of fresh air.
5.	77919/17 19/10/2017	**Ruslan Kazymovich KUBASHEV** 1985		IK-56 Sverdlovsk Region 06/07/2013 to 13/01/2018 4 year(s) and 6 month(s) and 8 day(s)		Lack of or inadequate hygienic facilities, lack of or insufficient physical exercise in fresh air, no or restricted access to running water, infestation of cell with insects/rodents, lack of fresh air, lack of or insufficient electric light, lack of or insufficient natural light, no or restricted access to shower, lack of toiletries, no or restricted access to potable water, no or restricted access to warm water.

No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Facility Start and end date Duration	Inmates per brigade Sq. m per inmate Number of toilets per brigade	Specific grievances
6.	80681/17 17/11/2017	**Eduard Vladimirovich CHUDINOV** 1969		IK-56 Sverdlovsk Region 05/12/2015 to 03/09/2017 1 year(s) and 8 month(s) and 30 day(s)		Lack of or insufficient electric light, lack of or insufficient natural light, lack of fresh air, no or restricted access to running water, no or restricted access to potable water, no or restricted access to warm water, no or restricted access to toilet, no or restricted access to shower, poor quality of food.
7.	84754/17 05/12/2017	**Yuriy Sergeyevich KRYUKOV** 1994		IK-56 Sverdlovsk Region 12/02/2016 to 03/11/2017 1 year(s) and 8 month(s) and 23 day(s)		No or restricted access to potable water, lack of fresh air, lack of or inadequate hygienic facilities, lack of or insufficient physical exercise in fresh air, lack of or insufficient electric light, lack of or insufficient natural light, no or restricted access to warm water, poor quality of food.
8.	15762/18 02/02/2018	**Vladislav Nikolayevich RUZHOVICH** 1975		IK-5 Krasnoyarsk Region 18/03/2010 to 12/06/2020 10 year(s) and 2 month(s) and 26 day(s)	150 inmate(s) 1.16 m² 6 toilet(s)	Overcrowding, no or restricted access to toilet, lack of or inadequate hygienic facilities.
9.	18888/18 30/03/2018	**Aleksey Nikolayevich PILISHKIN** 1985		IK-11 Nizhniy Novgorod Region 16/06/2014 to 12/05/2020 5 year(s) and 10 month(s) and 27 day(s)	132 inmate(s) 1.5 m² 6 toilet(s)	Overcrowding, poor quality of food, no or restricted access to shower, mouldy or dirty cell.
10.	21572/18 18/06/2018	**Maksim Yuryevich SIDORENKO** 1979		IK-2 Zabaykalskiy Region 01/05/2015 to 15/07/2020 5 year(s) and 2 month(s) and 15 day(s)	1.9 m²	Overcrowding, no or restricted access to toilet, lack of leisure room, lack of ventilation, no or restricted access to warm water, lack of fresh air.
11.	27643/18 28/05/2018	**Sergey Valeryevich ADAMOVICH** 1978	Kulakov Yevgeniy Valeryevich Arkhangelsk	IK-1 Arkhangelsk Region 29/06/2011 to 29/06/2020 9 year(s) and 1 day(s)	90 inmate(s) 1.6 m² 8 toilet(s)	No or restricted access to running water, no or restricted access to warm water, inadequate temperature, poor quality of food, sharing cells with inmates infected with contagious disease, lack of or insufficient electric light, constant electric light, no or restricted access to shower.
12.	28130/18 17/07/2018	**Aleksandr Petrovich POLYAKOV** 1966		IK-2 Zabaykalskiy Region 09/10/2017 to 08/06/2020 2 year(s) and 8 month(s)	1.5 m²	Lack of fresh air, infestation of cell with insects/rodents, lack of or insufficient electric light, inadequate temperature, no or restricted access to warm water, no or restricted access to shower, poor quality of food.
13.	29858/18 17/07/2018	**Nikolay Andreyevich OSIPOV** 1969		IK-2 Zabaykalskiy Region 22/10/2015 to 08/05/2020 4 year(s) and 6 month(s) and 17 day(s)	170 inmate(s) 0.9 m²	Overcrowding, lack of fresh air, lack of or insufficient electric light, lack of or insufficient natural light, lack or inadequate furniture, no or restricted access to warm water, no or restricted access to running water, poor quality of potable water, no heated toilet, no or restricted access to shower, poor quality of food

No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Facility Start and end date Duration	Inmates per brigade Sq. m per inmate Number of toilets per brigade	Specific grievances
14.	33103/18 28/06/2018	**Yuriy Ilyich VORONTSOV** 1968		IK-5 Kirov Region 16/10/2015 to 09/11/2020 5 year(s) and 25 day(s)	105 inmate(s) <2 m²	Overcrowding, lack of or insufficient physical exercise in fresh air, no or restricted access to shower, poor quality of food
15.	44980/18 10/09/2018	**Oleg Viktorovich STEPANOV** 1974		IK-2 Zabaykalskiy Region 09/10/2017 to 30/04/2020 2 year(s) and 6 month(s) and 22 day(s)	1.5 m²	Infestation of cell with insects/rodents, lack of or inadequate hygienic facilities, no or restricted access to warm water, poor quality of food, mouldy or dirty cell.
16.	53877/18 12/02/2019	**Yaroslav Andreyevich DYACHKOV** 1987		IK-2 Zabaykalskiy Region 24/10/2017 to 23/06/2020 2 year(s) and 8 month(s)	<2 m²	Constant electric light, lack of fresh air, lack of or insufficient natural light, no or restricted access to shower, overcrowding, lack or insufficient quantity of food.
17.	54199/18 06/11/2018	**Viktor Semenovich DMITRIYEV** 1981		IK-2 Zabaykalskiy Region 04/03/2011 to 07/06/2020 9 year(s) and 3 month(s) and 4 day(s)	<2 m²	Lack of or inadequate hygienic facilities, overcrowding, lack of or insufficient electric light, lack of fresh air, inadequate temperature, mouldy or dirty cell.
18.	56282/18 15/11/2018	**Nikolay Ivanovich BAZHUKOV** 1986		IK-1 Komi Republic 27/01/2018 to 30/04/2020 2 year(s) and 3 month(s) and 4 day(s)	45 inmate(s) <2 m²	Lack of prison clothing, lack of or inadequate hygienic facilities, lack of or poor quality of bedding and bed linen, lack of or insufficient physical exercise in fresh air, poor quality of food, sharing cells with inmates infected with contagious disease.