



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

Information Note on the Court's case-law 148

January 2012

Ananyev and Others v. Russia - 42525/07 and 60800/08

Judgment 10.1.2012 [Section I]

Article 46

Pilot judgment

General measures

Respondent State required to take general measures to alleviate conditions of detention in remand prisons

Facts – The case concerned the conditions of the applicants' detention, at different periods between 2005 and 2008, in various remand prisons pending trial. Having found violations of Articles 3 and 13 of the Convention, the European Court went on to consider the case under Article 46 of the Convention.

Law – Article 46: Inadequate conditions of detention were a recurrent structural problem in Russia, as a result of which the Court had found violations of Articles 3 and/or 13 in more than 80 judgments since *Kalashnikov*.^[1] A further 250 similar cases were pending. The origins of the violations that had been found in these cases were substantially similar: an acute lack of personal space, a shortage of sleeping room, limited access to light and fresh air and non-existent privacy when using sanitary facilities. The problem was thus widespread and the result of a malfunctioning of the Russian penitentiary system and of insufficient legal and administrative safeguards. Taking into account the recurrent and persistent nature of the problem, the large number of people affected, and the urgent need to grant them speedy and appropriate redress at the domestic level, it was appropriate to apply the pilot-judgment procedure.

The recurrent violations of Article 3 resulting from inadequate conditions of detention in some Russian remand centres was an issue of considerable magnitude and complexity that stemmed from a large number of negative factors, both legal and logistical. The situation in Russian remand centres indisputably still required comprehensive general measures at the national level, despite the efforts that had been made to renovate and build remand facilities and to provide inmates with 4 sq.m of space by 2016. Furthermore, other short-term measures that could have been implemented at little extra cost – such as shielding cell toilets, removing netting from cell windows and increasing the frequency of showers – had not been introduced.

While supporting the Russian authorities' view that there should be an integrated approach to finding solutions to the problem of overcrowding in remand prisons, with changes to the legal framework, practices and attitudes, the Court considered that it was not its task to advise the Government on such a complex reform process, still less to recommend a particular way of organising its penal and penitentiary system. It nevertheless deemed it important to highlight two issues the Russian authorities needed to address: firstly, the close affinity between overcrowding and the equally recurring

Russian problem of excessive length of pre-trial detention and, secondly, the need for provisional arrangements and safeguards to prevent remand prisons being filled beyond capacity.

As to the first point, all Council of Europe bodies had consistently indicated that a reduction in the number of remand prisoners would be the most appropriate solution to the problem of overcrowding. The Court had also stated in many of its judgments that remands in custody must be the exception rather than the norm and a measure of last resort. The Court had already identified a malfunctioning of the Russian judicial system on account of excessively lengthy detention on remand without proper justification (the percentage of applications for detention orders granted was inordinately high: 90% for initial applications, 98% for renewals). The Court also considered that Russian prosecutors should be formally encouraged to continue to reduce the number of applications they made for detention orders, except in the most serious cases involving violent offences. Ultimately, however, the successful prevention of overcrowding in remand centres was contingent on further consistent and long-term measures to achieve full compliance with the requirements of Article 5 § 3 of the Convention, notably through amendments to the Code of Criminal Procedure. Any such amendments would also have to be accompanied by effective measures to implement the changes in judicial practice.

As to the second issue – provisional arrangements to prevent and alleviate overcrowding – the Court noted that, notwithstanding a marked improvement in material conditions, substandard conditions were likely to persist for several more years. This called for the prompt introduction of additional legal safeguards to prevent or at least alleviate overcrowding in those prisons where it remained and to ensure effective respect for the rights of individuals detained there. Appropriate measures would include establishing both maximum and operational capacities for each remand prison, giving remand-centre governors power to refuse additional detainees where capacity would be exceeded and special transitional arrangements along the lines of those that had been introduced in Poland (see the Court's decisions in *Łatak v. Poland* and *Łomiński v. Poland*[2]). The crucial features of such arrangements would be that any detention in substandard conditions should be of short and defined duration, under judicial supervision and give rise to a claim for compensation. Consideration should also be given to releasing detainees whose authorised period of detention was about to expire or was no longer needed.

As regards the Article 13 issue, the respondent State was required to set up effective preventive and compensatory domestic remedies without further delay. Preventive remedies had to make it possible for detainees to obtain prompt and effective examination of their complaints by an independent authority or court empowered to order remedial action. Compensatory remedies should provide redress, including a reduction of sentence or monetary compensation in an amount comparable to the Court's awards in similar cases, to detainees held in inhuman or degrading conditions pending trial. A binding time-frame within which preventive and compensatory remedies would be made available had to be produced, in co-operation with the Committee of Ministers, within six months from the date on which the Court's judgment became final.

Lastly, in view of the fundamental nature of the right not to be subjected to inhuman or degrading treatment, the examination of similar pending applications would not be adjourned. Their continued processing would serve as a regular reminder to the Government of their Convention obligations. The Government were required to ensure the accelerated settlement of individual cases currently pending before the Court within 12 months from the date on which the Court's judgment became final or when such applications were brought to the Government's attention.

- [1] *Kalashnikov v. Russia*, 47095/99, 15 July 2002, [Information Note 44](#).
[2] *Łatak v. Poland* (dec.), 52070/08, and *Łomiński v. Poland* (dec.), 33502/09, both 12 October 2010, Information Note 134.
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