

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

FIFTH SECTION

DECISION

Application no. 251/04
Igor Gennadyevich USTYUGOV
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 1 September 2015 as a Chamber composed of:

Josep Casadevall, *President,*
Angelika Nußberger,
Ganna Yudkivska,
Vincent A. De Gaetano
Helena Jäderblom,
Aleš Pejchal,
Síofra O'Leary, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having regard to the above application lodged on 17 November 2003,

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

The applicant, Mr Igor Gennadyevich Ustyugov, is a Ukrainian national, who was born in 1970 and lives in Dnipropetrovsk. He is represented before the Court by Ms L.Y. Solonik, a lawyer practising in Dnipropetrovsk.

The Ukrainian Government ("the Government") were represented by their Agent, most recently Ms N. Sevostianova, of the Ministry of Justice of Ukraine.

A. The circumstances of the case

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

On 26 April 2000 the Zhovtnevyy District Court of Dnipropetrovsk convicted the applicant of, among other crimes, robbery and extortion and sentenced him to nine years' imprisonment.

On 17 May 2000 the applicant was taken to the Synelnykivska Prison no. 94 (*Синельниківська виправна колонія №94*, hereafter "the prison").

On 6 June 2000 the decision of 26 April 2000 was upheld by the Dnipropetrovsk Regional Court.

On 22 February 2002 the Synelnykivskyy District Court, Dnipropetrovsk Region, reclassified the offences according to the new Criminal Code, 2001, and reduced the term of the applicant's imprisonment by one month.

1. Conditions of detention in the prison according to the applicant

In his application form of 7 July 2004 the applicant stated that he had shared 60-square-metre sleeping quarters with eighty other inmates. Sanitary conditions in the prison were poor, in that there was only one bathroom for each two cells. Thus 150 inmates had to share two water taps and four lavatory pans. The cells were infested with lice and the rations were meagre. The applicant was not given any clothes, any hygiene products or any cutlery by the prison authorities. Tuberculosis-infected inmates were not segregated from the general prison population. Nor were there any other measures in place to prevent the spread of the disease. In 2002 the applicant contracted tuberculosis and spent three months in the prison hospital.

According to the applicant, he was placed in a disciplinary cell where he remained for fifteen days (particular dates not specified), under constant video surveillance.

In 2004 the applicant suffered a heart attack and was moved to a prison hospital. After a short stay there, he was returned to the prison. On his readmission he was allegedly beaten up by prison guards.

The applicant, a Lutheran, stated that it had been impossible to practise his religion while it had been possible to practise other religions (the applicant mentioned Jehovah's Witnesses and Protestants (in particular, Pentecostals)).

The applicant finally stated that the prison authorities had given him letters from the Court with delays, had not dispatched his letters to the Court, had opened his correspondence and had withheld unspecified enclosed documents.

2. Conditions of detention in the prison according to the Government

The Government submitted that between 2000 and September 2007 the applicant had been detained in three different detention units:

- 2000-03 – unit no. 9;
- 2004 – unit no. 10;

- 2005-September 2007 – high-security unit.

The sleeping quarters in units nos. 9 and 10 were 187 and 192 square metres and at the material time there were ninety-two and sixty-four detainees respectively. In each of the units there were nine hand basins and eight lavatory pans. Each detainee had a bed and a stool. There were tables, one bedside storage locker per two detainees and a television set. There was a dining room and a locker room. The premises had electricity and ventilation. Windows allowed access to fresh air and there was sufficient light.

In the high-security unit the applicant was detained in cell no. 1 (21 square metres). The cell had been designed for four persons. There were four beds, four chairs, four bedside storage lockers, a rubbish bin, two coat racks, a table and a television. The total space of the cells in the high-security unit was 166.5 square metres. In September 2007 there were 23 detainees there. There were eight washing facilities, including twelve lavatory pans and twelve hand basins as well as three showers.

The applicant had crockery and linens and was given food three times a day. The applicant had a special diet since previously he had had tuberculosis. The applicant also had daily walks. Once a week he could have a shower and received 200 grams of soap monthly for this purpose.

Since 1999 the applicant was subject to regular medical check-ups as he had previously suffered from tuberculosis. In August 2001 and between 11 March and 3 April 2002 the applicant was treated in the Dnipropetrovsk pre-trial detention centre hospital for a degenerative spinal disease and other spinal problems. In April 2002 he was diagnosed with a post-tuberculosis condition and between 2002 and April 2005 he received prophylactic treatment in spring and in autumn. In April 2005 it was established that the applicant had been completely cured of tuberculosis. In 2007 it was established that the applicant was disabled on account of his spinal problems.

According to the applicant's personal records, he was placed in a disciplinary cell in July and August 1999 (eleven days total), May 2001 (ten days), October 2001 (ten days), February and October 2002 (ten days total), June 2003 (ten days) and June 2006 (five days).

The Government further submitted that the prison was visited by various Christian priests. There were religious services three times a week.

B. Relevant international materials

1. *Recommendation Rec (2006)2 of the Committee of Ministers to member states on the European Prison Rules (Adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies)*

The relevant part of the European Prison Rules provides as following:

"18.1 The accommodation provided for prisoners, and in particular all sleeping accommodation, shall respect human dignity and, as far as possible, privacy, and meet the requirements of health and hygiene, due regard being paid to climatic conditions and especially to floor space, cubic content of air, lighting, heating and ventilation."

2. *Commentary to Recommendation REC (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules*

The relevant part of the Commentary provides as following:

"The CPT, by commenting on conditions and space available in prisons in various countries has begun to indicate some minimum standards. These are considered to be 4m2 for prisoners in shared accommodation and 6m2 for a prison cell. These minima are, related however, to wider analyses of specific prison systems, including studies of how much time prisoners actually spend in their cells. These minima should not be regarded as the norm. Although the CPT has never laid down such a norm directly, indications are that it would consider 9 to 10 m2 as a desirable size for a cell for one prisoner. This is an area in which the CPT could make an ongoing contribution that would build on what has already been laid down in this regard. What is required is a detailed examination of what size of cell is acceptable for the accommodation of various numbers of persons. Attention needs to be paid to the number of hours that prisoners spend locked in the cells, when determining appropriate sizes. Even for prisoners who spend a large amount of time out of their cells, there must be a clear minimum space, which meets standards of human dignity."

3. *International Committee of the Red Cross (ICRC),'Water, Sanitation, Hygiene and Habitat in Prisons' Supplementary Guidance', 2012.*

In its Guidance the ICRC outlined the following principles:

"Shared or dormitory accommodation: **3.4 m2** per person, including where bunk beds are used.

...

As previously mentioned, space alone is a limited measure of the quality of life and conditions of detention. As such, it is merely a starting point when evaluating the conditions in which detainees are held. Space norms cannot be specified separately from the total environment. The appropriateness of the ICRC's recommended specifications in any given situation will depend on a number of other factors including:

- the specific individual needs of, for example, sick, old or young prisoners, women and/or people with disabilities;

– the physical condition of the buildings;

– the amount of time spent in the accommodation area;

– the frequency and extent of opportunities to take physical exercise, work and be involved in other activities outside the accommodation area;

– the number of people in the accommodation area (to allow a degree of privacy and avoid isolation);

– the amount of natural light and the adequacy of the ventilation;

– other activities being undertaken in the accommodation area (e.g. cooking, washing, drying);

– other services available (e.g. toilets and showers); and >>the extent of supervision provided."

COMPLAINTS

The applicant complained under Articles 6 and 7 of the Convention that his conviction had not been fair, in that the domestic courts had erred in their application of domestic law.

The applicant complained that the conditions of his detention were inadequate, that he had not received adequate medical assistance and that he had no opportunity to practice his religion because he was a Lutheran. The applicant further complained that he had been in the disciplinary cell for fifteen days under permanent video surveillance. Finally, the applicant complained that his communication with the Court Registry had been intercepted by the prison authorities. He cited Articles 6 and 9 of the Convention.

The applicant finally complained that he had been beaten by prison officers.

THE LAW

1. The applicant complained that the conditions of his detention were inadequate and that he had not received proper medical assistance while in the prison.

The Court considers that the applicant's complaints fall to be examined under Article 3 of the Convention which reads as follows:

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

The Government submitted that the applicant had never raised his complaints of unsatisfactory conditions of detention and lack of medical

assistance before the prosecutor's office or before a court. The applicant could have equally sought damages in court with a civil claim.

The Government further maintained, referring to their description of the applicant's conditions of detention and of the medical assistance received by the applicant, that there was no evidence of any breach of Article 3 of the Convention.

The applicant submitted that he had complained about "his detention" to the prison authorities, to a prosecutor and to the President of Ukraine but had received "*pro forma* answers". In any case, in its case-law the Court considered those remedies, including the possibility of lodging a complaint before the national courts, ineffective.

He stated that the conditions of detention in the prison units nos. 9 and 10 had been inadequate.

The applicant further submitted that he had been diagnosed with certain illnesses only a year and a half after his arrival at another detention facility in Dnipropetrovsk in 1999. In 2002 the applicant was diagnosed with a post-tuberculosis condition which, according to him, was caused by his conditions of detention. Moreover, even though the applicant recovered, he was recognised later as being disabled.

The Court notes that in numerous previous cases it has found the remedies referred to by the Government ineffective on the grounds that the problems complained of were of a structural nature and that the Government had not shown how recourse to such proceedings could have brought about an improvement in the applicants' conditions of detention (see, *Melnik v. Ukraine*, no. 72286/01, §§ 69-71, 28 March 2006; more recently, *Buglov v. Ukraine,* no. 28825/02, § 74, 10 July 2014). It can see no reason to hold otherwise in the present case.

The Court, however, reiterates that in order to fall under Article 3 of the Convention, ill-treatment must attain a minimum level of severity. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the gender, age and state of health of the victim. Cases concerning allegations of inadequate conditions of detention do not lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation) because in such instances the respondent Government alone have access to information capable of corroborating or refuting these allegations. Accordingly, the Court is mindful that the applicants might experience certain difficulties in procuring evidence to substantiate a complaint in that connection. Nevertheless, in such cases applicants may well be expected to submit at least a detailed account of the facts complained of and provide – to the greatest possible extent – some evidence in support of their complaints (see *Danilov v. Ukraine,* no. 2585/06, § 78, 13 March 2014, with further references).

In the Court's opinion, this requirement has not been met in the present case as the applicant's complaints regarding the conditions of detention in the prison and his medical care have been limited to vague and general statements not supported by any evidence.

In particular, given that between 2000 and 2007 the applicant apparently was detained in three different units of one prison, it is unclear to which particular unit and period of detention he was referring in his submissions. The applicant's initial description of his conditions of detention and the Government's submissions differ considerably. The applicant, however, even though he was represented by a lawyer, failed to provide in his observations any details in support of his version of facts.

The Court further notes that, according to the Government's description of the applicant's conditions of detention, the applicant at each particular point of time had between 2 and 5 sq. m of space in his cell. However, given that the applicant provided a minimum amount of information on his conditions of detention and that, contrary to the Government's clear and precise submissions, his description is very general and lacks details, the Court considers that in such circumstances the mere fact of having during certain periods of detention less space than recommended by the CPT and ICRC is not enough on its own to conclude that the applicant's suffering, if any, reached the threshold of severity required by Article 3 of the Convention (see, *Visloguzov v. Ukraine*, no. 32362/02, §§ 46-49, 20 May 2010; by contrast, *Orchowski v. Poland*, no. 17885/04, §§ 119-135, 22 October 2009).

Equally the applicant failed to substantiate that at any particular point in time he had suffered from serious health problems but received inadequate treatment in breach of Article 3 of the Convention. The applicant's submissions in this connection are fragmented, inconsistent and unsubstantiated. They are limited to the statements that the applicant received belated treatment in 2001, contracted tuberculosis in 2002 (in his later submissions he stated that he had been diagnosed with a post-tuberculosis condition) and had a heart attack in 2004. However, those statements are neither corroborated by any evidence, nor did the applicant submit any evidence that he had tried but failed to obtain some documents (such as his medical file) which would confirm his submissions.

In view of the above the Court considers 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.

2. The applicant further complained that he had no opportunity to practice his religion because he was a Lutheran, and that he had been in the disciplinary cell for fifteen days under permanent video surveillance. The applicant also complained that his communication with the Court Registry had been intercepted by the prison authorities. He cited Articles 6 and 9 of the Convention.

The Court considers that the applicant's complaints in this connection fall within Articles 8 (complaint about video surveillance in detention and alleged interception of the applicant's correspondence) and 9, alone or in conjunction with Article 14 (complaint about the impossibility of practicing his religion).

The Government submitted that the applicant had failed to raise before the national authorities (in particular, the prosecutor's office) his complaints about the monitoring of his correspondence with the Court, video surveillance and the alleged breaches of his freedom of religion.

The Government also stated that the applicant had not been placed in a disciplinary cell in 2004.

In reply to the Government's observations the applicant reiterated his initial submissions and for the first time specified that he had been placed in a disciplinary cell for fifteen days in 2004.

The Court notes that the applicant failed to provide any evidence that he had ever raised the above complaints before the national authorities. However, even assuming that no effective remedies in respect of those complaints exist, the complaints are in any event inadmissible for the following reasons.

The applicant failed to substantiate his complaints under Article 9 of the Convention about access to religious services, in particular, his complaints lack any details. There is also no evidence that he was placed in a disciplinary cell for 15 days in 2004. During the periods when he was placed in a disciplinary cell, which the Government details, there is no indication that he was subject to video surveillance. Nor there is any evidence that the prison authorities in any way monitored the applicant's correspondence. The applicant's statements in this connection are quite vague and general.

It follows that this part of the application must also be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

2. The Court has examined the remainder of the applicant's complaints. 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. It follows that this part of the application must also be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, by a majority,

Declares the application inadmissible.

Done in English and notified in writing on 24 September 2015.

Claudia Westerdiek
Registrar

Josep Casadevall
President