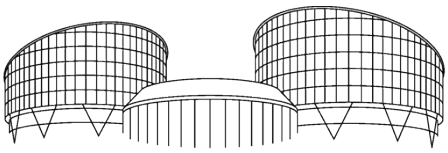

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF SOROKIN v. RUSSIA

(Application no. 67482/10)

JUDGMENT

STRASBOURG

10 October 2013

This judgment is final. It may be subject to editorial revision.

In the case of Sorokin v. Russia,

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

Khanlar Hajiyev, *President,*
Erik Møse,
Dmitry Dedov, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 17 September 2013,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 67482/10) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Nikolay Nikolayevich Sorokin ("the applicant"), on 25 April 2010.

2. The applicant was represented by Mr A. Polonskiy, a lawyer practising in Volgograd. The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

3. On 13 April 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1971 and lived in Volgograd prior to his arrest.

A. Criminal proceedings against the applicant

5. On 31 January 2003 the applicant was arrested and charged with theft and the use of forged identity documents. Two days later he was remanded in custody.

6. On 6 April 2004 the Dzerzhinskiy District Court of Volgograd found him guilty as charged and sentenced him to three years and six months' imprisonment. On 27 July 2004 the Volgograd Regional Court upheld the judgment on appeal.

7. In the meantime, criminal proceedings against the applicant and five other individuals were instituted on the charges of participation in a criminal syndicate, several counts of aggravated robbery, inflicting serious injuries and two counts of murder. On 12 April 2004 the case went to trial.

8. On 26 June 2009 the Volgograd Regional Court found the defendants guilty, on the basis of a jury verdict. The applicant was sentenced to eighteen years' imprisonment in a high-security institution. On 18 March 2010 the Supreme Court of the Russian Federation upheld the conviction on appeal.

B. Condition of the applicant's detention in prison IZ-34/1

9. Between 2 February 2003 and 25 April 2010 the applicant was held in remand prison IZ-34/1 in the Volgograd Region. From 30 November to 26 December 2006 and from 16 March to 23 April 2009 the applicant was transferred to a penitentiary medical facility in the Volgograd Region where he received treatment for tuberculosis.

10. The prison was severely overcrowded. Thus, cell 41 measuring 20 sq. m was equipped with 16 sleeping places and accommodated up to 30 inmates; cell 64 measuring 10 sq. m was designed for 6 and housed up to 16 individuals; furthermore, cell 70 measuring 16 sq. m presented 6 places and up to 15 detainees who occupied them.

11. In addition, the applicant complained about the following aspects of the detention: detainees had to use a hole in the floor as a toilet; cells were equipped with lavatory pans for the first time in 2008. Until 2010, there had been no partitions between toilets and the living space. Hot water was not available.

C. Civil claim for compensation

12. The applicant brought an action before the Supreme Court of the Russian Federation for compensation for a breach of his right to a trial within a reasonable time. He relied on the new Compensation Act (see below).

13. By decision of 29 September 2010, the Supreme Court instructed the applicant to supply additional information and documents by 22 October 2010. On 27 October 2010 the Supreme Court disallowed the applicant's action because the information had not been received.

14. The applicant challenged the decision of 27 October 2010 on appeal. He submitted that the requested information and documents had been sent to the Supreme Court on 19 October 2010.

15. On 28 December 2010 the Appeals Panel of the Supreme Court rejected the appeal, finding that the applicant's submission had been belated because they had only reached the court on 29 October 2010.

II. RELEVANT DOMESTIC LAW

16. On 30 April 2010 the Russian Parliament adopted a Federal Law, no. 68-FZ, "On Compensation for Violation of the Right to a Trial within a Reasonable Time or the Right to Enforcement of a Judgment within a Reasonable Time" ("the Compensation Act"). On the same date the Parliament adopted a Federal Law, no. 69-FZ, introducing a number of corresponding changes to the relevant federal laws. Both laws entered into force on 4 May 2010.

17. The Compensation Act entitles a party concerned to bring an action for compensation of the violation of his or her right to a trial within a reasonable time (Section 1 § 1).

18. All individuals who have complained to the European Court of Human Rights about a violation of their right to a trial within a reasonable time may claim compensation in domestic courts under the Compensation Act within six months of its entry into force, provided that the European Court has not ruled on the admissibility of the complaint (Section 6 § 2).

THE LAW

I. THE GOVERNMENT'S REQUEST FOR THE APPLICATION TO BE STRUCK OUT UNDER ARTICLE 37 OF THE CONVENTION

19. On 5 December 2012 the Government submitted a unilateral declaration inviting the Court to strike out the application. They acknowledged that between 23 April 2009 and 25 April 2010 the applicant had been detained in conditions which did not comply with the requirements of Article 3 of the Convention and offered to pay a sum of money.

20. By letter of 7 February 2013, the applicant formulated his objections to the Government's proposal. He submitted, in particular, that the period of his detention should be taken into account in its entirety, from 31 January 2003 to 25 April 2010.

21. Having studied the terms of the Government's unilateral declaration, the Court observes that the Government's acknowledgement of a violation only covered the most recent period of the applicant's detention following his return from the hospital and that the amount of redress was calculated accordingly. Without prejudging its decision on the admissibility and merits of the case, the Court considers, in the particular circumstances of the applicant's case, that it does not provide a sufficient basis for concluding that respect for human rights as defined in the Convention and its Protocols does not require it to continue its examination of the case (see, *mutatis*

mutandis, Rantsev v. Cyprus and Russia, no. 25965/04, §§ 194-202, ECHR 2010 (extracts)).

22. This being so, the Court rejects the Government's request to strike the application out of its list of cases under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the case.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

23. The applicant complained that the conditions of his detention in prison IZ-34/1 had violated Article 3 of the Convention, which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

A. Admissibility

24. The Government submitted that the applicant's detention in prison IZ-34/1 could not be regarded as a "continuous situation" given that he had been twice transferred to a medical facility. Accordingly, they considered that the Court was competent, by virtue of the six-month rule, to take into account only the period of the applicant's detention from 23 April 2009 to 25 April 2010. The Government referred to the judgment in the case of *Mitrokhin v. Russia* (no. 35648/04, 24 January 2012).

25. The applicant accepted that he was temporarily taken out of the remand prison to the medical facility. There he received treatment for tuberculosis that he had contracted in the remand prison. The material conditions of detention in the medical facility were substantially similar to those in the remand prison. Moreover, throughout the period from 31 January 2003 to 18 March 2010 his procedural status had not varied, he had continuously been a defendant remanded in custody. In the applicant's view, these elements distinguished his case from the case of *Mitrokhin*, in which the applicant had been transferred to a correctional colony to serve a prison sentence.

26. The Court reiterates that a period of an applicant's detention should be regarded as a "continuing situation" as long as the detention has been effected in the same type of detention facility in substantially similar conditions. Short periods of absence during which the applicant was taken out of the facility for interviews or other procedural acts would have no incidence on the continuous nature of the detention. However, the applicant's release or transfer to a different type of detention regime, both within and outside the facility, would put an end to the "continuing situation". The complaint about the conditions of detention must be filed within six months from the end of the situation complained about or, if there

was an effective domestic remedy to be exhausted, of the final decision in the process of exhaustion (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 78, 10 January 2012).

27. In the instant case the applicant's stay in the remand prison was punctuated by his transfers to a medical facility in which he spent slightly less than one month in 2006 and slightly more than one month in 2009. The Court has previously examined the situation of the applicants who had been transferred from the remand prison to the correctional colony to serve their sentence and who had later returned to the same prison in connection with proceedings in a different criminal case. Their departure to the colony being definitive at the material time and their subsequent return to the same prison being a mere happenstance, the Court reached the conclusion that their transfer marked the end of the situation complained about and that the six-month period should run from the day they left the prison (see *Mitrokhin*, cited above, § 36, and *Yartsev v. Russia* (dec.), no. 13776/11, § 30, 26 March 2013). By contrast, the applicant's transfer to a medical facility was obviously of a temporary nature. Upon completion of the treatment, he was to return to the prison in which he was remanded in custody. The Court accordingly finds that two short periods of his absence from the prison had no incidence on the continuous nature of his detention. It rejects therefore the Government's argument relating to the application for the six-month rule to the earlier period of the applicant's detention.

28. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

29. The Government acknowledged that the applicant's conditions of detention from 23 April 2009 to 25 April 2010 did not comply with the requirements of Article 3 of the Convention.

30. The applicant took note of their admission.

31. The Court reiterates that in two applications brought by the applicant's co-defendants, it has already found a violation of Article 3 of the Convention on account of an acute lack of personal space in the cells of prison IZ-34/1 during the same period of time (see *Ananyin v. Russia*, no. 13659/06, §§ 65-70, 30 July 2009, and *Lyubimenko v. Russia*, no. 6270/06, §§ 54-59, 19 March 2009).

32. Having regard to the applicant's factual submissions undisputed by the Government, the Government's acknowledgement relating to the most recent period of the applicant's detention and the findings in the above-mentioned cases, the Court considers that the conditions of the applicant's

detention in remand prison IZ-34/1 amounted to inhuman and degrading treatment.

33. There has accordingly been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention from 31 January 2003 to 25 April 2010.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

34. The applicant complained that the length of criminal proceedings against him had been excessive which amounted to a violation of Article 6 § 1 of the Convention.

35. The Court observes that the applicant's conviction became final on 18 March 2010. Accordingly, the applicant was entitled to bring proceedings for compensation on the basis on the new Compensation Act. The Court has already found that the Compensation Act was designed, in principle, to address the issue of excessive length of domestic proceedings in an effective and meaningful manner, taking account of the Convention requirements (see *Fakhretdinov and Others v. Russia* (dec.), nos. 26716/09, 67576/09 and 7698/10, § 27, 23 September 2010).

36. It is further observed that the applicant attempted to institute proceedings for compensation under the Compensation Act. However, he did not comply with the formal requirements on lodging such a claim. When instructed to remedy the formal defects, he did so in a belated fashion and his claim was disallowed.

37. It follows that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

38. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

39. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

40. The Government did not submit comments on the applicant's claim.

41. The Court considers the applicant's claim excessive. Having regard to its case-law in similar cases, it awards the applicant EUR 23,250 in respect of non-pecuniary damage, plus any tax that may be chargeable, and rejects the remainder of his claim.

B. Costs and expenses

42. The applicant did not claim any costs or expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

43. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the conditions of the applicant's detention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months EUR 23,250 (twenty-three thousand two hundred and fifty euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President