

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

THIRD SECTION

DECISION

Applications nos. 11470/16 and 22147/16
Mikhail Andreyevich SMOLIN against Russia
and Gennadiy Valeryanovich SHUBIN against Russia
(see appended table)

The European Court of Human Rights (Third Section), sitting on 15 June 2017 as a Committee composed of:

Luis López Guerra, *President,*
Dmitry Dedov,
Jolien Schukking, *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 submitted by the respondent Government and the observations in reply submitted by the applicant in the application no. 22147/16,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The list of applicants and the relevant details of the applications are set out in the appended table.

The applicants' complaints under Article 3 of the Convention concerning inadequate conditions of detention were communicated to the Russian Government ("the Government"). In case no. 11470/16 the applicant's complaint under Article 13 of the Convention was also communicated to 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)

The Court reiterates that it adopts conclusions after evaluating all the evidence, including such inferences as may flow from the facts and the parties' submissions. According to its established case-law, proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see, for example, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 121, 10 January 2012). In cases regarding conditions of detention the burden of proof may, under certain circumstances, be shifted to the authorities (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII; see also *Mathew v. the Netherlands*, no. 24919/03, § 156, ECHR 2005 IX). Nevertheless, an applicant must provide an elaborate and consistent account of the conditions of his or her detention, mentioning the specific elements which would enable the Court to determine that the complaint is not manifestly ill-founded or inadmissible on any other grounds.

In the present cases, the Government contended that the applicants had been afforded adequate personal space and had individual sleeping places. Moreover, they had been allowed an outdoor exercise daily and had had proper access to hygienic facilities. The Government relied on the information provided by remand prisons governors and excerpts from remand prisons' population registers accounting for each day of the applicants' detention.

The Court is satisfied that the excerpts are original documents which were prepared during the periods under the examination and which showed the actual number of inmates present in the cells on relevant dates. The Court also notes that the excerpts from the registers demonstrate that at the relevant time the remand prisons were not overcrowded.

Having assessed the evidence presented by the parties in its entirety, the Court gives credence to the primary documents produced by the Government and rejects the applicants' allegations as unsubstantiated.

Taking into account the cumulative effect of the conditions of the applicants' detention in the remand prisons, the Court does not consider that the conditions reached the threshold of severity required to characterise the treatment as inhuman or degrading within the meaning of Article 3 of the Convention.

In view of the above, the Court finds that these complaints are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Remaining complaint

In case no.11470/16, the applicant also argued under Article 13 of the Convention that he did not have an effective remedy to complain about the inadequate detention conditions.

The Court reiterates that Article 13 of the Convention only applies where an individual has an "arguable claim" to be the victim of a violation of a Convention right. In view of its findings above with regard to the complaint about the conditions of detention, the Court considers that the applicant has no "arguable claim" and that the complaint under Article 13 should also be declared manifestly ill-founded and rejected under Article 35 §§ 3 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 6 July 2017.

Liv Tigerstedt Acting Deputy Registrar	Luis López Guerra President

APPENDIX

No.	Application no. Date of introduction	Applicant name Date of birth	Representative name and location	Facility Start and end date Duration	Specific grievances	Other complaints under well-established case-law
1.	11470/16 15/02/2016	**Mikhail Andreyevich Smolin** 08/04/1991		IZ 37/1 Ivanovo 07/04/2014 to 17/08/2015 1 year(s) and 4 month(s) and 11 day(s)	lack of (sufficient) natural light, lack of fresh air, lack of (regular) physical exercise on fresh air	Art. 13 - lack of any effective remedy in respect of inadequate conditions of detention
2.	22147/16 04/04/2016	**Gennadiy Valeryanovich Shubin** 12/12/1964	Panfilov Aleksandr Viktorovich Murmansk	IZ-1 Murmansk 14/02/2013 to 22/02/2016 3 year(s) and 9 day(s)	lack of (adequate) heating, lack of (regular) physical exercise on fresh air	