



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

FIRST SECTION

CASE OF LAPSHOV v. RUSSIA

(Application no. 5288/08)

JUDGMENT

STRASBOURG

24 October 2013

FINAL

24/01/2014

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

In the case of Lapshov v. Russia,

The European Court of Human Rights (First Section), sitting 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 deliberated in private on 1 October 2013,

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

PROCEDURE

1. The case originated in an application (no. 5288/08) 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 Zakhar Viktorovich Lapshov (“the applicant”), on 27 November 2007.

2. The applicant was represented by Mr V. Polozhevets, a lawyer practising in Kaliningrad. 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 that he had been detained in appalling conditions in the temporary detention centre pending investigation and trial.

4. On 30 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 1982 and is serving a prison sentence in Kaliningrad.

6. On an unspecified date the applicant was charged with robbery and remanded in custody. During the period between 26 July 2006 and 7 August

2007 he was detained on numerous occasions in a temporary detention centre in Bagrationovsk, Kaliningrad Region.

7. According to the applicant, the criminal proceedings against him ended in his conviction for robbery. The final decision on the matter was taken on 18 December 2007.

A. The description provided by the Government

8. According to the Government, the applicant was detained in the temporary detention centre in Bagrationovsk from 26 to 29 July, 11 to 13 September, 1 to 4 November, 13 to 23 December 2006, 17 to 24 January, 31 January to 7 February, 1 to 10 March, 11 to 14 and 18 to 21 April, 2 to 4 May, 30 May to 9 June, 14 to 18 and, 21 to 25 July and 1 to 7 August 2007. During the relevant periods he was brought to the centre in order to participate in investigation activities and court hearings.

9. The Government were unable to indicate the exact cell numbers where the applicant had been detained. Nor was it possible for the Government to submit the information on the population of the temporary detention centre at the time of the applicant's detention. The Government provided the following overview of all the cells in the temporary detention centre:

Cell no.	Cell surface, square metres
1	5.7
2	5.0
3	5.8
4	8.6

10. There were no individual beds in the cells. The inmates had to share sleeping platforms. The number of inmates detained together with the applicant varied from one to four. On the average, the number of the inmates detained daily at the temporary detention centre was seven to eight. There was no ventilation system. There was only artificial lighting. The cells were lit by a 100-watt electric bulb. The cells were not equipped with a toilet. Nor was there an outdoor exercise area.

B. The description provided by the applicant

11. According to the applicant, he was kept in a windowless cell measuring approximately nine sq. m and housing from four to six inmates. The cell was not equipped with a toilet. Instead, the inmates were to use a tank placed in the cell. The person using it could be seen by others present in the cell. The applicant had to stay indoors all the time. No daily exercise was provided for. Nor was he given any bedding or a mattress. He received

one meal per day and had to eat standing or sitting on a bed with a plate in the hands as there were no chairs or table in the cell.

12. In response to the applicant's complaint about conditions of his detention in the temporary detention centre, the prosecutor's office carried out an inquiry which confirmed the applicant's allegations. The prosecutor asked the regional department of the interior to take measures necessary to bring the conditions of detention in the temporary detention centre in compliance with statutory standards. He also informed the Regional Governor of the situation suggesting an allocation of budgetary funds for reconstruction of the temporary detention centre. In particular, in his report to the Governor, the prosecutor stated as follows:

“The inspection of the temporary detention centre of the Bargationovsk department of the interior conducted by the regional prosecutor's office on 24 July 2007 in response to the complaints lodged by six persons who had been detained there has disclosed a serious violation of all requirements of the law: [toilets and sinks] are not installed, there are no sanitary hygiene products in the stuffy cells; the inmates are served only one meal a day, etc. As regards the medical assistance, ... the only medicine available is analgin and citramonum with the passed expiration date.”

II. RELEVANT DOMESTIC LAW

13. The Federal Law on Detention of Suspects and Defendants charged with Criminal Offences, in effect, as amended, since 21 June 1995, provides that suspects and defendants detained pending investigation and trial are held in remand prisons (Article 8). They may be transferred to temporary detention facilities if so required for the purposes of investigation or trial and if transportation between a remand prison and a police station or courthouse is not feasible because of the distance between them. Such detention in a temporary detention facility may not exceed ten days a month (Article 13). Temporary detention facilities in police stations are designated for the detention of persons arrested on suspicion of a criminal offence (Article 9).

14. According to the Internal Regulations for Temporary Detention Facilities, approved by Order No. 41 of the Ministry of the Interior of the Russian Federation on 26 January 1996, as amended (in force at the time of the applicant's detention), the living space per detainee should be four square metres (paragraph 3.3 of the Regulations). It also made provision for cells in temporary detention facilities to be equipped with a table, toilet, water tap, shelf for toiletries, drinking water tank, radio and rubbish bin (paragraph 3.2 of the Regulations). Furthermore, the Regulations made provision for detainees to have outdoor exercise for at least one hour a day in a designated exercise area (paragraphs 6.1, 6.40, and 6.43 of the Regulations).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

15. The applicant complained that the conditions of his detention in the temporary detention centre in Bagratiyonovsk, Kaliningrad Region, had been incompatible with the standards set forth in 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

16. The Court notes that the application 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

17. The Government acknowledged that the applicant’s rights set out in Article 3 of the Convention have been infringed.

18. The applicant challenged the veracity of the information submitted by the Government as regards the average number of inmates detained at the temporary detention centre. According to the four excerpts from the temporary detention centre population register submitted by the applicant, the total number of inmates detained there varied on those dates from nine to eleven.

19. The Court reiterates that Article 3 of the Convention 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 *Balogh v. Hungary*, no. 47940/99, § 44, 20 July 2004, and *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). The Court has consistently stressed that the suffering and humiliation involved must, for a violation to be found, go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his 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).

20. Turning to the circumstances of the present case, the Court observes that the Government, in principle, did not challenge the veracity of the applicant's allegations concerning the conditions of his detention in the temporary detention centre. The cell in which the applicant was held on numerous occasions had been designed for short-term detention not exceeding ten days. Accordingly, it lacked the basic amenities indispensable for extended detention. The cell did not have a window and offered no access to natural light or air. There was no toilet or sink. Admittedly, during the period in question the applicant spent certain time outside the cell participating in investigative activities or court hearings. However, on certain days he was confined to his cell for practically twenty-four hours a day without any possibility to pursue physical and other out-of-cell activities.

21. In the Court's opinion, such conditions of detention caused the applicant considerable mental and physical suffering diminishing his human dignity, which amounted to degrading treatment within the meaning of Article 3 of the Convention.

22. The Court further notes that the Government have acknowledged that the applicant had been detained in conditions incompatible with the standards set forth in Article 3 of the Convention.

23. Having regard to its established case-law on the issue and the circumstances of the present case, the Court does not see any reason to hold otherwise. There has been accordingly a violation of Article 3 of the Convention on account of the degrading conditions of the applicant's detention in the temporary detention centre in Bargationovsk, Kaliningrad Region, during multiple periods between 26 July 2006 and 7 August 2007.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. 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

25. The applicant claimed 15,000 euros (EUR) in respect of non-pecuniary damage.

26. The Government considered the applicant's claims excessive.

27. The Court observes that the applicant was detained in appalling conditions in contravention of Article 3 of the Convention. The Court considers that the applicant's suffering and frustration cannot be compensated for by the mere finding of a violation. However, the Court accepts the Government's argument that the specific amount claimed appears excessive. Making its assessment on an equitable basis, it awards the applicant EUR 5,000, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

28. The applicant also claimed 50,000 Russian roubles for the costs and expenses incurred before the Court.

29. The Government did not comment

30. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 850 for the proceedings before the Court.

C. Default interest

31. 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 application admissible;
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 from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention,, the following amounts, to be converted into the currency of the respondent State, at the rate applicable at the date of settlement:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

- (ii) EUR 850 (eight hundred fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 24 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro-Lefèvre
President