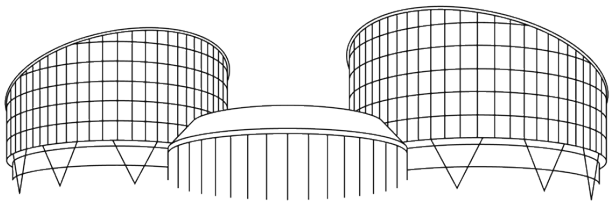

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 21056/11
Aleksey Nikolayevich NORKIN
against Russia

The European Court of Human Rights (First Section), sitting on 5 February 2013 as a Chamber composed of:

Isabelle Berro-Lefèvre, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having regard to the above application lodged on 9 March 2011,

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

1. The applicant, Mr Aleksey Nikolayevich Norkin, is a Russian national, who was born in 1979 and lives in Ketovo in the Nizhniy Novgorod Region.

2. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

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

4. Between 17 February 2006 and 10 April 2007 the applicant was held in remand prison IZ-52/1 in the Nizhniy Novgorod Region. The prison was overcrowded. Thus, cells 347 and 358 measuring 14 sq. m were equipped with 8 sleeping places but accommodated up to 10 inmates, whereas cell 361 measuring 10 sq. m presented 4 places and up to 5 detainees who occupied them. In September 2006 the applicant was diagnosed with tuberculosis and he was transferred to the medical wing of the prison where he received treatment by antibiotics.

5. In February 2010 the applicant brought a civil claim for compensation in connection with inadequate conditions of detention in prison IZ-52/1. By judgment of 16 June 2010, the Sovetskiy District Court of Nizhniy Novgorod granted the claim and awarded him 2,000 Russian roubles (approximately 50 euros). On 21 September 2010 the Nizhniy Novgorod Regional Court upheld the judgment on appeal.

B. Relevant domestic law

6. The Civil Code of the Russian Federation establishes that prescription does not apply, in particular, to the claims for the protection of personal non-pecuniary rights and other intangible assets and to the claims for compensation for the damage that was caused to the claimant's life, health or dignity (Article 208).

COMPLAINTS

7. The applicant complained under Article 3 of the Convention about the appalling conditions of his detention which resulted in his infection with tuberculosis. He also alleged that he did not have an effective remedy for this complaint, contrary to the requirements of Article 13 of the Convention.

8. The applicant also complained under Articles 6 and 13 of the Convention about various procedural irregularities in the civil proceedings for compensation.

THE LAW

9. The applicant's first complaint relates to the conditions of his detention in a Nizhniy Novgorod remand prison where he was held between

17 February 2006 and 10 April 2007, which is more than four years before he lodged his application with the Court on 9 March 2011. However, in 2010 the applicant lodged a civil action against the remand prison, seeking compensation for damage allegedly caused to him on account of inadequate conditions of his detention. The action resulted in the final judgment of the Nizhniy Novgorod Regional Court issued on 21 September 2010, by which the applicant's claim was granted in part.

10. The Court reiterates the admissibility requirements as defined in Article 35 § 1 of the Convention, which stipulates:

> "The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken."

11. Having regard to the fact that the period of the applicant's detention had ended more than six months before the application was lodged with the Court, the Court must determine whether the applicant complied with the six-month requirement imposed by Article 35 of the Convention.

12. The Government submitted, firstly, that the effectiveness of a given remedy, such as the civil claim for compensation in the instant case, should be assessed in the light of the objective criteria rather than from the standpoint of the applicant's subjective belief into its effectiveness. Secondly, they pointed out that the Court's case-law on the date from which the six-month period started running in a situation where an applicant availed himself of a civil-law remedy, was still at its formative stage. By way of illustration, they referred to the case of *Novoselov v. Russia* (no. 66460/01, 2 June 2005), in which the application had been lodged with the Court more than six months after the end of the detention period and more than one year and eight months before the institution of civil proceedings, to the case of *Salakhutdinov v. Russia* (no. 43589/02, 11 February 2010), in which the applicant's complaint about the conditions of detention was rejected as being out of time, and to the case of *Pavlenko v. Russia* (no. 42371/02, 1 April 2010), in which the Court reiterated that an applicant attempting a remedy which the Court considers inappropriate, runs the risk that the time taken to do so will not interrupt the running of the six-month time-limit. Thirdly, the Government insisted that since the adoption of the *Kalashnikov* judgment (see *Kalashnikov v. Russia*, no. 47095/99, ECHR 2002-VI), the Court had consistently maintained its position that there had been no effective remedy in the Russian legal system for the complaints relating to inadequate conditions of detention. That case-law was accessible to the applicant and he should have been aware of its existence. Finally, the Government noted that the Russian Civil Code set no time-limit for lodging civil claims, such as the one lodged by the applicant, which created potential for abuse on the part of applicants who could attempt using a pro forma civil claim to re-trigger a six-month

time-limit that had expired a long time ago. This would undermine the purposes of Article 35 of the Convention.

13. The applicant responded that his complaints to the Ombudsman and to the regional prosecutor had been fruitless because they had not reviewed his arguments, heard his submissions, examined eye-witnesses or inspected the cells. By contrast, his applications to courts of general jurisdiction at two instances were effective remedies within the meaning of Article 35 § 1 because the courts were competent to establish a breach of Article 3 of the Convention and to award just compensation, as required by Article 13. The applicant emphasised that he had lodged his application with the Court within six months of the Regional Court's judgment of 21 September 2010 and that it cannot therefore be rejected as being out of time.

14. The Court reiterates that the purpose of the six months' rule is to promote security of law and to ensure that cases raising issues under the Convention are dealt with within a reasonable time. Furthermore, it ought to protect the authorities and other persons concerned from being under any uncertainty for a prolonged period of time. It marks out the temporal limits of supervision carried out by the Court and signals to both individuals and State authorities the period beyond which such supervision is no longer possible. The rule also affords the prospective applicant time to consider whether to lodge an application and, if so, to decide on the specific complaints and arguments to be raised. Finally, the rule should ensure that it is possible to ascertain the facts of the case before that possibility fades away, making a fair examination of the question at issue next to impossible (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, §§ 39-41, 29 June 2012, and *Artyomov v. Russia*, no. 14146/02, § 107, 27 May 2010, with further references).

15. Normally, the six-month period runs from the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset however that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of. Article 35 § 1 cannot be interpreted however in a manner which would require an applicant to seize the Court of his complaint before his position in connection with the matter has been finally settled at the domestic level. Where, therefore, an applicant avails himself of an apparently existing remedy and only subsequently becomes aware of circumstances which render the remedy ineffective, the Court considers that it may be appropriate for the purposes of Article 35 § 1 to take the start of the six month period from the date when the applicant first became or ought to have become aware of those circumstances (see *Artyomov*, § 108, with further references).

16. The present application was introduced more than four years after the end of the detention period which the applicant complained about, but within six months of the final judgment by the Regional Court in his action

for compensation. Accordingly, the Court's inquiry into whether or not the six-month rule has been complied with will comprise two prongs. First, it has to determine whether a civil claim for compensation was a remedy to be exhausted for the purposes of Article 35 § 1 of the Convention. If the civil action was not such a remedy, the Court will secondly have to examine whether the applicant, unaware of circumstances which rendered the remedy ineffective, still complied with the six-month rule by availing himself of that apparently existing remedy (*ibid.*, § 109).

17. The Court reiterates its constant position that in Russian legal system a civil action for compensation for inadequate conditions of detention has not been considered an effective remedy. In the first case of *Kalashnikov v. Russia* which concerned the problem of overcrowded remand prisons, the Court rejected the Russian Government's objection as to the non-exhaustion of the domestic remedies, finding in particular that the Government had not demonstrated what redress could have been afforded to the applicant by a prosecutor, a court, or another State agency, bearing in mind that the problems arising from the conditions of the applicant's detention were apparently of a structural nature and did not concern the applicant's personal situation alone (see *Kalashnikov v. Russia* (dec.), no. 47095/99, 18 September 2001). The same reasons were relied upon by the Court for rejecting the Government's non-exhaustion objection in subsequent cases (see *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004; *Mamedova v. Russia*, no. 7064/05, § 55, 1 June 2006, and *Andrey Frolov v. Russia*, no. 205/02, § 39, 29 March 2007).

18. The judgment in the *Benediktov v. Russia* case represented a further development of the Court's case-law. The Court found an additional violation of Article 13 of the Convention, taken in conjunction with Article 3, on account of the Government's failure to submit evidence that there existed any domestic remedy by which the applicant could have complained about the general conditions of his detention or that the remedies available to him were effective, that is to say that they could have prevented violations from occurring or continuing, or else afforded the applicant appropriate redress (see *Benediktov v. Russia*, no. 106/02, § 29, 10 May 2007). The Court confirmed this position in a number of follow-up cases (see *Vlasov v. Russia*, no. 78146/01, §§ 87-89, 12 June 2008; *Sudarkov v. Russia*, no. 3130/03, §§ 37-39, 10 July 2008, and *Buzychkin v. Russia*, no. 68337/01, §§ 64-67, 14 October 2008). In the *Aleksandr Makarov v. Russia* judgment, the Court carried out an analysis of the three possible remedies which, as the Government suggested, the applicant could have employed, including a complaint to a prosecutor, an application to an ombudsman and a civil action for damages. The Court concluded that none of them could be considered an effective remedy within the meaning of Article 35 of the Convention (see *Aleksandr Makarov v. Russia*, no. 15217/07, §§ 82-90, 12 March 2009).

19. Most recently, the Court has undertaken a profound examination of the entire gamut of remedies existing in the Russian legal system for complaints about inhuman or degrading conditions of detention, including the civil claim for compensation. Noting in particular that the provisions of the Civil Code made the award conditional on the establishment of fault on the part of the authorities and that the level of the compensation – where awarded – was unreasonably low in comparison with the awards made by the Court in similar cases, the Court held that, given the present state of Russian law, it was not prepared to change its position, as expressed in previous cases, that a civil claim for damages incurred in connection with inhuman or degrading conditions of detention does not satisfy the criteria of an effective remedy that offers both a reasonable prospect of success and adequate redress (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 113-118, 10 January 2012). The circumstances of the instant case, in which the applicant – who had been already released – was granted a compensation of approximately fifty euros for more than fourteen months' detention in inadequate conditions, demonstrate that a civil claim before Russian courts did not result in an adequate and sufficient quantum of damages to the applicant (compare *Shilbergs v. Russia*, no. 20075/03, § 78, 17 December 2009).

20. The civil claim for compensation not being recognised by the Court as an effective remedy, it remains to be seen whether in the circumstances of the present case there was a possibility that the applicant, unaware of circumstances which rendered the remedy ineffective, still complied with the six-month rule by availing himself of that remedy.

21. It is recalled that the Court calculated the six-month period from the date of the final judgment in a civil action for compensation in the cases in which it found no indication that the applicant, having no access to legal advice, was aware, or should have become aware, of the futility of that action (see *Gladkiy v. Russia*, no. 3242/03, § 62, 21 December 2010; *Roman Karasev v. Russia*, no. 30251/03, §§ 41-42, 25 November 2010; *Skorobogatykh v. Russia*, no. 4871/03, §§ 32-34, 22 December 2009, and *Novoselov*, cited above). However, in cases where the applicant was apparently aware of the absence of an effective domestic remedy at the time of lodging his application with the Court, the Court took the last day of the applicant's detention as the date from which the six-month period started to run (see *Artyomov*, cited above, §§ 113-118, and *Moskalyuk v. Russia*, no. 3267/03, §§ 45-48, 14 January 2010).

22. It is important to note that the above-cited applications were all introduced in 2003, that is less than a year after the Court had for a first time found a violation of Article 3 on account of inhuman and degrading conditions of detention in an overcrowded remand prison (see *Kalashnikov*, cited above). By contrast, in the instant case the period of the applicant's detention which he complained about had ended on 10 April 2007. As

shown in paragraph 17 above, by that time the Court's case-law on the absence of an effective remedy for complaints concerning inadequate conditions of detention had been sufficiently established. The applicant had at his disposal a period of six months during which he could have ascertained the conditions on the admissibility of an application to the Court and, if necessary, obtained appropriate legal advice. However, he did not submit his application within that time period. Even assuming that he genuinely believed that a civil claim for compensation would be an effective remedy for his complaint about inadequate conditions of detention, the Court find it anomalous that he chose to wait for another four years before filing such a claim in 2010. As the Court has repeatedly emphasised, applicants must act with reasonable expedition in bringing their cases before it for examination and have sufficient explanation, consonant with the purpose of Article 35 § 1 of the Convention and the effective implementation of the Convention guarantees, for long periods of delay.

23. It is relevant for the purposes of the present inquiry that Russian civil law contains a provision, according to which prescription does not apply to claims for compensation relating to the protection of the claimant's intangible assets, such as his health or dignity (see paragraph 6 above). As a consequence, such a claim may be introduced at any time in respect of a period of detention that occurred no matter how long ago. As stated above, the six-month rule enshrines the basic principle that complaints of breaches of Convention rights be brought with the expedition necessary to ensure effective and fair examination of the case. There are no exceptions and no possibility of waiver. Therefore, if such a claim were considered a starting point for the calculation of the six-month time-limit, the uncertainty created by the passage of time preceding the introduction of that claim would render nugatory the six-month rule (see *Denisov v. Russia* (dec.), no. 33408/03, 6 May 2004).

24. In view of these various elements, the Court is driven to the conclusion that the complaint about the inadequate conditions of detention should have been introduced within six months of the day following the applicant's transfer out of the remand prison (see *Sabri Güneş*, cited above, § 60). The applicant should have been aware of the ineffectiveness of the judicial avenue he had made use of, long before he lodged his application with the Court. The final disposal of his claim for compensation cannot be relied on as starting a fresh time-limit for his complaint. Therefore, the complaint to the Court should have been introduced no later than 10 October 2007, whereas it was actually lodged on 9 March 2011.

25. It follows that this complaint 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.

26. The applicant also raised additional complaints about various alleged deficiencies in the civil proceedings, to which he was a party. The Court has

given careful consideration to these grievances in the light of all the material in its possession and considers that, in so far as the matters complained of are within its competence, that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President