

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

THIRD SECTION

DECISION

Applications nos. 14867/18 and 2802/19
Saymumin Valiyevich TOSHOV against Russia
and Konstantin Andreyevich KUPTSOV against Russia
(see appended table)

The European Court of Human Rights (Third Section), sitting on 15 September 2022 as a Committee composed of:

Darian Pavli*, President,*
Andreas Zünd*,*
Frédéric Krenc*, judges,*
and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

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

Having deliberated, decides as follows:

FACTS AND PROCEDURE

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

The applicants' complaints under Article 3 of the Convention concerning the inadequate conditions of detention were communicated to the Russian Government ("the Government"). Complaints based on the same facts were also communicated under other provisions of the Convention.

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 Articles 3 and 13 of the Convention (inadequate conditions of detention and lack of an effective domestic remedy)

In the present applications, the applicants complained of conditions of their 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). They 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 as follows:

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."

The Government submitted their observations, having disputed the violations alleged. On 10 January 2020 the Government submitted additional information about the new Compensation Act and asked to treat it as a new remedy in respect of conditions of detention complaints under Articles 3 and 13 of the Convention.

The Court has earlier held that applicants are required to make use of the newly introduced compensatory remedy in respect of improper conditions of past correctional detention in breach of domestic standards (see *Shmelev and Others v. Russia* (dec.), no. 41743/17, §§ 153-57, 17 March 2020). In the present case, the applicants complained about the conditions of their post-conviction detention which were, as indicated by the applicants, below the national standard of two square metres per person. Therefore, there are no circumstances which could justify the applicants' failure to have recourse to the new compensatory remedy.

It follows that the complaints under Article 3 of the Convention must be rejected for non-exhaustion of domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

In so far as the applicants refer to Article 13 of the Convention, the Court, having regard to its conclusion concerning Article 3, finds that no separate issue arises under this provision. It finds that this complaint is manifestly ill-founded within the meaning of Article 35 §§ 3 and 4 of the Convention.

C. Remaining complaints

The applicant in application no. 2802/19 also raised other complaints under various articles of the Convention.

The Court has examined these complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

It follows that this part of the application must be rejected in accordance with Article 35 § 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 13 October 2022.

Viktoriya Maradudina	Darian Pavli
Acting Deputy Registrar	President

APPENDIX

List of applications raising complaints under Articles 3 and 13 of the Convention (inadequate conditions of detention and lack of an effective domestic remedy)

No.	Application no. Date of introduction	Applicant's name Year of birth	Facility Start and end date Duration	Sq. m per inmate Number of toilets per brigade	Specific grievances
1.	14867/18 05/03/2018	**Saymumin Valiyevich TOSHOV** 1979	IK-11 Nizhniy Novgorod Region 01/12/2015 to 21/12/2021 6 year(s) and 21 day(s)	1.6 m²	overcrowding, lack or inadequate furniture, lack of fresh air, lack of or inadequate hygienic facilities, infestation of cell with insects/rodents, lack of or insufficient physical exercise in fresh air, poor quality of food
2.	2802/19 12/02/2019	**Konstantin Andreyevich KUPTSOV** 1979	IK-2 Zabaykalskiy Region 08/06/2017 to 04/02/2021 3 year(s) and 7 month(s) and 28 day(s)	1.9 m² 8 toilet(s)	lack of fresh air, overcrowding, inadequate temperature, no or restricted access to warm water, lack of privacy for toilet