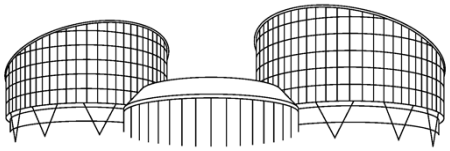

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF KARBYSHEV v. RUSSIA

(Application no. 26073/09)

JUDGMENT

STRASBOURG

13 March 2014

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Karbyshev v. Russia,

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

Khanlar Hajiyev, *President,*
Julia Laffranque,
Dmitry Dedov, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having deliberated in private on 18 February 2014,

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

PROCEDURE

1. The case originated in an application (no. 26073/09) 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 Vyacheslav Viktorovich Karbyshev ("the applicant"), on 11 April 2009.

2. The Russian Government ("the Government") were represented by their Agent, 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

4. The applicant was born in 1985 and lived in Ust-Ilimsk until his arrest.

THE CIRCUMSTANCES OF THE CASE

A. Criminal proceedings against the applicant

5. On 13 June 2007 the Ust-Ilimsk Town Court of the Irkutsk Region found the applicant guilty of inflicting grave bodily harm which caused the death of the victim and sentenced him to a prison term. The applicant appealed, claiming in general terms that the proceedings had been unfair, and that the court had applied domestic law and assessed the evidence erroneously. He further alleged that the court had failed to examine two

witnesses and had delivered its judgment in the absence of one of the co-defendants.

6. On 1 October 2007 the Irkutsk Regional Court quashed the conviction on appeal and remitted the case to the first-instance court for a fresh examination.

7. On 20 March 2009 the Ust-Ilimsk Town Court found the applicant guilty of the same offence and gave him a custodial sentence. The applicant appealed. Giving no further details, he alleged that the Town Court had applied domestic law and assessed the evidence erroneously, and that it had rejected the majority of the motions lodged by the defence. He further complained about the change of his counsel during the proceedings.

8. On 5 October 2009 the Irkutsk Regional Court rejected the applicant's complaint and upheld the judgment on appeal.

B. Conditions of detention

9. Between 26 September 2005 and 9 January 2009 the applicant was detained in remand prison IZ-38/2 of the Irkutsk Region. The prison was severely overcrowded. Thus, cell 95 measuring 24 sq. m was equipped with 8 sleeping places and accommodated up to 17 inmates. In addition, the applicant claimed that he had contracted tuberculosis during his stay there.

10. From 23 February to 27 April 2008 the applicant was transferred to remand prison IZ-38/1 of Irkutsk and from 17 July to 3 August 2008 he was transferred to penitentiary medical facility LIU-27 in the Irkutsk Region for treatment of his tuberculosis.

THE LAW

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

11. On 24 October 2012 the Government submitted a unilateral declaration inviting the Court to strike out the application. They acknowledged that between 3 August 2008 and 9 January 2009 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. The applicant did not comment.

12. 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 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 *Sorokin v. Russia*, no. 67482/10, 10 October 2013).

13. 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 VIOLATIONS OF ARTICLE 3 OF THE CONVENTION

14. The applicant complained under Article 3 of the Convention that the conditions of his detention in prison IZ-38/2 had been inhuman and degrading and that he had contracted tuberculosis during his stay there. Article 3 of the Convention reads as follows:

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

A. Conditions of detention

1. Admissibility

15. The Government submitted that the applicant's detention in prison IZ-38/2 could not be regarded as a continuous situation given that he had been transferred first to another remand prison and then 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 3 August 2008 to 9 January 2009. The Government referred to the judgment in the case of *Mitrokhin v. Russia* (no. 35648/04, 24 January 2012). The applicant did not comment.

16. 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).

17. The Court recalls that in the judgment *Ananyev and Others v. Russia* (cited above) it has established that the problem of inhuman and degrading conditions of detention in Russian remand prisons, in particular, of their overpopulation, was not limited to a certain facility or even a certain region, but rather was structural and inherent to the majority of the Russian pre-trial detention facilities.

18. The Court notes that the Government did not submit any evidence proving that the conditions of the applicant's detention in remand prison IZ-38/1 from 23 February to 27 April 2008 were substantially different from those in IZ-38/2, and in the light of its findings in the *Ananyev and Others* case, it sees no grounds to make such an assumption. It follows that the applicant's transfer to remand prison IZ-38/1 of Irkutsk did not interrupt the "continuing situation" as regards the conditions of his detention.

19. Turning next to the applicant's transfer to medical facility LIU-27, the Court notes that he spent there just seventeen days from 17 July to 3 August 2008. 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 the short period of his absence from the prison had no incidence on the continuous nature of his detention (see *Sorokin v. Russia*, cited above, § 27).

20. Considering the above, the Court rejects the Government's argument relating to the application of the six-month rule to the earlier period of the applicant's detention.

21. 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.

2. Merits

22. The Government acknowledged that the applicant's conditions of detention from 3 August 2008 to 9 January 2009 did not comply with the requirements of Article 3 of the Convention.

23. 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 lack of any evidence to the contrary, the Court considers that the conditions of the applicant's detention in remand prison IZ-38/2 amounted to inhuman and degrading treatment.

24. There has accordingly been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention from 26 September 2005 to 9 January 2009.

B. Contraction of tuberculosis

25. The Court has found on several occasions that the fact of contracting tuberculosis in a penitentiary institution, although disturbing, does not in itself imply a violation of Article 3 of the Convention. What matters most is whether he received proper and sufficient treatment for it (see, for example, *Vasyukov v. Russia*, no. 2974/05, § 66, 5 April 2011).

26. It transpires from the case file that the applicant was not only treated in a hospital (see paragraph 10 above), but also provided with medical care in the remand prison. There is no evidence that he has ever complained about the quality of that treatment.

27. This complaint is therefore manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 3 (b) OF THE CONVENTION

28. The applicant complained next that he could not adequately prepare for trial because of the poor conditions of his detention. The applicant referred to Article 6 § 3 (b) of the Convention which reads as follows:

> "3. Everyone charged with a criminal offence has the following minimum rights:
> ...
> (b) to have adequate time and facilities for the preparation of his defence..."

29. The Court notes that the applicant did not raise that complaint before the domestic courts either during the first or during the second rounds of the criminal proceedings against him (see paragraphs 5 and 7 above). It follows that the complaint is inadmissible due to non-exhaustion of domestic remedies in accordance with Article 35 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed compensation in respect of non-pecuniary damage. He left its amount at the Court's own discretion.

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

33. The Court, having regard to its case-law in similar cases, awards the applicant 11,875 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

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

C. Default interest

35. 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 regarding 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 11,875 (eleven thousand eight hundred seventy-five 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.

Done in English, and notified in writing on 13 March 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President