



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

FIRST SECTION

Application no. 9904/09
Aleksy Mikhaylovich YUDIN
against Russia
lodged on 25 December 2008

STATEMENT OF FACTS

The applicant, Mr Aleksy Mikhaylovich Yudin, is a Russian national, who was born in 1980 and lives in the town of Saransk, the Republic of Mordoviya. He is represented before the Court by Mr F.V. Bagryanskiy and Mr A.V. Mikhaylov, lawyers practising in Vladimir.

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

A. The applicant's arrest and preliminary investigation

On 6 September 2006 the applicant was arrested in the town of Ruzayevka, the Republic of Mordoviya. Sometime later he was charged with several counts of grave and particularly grave crimes and remanded in custody. Preliminary investigation followed.

On 11 and 24 April 2007 several police and medical officers, acting on investigator's orders issued on the same dates, collected samples of saliva, hair and blood from the applicant. As the applicant resisted, they took the samples by force, which, according to the applicant, was hurtful and humiliating.

Although the applicant challenged admissibility of that evidence in the subsequent trial, he did not try to bring any separate proceedings in respect of this issue.

B. Criminal proceedings against the applicant

On 12 February 2008 the trial commenced. The applicant was represented by Mr S., his counsel, throughout the proceeding.

On 7 August 2008 the Supreme Court of the Republic of Mordoviya found the applicant and four other persons guilty of numerous counts of

banditry, extortion, theft and premeditated destruction of property and sentenced him to fifteen years' imprisonment and a fine.

On an unspecified date the applicant submitted a statement of appeal drafted by Mr S. Also, he requested the appeal court to appoint him a new lawyer as Mr S. ceased to be his representative at this stage.

On 26 February 2009 the Supreme Court of Russia examined the appeal. The hearing was conducted by means of a video link. Two other co-accused together with their lawyers as well as a prosecutor participated in it.

At the start of the hearing the court informed the applicant that his request had been granted and Mrs Ch., a lawyer practicing in Moscow, had been appointed to represent him in the appeal proceeding. The applicant immediately asked whether he and Ch. could have a confidential talk. He pointed out that he pleaded not guilty, that his appeal concerned issues of both fact and law, and that he had never met Ch. before. However, he was allowed to talk to her only for a few minutes from the video conference room in the presence of the co-accused and convoy guards.

On the same day the Supreme Court of Russia gave the appeal judgment, reducing the sentence in respect of the applicant and maintaining his conviction in the remaining part. Only the operative part of the judgment was read out in public. The full text was mailed to the parties on a later unspecified date.

C. Conditions of the applicant's detention and transport

1. Conditions of detention in the remand prison

After the arrest the applicant was placed in remand prison IZ-13/1 of the Republic of Mordoviya, where he stayed from 6 October 2006 to 19 August 2008 in the following conditions.

Cell no.	Surface (sq. m)	Design Capacity	Actual Population
10	16	4	6
20	20-25	7	7
29	7	2	2
31	7	2	2
33	7	2	2
34	7	2	2
41	16	4	5
55	20-25	6	7
82	20-25	7	7

Each cell was equipped with bunk beds, benches, a table, a toilet pan, a sink, a shelf and a chest of drawers, further reducing the available free space. The cells were poorly lit and making it difficult to read or write.

The sanitary conditions were poor. The cells were dirty and infested with rats and cockroaches. The toilet pans were separated from the rest of the cell by a makeshift partition made by detainees from plastic bags and it did not provide sufficient privacy. No toiletries were given to detainees. The

applicant was allowed to take shower once a week, but on occasions he had no such possibility for over a month. The detainees had to drink tap water of very bad quality as no drinking water was available.

2. Conditions of transport between the remand prison and the courthouse

Between 12 February and 8 August 2008 the applicant was regularly transported from the remand prison to the courthouse to take part in trial.

On days of hearings, while waiting for his transport, the applicant was placed together with up to six other persons in special transit cells measuring 1 by 1.5 m (1.5 sq. m). There were no windows in the cells. They were not equipped with ventilation, lighting or toilets. No drinking water was available to the detainees.

Having spent from 40 minutes to one hour in a transit cell, the applicant was loaded on a prison van and placed into a single-occupancy compartment measuring 60 by 70 cm (0.42 sq. m). Oftentimes the applicant had to share that compartment with another detainee. It was dark and cold inside as lighting and heating were always turned off.

3. Conditions of detention in the courthouse

Upon arrival in the Supreme Court of the Republic of Mordoviya the applicant was placed in a special convoy room measuring 1.5 by 3.5 m (5.25 sq. m). He spent there up to three and a half hours together with five to seven other detainees.

The convoy room was poorly lit. It was not equipped with any sanitary facilities. The applicant could use toilet, but he was always accompanied there by a convoy guard and a co-detainee, whom the applicant was handcuffed to. Fresh water was unavailable.

During the hearings the applicant and the other co-accused sat on a bench enclosed on all sides by metal railing. There was no table or other piece of furniture which he could use to write or to place his documents. Also, the metal bars prevented him from effective communication with his lawyer.

In his statement of appeal the applicant complained about lack of basic facilities to prepare for hearings and alleged that the conditions of his detention in the remand prison, in the courthouse and the conditions of transport between them exhausted him physically and mentally to the point that he could not effectively participate in the trial. However, in the appeal judgment of 26 February 2009 these arguments remained without an answer.

COMPLAINTS

1. The applicant complains under Article 3 of the Convention about the conditions of his detention in remand prison IZ-13/1 of the Republic of Mordoviya, in the courthouse and about the conditions of transport between them.

2. The applicant claims that the appalling conditions of his detention and transport had an adverse effect on his right to effective participation in the proceedings guaranteed by Article 6.

3. Under the same Article he complains that his communication with the new counsel at the appeal hearing was not confidential and was unreasonably short.

4. Lastly, the applicant claims that the delivery of the appeal judgment was not public, in breach of the requirements of Article 6 of the Convention.

QUESTIONS TO THE PARTIES

1. Were the conditions of the applicant's detention in remand prison IZ-13/1 of the Republic of Mordoviya compatible with Article 3 of the Convention? If the Government consider that the information given by the applicant (in particular, the occupancy numbers) was inaccurate, they are invited to produce extracts from the prison population register covering at least one day per week during the entire period of the applicant's detention.

2. Were the conditions of transport of Mr Yudin to/from the custodial facilities or the courthouse compatible with Article 3 of the Convention? In particular, the Government are requested to indicate in respect of the applicant:

- (a) How many times was he transported from the remand prison to the courthouse and on which dates?
- (b) How long was the way?
- (c) How much space was allowed for the applicant in the prison van?
- (d) Did the applicant have access to toilet during the trip?
- (e) Was drinking water available to him?
- (f) Were the transportation compartments ventilated on hot days and heated on cold days?

3. In respect of the convoy cell of the Supreme Court of the Republic of Mordoviya, the Government are requested to submit the following information, supported by copies of original documents:

- (a) The complete schedule of all trial and appeal hearings in the applicant's criminal case;
- (b) The floor surface of the cell in square metres;
- (c) The number of detainees held in the cell at the same time with the applicant;
- (d) Whether the applicant had an unhindered access to toilets, drinking water, natural light and fresh air.

In the light of the above information, were the conditions of the applicant's stay in the courthouse of the Supreme Court of the Republic of Mordoviya compatible with Article 3 of the Convention?

4. Did the applicant have adequate time and facilities for the preparation of his defence during the trial and appeal proceedings, as required by Article 6 § 3 (b) of the Convention? In particular, did the conditions of his

detention on remand have an adverse effect on his ability to prepare for the hearings?

5. Is the refusal of a confidential talk between the applicant and his new counsel before the appeal hearing of 26 February 2009 compatible with the “equality of arms” principle enshrined in Article 6 of the Convention, given in particular the fact that the other parties were represented by their counsel?

6. Was the judgment of the Supreme Court of Russia of 26 February 2009 pronounced publicly, as required by Article 6 § 1 of the Convention? In particular, was the pronouncement of that judgment at the hearing limited to the operative part, and if so, was the judgment made public by any other means?