



Russia required to take urgent action regarding inhuman and degrading conditions of pre-trial detention

Pilot judgment¹

In today's Chamber judgment in the case [Ananyev and Others v. Russia](#) (application nos. 42525/07 and 60800/08), which is not final², the European Court of Human Rights held, unanimously, that there had been:

A violation of Article 3 (prohibition of inhuman or degrading treatment or punishment) and a violation of Article 13 (right to an effective remedy) of the European Convention on Human Rights.

The case concerned the applicants' complaints that they had been detained in inhuman and degrading conditions in remand centres awaiting criminal trials against them.

Under **Article 46 (enforcement of the Court judgments)**, the Court held that the Russian Government had to:

- improve the material conditions of detention, by shielding the toilets in cells, removing thick netting from cell windows and increasing the frequency of showers;
- change the applicable legal framework, as well as practices and attitudes;
- ensure that pre-trial detention is only used in absolutely necessary cases;
- establish maximum capacity for each remand prison; and,
- ensure that victims can complain effectively about inadequate conditions of detention and that they obtain appropriate compensation.

In order to achieve the above, the Russian authorities had to produce, in co-operation with the Committee of Ministers of the Council of Europe, within six months from the date on which the judgment becomes final, a binding time frame for resolving the problems. They also had to provide redress, including by granting accelerated settlement to all cases brought by victims of inhuman or degrading conditions of detention in Russian remand prisons, within 12 months from the date on which today's judgment becomes final (for those cases already communicated) or from the date of communication (new cases).

¹ Since 2004 and in response to the large number of cases deriving from systemic or structural problems in certain countries the Court has developed a pilot-judgment procedure. This consists in identifying in a single judgment systemic problems underlying a violation of the European Convention on Human Rights and indicating in that judgment the remedial measures required to resolve such situations. The pilot-judgment procedure is not only intended to facilitate effective implementation by respondent states of individual and general measures necessary to comply with the Court's judgments, but also induces the respondent State to resolve large numbers of individual cases arising from the same structural problem at domestic level, thus reinforcing the principle of subsidiarity which underpins the Convention system.

² Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Principal facts

The applicants, Sergey Ananyev, Gennadiy Bashirov and Gulnara Bashirova are Russian nationals who were all detained - during different periods between 2005 and 2008 - in various remand prisons in Russia pending trials against them on criminal charges.

In particular, in 2007 Mr Ananyev was detained for about two months in a 15-square-metre cell equipped with 13 sleeping places, which he shared with up to 20 other detainees.

Mr Bashirov and Ms Bashirova were detained in a number of different cells which they claimed were overcrowded. The Government argued that there were only so many detainees in those cells as there were sleeping places. Mr Bashirov and Ms Bashirova submitted extracts from four annual reports by the Ombudsman of the Astrakhan Region, all of which had found that the remand prisons in the region had been continuously overcrowded during that time and criticised the officially accepted occupancy limits as being too high.

Complaints, procedure and composition of the Court

Relying on Articles 3 and 13, the applicants complained in particular that they had been held in overcrowded cells and that they could not effectively obtain an improvement in the conditions of their detention or some form of compensation.

The applications were lodged with the European Court of Human Rights respectively on 14 September 2007 and 10 November 2008.

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

Nina **Vajić** (Croatia), *President*,
Anatoly **Kovler** (Russia),
Peer **Lorenzen** (Denmark),
Mirjana **Lazarova Trajkovska** ("The former Yugoslav Republic of Macedonia"),
Julia **Laffranque** (Estonia),
Linos-Alexandre **Sicilianos** (Greece),
Erik **Møse** (Norway), *Judges*,

and also Søren **Nielsen**, *Section Registrar*.

Decision of the Court

Admissibility

The Court held that the question of whether the applicants had exhausted all available remedies was closely linked to the merits of the application and would therefore be examined under their Article 13 complaint.

In the context of the six-month rule for admissibility of applications, the Court noted that, since Mr Ananyev and Mr Bashirov had introduced their applications within six months of the end of their respective detention periods, their complaints about the conditions of their pre-trial detention and about the alleged absence of an effective remedy were admissible.

As regards Ms Bashirova, the Court noted that she had been held in a remand prison on two different occasions and in both cases she had complained about it before the Court more than 6 months after the end of her detention. Accordingly, her complaints had to be rejected as inadmissible.

Merits

The Court had asked the applicants and the Russian Government whether the present applications revealed an existence of a structural problem relating to inadequate conditions of detention in Russian remand prisons (SIZOs) and whether an effective remedy existed in Russia for that kind of complaint. It considered their submissions and analysed the existing remedies which detainees in Russian pre-trial prisons could use in order to challenge inadequate detention conditions.

Effective remedy (Article 13)

More specifically, the Court examined whether people who considered that they had been kept in inadequate remand conditions could effectively complain to the prison authorities, to the prosecutor, to an ombudsman or to the courts and whether they could make a successful claim for compensation. It concluded that for the time being the Russian legal system did not provide an effective remedy which could be used to put an end to inhuman and degrading conditions of detention or to provide adequate and sufficient redress in connection with a related complaint.

Consequently, the Court rejected the Government's objection as to the non-exhaustion of domestic remedies and found that there had been a violation of Article 13.

Conditions of detention (Article 3)

In their respective cells, Mr Ananyev and Mr Bashirov had been given less than 1.25 metres and 2 metres of personal space and the number of detainees had significantly exceeded the number of sleeping places available. In addition, they had remained inside their cells all the time, except for a one-hour period of outdoors exercise. They had also eaten their meals and used the toilet in those cramped conditions, in which Mr Bashirov in particular had spent more than three years.

Consequently, Mr Ananyev and Mr Bashirov had been subjected to inhuman and degrading treatment, in violation of Article 3.

Just satisfaction (Article 41)

The Court held that Russia was to pay Mr Ananyev 2,000 euros (EUR), and Mr Bashirov EUR 13,000 in respect of non-pecuniary damage and EUR 850 for costs and expenses.

Measures to implement the judgment (Article 46)

The Court found that inadequate conditions of detention was a recurrent structural problem in Russia, as a result of which it had found violations of Articles 3 and 13 in more than 80 judgments adopted since the first such finding in the *Kalashnikov* case (*Application no. 47095/99, judgment of 15 July 2002*). Further 250 cases were pending before the Court in which the applicants complained about the conditions of their detention.

While the violations found had occurred in geographically diverse regions, the origins of the violations were substantially similar: detainees suffered inhuman and degrading treatment because of acute lack of personal space in their cells, shortage of sleeping places, limited access to light and fresh air and non-existent privacy when using the sanitary facilities. Consequently, the problem was the result of a malfunctioning of the Russian penitentiary system and insufficient legal and administrative safeguards, and the Russian authorities had acknowledged both the magnitude of the problem and the urgency to take steps to deal with it.

In view of the above, the Court decided to apply the pilot judgment procedure. It further found it necessary to identify the origin of the problem and to provide assistance to the Russian Government and to the Committee of Ministers in the process of implementing today's judgment.

It noted, firstly, that certain measures to improve the material conditions of detention could be implemented in the short term and at little extra cost – such as shielding the toilets located inside the cell with curtains or partitions, removal of thick netting on cell windows blocking access to natural light and a reasonable increase in the frequency of showers. They required immediate planning and further action. It also encouraged the Russian authorities' attempts to find an integrated approach to solving the problem of overcrowding in remand prisons, including in particular by changing the legal framework, practices and attitudes.

The Court further noted that the primary cause of overcrowding was the excessive use of pre-trial detention without proper justification and the excessive duration of such detention. Noting an inordinately high level of applications for a detention order granted by the Russian courts (in excess of 90%), the Court reiterated that it had found a breach of the obligation to guarantee a trial within a reasonable time or release pending trial, under Article 5 § 3 of the Convention, in more than 80 cases against Russia. In those cases the domestic courts had extended the applicants' detention relying essentially on the gravity of the charges and employing the same stereotyped formulae. That had also been identified by the Committee of Ministers as a structural problem in Russia. In order to resolve it, which in turn would effectively decrease the number of remand prisoners, the Court considered that the custodial measure should be reserved to the most serious cases involving violent offences and that remand in custody should be an exceptional measure rather than the norm.

Given that the implementation of the above-mentioned measures would require time, provisional arrangements - such as the adoption of additional legal safeguards for preventing and alleviating overcrowding - had to be put in place. More specifically, maximum capacity for each remand prison had to be established, corresponding at least to the national penitentiary standards, and it had to be periodically reviewed to reflect the evolving norms. Remand centres' governors had to be allowed to refuse to accept inmates beyond the prison's capacity. Releasing people, whose detention appeared no longer necessary, early from remand prisons was also an important element for eliminating overcrowding.

Furthermore, preventive and compensatory remedies had to be introduced. The preventive remedies had to make it possible for detainees to obtain a rapid and effective examination of their complaints about inadequate conditions of detention. That could either be in the form of a complaint to an independent authority supervising detention facilities – such as supervising prosecutors – or as a complaint to a court of general jurisdiction which would be capable of ordering remedial action and whose decisions would be subject to mandatory enforcement. A compensatory remedy should be able to provide redress, including monetary compensation in an amount comparable to the Court's awards in similar cases, to detainees in all cases in which they had been kept in inhuman or degrading conditions awaiting trial.

As regards the timing within which all the measures had to be implemented, the Court held that the Russian Government had to produce, in co-operation with the Committee of Ministers, within six months from the date on which the judgment became final, a binding time-frame in which to make available preventive and compensatory remedies in respect of alleged violations related to inadequate conditions of detention.

In view of the fundamental nature of the right not to be treated inhumanly or degradingly, the Court did not adjourn the examination of similar applications pending

before it. It found that continuing to process all conditions-of-detention cases would remind Russia of its obligations to enforce today's judgment. Russia had to do so including by ensuring accelerated settlement of individual cases already pending before the Court within 12 months from the date on which this judgment became final or when such applications were brought to the attention of the Government.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.