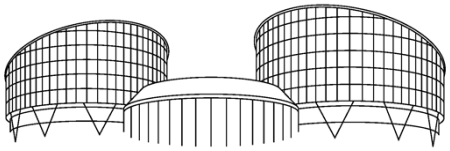

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BERGER v. RUSSIA

(Application no. 66414/11)

JUDGMENT

STRASBOURG

13 March 2014

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

In the case of Berger v. Russia,

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

Khanlar Hajiyev, *President,*
Julia Laffranque,
Erik Møse, *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. 66414/11) 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 Oleg Ottovich Berger ("the applicant"), on 21 September 2011.

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 December 2012 the application was communicated to the Government.

THE FACTS

4. The applicant was born in 1965 and lived in Novokuznetsk until his arrest.

THE CIRCUMSTANCES OF THE CASE

A. Conditions of detention

5. Between 1 March 2005 and 21 September 2011 the applicant was held in remand prison IZ-42/2 in the Kemerovo Region. The prison was overcrowded. Thus, cell 219 measuring 36 sq. m was designed for 12 and housed up to 18 individuals. Since October 2011 the applicant was isolated from the other detainees and kept in virtually solitary confinement conditions. In addition, the applicant claimed that on several occasions he had been beaten by prison wardens.

6. From 12 June to 7 September 2005, from 29 October to 27 November 2009 and from 7 to 15 December 2010 the applicant was transferred from the remand prison to a prison hospital to undergo medical treatment.

B. Related court proceedings

7. It appears that the applicant complained to the regional prosecutor about the conditions of his detention in the remand prison. On an unspecified date he received the prosecutor's reply and challenged it before courts.

8. On 28 April 2011 the Kuznetskiy District Court of Novokuznetsk rejected the applicant's claims.

9. On 21 June 2011 the Kemerovo Regional Court upheld the above judgment on appeal.

THE LAW

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

10. On 11 June 2013 the Government submitted a unilateral declaration inviting the Court to strike out the application. They acknowledged that between 27 November 2009 and 21 September 2011 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.

11. On 19 July 2013 the applicant submitted his comments on the Government's declaration. He disagreed, in particular, with the amount of the proposed compensation, considering it to be insufficient.

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 prison 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 VIOLATION OF ARTICLE 3 OF THE CONVENTION

14. The applicant complained that the conditions of his detention in remand prison IZ-42/2 between 1 March 2005 and 21 September 2011 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

15. The Government submitted that the applicant's detention in prison IZ-42/2 could not be regarded as a continuous situation given that he had been transferred to the medical facility on several occasions (see paragraph 6 above). 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 from 27 November 2009 to 21 September 2011. 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 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 certain procedural acts or for medical treatment only to be returned there after a short period of time (see *Sorokin*, cited above, § 27).

17. In the instant case, the applicant's transfers to the prison hospital, after which he was returned to the remand prison, were obviously of a temporary nature. The Court accordingly finds that the periods of his absence from the remand prison 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.

18. 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

19. The Government acknowledged that the applicant's conditions of detention from 27 November 2009 to 21 September 2011 did not comply with the requirements of Article 3 of the Convention.

20. Having regard to the applicant's factual submissions undisputed by the Government and 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 remand prison IZ-42/2 amounted to inhuman and degrading treatment.

21. There has accordingly been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention between 1 March 2005 and 21 September 2011.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

22. As to the remainder of the application, the Court considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, the Court rejects it as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. 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

24. The applicant claimed 500,000 euros (EUR) in respect of non-pecuniary damage.

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

26. The Court, having regard to its case-law in similar cases, awards the applicant 20,750 euros (EUR) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

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

C. Default interest

28. 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 20,750 (twenty thousand seven hundred fifty 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	Khanlar Hajiyev
Deputy Registrar	President