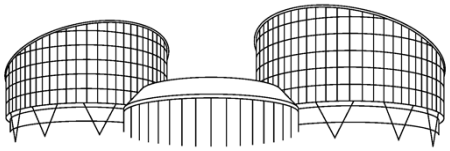

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ZENKOV v. RUSSIA

(Application no. 37858/08)

JUDGMENT

STRASBOURG

30 April 2014

FINAL

30/07/2014

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Zenkov v. Russia,

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

Isabelle Berro-Lefèvre, President,
Elisabeth Steiner,
Khanlar Hajiyev,
Paulo Pinto de Albuquerque,
Erik Møse,
Ksenija Turković,
Dmitry Dedov, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 8 April 2014,

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

PROCEDURE

1. The case originated in an application (no. 37858/08) 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 Anatolyevich Zenkov ("the applicant"), on 20 June 2008.

2. The applicant was represented by Mr A. Khinevich, a lawyer practising in the Amur Region. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the conditions of his pre-trial detention had been incompatible with the standards set forth in the Convention, that his pre-trial detention had been unlawful, and that his ensuing claim for damages had been unsuccessful.

4. On 27 August 2010 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1983 and lives in Blagoveshchensk.

A. Criminal proceedings against the applicant

6. On 11 March 2006 the applicant was arrested on suspicion of fraud. On 12 March 2006 the Blagoveshchensk Town Court of the Amur Region authorised the applicant's detention. As regards the reasons justifying applicant's detention, the court noted as follows:

> "... [the applicant] is charged with moderately serious offences carrying a custodial sentence of up to five years. It can be seen from the materials submitted that [the applicant] is charged with offences committed by a group of people. In such circumstances, the court considers that, if at liberty, [the applicant] might abscond in order to evade justice, or fail to appear for questioning before the investigator or in court in order to obstruct the proceedings, and he might [also] put pressure on witnesses or destroy evidence."

7. The applicant remained in custody pending the investigation and trial. His detention was extended on several occasions.

8. On an unspecified date the investigator reclassified the charges against the applicant to several counts of theft and robbery.

9. On 21 November 2006 the Town Court opened the trial against the applicant and seven other persons.

10. On 29 June 2007 the Town Court extended the pre-trial detention in respect of the applicant and four of the co-defendants until 21 October 2007. In particular, the court noted as follows:

> "Having heard the defence parties, who consider that the preventive detention imposed on [the defendants] can be replaced by a less strict measure, having studied the materials of the case-file, and having regard to the fact that [the defendants] are charged with grievous offences and moderately serious offences against property, the court does not consider that it is possible to [release the defendants pending trial]."

11. On 16 November 2007 the Town Court extended the pre-trial detention in respect of the applicant and the four other persons until 21 January 2008. The court reiterated verbatim its own reasoning from the detention order of 29 June 2007. The applicant appealed, alleging that from 21 October to 16 November 2007 he had been detained without a court order.

12. On 17 December 2007 the Town Court found the applicant guilty as charged and sentenced him to ten years' imprisonment.

13. On 21 February 2008 the Amur Regional Court quashed the detention order of 16 November 2007 on appeal. The court acknowledged that the review by the Town Court of the applicant's detention had been carried out more than three weeks late, in contravention of the applicable domestic rules of criminal procedure. The court further noted that, in view of the applicant's conviction and the imposition of a ten-year sentence, he could not be released and there was no need to examine the issue of his pre-trial detention on the merits.

14. On 31 July 2008 the Regional Court upheld, in substance, the applicant's conviction on appeal and reduced his sentence to eight years' imprisonment. The court quashed the applicant's conviction in respect of one count of theft and remitted the matter for fresh consideration.

15. On 13 October 2008 the Town Court discontinued the criminal proceedings concerning one of the thefts allegedly committed by the applicant. The applicant did not appeal.

16. On 8 June 2009 the Presidium of the Regional Court carried out a supervisory review of the applicant's conviction and reduced his sentence to seven years and six months' imprisonment.

17. On 5 February 2010 the applicant was released on parole.

B. Proceedings concerning compensation for unlawful detention

18. On 29 September 2008 the Town Court dismissed a claim by the applicant for damages in the amount of 150,000 Russian roubles (RUB) in respect of his allegedly unlawful detention from 21 October to 17 December 2007. In particular, the court noted as follows:

> "... in view of the fact that the period [of the applicant's detention from 21 October to 17 December 2007] was set off against the period of the applicant's sentence imposed by the final judgment, the court discerns no ground to find the applicant's detention during the said period unlawful. Nor does the court find the applicant's claim for non-pecuniary damage on account of [his] detention during the said period to be substantiated. Accordingly, the court dismisses the claim."

19. On 19 November 2008 the Regional Court upheld the judgment of 29 September 2008 on appeal.

20. On 25 March 2010 the President of the Regional Court granted the applicant's request for supervisory review of the judgments of 29 September and 19 November 2008.

21. On 19 April 2010 the Presidium of the Regional Court quashed the judgments of 29 September and 19 November 2008 by way of supervisory review and granted the applicant's claims in part. Referring to the Convention and the relevant provisions of the Russian Civil Code, the court confirmed that, having been detained unlawfully, the applicant had a right to compensation, and awarded him RUB 15,000. In particular, it ruled as follows:

> "Given that it has been established that [the applicant] was unlawfully detained [from 21 October to 17 December 2007], and regard being had to the length of such unlawful detention, its subsequent offsetting against the period of imprisonment [the applicant] was sentenced to, and the lack of evidence of any deterioration in the [applicant's] health resulting from his unlawful detention, the Presidium considers it appropriate to adopt a new judgment granting the applicant's claim for damages in part and awarding him compensation in the amount of RUB 15,000."

C. Conditions of the applicant's detention

22. From 11 March 2006 to 11 March 2008, from 19 February to 19 March 2009, and from 28 May to 20 August 2009 the applicant was detained in remand prison no. 28/1 in Blagoveshchensk.

1. The description submitted by the Government

23. The Government's submissions as regards the conditions of the applicant's detention may be summarised as follows:

Period of detention	Cell no.	Cell surface area (square metres)	Number of beds	Number of inmates
From 11 March to 3 April 2006	209	12	2	2-4
From 4 April to 22 May 2006	31	49.2	22	20-31
From 23 May to 8 August 2006	215	18	4	2-6
From 9 August to 26 December 2006	98	8.5	3	1-4
From 27 December 2006 to 11 March 2008	31	49.2	22	17-31
From 19 February to 19 March 2009	31	49.2	22	14-22
From 28 May to 20 August 2009	237	18	4	1-4

24. According to the Government, the applicant was at all times provided with an individual bed and bedding, even though the personal space afforded to him was, on certain occasions, less than the statutory 4 square meters per person. The applicant was provided with three meals per day. The quality of the food was subject to the requisite quality control.

25. All the cells in the remand prison where the applicant was detained were equipped with forced ventilation. The ventilation system was in good working order. Natural ventilation was achieved by means of trickle vents in the windows. The temperature in the cells was between 18 and 24°C. The heating and water supply were in compliance with the applicable standards. The metal bars on the windows did not prevent access to daylight. The artificial lighting in the cells was in compliance with the applicable specifications and was on from 6 a.m. to 10 p.m. At night low-voltage bulbs were used to maintain lighting in the cell.

26. The toilet was located on a 35 cm-high platform in the corner of the cell. It was separated from the living area of the cell by a brick or metal screen 1.75 or 1.65 m high which ensured privacy. The distance between the toilet and the dining table was at least 1.5 metres. The closest sleeping place was located from 1 metre (cell no. 98) to 2.45 metres (cell no. 209) away from the toilet. The distance between the toilet and the sleeping places or dining area was at least 1.6 meters. The cells were regularly cleaned and disinfected.

27. The applicant was allowed daily outdoor exercise. On average, the applicant was confined to his cell for 20-23 hours a day.

2. The description submitted by the applicant

28. The applicant did not contest the data submitted by the Government in respect of the measurements and population of the cells where he had been detained. He added that for 5 days in December 2006 and 15 days in May 2008 he had been detained in disciplinary cells nos. 49 and 61, where he was held in solitary confinement.

29. According to the applicant, he was not provided with an individual bed. The cells in the remand prison were dirty and infested with insects and mice. At times inmates suffering from tuberculosis were held in the cell.

3. The applicant's complaint about the conditions of his detention in the remand prison

30. On an unspecified date the applicant complained to the regional prosecutor's office that the conditions of his detention were appalling. In response to his complaint, the prosecutor's office inspected the remand prison.

31. On 31 October 2008 the prosecutor's office informed the applicant that the irregularities found in the course of the inspection would be rectified. As regards the conditions of detention in the remand prison, the prosecutor summarised the inspection findings as follows:

> "The inspection found numerous violations of [the Federal Law on the detention of suspects and defendants charged with criminal offences] governing ... conditions of detention ... in remand prisons.
>
> The furnishing of the cells is not in compliance with statutory requirements. In some cells the number of tables, benches, cabinets for food storage, and sinks is insufficient in relation to the number of inmates. There is no artificial ventilation. Stands for drinking-water tanks and screens separating the toilet from the rest of the cell are missing. There is no radio. More than 40 per cent of the cells do not have wooden floors. Disinfection measures are not carried out to the full extent (extermination of bed bugs in disciplinary cells, extermination of cockroaches in the kitchen and bakery). The cells are infested with insects (bed bugs, cockroaches) ...
>
> Many cells require complete refurbishment (the walls and ceilings are covered with mould, the plaster is flaking off the walls and ceilings, there are numerous cracks).

Because of the lack of forced ventilation the cells are humid; the air is stuffy and humid. Some cells are not equipped with a radio. The temperature is not in compliance with the applicable standards."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

32. The applicant complained that he had been detained in appalling conditions in remand prison no. IZ-28/1 in Blagoveshchensk, in contravention of Article 3 of the Convention, which reads as follows:

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

33. The Government considered that the applicant had not been subjected to inhuman or degrading treatment in contravention of Article 3 of the Convention. The conditions of his detention in the remand prison had been in compliance with statutory standards as regards hygiene, heating and water supply. However, the Government conceded that the remand prison where the applicant had been detained had been overcrowded and the statutory requirement of 4 square metres per inmate had not always been complied with.

34. The applicant maintained his complaint.

A. Admissibility

35. 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

36. For an overview of the general principles, see the Court's judgment in the case of *Ananyev and Others* (nos. 42525/07 and 60800/08, §§ 139-59, 10 January 2012).

37. Turning to the circumstances of the present case, the Court observes that the parties disagreed as to certain aspects of the conditions of the applicant's detention in remand prison no. IZ-28/1 in Blagoveshchensk during several periods between 11 March 2006 and 20 August 2009.

38. In this connection, the Court takes into account the Government's admission that the remand prison was overcrowded and the personal space

afforded to each inmate was on certain occasions below the statutory minimum of 4 square metres.

39. The Court further observes that, on the basis of the data submitted by the Government which was not contested by the applicant, the applicant was afforded no more than 3 square metres of personal space on average. Sometimes he had as little as 1.59 square metres of personal space (see paragraph 23 above). As a result of such overcrowding, the applicant's conditions of detention did not meet the minimum standard laid down in the Court's case-law (see, among many other authorities, *Ananyev and Others*, cited above, §§ 143-49). Furthermore, according to the information provided by the Government, sometimes the number of inmates held in the cell was greater than the number of sleeping places. Accordingly, the Court finds credible the applicant's allegation that he was not provided with an individual bed. The applicant was confined to an overpopulated cell for 20-23 hours per day.

40. These findings are sufficient for the Court to conclude that the problem of overcrowding had not been rectified by the authorities in the present case at the time of the applicant's detention. The Court acknowledges that sometimes the number of inmates detained with the applicant decreased and the personal space afforded to each of them exceeded 3 square metres. The Court does not, however, regard such occasional fluctuations in the remand prison population as having an attenuating effect on the applicant's situation as a whole.

41. Lastly, the Court takes into account the prosecutor's response to the applicant's complaint about the conditions of detention in the remand prison at the relevant time, which confirmed the applicant's allegations that the cells where he was detained, and the remand prison as a whole, were in a deplorable state. It also notes that the Government did not proffer any explanation for the discrepancy between the prosecutor's findings and the information contained in their observations.

42. In the Court's opinion, the conditions of the applicant's detention must have caused him considerable mental and physical suffering that went beyond the threshold of severity under Article 3 of the Convention. There has therefore been a violation of the said Article on account of the inhuman and degrading conditions of the applicant's detention in remand prison no. IZ-28/1 in Blagoveshchensk during several periods between 11 March 2006 and 20 August 2009.

II. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

43. The applicant complained under Articles 5 and 6 of the Convention that his pre-trial detention from 21 October to 16 November 2007 had been unlawful and that his ensuing claim for damages had been unsuccessful. The

Court will examine the complaint under Article 5 of the Convention, which, in so far as relevant, reads as follows:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation."

A. Admissibility

1. The parties' submissions

44. The Government submitted that the applicant had lost his victim status. In their view, the Russian authorities had expressly acknowledged the violation of his rights under Article 5 and had awarded him commensurate compensation. In particular, they pointed out that on 21 February 2008 the Regional Court had quashed the detention order of 16 November 2007 on appeal. The court had recognised that the applicant's detention had been reviewed belatedly, in contravention of the applicable domestic rules of criminal procedure. Subsequently, the Presidium of the Regional Court had granted in part the applicant's civil claims concerning the unlawfulness of his pre-trial detention during the relevant period and had awarded him RUB 15,000. Alternatively, the Government submitted that the applicant's complaints had been submitted belatedly and should be dismissed for his failure to comply with the six-month rule set out in Article 35 § 1 of the Convention.

45. The applicant considered his complaints admissible.

2. The Court's assessment

(a) The applicant's victim status

46. The Court reiterates that an applicant is deprived of his or her victim status if the national authorities have acknowledged, either expressly or in substance, and then afforded appropriate and sufficient redress for, a breach of the Convention (see, for example, *Scordino v. Italy* (no. 1) [GC], no. 36813/97, §§ 178-93, ECHR 2006-V).

(i) Whether the domestic authorities acknowledged the violation of the applicant's rights

47. As regards acknowledgement of the violation of the applicant's rights under Article 5 of the Convention, the Court notes that, as pointed out by the Government and not disputed by the applicant, on 21 February 2008 the Regional Court found that that the applicant's pre-trial detention during the period under consideration had been unlawful.

48. Accordingly, the Court accepts that the Russian authorities acknowledged the violation of the applicant's rights under Article 5 of the Convention.

(ii) Whether the redress afforded was appropriate and sufficient

49. With regard to the second condition, namely appropriate and sufficient redress, the Court notes that the applicant received pecuniary compensation for the time spent in custody.

50. The first question is whether, in the circumstances, such redress was "appropriate". The Court observes that it has previously examined this issue in an earlier case against Russia, where it found that monetary compensation for damage resulting from unlawful detention constituted "appropriate" redress for an applicant who, by the time he was awarded it, was no longer in detention (see *Trepashkin v. Russia*, no. 36898/03, §§ 71-72, 19 July 2007). The Court sees no reason to depart from such conclusion in the case under consideration. It accepts, accordingly, that the redress afforded to the applicant was appropriate.

51. As to the "sufficiency" of the redress, the Court's task is to consider, on the basis of the material in its possession, what it would have done in the same position (see, *mutatis mutandis*, *Scordino*, cited above, § 211).

52. The Court observes that the Presidium of the Regional Court awarded the applicant RUB 15,000 (approximately EUR 380 at the time) in compensation for non-pecuniary damage on account of his unlawful detention from 21 October to 17 December 2007, that is, for a longer period than that under consideration in the present case. However, the Court notes that this amount is much lower than the amount it generally awards in similar Russian cases (compare, for example, *Sergey Solovyev v. Russia*, no. 22152/05, § 71, 25 September 2012, and *Tarakanov v. Russia*, no. 20403/05, § 63, 28 November 2013). That factor in itself constitutes a situation that is manifestly unreasonable having regard to the Court's case-law.

53. The Court thus concludes that the redress afforded to the applicant was insufficient. Accordingly, the second condition has not been fulfilled. The Court considers that the applicant in the instant case can still claim to be a "victim" of the violation of Article 5 of the Convention. Therefore, this objection by the Government must be dismissed.

(b) Application of the six-month rule

54. As regards the six-month rule set out in Article 35 § 1 of the Convention, the Court observes that the final decision concerning the lawfulness of the applicant's pre-trial detention was taken by the Regional Court on 21 February 2008. Accordingly, by raising, in substance, the complaint under Article 5 § 1 (c) of the Convention in his first letter to the Court dispatched on 20 August 2008, the applicant complied with the six-month rule. The Government's objection should therefore be dismissed.

55. The Court further notes that in his application form of 31 January 2009 the applicant raised an additional complaint about the domestic court's dismissal of his claims for the damage which allegedly resulted from his unlawful detention. At the time, the final decision on the matter was that of the Regional Court of 19 November 2008 (which was subsequently quashed by way of supervisory review in 2010). Accordingly, no issue arises under the six-month rule in respect of the applicant's complaint under Article 5 § 5 of the Convention.

(c) Conclusion

56. Regard being had to the above, the Court finds that the complaints under Article 5 §§ 1 (c) and 5 of the Convention are not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

Article 5 § 1 (c)

(a) The parties' submissions

57. The Government did not comment on the merits of the complaint.

58. The applicant maintained his complaint.

(b) The Court's assessment

59. The Court reiterates that the expressions "lawful" and "in accordance with a procedure prescribed by law" in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. However, the "lawfulness" of detention under domestic law is not always the decisive element. The Court must in addition be satisfied that detention during the period under consideration was compatible with the purpose of Article 5 § 1 of the Convention, which is to prevent persons from being deprived of their liberty in an arbitrary fashion. In particular, any *ex post facto* authorisation of pre-trial detention is incompatible with the "right to security of person" as it

is necessarily tainted with arbitrariness (see, among numerous authorities, *Khudoyorov v. Russia*, no. 6847/02, §§ 124 and 142, ECHR 2005-X (extracts)).

60. Turning to the circumstances of the present case, the Court observes that on 16 November 2007 the Town Court authorised the applicant's detention from 21 October to 16 November 2007 *ex post facto*. The Court further observes that on 21 February 2008 the Regional Court, when reviewing the relevant period of the applicant's pre-trial detention, recognised that it had been authorised belatedly, in contravention of the applicable domestic rules of criminal procedure.

61. Having regard to its well-established case-law on the issue and the circumstances of the present case, the Court does not see any reason to disagree with the findings of the domestic judicial authorities. It follows that the applicant's pre-trial detention from 21 October to 16 November 2007 was not "lawful" under domestic law. There has, accordingly, been a violation of Article 5 § 1 (c) of the Convention. In these circumstances, the Court does not find it necessary to examine separately the applicant's grievances under Article 5 § 5 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

62. The applicant further complained of other violations, referring to Articles 3, 5 and 6 of the Convention and to Article 3 of Protocol No. 7.

63. The Court has examined these complaints and 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, they 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.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

64. 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

65. The applicant claimed 540,000 euros (EUR) in respect of non-pecuniary damage.

66. The Government considered the applicant's claim excessive.

67. The Court accepts the Government's argument that the applicant's claim is excessive. Nevertheless, it considers that the applicant's suffering and frustration resulting from the infringement of his rights cannot be sufficiently compensated for by the finding of a violation alone. Making its assessment on an equitable basis, the Court awards the applicant EUR 11,700 in respect of non-pecuniary damage.

B. Costs and expenses

68. The applicant did not submit any claims for costs and expenses. Accordingly, the Court makes no award under this head.

C. Default interest

69. 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 complaints concerning the conditions of the applicant's detention in remand prison no. IZ-28/1 in Blagoveshchensk and the alleged unlawfulness of his pre-trial detention from 21 October to 16 November 2007 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 5 § 1 (c) of the Convention;

4. *Holds* that there is no need to examine the complaint under Article 5 § 5 of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 11,700 (eleven thousand seven hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State 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;

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

Done in English, and notified in writing on 30 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen	Isabelle Berro-Lefèvre
Registrar	President