



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

FIRST SECTION

CASE OF VLADIMIR BELYAYEV v. RUSSIA

(Application no. 9967/06)

JUDGMENT

STRASBOURG

17 October 2013

FINAL

17/01/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Vladimir Belyayev v. Russia,

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

Isabelle Berro-Lefèvre, *President*,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Linos-Alexandre Sicilianos,

Erik Møse,

Ksenija Turković,

Dmitry Dedov, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 24 September 2013,

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

PROCEDURE

1. The case originated in an application (no. 9967/06) 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 Vladimir Ivanovich Belyayev (“the applicant”), on 11 January 2006.

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

3. The applicant alleged in particular that he had been detained in overcrowded cells with little opportunity for outdoor exercise.

4. On 26 August 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1968 and is serving a prison sentence in the Sverdlovsk region.

6. On 14 November 2003 the St Petersburg City Court found the applicant guilty of murder and of membership of an organised criminal gang, and sentenced him to twenty-one years’ imprisonment. On

11 November 2004 the Supreme Court of Russia upheld the applicant's conviction, in substance, on appeal.

A. Conditions of detention

7. It appears that the applicant has been serving his prison sentence in different correctional facilities. From 6 April to 23 December 2005 the applicant was held in correctional colony no. IK- 4 in the Magadan region. Throughout the period in question, he was repeatedly sanctioned for failure to comply with the colony's internal regulations and was continuously detained in disciplinary cells.

8. In particular, on 12 and 20 April 2005 the applicant was placed in a punishment cell for ten days for refusal to participate in cleaning work in the colony. On 28 April 2005 he spoke rudely to guards and was placed in a punishment cell for three days. On 3 May 2005 the applicant was placed in a punishment cell for seven days for having brought, in contravention of internal regulations, black tea leaves into the punishment cell. On 11 May 2005 the applicant refused to participate in cleaning work in the colony and was placed in a punishment cell for ten days. On 20 May 2005 the applicant was placed in a punishment cell for fifteen days for refusing to wear prison uniform and for swearing at colony officers. On 6 June 2005 the applicant wrenched the sink off the wall, broke the window frame and crushed a bulb with a kettle in the cell where he was detained. He was placed in a prison-type cell for one month.

1. Cell population and general conditions of detention

(a) The description submitted by the Government

9. The Government's submissions as regards the conditions of the applicant's detention can be summarised as follows:

Period of detention	Cell type and number	Cell surface in square metres	Number of inmates	Personal space afforded to the applicant in square metres
6 to 30 April	Punishment cell no. 22	5.9	1	5.9
30 April to 10 May			2	2.95
11 May to 5 June			1	5.9
6 June to 30 July	Prison-type cell no. 11	8.2	1	8.2

Period of detention	Cell type and number	Cell surface in square metres	Number of inmates	Personal space afforded to the applicant in square metres
1 to 3 August	Punishment cell no. 1	13.4	2	6.7
3 to 5 August			5	2.68
5 to 10 August			4	3.35
10 to 11 August			3	4.47
12 to 17 August	Prison-type cell no. 15	8.9	1	8.9
17 August to 12 September			3	2.97
12 September to 23 December	Punishment cell no. 22	5.9	1	5.9

10. All the cells were equipped with a ventilation system in working order. There was access to natural light. During the night the cells were lit with a 40-watt electric bulb. The windows measured 50 x 90 centimetres and were covered with a steel grille whose openings measured 0.3 x 3 centimetres. The grille did not prevent access to daylight. The toilet was located in the corner of the cell, some 1.5 metres from the dining table and the nearest bed. It was separated by a 1.1-metre-high brick wall with a door. The temperature in the cells was at least 16°C. The colony's disciplinary premises were provided with six exercise areas measuring from 7.5 to 10.6 square metres. The inmates had an hour's daily outdoor exercise.

(b) The description submitted by the applicant

11. The applicant provided the data similar to the Government's submissions as regards the size and the population of the cells where he had been detained.

12. According to the applicant, the cells where he was held were located in the basement of the building. They were damp and cold. The walls were covered with mould. There was no ventilation or hot water. The potable water contained yellowish residue and sand. The beds and mattresses were in poor condition and uncomfortable. The cells were overcrowded. The one-and-a-half-hour's exercise took place in small yards which were always overcrowded. Nor was any exercise equipment available there. The applicant was allowed to take a shower every 7 to 10 days. On those days he was not allowed to have an outdoor exercise. The shower facilities were dirty.

2. Domestic litigation concerning the conditions of the applicant's detention

13. On an unspecified date the applicant complained to the Magadan Town Court that the conditions of his detention were not in compliance with the applicable domestic standards. In particular, he alleged that the disciplinary cells where he was detained were not suitable for detention. There was no ventilation; the lighting was poor; the cells were overcrowded. There was no hot water. The cells were cold and damp. The wash sinks were not isolated from the toilet. On 12 October 2005 the Town Court dismissed the applicant's complaint. The court noted as follows:

"It follows from the materials in the case-file, that the punishment and prison type cells in correctional colony no. IK-4 are lit with electric bulbs of appropriate voltage. The temperature in the cells is in accordance with [statutory requirements].

According to certificate no. 49/4 of 21 September 2005 submitted by correctional colony no. IK-4, from 6 April 2005 to date [the applicant] has been detained in punishment and prison-type cells nos. 1, 11, 15, [and] 22.

Pursuant to Article 99 of the Russian Code on the Execution of Criminal Sentences, the personal space afforded per convict cannot be lower than 2 square metres in correctional colonies and 2.5 square metres in prisons.

The materials in the case-file demonstrate that cell no. 11 measures 8.8 square metres, cell no. 22 measures 6.4 square metres, cell no. 1 measures 14 square metres, cell no. 15 measures 10.2 square metres. [The applicant] was detained in cells nos. 11 and 22 alone. In cell no. 1 there were five detainees, in cell no. 15 there were three detainees.

Accordingly, the personal space afforded per convict in correctional colony no. IK-4 where [the applicant] has been detained to date is in compliance with law.

...

According to the certificate of 7 October 2005 submitted by the respondent party, [the administration] conducted an inspection of cell no. 22 where [the applicant] is currently detained. Cell no. 22 measures 6.5 sq. m and houses ... two inmates. The floor is made of wood and covered with oil-based paint. The walls are 1.75 m high and covered with oil-based paint. The top part of the walls and the ceiling are white-washed. The lighting is combined. There is artificial electric lighting ... Natural light is ensured by a window measuring 50 by 90 cm. There are window panes and a vent. The temperature in the cell is 21⁰ C. The toilet is separated by a partition which is 1.1 m high. There is a centralised cold water supply. The bench is attached to the floor. Its base is made of concrete with a wooden seat... The table is made of concrete and attached to the floor. The pull-down beds are made of wood and have a smooth surface. The door is heat-insulated and adheres tightly to the door frame.

Regard being had to the above, the court concludes that the conditions of the [applicant's] detention in correctional colony no. IK-4 are in compliance with applicable laws"

14. On 8 November 2005 the Magadan Regional Court upheld the judgment of 12 October 2005 on appeal.

3. Other proceedings

15. On numerous occasions the applicant challenged in court the actions taken against him by the authorities of correctional colony no. IK-4, including the disciplinary sanctions imposed on him. Each time the courts considered his complaints in his absence, noting that the domestic rules of civil procedure did not impose on the court an obligation to ensure the convict's presence in the courtroom. The applicant's representative attended all the hearings, and made submissions to the court on the applicant's behalf.

II. RELEVANT DOMESTIC LAW

A. Conditions of post-conviction detention

16. Article 99 § 1 of the Russian Code on the Execution of Criminal Sentences of 8 January 1997 (the "Code") provides for a minimum standard of two square metres of personal space for male convicts in correctional colonies. They should be provided with their own sleeping place and given bedding, clothes and toiletries. In prisons, the personal space afforded per male convict is 2.5 square metres.

B. Types of detention regimes

17. The Code provides for five main types of penal institutions for convicted criminals: correctional settlement, general regime colony, strict regime colony, special regime colony, and prison (Article 74 of the Code).

18. The convicts have a different scope of rights depending on the regime of the correctional facility where they serve a sentence. In particular, the number of family visits and parcels the convicts may receive per year, as well as the amount of cash they are allowed to spend vary depending on the regime of the correctional facility.

19. The conditions imposed on an inmate serving a sentence in a correctional settlement are the mildest. In particular, the convicts do not live in cells or barracks but in unguarded dormitories. They have the right to move freely within the correctional settlement during the day. The number and length of family visits are not limited, nor is the possibility of receiving parcels and money from home. As an incentive for good behaviour, and subject to approval by the administration, the convicts may, *inter alia*, live outside the correctional settlement with their families, live in rented flats,

leave the correctional settlement for holidays and weekends, and move freely within the city or district where the settlement is situated. They do not wear a uniform and can dispose of their money as they please. The convicts may even be granted leave to work in another town or district, or participate in distance-learning programmes of higher education establishments (Article 129 of the Code).

20. The regime in a prison is the most severe. The convicts are detained in cells. They are allowed daily outdoor exercise not exceeding one hour and a half. The number of family visits and parcels received per year is limited. So is the amount of money the convicts may spend during a month (Article 131 of the Code).

21. The convicts serving a sentence in the strict regime colonies are placed in dormitories. They are allowed six family visits per year. They may receive eight parcels per year. These numbers may be decreased or increased subject to the convict's compliance with internal regulations of the correctional colony (Articles 122-23 of the Code).

C. Disciplinary actions in correctional facilities

22. For failure to comply with the colony's internal regulations a convict may be placed in a disciplinary cell. During the period of detention in a punishment cell a convict has a right to one-hour daily outdoor exercise. In the event of repeated violations, a convict can be transferred to a prison-type cell. During the period of detention there, a convict has a right to a 1.5-hour daily outdoor exercise which may be increased up to 2 hours per day (Article 155 of the Russian Code on the Execution of Criminal Sentences).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

23. The applicant complained that he had been detained in overcrowded cells with little opportunity for outdoor exercise in correctional colony no. IK-4 in the Magadan region from 6 April to 23 December 2005. He relied on Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

24. The Government contested that argument. They considered that the applicant had been detained in conditions compatible with domestic and international standards. They relied on the statements prepared by the correctional colony authorities in October-December 2010, which stated

that the inmate register had been destroyed. According to the authorities, the statements were prepared, *inter alia*, on the basis of the data contained in the cell records which were kept in the applicant's personal file. No copies of those documents were provided. As regards the area of the cells, the authorities submitted copies of the official floor plans.

25. The applicant maintained his complaint. He argued that the Government failed to substantiate their allegations and that the data provided by them were contradictory. In particular, he pointed out, that the cell sizes quoted by the Government did not coincide with the information examined by domestic courts which considered his complaint about the conditions of his detention. He further noted that the statements describing the conditions of his detention in correctional colony no. IK-4 were prepared by the administration several years after the events in question and could not be considered reliable.

A. Admissibility

26. 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

27. The Court reiterates that Article 3 enshrines one of the fundamental values of a democratic society. The Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances or the victim's behaviour (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). The Court has consistently stressed that, in the context of deprivation of liberty, the suffering and humiliation involved must in any event go beyond the inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Although measures depriving a person of liberty may often involve such an element, in accordance with Article 3 of the Convention the State must ensure that a person is detained under conditions which are compatible with respect for his human dignity and that the manner and method of the execution of the measure do not subject him to distress or hardship exceeding the unavoidable level of suffering inherent in detention (see *Kudła v. Poland* [GC], no. 30210/96, § 92-94, ECHR 2000-XI).

28. Turning to the circumstances of the present case, the Court notes from the outset that the applicant did not complain that the general regime to which he had been subjected when detained in correctional colony no. IK-4 in the Magadan Region raised an issue under Article 3 of the

Convention (see, by contrast, *Lorsé and Others v. the Netherlands*, no. 52750/99, § 64, 4 February 2003). Nor is it the Court's view that the applicant's placement in disciplinary cells for his repeated failure to comply with the colony's internal regulations was, as such, incompatible with the provisions of the said Article.

29. Accordingly, the Court's task in the present case is to determine whether the material conditions of the applicant's detention in the disciplinary cells were compatible with the standards set forth in Article 3 of the Convention.

30. In this connection, the Court reiterates that the extreme lack of space in a prison cell weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions were "degrading" from the point of view of Article 3 (see *Karalevičius v. Lithuania*, no. 53254/99, § 36, 7 April 2005). It further reiterates that in deciding whether or not there has been a violation of Article 3 of the Convention on account of the lack of personal space, it always has regards to the following three elements: (a) each detainee must have an individual sleeping place in the cell; (b) each detainee must dispose of at least three square metres of floor space; and (c) the overall surface of the cell must be such as to allow the detainees to move freely between the furniture items. The absence of any of the above elements creates in itself a strong presumption that the conditions of detention amounted to degrading treatment and were in breach of Article 3 (see, in respect of pre-trial detention, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 148, 10 January 2012).

31. Turning to the circumstances of the present case, the Court will firstly address the applicant's argument as regards the accuracy of the data provided by the Government on the size of the cells where the applicant was detained during the period under consideration.

32. The Court notes that the information concerning the cell sizes referred to by the domestic courts in the judicial proceedings initiated by the applicant does not, in fact, coincide with the data provided by the Government in their observations forwarded to the Court following the notice of the present application. According to the official floor plans of the correctional colony submitted by the Government, the cells where the applicant was detained were smaller in size than indicated in the domestic courts' judgments. In these circumstances, the Court attaches decisive importance to the official documentation presented by the Government and accepts their submissions in this part as credible.

33. The Court further observes that the applicant did not dispute the veracity of the information provided by the Government as regards the cell population. Accordingly, the Court accepts that on certain occasions the applicant was afforded a personal space below 3 square metres. In particular, from 30 April to 10 May 2005 (10 days) the personal space

available to the applicant constituted 2.95 square metres, from 3 to 5 August 2005 (2 days) it amounted to 2.65 square metres and from 17 August to 12 September 2005 (26 days) the applicant was afforded 2.97 square metres. For the rest of the time the applicant was held in the cells where from 3.35 to 8.9 square metres of personal space were available to him (see paragraph 9 above).

34. The Court further notes that it is common ground between the parties that, at all times, the applicant was provided with an individual bed and practically always had an opportunity for outdoor exercise which lasted at least one hour per day. Nor did he allege that he had been unable to move freely within the cell.

35. As for the remainder of the applicant's submissions concerning allegedly poor hygiene conditions in the cells and shower facilities, the Court is unable, in view of the lack of specific detail or substantiation, to accept the applicant's allegations as credible.

36. Regard being had to the above, the Court concludes that, while on certain occasions the applicant was provided with slightly less than three square metres of personal space, in the circumstances of the case, it cannot establish that the conditions of the applicant's detention resulting from the disciplinary sanctions imposed on him for infraction of the colony regime, although not always adequate, reached the threshold of severity required to characterise the treatment as inhuman or degrading within the meaning of Article 3 of the Convention. Therefore, there has been no violation of this provision.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

37. Lastly, the applicant complained about various aspects of his detention. In particular, he alleged that he had been beaten up by guards, that the quality of dental and other medical services had been poor, that the correctional colony authorities had failed to dispatch a number of his letters, had put pressure on him in connection with his complaints to the Court, had confiscated his crucifix and not allowed him to use the prayer room, and that he had been unable to attend the civil proceedings he had initiated against the correctional colony authorities. He relied on Articles 3, 6, 8, 9, 13 and 34 of the Convention.

38. However, having regard to all the material in its possession, and in so far as these complaints fall within its competence, the Court finds that there is no appearance of a violation of the rights and freedoms set out in the Convention. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the conditions of the applicant's detention in correctional colony no. IK-4 in the Magadan region from 6 April to 23 December 2005 admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 3 of the Convention;

Done in English, and notified in writing on 17 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Isabelle Berro-Lefèvre
President