

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

THIRD SECTION

DECISION

Applications nos. 16143/16 and 78509/16
Nikita Anatolyevich VASILYEV against Russia
and Aleksandr Viktorovich YURCHENKO against Russia

The European Court of Human Rights (Third Section), sitting on 7 December 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,

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 the inadequate conditions of detention were communicated to the Russian Government ("the Government"). In application no. 78509/16 the applicant also raised a complaint under Article 13 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 Article 3 of the Convention (inadequate conditions of detention)

Turning to application no. 16143/16, the Court notes that the applicant lodged his application with the Court on 10 March 2016 complaining about the conditions of detention which ended on 2 September 2015. The Court further reiterates that in the absence of an effective remedy for that grievance, the complaint about inadequate conditions of detention should have been introduced within six months of the last day of the applicant's detention (see *Markov and Belentsov v. Russia* (dec.), nos. 47696/09 and 79806/12, 10 December 2013; *Norkin v. Russia* (dec.), no. 21056/11, 5 February 2013; and *Karnaushko and Others v. Russia* (dec.) [Committee], no. 17500/10, 15 December 2016).

The applicant's detention had ended on 2 September 2015, that is more than six months before he lodged his application with the Court.

It follows that the application was submitted too late and that it therefore is 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 of the Convention.

As regards application no. 78509/16, 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 case, the Government contended that the applicant had been afforded adequate personal space and had an individual sleeping place. Moreover, he 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 applicant's 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 prison was 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 applicant's allegations as unsubstantiated.

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 complaints

In application no. 78509/16, the applicant also complained 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 11 January 2018.

Liv Tigerstedt
Acting Deputy Registrar

Luis López Guerra
President

APPENDIX

No.	Application no. Date of introduction	Applicant name Date of birth	Facility Start and end date Duration	Inmates per brigade Sq. m. per inmate Number of toilets per brigade	Specific grievances	Other complaints under well-established case-law
1.	16143/16 10/03/2016	**Nikita Anatolyevich Vasilyev** 02/04/1981	IK-15 Norilsk 01/09/2014 to 02/09/2015 1 year(s) and 2 day(s)	160 inmate(s) 1.25 m² 6 toilet(s)	overcrowding, lack of fresh air, insufficient number of toilets and washstands	
2.	78509/16 22/11/2016	**Aleksandr Viktorovich Yurchenko** 12/08/1969	IK-34 Krasnoyarsk Region 01/06/2015 pending More than 2 year(s) and 5 month(s) and 18 day(s)	146 inmate(s) 4.5 m²	restricted access to toile, risk of being contaminated with tuberculosis, inadequate clothing	Art. 13 - lack of any effective remedy in respect of inadequate conditions of detention