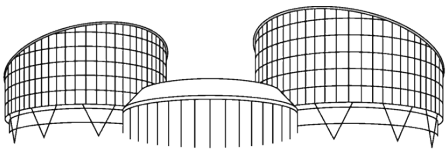

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF DMITRIYEV v. RUSSIA

(Application no. 40044/12)

JUDGMENT

STRASBOURG

24 October 2013

This judgment is final but it may be subject to editorial revision.

In the case of Dmitriyev 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 1 October 2013,

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

PROCEDURE

1. The case originated in an application (no. 40044/12) 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 Aleksandr Anatolyevich Dmitriyev ("the applicant"), on 16 April 2012.

2. 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 21 December 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1974 and lives in Tomsk.

A. Conditions of the applicant's detention

5. By judgment of 13 November 2008, the Kirovskiy District Court of Tomsk convicted the applicant and sentenced him to eleven years' imprisonment in a high-security correctional facility.

6. From 18 November 2005 to 26 December 2006, from 4 December 2007 to 16 February 2009 and from 16 June to 7 July 2010 the applicant was held in remand prison IZ-70/1 of Tomsk.

7. In the latter period, the applicant was brought to the Tomsk prison in connection with a hearing on his application for supervisory review of his conviction. He was placed in cell 218, known as a "transit cell". It measured 14 square metres and was equipped with 4 three-tier beds. The cell population varied from 9 to 12 inmates. There was one small window which was additionally covered with two layers of bars. The inmates were allowed one hour of outdoor exercise in the courtyards that measured from 18 to 25 square metres and were surrounded with three-metre-high walls.

8. On 20 July 2010 the applicant complained about inadequate conditions of detention to the Tomsk regional prosecutor. By letter of 27 August 2010, the acting prosecutor acknowledged that the prison was overcrowded.

B. Civil proceedings for compensation

9. On 16 March 2011 the applicant sued the Ministry of Finance of the Russian Federation for non-pecuniary damage he had incurred on account of the inadequate conditions of detention. He also sought leave to appear before the court.

10. By letter of 2 June 2011, a judge of the Kirovskiy District Court of Tomsk asked the director of remand prison IZ-70/2 to deliver a summons to the applicant and –

> "... to explain to him that neither the Code of Civil Procedure nor other federal acts allow the individuals who are serving a court-imposed sentence in correctional facilities, to appear in person before courts that hear their civil claims (whether they are plaintiffs, defendants, third parties or other parties). The Penitentiary Code provides for transporting detainees from correctional facilities to remand prisons only if it is necessary to ensure their participation in criminal proceedings (Article 77.1).
>
> It follows that the courts have no obligation to bring these individuals to the places where their civil claims are being heard with a view to ensuring their participation in such hearings."

11. On 23 June 2011 the Kirovskiy District Court heard the applicant's civil claim, with the participation of a representative of the Ministry of Finance and a representative of the remand prison. It noted that the applicant had been duly notified of the time and place of the hearing but had not appointed a representative. The District Court examined documents from the remand prison, heard testimony by a prison official and found that the allegation of overcrowding had been proven but that all other allegations by the applicant, including those relating a shortage of sleeping place and bed linen, poor ventilation and tiny exercise yards, were unfounded. It awarded the applicant 15,000 Russian roubles (RUR).

12. On 6 September 2011 the Tomsk Regional Court quashed the judgment on procedural grounds, nothing that the District Court had proceeded to hearing the case without ascertaining that the applicant had

indeed received the summons. It directed that the District Court should hold a new examination of the claim.

13. By letter of 16 September 2011 addressed to the director of the remand prison, the District Court judge informed the applicant that the hearing would take place on 14 October 2011 and that his request for leave to appear was rejected because the relevant laws did not make provision for participation of detainees in civil proceedings.

14. On 5 October 2011 the applicant submitted an addendum to his statement of claim. He contested the submissions that the representative of the remand prison made at the previous hearing, and asked the court to order the remand prison to produce further documentary evidence and to hear his former co-detainees K. and P.

15. At the hearings on 14 and 28 October 2011 the District Court heard the representatives of the Ministry of Finance and the remand prison and the witness K., as suggested by the applicant. It found in particular that cell 218 measured 13.9 square metres and accommodated up to 12 detainees. By judgment of 28 October 2011, the District Court again awarded the applicant RUR 15,000, supplying the following justification of the amount:

> "The court takes into account the factual circumstances, in which the non-pecuniary damage was caused, the personality and individual characteristics of the plaintiff (multiple convictions) and also notes that no evidence of physical suffering on account of [the overcrowding] has been produced before the court."

16. In his statement of claim, the applicant complained about the rejection of his request for leave to appear, about misrepresentation of the testimony by the witness K. and the small amount of the award.

17. On 10 January 2012 the Tomsk Regional Court upheld the judgment but increased the award to RUR 30,000, having regard to the "circumstances of the case in their entirety, the duration of the violation and its nature, [and] the degree of the plaintiff's physical and moral suffering". The Regional Court held that there was no violation of the applicant's procedural right on account of his absence since he had been duly notified of the date and place of the hearing but had not appointed a representative.

C. Proceedings before the Court

18. On 28 July 2010 the applicant submitted a completed application form, in which he alleged violations of Article 6 of the Convention in the criminal proceedings against him. The application was given number 54029/10.

19. On 2 November 2010 the applicant sent a letter to the Court, stating his wish to complain, among other matters, about the conditions of his detention in cell 218 of prison IZ-70/1 in the period from 16 June to 7 July 2010. He enclosed a copy of the prosecutor's letter of 27 August 2010.

20. On 27 January 2011 the applicant submitted an addendum to his application which contained in particular a detailed description of the conditions of his detention in cell 218.

21. On 16 April 2012 the applicant introduced a new addendum to his application. He alleged that the conditions of his detention in prison IZ-70/1, starting from 18 November 2005 and until 16 February 2009, had been in breach of Article 3 of the Convention.

22. By letter of 29 June 2012, the Court informed the applicant that his complaints concerning the allegedly inhuman conditions of detention in the Tomsk prison had been severed from the rest of his application and given number 40044/12. The applicant was requested to fill out an application form and to return it no later than 24 August 2012.

23. On 10 August 2012 the applicant submitted the completed application form.

II. RELEVANT DOMESTIC LAW

24. The Russian Code of Civil Procedure contains a list of situations which may justify the re-opening of a case on account of newly discovered circumstances. A judgment of the European Court of Human Rights finding a violation of the European Convention on Human Rights in a case in respect of which an applicant has lodged a complaint with the Court should be considered a new circumstance warranting a re-opening (Article 392 § 4 (4)).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

25. The applicant complained that the conditions of his detention in prison IZ-70/1 of Tomsk amounted to the inhuman and degrading treatment prohibited under 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

26. The Government submitted that the complaint was belated. The applicant had been transferred out of the detention facility on 7 July 2010; however, he did not mention the complaint under Article 3 of the

Convention in his application form of 28 July 2010. Although he stated his intention to lodge such a complaint in his letter of 2 November 2010, his subsequent submissions of 7 February 2011 did not meet the requirements of Rules 45 and 47 of the Rules of Court and the Practice Direction on the Institution of Proceedings. The Government concluded that the date of the application form of 16 April 2012 must be taken as the date of introduction of the complaint. The final decision on the applicant's claim for compensation could not re-trigger the running of the six-month time-limit since the Court has already found that it was not an effective remedy to be exhausted (here they referred to *Norkin v. Russia* (dec.), no. 21056/11, 5 February 2013).

27. The applicant replied that he had first introduced his complaint about the conditions of detention in the Tomsk remand prison on 2 November 2010. It was later followed on by the submission of an addendum to the application form on 7 February 2011. Being incarcerated and without legal background or access to legal assistance, he genuinely believed that he would be able to obtain compensation in civil proceedings before domestic courts. He also believed that a civil claim was part of the exhaustion requirement. The applicant concluded that his complaint was not belated.

28. Rule 47 of the Rules of Court provides in particular as follows:

> "1. Any application under Article 34 of the Convention shall be made on the application form provided by the Registry, unless the President of the Section concerned decides otherwise...
>
> 5. The date of introduction of the application for the purposes of Article 35 § 1 of the Convention shall as a general rule be considered to be the date of the first communication from the applicant setting out, even summarily, the subject matter of the application, provided that a duly completed application form has been submitted within the time limits laid down by the Court. The Court may for good cause nevertheless decide that a different date shall be considered to be the date of introduction."

29. The relevant parts of the Practice Direction on the Institution of Proceedings provide as follows:

> "3. An application should normally be made on the form referred to in Rule 47 § 1 of the Rules of Court and be accompanied by the documents and decisions mentioned in Rule 47 § 1(h).
>
> Where an applicant introduces his application in a letter, such letter must set out, at least in summary form, the subject matter of the application in order to interrupt the running of the six-month rule contained in Article 35 § 1 of the Convention.
>
> ...
>
> 13. An applicant who already has an application pending before the Court must inform the Registry accordingly, stating the application number."

30. The Court observes that on 28 July 2010 the applicant submitted an application form which, however, did not contain any mention of the complaint about the conditions of detention in the Tomsk prison. That complaint was raised for a first time in his letter of 2 November 2010 which set out, in a summary form, the nature of his grievance and enclosed relevant documents. The letter also stated the number of his pending application. Since that letter was joined to the already existing application, the Court did not consider it necessary to ask the applicant to fill out a separate application form.

31. On 7 February 2011 the applicant submitted an addendum to his original application form which elaborated on his complaint about the conditions of detention. Read together with the application form of 28 July 2010, the addendum contained all the information required under Rule 47 § 1 of the Rules of Court, whereas the supporting documents had already been enclosed with the letter of 2 November 2010. In accordance with its established practice and Rule 47 § 5 of the Rules of Court, under these circumstances the Court considers the date of the introduction of this complaint to be the date of the first communication of 2 November 2010 which indicated his intention to lodge a complaint about the conditions of his detention in the Tomsk prison in the period from 16 June to 7 July 2010. It follows that the complaint was introduced within six months of the date on which the applicant's detention in that facility had ended.

32. The Court further observes that the applicant's detention in the Tomsk prison was not continuous but was effected during three distinct periods. Following his conviction, in early 2009 he was sent to serve his sentence in a correctional colony. 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 (see *Mitrokhin v. Russia*, no. 35648/04, § 36, 24 January 2012, and *Yartsev v. Russia* (dec.), no. 13776/11, § 30, 26 March 2013). Admittedly, in the instant case the applicant was brought back to the same prison in connection with a hearing in the framework of the same criminal proceedings. However, it must be recalled that supervisory review is an extraordinary remedy in Russian legal system. Accordingly, the applicant may have or have not been summoned to the hearing and his accommodation in the same prison more than one year after his conviction had become final and after he had started serving the sentence was an incidental occurrence rather than an anticipated continuation of the criminal proceedings against him. In these circumstances, the Court finds that the applicant's detention prior to 16 February 2009 and his detention in 2010

did not constitute a "continuing situation" and must be viewed as distinct periods of detention.

33. On 16 April 2012 the applicant complained, for a first time, about the conditions of his detention in the period prior to 16 February 2009. This complaint was raised more than three years after the end of the period in question but within six months of the final judgment by the Tomsk Regional Court on the applicant's claim for compensation for the inadequate conditions of his detention. The Court reiterates its constant position that, in the present state of Russian law, a civil action for compensation for inadequate conditions of detention cannot be 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). A complaint about the inadequate conditions of detention must accordingly be introduced within six months of the day following the applicant's transfer out of the detention facility (see *Norkin* (dec.), cited above). The applicant should have been aware of the ineffectiveness of the judicial avenue he had made use of, before he lodged his application with the Court. The final disposal of his claims for compensation cannot be relied upon as starting a fresh time-limit for his complaints.

34. In the light of the above considerations, the Court finds as follows:

(a) the complaint about the conditions of detention in the period prior to 16 February 2009 is 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;

(b) the complaint about the conditions of detention in 2010 is not belated or inadmissible on any other grounds and must therefore be declared admissible.

B. Merits

35. The applicant maintained his complaints.

36. The Government did not make submissions on the merits.

37. The Court observes that the overcrowding in cell 218 in which the applicant had been detained from 16 June to 7 July 2010 was acknowledged by the supervising prosecutor and also established in the civil proceedings for compensation. Cell 218 measured approximately 14 square metres and accommodated up to 12 inmates.

38. Such an extreme overcrowding – the detainees had at their disposal less than two square metres of floor surface – is sufficient of itself to enable the Court to find a violation of Article 3 (see *Ananyev and Others*, cited above, §§ 145-148). It is superfluous to examine whether or not the applicant had an individual sleeping place at all times.

39. There has accordingly been a violation of Article 3 of the Convention on account of the inhuman and degrading conditions of the

applicant's detention in remand prison IZ-70/1 in the period from 16 June to 7 July 2010.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

40. The applicant complained that there had been a breach of his right to a fair hearing on account of the domestic courts' refusal of his requests for leave to appear, an incomplete recording of the testimony by the witness K., and a negligible amount of the award. Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair and public ... hearing ... by [a] ... tribunal ..."

A. The Government's request for the complaint to be struck out under Article 37 of the Convention

41. On 17 April 2013 the Government submitted a unilateral declaration inviting the Court to strike out this complaint. They acknowledged that there was a violation of the applicant's right under Article 6 § 1 of the Convention on account of his absence from the civil proceedings. They offered to pay him compensation and invited the Court to accept the declaration as "any other reason" justifying the striking out of the complaint in accordance with Article 37 § 1 (c) of the Convention.

42. The applicant objected to the striking-out of this complaint on the basis of the Government's unilateral declaration.

43. Having studied the terms of the Government's declaration, the Court is satisfied that the Government acknowledged a violation of the applicant's right to a fair hearing on account of his absence from the civil proceedings and also offered compensation in the amount which was not unreasonable in comparison with the awards made by the Court in similar cases (see, for recent examples, *Bortkevich v. Russia*, no. 27359/05, § 75, 2 October 2012, and *Rozhin v. Russia*, no. 50098/07, § 39, 6 December 2011).

44. The Court further observes that the Government's declaration does not contain any undertaking relating to an eventual re-opening of the proceedings and re-examination of the applicant's claim in full compliance with the fairness requirements set out in Article 6 of the Convention. In this regard, the Court reiterates that the nature of the alleged violation in the present case is such that it would not be possible to eliminate the effects of the infringement of the applicant's right to a fair hearing without re-opening the domestic proceedings (see *Rozhin*, § 23, cited above). It further notes that Article 392 of the Code of Civil Procedure provides for re-opening the proceedings in case of a judgment by the European Court finding a violation of the Convention or its Protocols. However, there is no apparent provision

of Russian law that would allow the courts to re-open the proceedings on account of a decision by the Court to strike a case out of its list of cases (*ibid*.).

45. Without prejudging its decision on the admissibility and merits of the case, the Court considers that the declaration, as presently formulated, does not allow it to conclude that respect for human rights as defined in the Convention and its Protocols does not require it to continue its examination of the complaint (see *Rozhin*, § 24, with further references).

46. This being so, the Court rejects the Government's request under Article 37 of the Convention and will accordingly pursue its examination of the admissibility and merits of the complaint.

B. Admissibility

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

C. Merits

48. The Court notes that the applicant repeatedly requested the domestic court to grant him leave to appear and to make oral submissions relating to the conditions of his detention in a remand prison. The courts refused him such leave, citing the provisions of Russian law which prevented incarcerated individuals from participating in civil proceedings in any capacity.

49. The Court has previously found a violation of the right to a fair hearing in many cases against Russia, in which Russian courts refused leave to appear in court to imprisoned applicants who had wished to make oral submissions on their civil claims (see *Bortkevich* and *Rozhin*, both cited above, and also *Roman Karasev v. Russia*, no. 30251/03, §§ 65-70, 25 November 2010; *Artyomov v. Russia*, no. 14146/02, §§ 204-208, 27 May 2010, and *Shilbergs v. Russia*, no. 20075/03, §§ 107-113, 17 December 2009). The Court consistently held that given the nature of the applicants' claims, which were, to a significant extent, based on their personal experience, an effective, proper and satisfactory presentation of the case could have only been secured by the applicants' attendance at the hearings. The applicants' testimony pertaining to the facts of the case, of which only they themselves had first-hand knowledge, would have constituted an indispensable part of the plaintiffs' presentation of the case.

50. Having regard to its previous case-law and the circumstances of the present case, the Court finds that by refusing to grant the applicant leave to appear and make oral submissions at the hearing on his civil claim which largely reflected his personal experience, and by failing to consider an

alternative arrangement for him to be heard in person – such as for instance conducting an off-site hearing or a hearing by a video-link – the domestic courts deprived the applicant of the opportunity to present his case effectively.

51. There has therefore been a violation of Article 6 § 1 of the Convention on account of the authorities' failure to afford the applicant an adequate opportunity to present his case effectively before the civil courts.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

52. 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

53. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage.

54. The Government submitted that the claim was excessive and that the amount of compensation should not, in any event, be in excess of EUR 16,000 (they referred to *Kasarakin and Others v. Russia* (dec.), no. 31117/07, 6 December 2012).

55. In the circumstances of the present case, having regard in particular to the duration of the applicant's detention which has been found to contravene Article 3 of the Convention, the Court considers that the applicant should be awarded EUR 5,000 in respect of non-pecuniary damage.

56. The Court further reiterates that when an applicant suffered the infringement of his rights guaranteed by Article 6 of the Convention, he should, as far as possible, be put in the position in which he would have been had the requirements of that provision not been disregarded, and that the most appropriate form of redress would, in principle, be the reopening of the proceedings, if requested (see *Bortkevich*, § 76, and *Rozhin*, § 40, both cited above, with further references).

B. Costs and expenses

57. The applicant did not make a claim for costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

58. 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 complaints about the conditions of the applicant's detention in 2010 and about his absence from the compensation proceedings admissible and the remainder of the application inadmissible;

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

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 5,000 (five thousand euros) plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State 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;

5. *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.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President