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

THIRD SECTION

DECISION

Application no. 22414/17
Aleksandr Vladimirovich YAGODNIKOV against Russia
and 6 other applications
(see appended table)

The European Court of Human Rights (Third Section), sitting on 5 November 2020 as a Committee composed of:

Darian Pavli, *President,*
Dmitry Dedov,
Peeter Roosma, *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 is set out in the appended table.

The applicants complained under Article 3 of the Convention about the inadequate conditions of their detention (see the appended table for details). Some applicants also argued under Article 13 of the Convention that they did not have an effective remedy to complain about poor conditions of their detention. These complaints were communicated to the Russian Government ("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) and under Article 13 of the Convention (lack of an effective remedy for conditions of detention)

In the present applications, the applicants complained of conditions of pre-trial and 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). Some of them 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:

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."

In its recent decision of *Shmelev and Others v. Russia* ((dec.), no. 41743/17 and 16 others, 17 March 2020), the Court has examined similar applications lodged by Russian applicants and declared them inadmissible for non-exhaustion of domestic remedies. In particular, the Court took into account that on 27 January 2020 the new Compensation Act entered into force in Russia. It noted that the Act provides that any detainee who alleges that his or her conditions of detention are in breach of national legislation or international agreements of the Russian Federation can apply to a court. The novelty of the Act is that a (former) detainee can claim, at the same time, a finding of a violation of inadequate detention conditions and financial compensation for such breach.

In that decision, the Court further held as follows:

"122. The Court reiterates that, where the detention is over, a compensatory remedy can suffice to provide the applicants with fair redress for the alleged breach of Article 3 (see case-law cited above in paragraph 87). Accordingly, it is sufficient to examine whether the applicants concerned can be required to exhaust the compensatory remedy.

123. As mentioned above, the Court may examine the effectiveness of a newly introduced domestic remedy even if it was not available at the time of lodging of applications, where such remedy is introduced at a later stage in response to the Court's finding of a systemic problem (see paragraph 106 above and the case-law cited therein).

124. The Court has concluded that the Compensation Act presents, in principle, an adequate and effective avenue for compensatory redress in cases raising issues of improper conditions of pre-trial detention. It has found that it is directly accessible to the persons concerned, is furnished with the requisite procedural guarantees associated with judicial adversarial proceedings, that there are no reasons to expect that such claims would not be processed within a reasonable time, or that the compensation would not be paid promptly. It also concluded that the system offers reasonable prospects of success to the applicants in terms of the compensation awards.

125. The Compensation Act is equipped with transitional provisions, so that any person whose complaint about inadequate conditions of detention was pending with this Court at the time of the Act's entry into force can apply within 180 days after that date (see paragraph 63 above). The same would apply to those whose complaints would be declared inadmissible by this Court in view of the Act coming into force.

126. The Court accepts that the domestic courts have not yet been able to establish any practice under the Compensation Act. However, the Court has already found that doubts about the prospects of a remedy, which appears to offer a reasonable possibility of redress, are not a sufficient reason to eschew it (see *Shtolts and Others*, cited above, § 111).

127. Accordingly, even though the domestic remedy was not available to the applicants at the time when they applied to the Court, the situation justifies a departure from the general rule on exhaustion and requires the applicants in question to seek compensation under the Compensation Act.

128. The Court accepts that the outcome of the applicants' claims under the new provisions cannot at present be ascertained. However, as the Court has already noted on similar occasions, it would remain open for the applicants to lodge fresh complaints should their claims to the domestic courts prove unsuccessful, for one reason or another. The Court's ultimate supervisory jurisdiction remains in respect of any complaints lodged by the applicants who, in conformity with the principle of subsidiarity, have exhausted available avenues of redress (see *Domján*, § 37; and *Shtolts and Others*, §§ 112-113, both decisions cited above). The Court will remain free to assess the compliance of application of the domestic practice with the pilot judgment and the Convention standards in general, including in respect of the standard of evidence employed by the domestic courts (see the summary of the relevant case-law in paragraph 82 above).

129. Finally, the Court does not lose sight of a number of positive developments related to the situation with pre-trial detention in Russia that will be analysed below."

Having thus considered that there exists an effective remedy in Russia for cases where applicants complain about a breach of Article 3 in respect of past pre-trial detention, and having dismissed the applications by such applicants for non-exhaustion, the Court declared that it will apply that approach to all similar applications (see *Shmelev and Others*, (dec.), cited above, § 130).

The Court also found that applicants who complained about their detention in overcrowded conditions of post-conviction facilities in violation of the national statutory norm of two square metres per person, and where their detention in such conditions was already over, found themselves in a situation similar to that of persons whose past pre-trial

detention had been in breach of the applicable national standards. The Court stressed that for them, as well as for other persons in similar situation, the new Compensatory Act presents, in principle, an adequate and effective avenue of obtaining compensatory redress, and offers reasonable prospects of success (see *Shmelev and Others*, (dec.), cited above, § 154). It thus also rejected for non-exhaustion of domestic remedies applications where applicants complained about post-conviction detention in violation of the national statutory standard and decided that actual or potential applicants finding themselves in a similar situation – i.e. where the complaint concerns past correctional detention in conditions in breach of the applicable domestic standards – are also expected to first make use of the compensatory remedy introduced in January 2020 (*Shmelev and Others*, (dec.), cited above, §§ 155-156).

Turning to the circumstances of the present cases and having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility of these complaints. In particular, the Court notes that two applicants complained about the conditions of their detention in colony IK-56 in the Sverdlovsk Region. In addition to the specific grievances listed in the appended table, the applicants provided similar description of the general conditions. While not arguing that they lacked personal space as such, the applicants nevertheless complained about degrading treatment relating to the lack of water-supply and sewage systems in IK-56 colony, and the absence of proper sanitary installations in the cells. The treatment they complained of consisted of the necessity to relieve themselves in a bucket, often in the presence of another inmate, and to endure difficulties as a result of the lack of sanitary facilities, such as the unpleasant odour in the cells, poor hygiene and the daily obligation to empty and clean the bucket. Those conditions in IK-56 of the Sverdlovsk Region were already the subject of the Court's criticism, when it held that the lack of access to proper sanitary facilities run counter to the guarantees of Article 3 of the Convention (see *Gorbulya v. Russia*, no. 31535/09, § 94, 6 March 2014). The Court in this respect does not lose sight of the parties' submissions that the Russian authorities decided to close the facility and that by the summer 2018 all inmates were transferred from it. It is clear that the conditions in IK-56 colony ran counter to the domestic legal requirements. It thus follows that the applicants who complained about the conditions of their detention in IK-56 colony in Sverdlovsk Region were in the same position as applicants who complained about their detention in overcrowded conditions of post-conviction facilities in violation of the national statutory norm of two square metres per person (see *Shmelev and Others*, (dec.), cited above, § 154).

To sum up, the Court considers that in so far as the applicants have lodged *prima facie* well-founded complaints about breach of their rights by

improper conditions of their detention, as described in the appended table, the Compensation Act affords them an opportunity to obtain compensatory redress. Accordingly, the applicants should exhaust this remedy before their complaints can be examined by the Court. It follows that their complaints, as listed in the appended table, under Articles 3 and 13 should be declared inadmissible pursuant to Article 35 §§ 1 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 26 November 2020.

Liv Tigerstedt	Darian Pavli
Acting Deputy Registrar	President

APPENDIX

List of applications raising complaints under Article 3 of the Convention

(inadequate conditions of detention)

No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Facility Start and end date Duration	Inmates per brigade Sq. m per inmate	Specific grievances
1.	22414/17 10/03/2017	**Aleksandr Vladimirovich YAGODNIKOV** 1978	Vinogradov Aleksandr Vladimirovich Kostroma	IK-1 Kostroma Region 17/09/2015 to 15/09/2017 1 year(s) and 11 month(s) and 30 day(s	100 inmate(s) 1.6 m²	poor quality of food, lack of or insufficient electric light, infestation of cell with insects/rodents, lack of or insufficient physical exercise in fresh air
2.	60886/17 12/02/2018	**Timur Arongulovich TEMIROV** 1970		IK-56 Sverdlovsk Region 10/04/2010 to 13/01/2018 7 year(s) and 9 month(s) and 4 day(s)		overcrowding, no or restricted access to toilet, no or restricted access to running water, infestation of cell with insects/rodents, lack of or insufficient electric light, lack of or insufficient natural light, lack of or insufficient physical exercise in fresh air, no or restricted access to shower
3.	73501/17 02/10/2017	**Sergey Mikhaylovich MONOGOV** 1977	Yesina Tatyana Robertovna Sevastopol	IK-56 Sverdlovsk Region 25/08/2014 to 16/04/2018 3 year(s) and 7 month(s) and 23 day(s)		no or restricted access to running water, lack of fresh air, lack of or inadequate hygienic facilities, lack of or insufficient natural light, lack of or insufficient physical exercise in fresh air
4.	5103/18 28/02/2018	**Aleksey Aleksandrovich KUKLIN** 1986		IK-2 Zabaykalskiy Region 18/12/2015 to 20/05/2020 4 year(s) and 5 month(s) and 3 day(s)	130 inmate(s) 1 m²	overcrowding, no or restricted access to warm water, lack of or insufficient electric light, lack of or inadequate hygienic facilities, lack of fresh air
5.	16625/18 23/03/2018	**Vladimir Sergeyevich KREMNEV** 1988		IK-11 Nizhniy Novgorod 01/06/2017 to 30/12/2019 2 year(s) and 6 month(s) and 30 day(s)	1.5 m²	infestation of cell with insects/rodents, lack of fresh air, lack of or inadequate hygienic facilities, lack of or insufficient physical exercise in fresh air, lack of requisite medical assistance, lack or inadequate furniture, lack or insufficient quantity of food, overcrowding
6.	24424/18 10/05/2018	**Magomed Mikhaylovich ZAMAYEV** 1983		IK-11 Nizhniy Novgorod Region 27/06/2011 to 10/06/2019 7 year(s) and 11 month(s) and 15 day(s)	0.7 m²	overcrowding, infestation of cell with insects/rodents, lack of fresh air, lack of or inadequate hygienic facilities, no or restricted access to toilet, no or restricted access to running water, lack of privacy for toilet, lack of requisite medical assistance, poor quality of food, lack or insufficient quantity of food
7.	16311/19 25/02/2019	**Kirill Sergeyevich KIPKEYEV** 1982		IK-8 Komi Republic 28/09/2017 to 15/04/2020 2 year(s) and 6 month(s) and 19 day(s)	1.5 m²	overcrowding, lack of or poor quality of bedding and bed linen, lack of toiletries, lack of or inadequate hygienic facilities, poor quality of food, lack or insufficient quantity of food, no or restricted access to warm water, inadequate temperature, lack of fresh air