

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

FIRST SECTION

DECISION

Application no. 64465/11
Zaza Zhorayevich MAKHVILADZE
against Russia

The European Court of Human Rights (First Section), sitting on 26 August 2014 as a Committee composed of:

Khanlar Hajiyev, *President,*
Julia Laffranque,
Erik Møse, *judges,*

and Søren C. Prebensen, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 27 September 2011,

Having regard to the comments submitted by the parties,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Zaza Zhorayevich Makhviladze, is a Russian national, who was born in 1968 and lives in Volgograd.

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

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

4. On 17 February 2009 the applicant was arrested on suspicion of an attempted drug sale.

5. On 19 February 2009 the applicant was detained and placed in remand prison IZ-34/1 of Volgograd where he was held until 17 February 2010. The facility was overcrowded. Thus, cell 37 measuring 10 sq. m was equipped with six sleeping places and accommodated up to twelve inmates; cell 53 measuring 20 sq. m was designed for ten detainees but housed up to forty individuals.

6. After a while the applicant brought a civil lawsuit seeking, in particular, compensation for the allegedly inadequate conditions of detention in prison IZ-34/1. By final judgment of 30 March 2011, the Volgograd Regional Court granted the claim and awarded the applicant 100,000 Russian roubles.

COMPLAINTS

7. The applicant complained under Article 3 of the Convention about the conditions of his detention in the remand prison.

8. With reference to the same Article the applicant claimed that the medical assistance in the prison had been inadequate.

9. Lastly, the applicant complained under Article 6 about various shortcomings of the civil proceedings.

THE LAW

10. The applicant's first complaint is related to the conditions of his detention in the remand prison. Having regard to the fact that the respective period of his detention had ended more than six months before his application was lodged with the Court, the Court must determine whether the applicant complied with the six-month requirement imposed by Article 35 of the Convention.

11. The Government submitted that, since the adoption of the Kalashnikov judgment (see *Kalashnikov v. Russia*, no. 47095/99, ECHR 2002-VI), the Court had consistently maintained its position that there had been no effective remedy in the Russian legal system for the complaints relating to inadequate conditions of detention. That case-law was accessible to the applicant and he should have been aware of its existence. In those circumstances, he should have lodged his application within six months of the end of the situation he complained about, that is, the period of his detention in the remand prison.

12. The applicant replied that he had lodged his application within six months of the domestic courts' final decision on his compensation claims. Accordingly, it was not belated.

13. The Court reiterates that the six-month period normally runs from the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset however that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of (see *Artyomov v. Russia*, no. 14146/02, § 108, 27 May 2010, with further references).

14. The Court further recalls its constant position that given the present state of Russian law, a civil action for compensation for inadequate conditions of detention has not been considered an effective remedy (see, most recently, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 113-118, 10 January 2012, with further references). The Court's case-law on the absence of an effective remedy for complaints concerning inadequate conditions of detention being sufficiently established, the applicant had at his disposal a period of six months following his departure from the remand prison, during which he should have ascertained the conditions on the admissibility of an application to the Court and, if necessary, obtained appropriate legal advice. However, he did not submit his application within that time period.

15. The Court has examined a similar situation and reached the conclusion that the complaint about the inadequate conditions of detention should have been introduced within six months of the day following the applicant's transfer out of the detention facility (see *Norkin v. Russia* (dec.), no. 21056/11, 5 February 2013). There are no arguments or factual information in the present case that would warrant a departure from the Court's findings in that decision. The applicant should have been aware of the ineffectiveness of the judicial avenue he had made use of, before he lodged his application with the Court. The final disposal of his claims for compensation cannot be relied upon as starting a fresh time-limit for his complaints.

16. It follows that his complaints about allegedly inadequate conditions of detention are inadmissible for non-compliance with the six-month rule set out in Article 35 § 1 of the Convention, and must be rejected pursuant to Article 35 § 4.

17. The Court has examined the remainder of the applicant's complaints. However, having regard to all the material in its possession, it finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Søren C. Prebensen
Acting Deputy Registrar

Khanlar Hajiyev
President