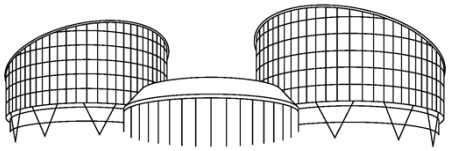

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ZHULIN v. RUSSIA

(Application no. 33825/10)

JUDGMENT

STRASBOURG

13 March 2014

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

In the case of Zhulin 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. 33825/10) 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 Sergey Vladimirovich Zhulin ("the applicant"), on 14 May 2010.

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 17 January 2012 the application was communicated to the Government.

4. On 13 April 2012 the Government submitted a unilateral declaration inviting the Court to strike out the application. They acknowledged that a part of the applicant's detention did not comply with the requirements of Article 3 of the Convention and offered to pay a sum of money. They further submitted that the complaints about the remaining period of the detention were inadmissible.

5. On 5 March 2013 the Court decided not to accept the unilateral declaration as it did not cover the entire period of the applicant's detention. It invited the Government to submit observations on the admissibility and the merits of the case.

THE FACTS

6. The applicant was born in 1971 and lives in Nizhniy Novgorod.

THE CIRCUMSTANCES OF THE CASE

A. Criminal proceedings against the applicant

7. On 10 December 2008 the applicant was charged with an aggravated fraud and remanded in custody.

8. On 4 February 2010 the Arzamas Town Court of the Nizhniy Novgorod Region found the applicant guilty and sentenced him to five years and six months' imprisonment and a fine. The applicant appealed, complaining about a number of procedural irregularities and allegedly erroneous assessment of the evidence.

9. On 9 April 2010 the Nizhniy Novgorod Regional Court upheld the applicant's conviction, reducing the sentence by one month.

B. Conditions of detention

10. During several periods between 10 December 2008 and 6 February 2010 the applicant was held in the temporary detention centre (IVS) of Arzamas in the Nizhniy Novgorod Region. He was regularly taken out of that facility either to take part in the trial or to undergo medical treatment in a prison hospital.

11. The conditions of the applicant's detention in IVS of Arzamas were characterised by the following elements: the applicant's cell 6 in the basement measured 5.3 sq. m and accommodated two inmates, there was no window, table or bench, the toilet was not seaprated from the rest of the cell by a partition. In addition, no outdoor exercise was available to the detainees.

12. The applicant brought an action in connection with poor conditions of detention in IVS of Arzamas. By the judgment of 18 February 2010, the Arzamas Town Court found that the applicant had been detained in an overcrowded cell located in the basement that had no windows. The applicant was not taken outdoors. It held that the conditions of the applicant's detention during that period had fallen short of the requirements of Russian law.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

13. The applicant complained that the conditions of his detention in the Arzamas IVS between 10 December 2008 and 6 February 2010 had violated 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

14. The Government submitted that the applicant's detention in the IVS could not be regarded as a "continuous situation" as it had been punctuated with transfers to the domestic courts and to the prison hospital. Accordingly, they considered that the Court was competent, by virtue of the six-month rule, to take into account only the most recent period of the applicant's detention starting from 30 November 2009. The applicant maintained his complaints.

15. The Court has previously found that short periods of an applicant's temporary absence from a specific facility have no incidence on the continuous nature of his detention. It is especially true when an individual is remanded in custody pending trial and is taken out of a facility for interviews and other procedural acts or for medical treatment only to be returned there after a short period of time (see *Sorokin v. Russia*, no. 67482/10, § 27, 10 October 2013).

16. In the instant case, the applicant's transfers to courts and to the medical facility, after which he was to return to the IVS, was obviously of a temporary nature. The Court accordingly finds that the periods of his absence from the IVS had no incidence on the continuous nature of his detention and rejects the Government's argument relating to the application of the six-month rule to its earlier periods.

17. 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

18. The Government acknowledged that the applicant's conditions of detention during several periods between 30 November 2009 and 6 February 2010 did not comply with the requirements of Article 3 of the Convention.

19. Having regard to the applicant's factual allegations, which were undisputed by the Government, to the findings of the domestic courts (see paragraph 12 above) and to the Government's acknowledgement relating to the most recent period of the applicant's detention, the Court considers that the conditions of the applicant's detention in the Arzamas IVS amounted to inhuman and degrading treatment.

20. There has accordingly been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in the period between 10 December 2008 and 6 February 2010.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

21. The applicant further complained about various breaches of Article 6 § 1 of the Convention during the criminal proceedings against him. In the light of all the material in its possession and in so far as the matters complained of are within its competence, the Court considers that these grievances do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, the Court rejects them as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

22. 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

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

24. The Government considered that the amount was excessive and contradicted the Court's case-law (here they referred to *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2012, and, *mutatis mutandis*, to *Kasarakin v. Russia and 5 Other Applications* (dec.), no. 31117/07, 6 December 2012). They submitted that in case of finding of a violation of the Convention, the applicant should be awarded no more than EUR 4,000.

25. Having regard to its case-law in similar cases, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

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

C. Default interest

27. 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 5,000 (five thousand 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.

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

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