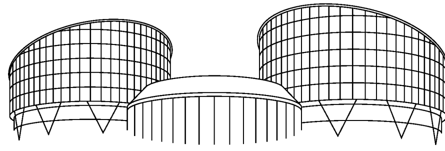

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF ANATOLIY KUZMIN v. RUSSIA

(Application no. 28917/05)

JUDGMENT

STRASBOURG

25 June 2015

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Anatoliy Kuzmin v. Russia,

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

Isabelle Berro, *President,*
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Dmitry Dedov, *judges,*
and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 2 June 2015,

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

PROCEDURE

1. The case originated in an application (no. 28917/05) 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 Anatoliy Nikolayevich Kuzmin ("the applicant"), on 25 July 2005.

2. 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 confinement in the court convoy cell were not compatible with Article 3 of the Convention.

4. On 27 August 2009 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and lives in Chelyabinsk.

A. Criminal proceedings against the applicant

6. On 17 January 2005 the applicant was detained on suspicion of having committed a robbery.

7. By decision of 11 March 2005 the court extended the applicant's pre-trial detention until 22 March 2005. According to the applicant, his pre-trial detention continued on 23 March 2005 since the investigator sent his criminal case to the court with a one day delay.

8. On 25 April 2005 the Tsentralniy District Court of Chelyabinsk convicted the applicant of robbery and sentenced him to nine years of imprisonment. The applicant appealed.

9. By decision of 22 July 2005 the Chelyabinsk Regional Court upheld the judgment with certain modifications.

10. The applicant subsequently lodged a request with a court to initiate supervisory review proceedings in his case. On an unspecified date the applicant's request was granted.

11. On 22 November 2006 the Presidium of Chelyabinsk Regional Court amended the judgment and reduced the applicant's sentence to eight years and six months of imprisonment.

B. Conditions of the applicant's detention in the courthouse

1. *The applicant's account*

12. During the trial the applicant was transported to the Tsentralniy District Court of Chelyabinsk to take part in the examination of his criminal case.

13. While waiting for hearings in the Tsentralniy District Court of Chelyabinsk the applicant was put in a convoy cell, a barred room measuring approximately 4 sq. metres with one bench. According to the applicant, he was usually kept in the convoy cell with six other accused. On 29 June 2005 as many as nine accused were kept in the convoy cell. The cell did not have a toilet and the detainees were taken to the toilet on the wardens' orders. Though the accused leaving for a court were provided with a packed lunch, no hot meal or hot water was distributed. The accused were not allowed to smoke.

14. The applicant did not provide any detailed information as to how many times and how long he had been detained in the convoy cell.

15. He stated that the average time spent in the convoy cell by an accused was 4-5 hours a day.

16. On 30 June and 18 July 2005 the applicant complained to the court and the Head of the Court's Convoy Service about the conditions of detention in the convoy cell.

17. By letter of 28 July 2005 the Tsentralniy District Court of Chelyabinsk replied to the applicant's complaint. The relevant part of the letter reads as follows:

> "... on 29 June 2005 twenty accused were brought to the court's convoy cells, the cells were filled up to the limit because according to the Order no. 41 ... the following categories of individuals should be detained separately: men and women, minors and adults, individuals with previous criminal record and first time accused, suspects and convicted, suspects and accused in one case.
>
> According to the Federal Law ... smoking is prohibited in all premises of the Tsentralniy District Court of Chelyabinsk, including the convoy cell."

18. By letter of 9 August 2005 the Head of the Court's Convoy Service replied to the applicant's complaint. The relevant part of the letter reads as follows:

> "On 29 June 2005 the convoy staff was obliged to seat the accused brought to the court according to the rules in force, thus 9 individuals were put together in one of the convoy cells.
>
> According to the Federal Law ... smoking is prohibited in all premises of the Tsentralniy District Court of Chelyabinsk, including the convoy cell."

19. On 25 July 2005 the applicant asked the prosecutor to institute criminal proceedings against the wardens of the courthouse. The prosecutor ignored the applicant's motion and the applicant challenged his inaction in court. By decision of 18 October 2005 the Chelyabinsk Regional Court rejected the applicant's complaint in the final instance. The relevant part of the decision reads as follows:

> "The court's conclusion that there are no grounds to record the applicant's complaint under Article 144 of the Code of Criminal Procedure (CCP) and to adopt a procedural decision under Article 145 of CCP correlates with the factual circumstances of the case. It follows from the applicant's statement of appeal ... that he complained of the conditions of the detention in the convoy cell of the Tsentralniy District Court of Chelyabinsk, namely the smoking ban and the overcrowding of the cells. The complaint does not contain any information on committed crimes and does not require institution of criminal proceedings. These circumstances were established during the court hearing and confirmed by the record of the hearing. For the reasons mentioned above the court of first instance reasonably dismissed the applicant's complaint."

2. The Government's account

20. The Government submitted that the courthouse convoy premises measuring 50 sq. metres in total had four cells, 4 sq. metres each. They had adequate ventilation and lighting, the entrance was secured by metal grill doors. Each cell was equipped with one bench. The cells did not have sanitary facilities, but the convoy premises had two lavatories. The applicant had access to the toilet at any time upon request. The Government provided undated photographs and a plan of the convoy premises.

21. Relying on a certificate issued by the director of facility IZ-74/1 on 21 October 2009, the Government claimed that the applicant was brought to the Tsentralniy District Court of Chelyabinsk seven times: on 11 March, 7, 19, 22 and 25 April, 29 June and 31 August 2005.

22. The Government submitted that the documents confirming the number of detainees in the convoy cells and their time of arrival and departure were destroyed on 16 January 2009 due to expiry of the time-limit for their storage.

23. With reference to the applicable regulations, the Government submitted that on the dates of the applicant's transfers to the District Court the applicant had received a dry ration (bread, tinned meat or fish, tea, salt, sugar and disposable tableware before 2 August 2005, and instant first and second course, sugar, tea, disposable tableware from 2 August 2005). The Government provided a copy of the invoice dated 15 June 2006 confirming the purchase of a water boiler by the District Court.

24. The Government acknowledged that on 29 June 2005 the convoy premises were crowded to the limit. According to the statement by the Deputy Head of the Convoy Service dated August 2005, there were twenty detainees in four cells in the convoy premises. The statement does not provide exact numbers for each cell.

II. RELEVANT DOMESTIC LAW

25. For a summary of the relevant domestic and international law provisions governing the conditions of pre-trial detention and the catering arrangements for detainees, see the cases of *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 25-58, 10 January 2012, and *Vladimir Krivonosov v. Russia*, no. 7772/04, §§ 71-72, 15 July 2010.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF THE APPLICANT'S DETENTION IN THE COURTHOUSE

26. The applicant complained that the conditions of his detention in the premises of the Tsentralniy District Court of Chelyabinsk during the period from 11 March to 31 August 2005 had been in breach 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."

A. Submissions of the parties

27. The Government submitted that the conditions of the applicant's detention had been compatible with the requirements of Russian law and Article 3 of the Convention. They also argued that although on 29 June 2005 the cells were crowded to the limit, the period of several hours is too short to attain the threshold of severity required for a finding of a violation of Article 3 of the Convention.

28. The applicant maintained his complaint.

B. The Court's assessment

1. Admissibility

29. The Court notes that the complaint in this part is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) General principles relevant to the present case

30. The Court reiterates at the outset that in order to fall within the scope of Article 3 ill-treatment must attain a minimum level of severity. The assessment of this minimum is, in the nature of things, relative: it depends on all the circumstances of the case, such as the nature and context of the treatment or punishment, the manner and method of its execution, its duration, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see *T. v. the United Kingdom* [GC], no. 24724/94, § 68, 16 December 1999).

31. When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II). The length of the period during which a person is detained in the particular conditions also has to be considered (see, among other authorities, *Alver v. Estonia*, no. 64812/01, 8 November 2005).

32. In a number of cases the Court has found that where the applicants have at their disposal less than three square metres of floor surface, the overcrowding was considered to have been so severe as to justify of itself a finding of a violation of Article 3 of the Convention (see, for example, *Dmitriy Sazonov v. Russia*, no. 30268/03, §§ 31-32; *Tereshchenko v. Russia*, no. 33761/05, §§ 83-84, 5 June 2014; and *T. and A. v. Turkey*, no. 47146/11, § 96, 21 October 2014).

33. However this lack of personal space may in certain circumstances be refuted by the cumulative effect of the conditions of detention (see, for

example, *Fetisov and Others v. Russia*, nos. 43710/07, 6023/08, 11248/08, 27668/08, 31242/08 and 52133/08, §§ 134-38, 17 January 2012; *Dmitriy Rozhin v. Russia*, no. 4265/06, §§ 52-53, 23 October 2012; and *Kurkowski v. Poland*, no. 36228/06, § 67, 9 April 2013).

34. In assessing evidence, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland v. the United Kingdom*, 18 January 1978, § 161, Series A no. 25). Such proof may follow from the coexistence of sufficiently strong, clear and concordant inferences or of similar unrebutted presumptions of fact (see *Salman v. Turkey* [GC], no. 21986/93, § 100, ECHR 2000-VII). An applicant must provide an elaborate and consistent account of the conditions of his or her detention mentioning the specific factors, such as the dates of his or her transfer between facilities, which would enable the Court to determine that the complaint is not manifestly ill-founded or inadmissible on any other grounds (see *Sakhvadze v. Russia*, no. 15492/09, § 87, 10 January 2012).

(b) Application to the present case

35. Turning to the circumstances of the present case, the Court notes that the applicant did not provide the exact dates of his detention in the courthouse.

36. The Government submitted information that the applicant had been detained in the courthouse seven times: on 11 March, 7, 19, 22 and 25 April, 29 June and 31 August 2005.

37. The applicant also submitted that on 29 June 2005 there were nine detainees in the cell. He relied on the letters of 28 July and 9 August 2005 from the Tsentralniy District Court of Chelyabinsk and the Head of the Court's Convoy Service explaining to the applicant that due to a high number of accused brought to the court on 29 June 2005 the cells were filled to the limit and nine persons were put in one cell. The applicant also noted that in average he had spent 4-5 hours in these premises.

38. The Government acknowledged that on this day the convoy premises were crowded to the limit. However they did not provide any information about the number of detainees in the applicant's 4 sq. metre cell throughout this day.

39. As to the other six days of the applicant's detention in the convoy premises, the Court notes that the applicant did not describe the conditions of his detention in any particular detail. The Court observes that the applicant's allegations have been presented in general terms and that the applicant did not support his allegations about the conditions of his detention with evidence. The Court points out that the applicant did not challenge the description of the conditions of detention submitted by the Government (see paragraphs 20 to 23 above).

40. The Court observes that the Government did not submit details as to the number of detainees in each convoy cell on the dates the applicant was

there, the reason being the destruction of the relevant documents. In this connection, the Court reiterates that the destruction of the relevant documents due to the expiry of the time-limit for their storage, albeit regrettable, cannot in itself be regarded as an unsatisfactory explanation for the failure to submit the relevant documents (see *Shcherbakov v. Russia*, no. 23939/02, § 77, 17 June 2010). In the present case the archived documents containing that information were destroyed due to the expiry of the storage time-limits on 16 January 2009 that is before 27 August 2009, which is the date on which the case was communicated to the respondent Government. In these circumstances, the Court can accept that the Government have, in the present case, accounted properly for their inability to submit the original records concerning the number of persons detained with the applicant.

41. Having regard to the above the Court finds it established that the applicant was detained in convoy cells on seven occasions: 11 March, 7, 19, 22 and 25 April, 29 June and 31 August 2005. The applicant spent approximately 4-5 hours in the cell on each occasion and at least on 29 June 2005 the cell held up to nine detainees. The cells measured 4 square metre each and their conditions were otherwise as described by the Government (see paragraph 20 above).

42. The Court finds that on the basis of the above facts the conditions of the applicant's detention in the convoy cell, in particular on 29 June 2005, could raise an issue under Article 3 of the Convention (see *Moiseyev v. Russia*, no. 62936/00, § 143, 9 October 2008).

43. At the same time the Court recalls the case of Dmitriy Rozhin (see *Dmitriy Rozhin*, cited above, § 52), where the applicant spent 11 days in a disciplinary cell and was afforded less than 2 sq. metres of personal space, the case of Fetisov (*Fetisov and Others*, cited above, § 134), where one of the applicants spent 19 days in a cell and was afforded approximately 2 sq. metres of personal space and the case of Kurkowski (see *Kurkowski*, cited above, § 66), where the applicant spent 4 days in a cell and was afforded 2.1 sq. metres. Having regard to the overall situation the Court found in these cases no violation of Article 3 of the Convention.

44. The Court notes that the present case does not concern the applicant's detention on remand or placement in a disciplinary cell but a temporary placement in a cell awaiting the hearing in his criminal case. Except for 29 June 2005 the Court cannot establish beyond reasonable doubt that the conditions were such as to amount to a violation of Article 3 of the Convention. As for the 29 June 2005 the Court accepts that the convoy cell was overcrowded during the applicant's 4-5 hour stay there. Nevertheless, taking into account the brevity of the applicant's stay in the convoy cell, the fact that it did not alternate with inhuman and degrading conditions of his detention in the remand prison and transport (compare *Moiseyev*, cited above, § 142), the Court does not consider that the

conditions of the applicant's detention on 29 June 2005, although far from adequate, reached the threshold of severity required to characterise the treatment as inhuman or degrading within the meaning of Article 3 of the Convention (see *Fetisov and Others*, cited above, § 138).

45. In view of the above, the Court therefore concludes that there has been no violation of Article 3 of the Convention in respect of the conditions of the applicant's detention in the convoy cells of the District Court on seven occasions between 11 March and 31 August 2005.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

46. The applicant also alleged violations of his rights in the course of the pre-trial detention and trial, as well as a lack of effective remedies in this respect. He relied on Articles 5, 6 § 1, 6 § 3 (b), and 13 of the Convention. Having regard to all the material in its possession, the Court finds that, in so far as these complaints fall 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. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the applicant's conditions of detention in the courthouse admissible and the remainder of the application inadmissible;

2. *Holds* that there has been no violation of Article 3 of the Convention in respect of the applicant's detention in the convoy cells of the District Court on seven occasions between 11 March and 31 August 2005.

Done in English, and notified in writing on 25 June 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Isabelle Berro
President