



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

FIRST SECTION

DECISION

Application no. 61199/08
Viktor Leonidovich KOLCHIN against Russia
and two other applications
(see list appended)

The European Court of Human Rights (First Section), sitting on 19 March 2013 as a Committee composed of:

Elisabeth Steiner, *President*,

Linos-Alexandre Sicilianos,

Ksenija Turković, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having regard to the above applications lodged on 31 October 2008, 21 January 2009 and 20 September 2010, respectively,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicants,

Having deliberated, decides as follows:

THE FACTS

1. The full names of the applicants, their dates of birth and their places of residence are set out in the appendix. They are Russian nationals.

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

3. All the applicants were defendants in criminal proceedings. During several periods of time they were held in police custody. Thus, Mr Kolchin (application no. 61199/08) was held in IVS Pavlovo in the Nizhniy Novgorod Region between 20 November 2006 and 2 February 2007.

Mr Nesterenko (application no. 18486/09) was held in IVS Pankrushikhinskiy District in the Altay Region between 13 November 2005 and 23 September 2006. Finally, Mr Ivanov (application no. 44072/10) was detained in IVS Bezhetskiy District in the Tver Region between 29 November 2005 and 22 August 2006. According to the applicants, the conditions of their detention were characterised by overcrowding and restricted access to natural light and air.

4. On various dates the applicants brought civil claims for compensation in connection with inadequate conditions of their detention in police custody. By final judgment of 11 November 2008, the Nizhniy Novgorod Regional Court granted Mr Kolchin's claim and awarded him 2,000 Russian roubles (RUB). By final judgment of 23 July 2008, the Altay Regional Court awarded Mr Nesternenko RUB 3,000. By final judgment of 13 April 2010, the Tver Regional Court rejected Mr Ivanov's claim, finding that he did not prove the fault of State officials.

COMPLAINTS

5. All the applicants complained under Article 3 of the Convention about the conditions of their detention in police custody.

6. The applicants Mr Kolchin and Mr Ivanov also complained under Article 6 of the Convention about various irregularities in the civil proceedings.

THE LAW

7. Having regard to the similarity of the main issues under the Convention in the above cases, the Court decides to join the applications and examine them in a single decision.

8. The applicants' first complaint related to the conditions of their detention in various police wards. Having regard to the fact that the respective periods of their detention had ended more than six months before their application were lodged with the Court, the Court must determine whether the applicants complied with the six-month requirement imposed by Article 35 of the Convention.

9. The Government submitted 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 applicants and they should have been aware of its existence. In those

circumstances, they should have lodged their applications within six months of the end of the situation they complained about, that is, the period of their detention in police custody.

10. The applicants replied that they had lodged their applications within six months of the domestic courts' final decisions on their compensation claims. Accordingly, they were not belated.

11. The Court reiterates that the six-month period normally 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 (see *Artyomov v. Russia*, no. 14146/02, § 108, 27 May 2010, with further references).

12. The Court further recalls its constant position that given the present state of Russian law, a civil action for compensation for inadequate conditions of detention has not been considered an effective remedy (see, most recently, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 113-118, 10 January 2012, with further references). The Court's case-law on the absence of an effective remedy for complaints concerning inadequate conditions of detention being sufficiently established, the applicants had at their disposal a period of six months following their departure from police wards, during which they should have ascertained the conditions on the admissibility of an application to the Court and, if necessary, obtained appropriate legal advice. However, they did not submit their applications within that time period.

13. The Court has recently examined a similar situation and reached 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 detention facility (see *Norkin v. Russia* (dec.), no. 21056/11, 5 February 2013). There are no arguments or factual information in the present case that would warrant a departure from the Court's findings in that decision. The applicants should have been aware of the ineffectiveness of the judicial avenue they had made use of, before they lodged their application with the Court. The final disposal of their claims for compensation cannot be relied upon as starting a fresh time-limit for their complaints.

14. It follows that their complaints about allegedly inadequate conditions of detention are 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.

15. Two applicants also raised additional complaints about alleged deficiencies in the civil proceedings, to which they were parties. 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

Decides to join the applications;

Declares the applications inadmissible.

André Wampach
Deputy Registrar

Elisabeth Steiner
President

APPENDIX

No	Application No	Lodged on	Applicant Date of birth Place of residence	Represented by
1.	61199/08	31/10/2008	Viktor Leonidovich KOLCHIN 27/09/1969 Lesnoy	
2.	18486/09	21/01/2009	Yuriy Petrovich NESTERENKO 06/11/1961 Gorno-Altaysk	
3.	44072/10	20/09/2010	Andrey Sergeyevich IVANOV 01/01/1980 Bor	