

Press release issued by the Registrar

CHAMBER JUDGMENT IN THE CASE OF
KALASHNIKOV v. RUSSIA

The European Court of Human Rights has today notified in writing a judgment¹ in the case of *Kalashnikov v. Russia* (application no. 47095/99). The Court held unanimously that there had been:

- a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights;
- a violation of Article 5 § 3 (right to stand trial within a reasonable time);
- a violation of Article 6 § 1 (right to a fair hearing within a reasonable time).

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 5,000 euros (EUR) for non-pecuniary damage and EUR 3,000 for costs and expenses. (The judgment is available only in English.)

1. Principal facts

Valeriy Yermilovich Kalashnikov, a Russian national, was born in 1955 and lives in Moscow.

In February 1995, when he was president of the Northeast Commercial Bank (*Северо-Восточный Акционерный Банк*), Mr Kalashnikov was charged with embezzlement. In June 1995, he was placed in detention on remand. Examination of his case by Magadan City Court started in November 1996, but was adjourned from May 1997 to April 1999. He was convicted on 3 August 1999 and on 29 September 1999 the case was terminated. On 30 September 1999 a further charge was brought against him relating to misappropriation of property. He was acquitted on 31 March 2000. On 26 June 2000 he was released from prison following an amnesty.

From 29 June 1995 to 20 October 1999 the applicant was kept in the detention centre IZ-47/1 in the city of Magadan (Investigatory Isolation Ward No. 1 (*СИЗО-1*)). On 20 October 1999 he was sent to serve his sentence, following the City Court judgment of 3 August 1999, to the penitentiary establishment AV-261/3 in the village of Talaya. On 9 December 1999 he was transferred back to Magadan detention centre, where he stayed until his release on 26 June 2000.

1. Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its Protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

The applicant complained about the conditions in the Magadan detention centre, including the following:

- His cell measured 17 square meters and contained eight bunk beds; it nearly always held 24 inmates; there were three men to every bunk and inmates slept in turn;
- It was impossible to sleep properly as the television and cell light were never turned off;
- The person using the toilet was in view of both his cellmates and the prison guard;
- Inmates had to eat their meals in the cell at a dining table only a meter away from the toilet;
- The cell had no ventilation and was stiflingly hot in summer and very cold in winter;
- Being surrounded by heavy smokers, the applicant was forced to become a passive smoker;
- The cells were overrun with cockroaches and ants;
- He contracted a variety of skin diseases and fungal infections, losing his toenails and some of his fingernails; during the trial from 11 November 1996 to 23 April 1997 and from 15 April 1999 to 3 August 1999, a recess was ordered so that he could be treated for scabies; on six occasions detainees with tuberculosis and syphilis were placed in his cell and he received prophylactic antibiotic injections.

According to the applicant's medical records, he had scabies in December 1996, allergic dermatitis in July and August 1997, a fungal infection on his feet in June 1999, a fungal infection on his finger nail in August 1999, mycosis in September 1999 and a fungal infection on his feet, hands and groin in October 1999. A report by medical experts issued in July 1999 stated that he was suffering from neurocirculatory dystonia, astheno-neurotic syndrome, chronic gastroduodenitis, a fungal infection on his feet, hands and groin and mycosis.

2. Procedure and composition of the Court

The application was lodged with the Court on 1 December 1998. On 18 September 2001 an oral hearing was held, following which the case was declared admissible.

Judgment was given by a Chamber of seven judges, composed as follows:

Jean-Paul **Costa** (French), *President*,
Willi **Fuhrmann** (Austrian),
Loukis **Loucaides** (Cypriot),
Nicolas **Bratza** (British),
Hanne Sophie **Greve** (Norwegian),
Kristaq **Traja** (Albanian),
Anatoly **Kovler** (Russian), *judges*,

and also Sally **Dollé**, *Section Registrar*.

3. Summary of the judgment¹

1. This summary by the Registry does not bind the Court.

Complaints

The applicant complained about the conditions of his detention - relying on Article 3 - and that the length of his detention on remand and the criminal proceedings against him violated his rights guaranteed under Articles 5 § 3 and 6 § 1.

Decision of the Court

Article 3

The Court observed, among other things, that, according to the figures submitted, at any given time there was 0.9-1,9 m² of space per inmate in the applicant's cell. In this connection the Court recalled that the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment had set 7 m² per prisoner as an approximate, desirable guideline for a detention cell. Thus, in the Court's view, the cell was continuously, severely overcrowded - a state of affairs which in itself raised an issue under Article 3.

The Court also noted that, on account of the acute overcrowding, the inmates in the applicant's cell had to sleep in turns, on the basis of eight-hour shifts, that sleeping conditions were further aggravated by the constant lighting in the cell, as well as the general commotion and noise from the large number of inmates and that the resulting deprivation of sleep must have constituted a heavy physical and psychological burden on the applicant.

The Court also took into consideration: the absence of adequate ventilation in the applicant's cell which held an excessive number of inmates and who apparently were permitted to smoke; the infestation of the cell with pests; the filthy, dilapidated state of the cell and toilet area and lack of real privacy; and, the fact that, throughout his detention, the applicant contracted various skin diseases and fungal infections. The Court further noted with grave concern that the applicant was detained on occasions with inmates suffering from syphilis and tuberculosis, although the Russian Government stressed that contagion was prevented.

While the Court noted with satisfaction the major improvements that had apparently been made to the area of the Magadan detention facility where the applicant's cell was located (as shown in the video recording submitted to the Court), this did not detract from the wholly unacceptable conditions which the applicant had clearly had to endure at the material time.

Although the Court accepted that there was no indication that there was a positive intention of humiliating or debasing the applicant, the absence of any such purpose could not exclude a finding of violation of Article 3. The Court considered that the conditions of detention, which the applicant had had to endure for approximately 4 years and 10 months, must have caused him considerable mental suffering, diminishing his human dignity and arousing in him such feelings as to cause humiliation and debasement.

The Court therefore found the applicant's conditions of detention, in particular the severely overcrowded and insanitary environment and its detrimental effect on the applicant's health and well-being, combined with the length of the period during which the applicant was detained in such conditions, amounted to degrading treatment. Accordingly, there had been a violation of Article 3.

Article 5 § 3

The Court noted that the total period of the applicant's detention on remand amounted to four years, one month and four days. However, as the period before 5 May 1998 - the date when the Convention entered into force in Russia - lay outside the Court's jurisdiction, it could

only consider the period of one year, two months and 29 days, which elapsed between that date and the judgment of the Magadan City Court of 3 August 1999. Nonetheless it had to take into account the fact that by 5 May 1998 the applicant, having been placed in detention on 29 June 1995, had already been in custody for two years, ten months and six days.

The Court also recalled that the existence of a strong suspicion of the involvement of a person in serious offences, while relevant, could not alone justify a long period of pre-trial detention. Regarding the other ground relied on by the Magadan City Court in prolonging the applicant's detention, namely the danger of obstructing the examination of the case, the Court noted that the City Court did not mention any factual circumstances underpinning its conclusions, which were identical in 1996, 1997 and 1999. There was no reference in its rulings to any factor capable of showing that the risk relied on actually persisted during the relevant period. In sum, the Court found that the reasons relied on by the authorities, although relevant and sufficient initially, ceased to justify the applicant's detention as time passed.

In addition, the protracted proceedings were attributable neither to the complexity of the case nor the conduct of the applicant. Having regard to the investigation and the substantial delays in the court proceedings, the Court considered that the authorities did not act with all due expedition. The Court therefore found that the period spent by the applicant in detention pending trial exceeded a "reasonable time" and that there had been a violation of Article 5 § 3.

Article 6 § 1

The period under consideration - from 8 February 1995 to 31 March 2000 - amounted thus to a total of five years, one month and 23 days for, in effect, one level of jurisdiction, despite numerous ancillary proceedings. While its jurisdiction only covered the period after 5 May 1998, the Court observed that it could take into account the state of the proceedings existing on that date.

The Court further noted that, following the judgment of 3 August 1999 and the decision to discontinue the remaining charges on 29 September 1999, the authorities brought a new charge against the applicant on the basis of the same set of facts, thereby contributing even further to the length of the proceedings, which had already lasted over four-and-a-half years at the court of first instance. It considered that the authorities had failed in their duty of special diligence, particularly after the entry into force of the Convention on 5 May 1998.

The Court therefore considered that the length of the proceedings did not satisfy the "reasonable time" requirement and, accordingly, that there had been a breach of Article 6 § 1.

Judge Kovler expressed a separate concurring opinion, which is annexed to the judgment.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. On 1 November 1998 a full-time Court was established, replacing the original two-tier system of a part-time Commission and Court.