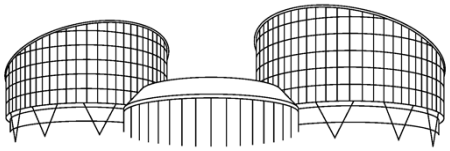

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF MALYUGIN v. RUSSIA

(Application no. 71578/11)

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 Malyugin 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. 71578/11) 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 Andrey Olegovich Malyugin ("the applicant"), on 25 October 2011.

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. The applicant's first letter, submitted on the abovementioned date, described the conditions of his detention in the temporary detention centre of St Petersburg and the Leningradskiy Region (hereafter – the IVS) between 19 May and 1 June 2006, and those of his stay in a remand prison from 1 June 2006 to 19 May 2011.

4. On 13 January 2012 the applicant lodged an application form which additionally presented complaints about the conditions of the applicant's transport between the custodial facilities and the courthouse in the period up until 19 May 2011 and about an alleged lack of reasons for his pre-trial detention and its excessive length.

5. On 13 April 2012 the application was communicated to the Government.

THE FACTS

6. The applicant was born in 1984 and lives in St Petersburg.

7. On 19 May 2006 the applicant was arrested on suspicion of organising a criminal gang and placed in the IVS, which, according to the applicant, was in a poor sanitary condition.

8. On the following day the applicant's detention was authorised by domestic courts. It was regularly prolonged until his release (see paragraph 11 below).

9. On 1 June 2006 the applicant was transferred from the IVS to remand prison IZ-47/1 of St Petersburg, where he stayed until 19 May 2011. The facility was overcrowded. Thus, cell 81 measuring 8 sq. m was equipped with six sleeping places and accommodated up to six inmates; cell 104 measuring 8 sq. m was designed for six detainees and housed up to six individuals; finally, cell 907 measuring 8 sq. m presented six sleeping places and up to six persons who occupied them.

10. On an unspecified date the St Petersburg City Court commenced the examination of the case. From that date, in order to take part in the hearings, the applicant was regularly transported by prison van between the remand prison and the court premises. While in the courthouse, he was placed in a confinement cell. The applicant alleged that both the van and the cell had been overcrowded.

11. On 19 May 2011 the St Petersburg City Court ordered to release the applicant and on 14 June 2011 it acquitted him of all charges.

THE LAW

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

12. On 19 March 2013 the Government submitted a unilateral declaration inviting the Court to strike out the application. They acknowledged that 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.

13. On 18 May 2013 the applicant submitted his comments on the Government's declaration. He disagreed, in particular, with the amount of the proposed compensation.

14. The Court recalls that it may be appropriate in certain circumstances to strike out an application under Article 37 § 1 on the basis of a unilateral declaration by the respondent Government even where the applicant wishes the examination of the case to be continued. Whether this is appropriate in a particular case depends on several factors, such as the scope of the Government's admissions regarding the violation and the redress which they intend to provide to the applicant (see *Rantsev v. Cyprus and Russia*, no. 25965/04, §§ 194-196, ECHR 2010 (extracts)).

15. As to the admission, the Court is satisfied that the Government have fully acknowledged the violation of Article 3 of the Convention.

16. As to the amount of compensation, the Court reiterates that in cases such as this one, the amount must be determined in accordance with the principles set out in the *Ananyev and Others v. Russia* judgment (nos. 42525/07 and 60800/08, §§ 172 and 235-240, 10 January 2012). The Court finds that the proposed redress is not, in the circumstances of the present case, sufficient and, therefore falls short of the above requirements.

17. Without prejudging its decision on the admissibility and merits of the case, the Court considers that the Government's offer 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. 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

18. The applicant complained that the conditions of his detention from 1 June 2006 to 19 May 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

19. 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

20. The Government acknowledged that the applicant's conditions of detention from 1 June 2006 to 19 May 2011 did not comply with the requirements of Article 3 of the Convention.

21. The applicant took note of their admission.

22. Having regard to the applicant's factual allegations of extreme overcrowding, which were undisputed by the Government, and to the Government's acknowledgement of the violation of Article 3, the Court considers that the conditions of the applicant's detention during the above period amounted to inhuman and degrading treatment.

23. There has accordingly been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention from 1 June 2006 to 19 May 2011.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

24. The remainder of the applicant's complaints, raised under Articles 3 and 5 of the Convention, has been introduced out of time and must be rejected in accordance with Article 35 § 1 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. 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

26. The applicant claimed 7,000,000 euros (EUR) in respect of non-pecuniary damage.

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

28. The Court considers the applicant's claim excessive. Having regard to its case-law in similar cases, and, in particular, the principles set out in the *Ananyev and Others* judgment (cited above, §§ 172 and 235-240), it awards the applicant EUR 17,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

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

C. Default interest

30. 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 from 1 June 2006 to 19 May 2011 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 17,000 (seventeen 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	Khanlar Hajiyev
Deputy Registrar	President