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

FIRST SECTION

DECISION

Application no. 8696/12
Dmitriy Vasilyevich ZHIRKO
against Russia

The European Court of Human Rights (First Section), sitting on 17 September 2013 as a Committee composed of:

Khanlar Hajiyev, President,
Julia Laffranque,
Erik Møse, judges,
and André Wampach, *Deputy Section Registrar,*

Having regard to the above application lodged on 24 June 2009,

Having regard to the comments submitted by the respondent Government and the comments in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Dmitriy Vasilyevich Zhirko, is a Russian national, who was born in 1980 and lives in Artem.

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. The applicant was a defendant in criminal proceedings. From 10 August 2007 to 13 October 2008 he was held in police temporary detention centre (IVS) of Spassk-Dalniy in the Primorskiy Region. According to the applicant, the conditions of his detention were characterised by overcrowding and restricted access to natural light and air.

4. Some time later the applicant brought a civil claim for compensation in connection with inadequate conditions of his detention in the IVS. By final judgment of 2 March 2010, the Primorskiy Regional Court rejected Mr Zhirko's claim.

5. On 20 November 2007 the Spassk Town Court of the Primorskiy Region convicted him of aggravated theft. The conviction was upheld on appeal on 16 January 2008 by the Primorskiy Regional Court.

COMPLAINTS

6. The applicant complained under Article 3 of the Convention about the conditions of his detention in the remand prison.

7. The applicant also complained under Articles 6 and 13 of the Convention that the conditions of his detention did not allow him to prepare for hearings in his criminal case.

THE LAW

8. The applicant's first complaint is related to the conditions of his detention in police custody. Having regard to the fact that the respective period of his detention had ended more than six months before his application was lodged with the Court, the Court must determine whether the applicant complied with the six-month requirement imposed by Article 35 of the Convention.

9. The Government submitted that, since the adoption of the *Kalashnikov* judgment (see *Kalashnikov v. Russia*, no. 47095/99, ECHR 2002-VI), the Court had consistently maintained its position that there had been no effective remedy in the Russian legal system for the complaints relating to inadequate conditions of detention. That case-law was accessible to the applicant and he should have been aware of its existence. In those circumstances, he should have lodged his application within six months of the end of the situation he complained about, that is, the period of his detention in police custody.

10. The applicant replied that he had lodged his application within six months of the domestic courts' final decision on his compensation claims. Accordingly, it was not belated.

11. The Court reiterates that the six-month period normally runs from the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset however that no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of (see *Artyomov v. Russia*, no. 14146/02, § 108, 27 May 2010, with further references).

12. The Court further recalls its constant position that given the present state of Russian law, a civil action for compensation for inadequate conditions of detention has not been 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). The Court's case-law on the absence of an effective remedy for complaints concerning inadequate conditions of detention being sufficiently established, the applicant had at his disposal a period of six months following his departure from the IVS, during which he should have ascertained the conditions on the admissibility of an application to the Court and, if necessary, obtained appropriate legal advice. However, he did not submit his application within that time period.

13. The Court has recently examined a similar situation and reached the conclusion that the complaint about the inadequate conditions of detention should have been introduced within six months of the day following the applicant's transfer out of the detention facility (see *Norkin v. Russia* (dec.), no. 21056/11, 5 February 2013). There are no arguments or factual information in the present case that would warrant a departure from the Court's findings in that decision. 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.

14. It follows that his complaints about allegedly inadequate conditions of detention are 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.

15. The applicant also raised additional complaints about alleged deficiencies in the criminal proceedings, to which he was a party. The Court has given careful consideration to these grievances in the light of all the material in its possession and considers that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President