



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

THIRD SECTION

CASE OF NOVINSKIY AND OTHERS v. RUSSIA

*(Application no. 28262/07 and 7 others –
see appended list)*

JUDGMENT

STRASBOURG

14 December 2017

This judgment is final but it may be subject to editorial revision.

In the case of Novinskiy and Others Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Luis López Guerra, *President*,

Dmitry Dedov,

Jolien Schukking, *judges*,

and Liv Tiggerstedt, *Acting Deputy Section Registrar*,

Having deliberated in private on 23 November 2017,

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

PROCEDURE

1. The case originated in applications against Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on the various dates indicated in the appended table.

2. The applications were communicated to the Russian Government (“the Government”).

THE FACTS

3. The list of applicants and the relevant details of the applications are set out in the appended table.

4. The applicants complained of the inadequate conditions of their detention. Some applicants also raised other complaints under the provisions of the Convention.

THE LAW**I. JOINDER OF THE APPLICATIONS**

5. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. THE INTRODUCTION DATE FOR CASE NO. 36825/16

6. The Government submitted that the Court’s Registry determined incorrectly the introduction date for application no. 36825/16.

7. The Court reiterates that the date of the introduction of an application is generally considered to be the date of the first communication from the applicant setting out, even summarily, the subject matter of the application (see, for example, *Kemevuako v. the Netherlands* (dec.), no. 65938/09, §§ 17 and 19, 1 June 2010, and *Zverev v. Russia* (dec.), no. 16234/05, § 12, 3 July 2012).

8. The Court notes that in this case, the applicant explicitly raised the complaint about the conditions of his detention in his letter of 9 June 2016 dispatched on the same date.

9. Having regard to the above, the Court finds that 9 June 2016 should be considered as the date of the introduction of the application.

III. THE *LOCUS STANDI* ISSUE FOR APPLICATION NO. 28262/07

10. The applicant, Mr Novinskiy, (application no. 28262/07) died while the case was pending before the Court. The applicant's wife, Mrs Olga Aleksandrovna Novinskaya, expressed her intention to pursue the application. The Government did not object to that request.

11. The Court considers that the applicant's wife has a legitimate interest in obtaining a finding of a breach of Mr Novinskiy's right guaranteed by Article 3 of the Convention (see *Ernestina Zullo v. Italy* [GC], no. 64897/01, §§ 36-37, 29 March 2006, and *Livada v. Ukraine* [Committee], no. 21262/06, §§ 34-35, 26 June 2014).

12. Accordingly, the Court holds that Mrs Novinskaya has standing to continue the proceedings in respect of application no. 28262/07 on behalf of the late applicant, Mr Novinskiy.

IV. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

13. The applicants complained principally of the inadequate conditions of their detention. They relied on Article 3 of the Convention, which reads as follows:

Article 3

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

14. The Court notes that the applicants were kept in detention in poor conditions. The details of the applicants' detention are indicated in the appended table. The Court refers to the principles established in its case-law regarding inadequate conditions of detention (see, for instance, *Kudła v. Poland* [GC], no. 30210/96, §§ 90-94, ECHR 2000-XI, and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 139-165, 10 January 2012). It reiterates in particular that extreme lack of space in a prison cell or

overcrowding weighs heavily as an aspect to be taken into account for the purpose of establishing whether the impugned detention conditions were “degrading” from the point of view of Article 3 and may disclose a violation, both alone or taken together with other shortcomings (see, amongst many authorities, *Karalevičius v. Lithuania*, no. 53254/99, §§ 36-40, 7 April 2005).

15. In the leading case of *Sergey Babushkin v. Russia*, no. 5993/08, 28 November 2013, the Court already found a violation in respect of issues similar to those in the present case.

16. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the applicants’ conditions of detention were inadequate.

17. These complaints are therefore admissible and disclose a breach of Article 3 of the Convention.

V. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

18. In applications nos. 28262/07, 36825/16 and 58980/16 the applicants submitted other complaints which also raised issues under the Convention, in accordance with the relevant well-established case-law of the Court (see appended table). These complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other ground. Accordingly, they must be declared admissible. Having examined all the material before it, the Court concludes that they also disclose violations of the Convention in the light of its findings in *Sergey Babushkin v. Russia* (cited above, §§ 38-45, pertaining to the absence of an effective remedy to complaint about the conditions of detention in Russia) and *Fetisov and Others v. Russia* (nos. 43710/07 and 5 others, §§ 139-145, 17 January 2012, regarding inappropriate interference with the right of individual petition).

VI. REMAINING COMPLAINTS

19. In application no. 28262/07, the applicant also raised other complaints under various Articles of the Convention.

20. The Court has examined the application 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, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

VI. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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.”

22. Regard being had to the documents in its possession and to its case-law (see, in particular, *Sergey Babushkin v. Russia*, (just satisfaction), no. 5993/08, 16 October 2014, and *Mozharov and Others v. Russia*, no. 16401/12 and 9 others, 21 March 2017), the Court considers it reasonable to award the sums indicated in the appended table.

23. 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. *Decides* to join the applications;
2. *Decides* that Mrs Novinskaya, the wife of the applicant in application no. 28262/07, has *locus standi* in the proceedings;
3. *Declares* the complaints concerning the inadequate conditions of detention and the other complaints under well-established case-law of the Court, as set out in the appended table, admissible, and the remainder of the application no. 28262/07 inadmissible;
4. *Holds* that these complaints disclose a breach of Article 3 of the Convention concerning the inadequate conditions of detention;
5. *Holds* that there has been a violation of the Convention as regards the other complaints raised under well-established case-law of the Court (see appended table);
6. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table, 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

7. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 14 December 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Acting Deputy Registrar

Luis López Guerra
President

APPENDIX

List of applications raising complaints under Article 3 of the Convention
(inadequate conditions of detention)

No.	Application no. Date of introduction	Applicant name Date of birth	Representative name and location	Facility Start and end date Duration	Inmates per brigade Sq. m. per inmate Number of toilets per brigade	Specific grievances	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros) ¹
1.	28262/07 01/03/2007	Ernest Ernestovich Novinskiy 21/10/1963	Preobrazhenskaya Oksana Vladimirovna Strasbourg	IK-26 Samara Region 23/08/2006 to 02/01/2009 2 year(s) and 4 month(s) and 11 day(s)	110 inmate(s) 1.5 m ²	overcrowding, lack of fresh air, lack of or insufficient electric light, smelly wet cells, lack of privacy for toilet, toilet outside, infestation of cell with insects/rodents, no or restricted access to shower, no or restricted access to warm water, lack of requisite medical assistance, poor quality of food	Art. 34 - hindrance in the exercise of the right of individual petition - Interference with applicant's correspondence.	12,000
2.	23591/16 04/04/2016	Aleksandr Vladimirovich Serebrov 01/03/1963	Vinogradov Aleksandr Vladimirovich Kostroma	FKU IK-1 FSIN Kostroma 01/09/2009 to 30/03/2016 6 year(s) and 6 month(s) and 30 day(s)	100 inmate(s) 2 m ²	overcrowding, lack of (sufficient) natural light, lack of fresh air, poor quality of food, infestation of the cell with insects, lack of (regular) physical exercise on fresh air		5,000
3.	36825/16 09/06/2016	Dmitriy Aleksandrovich Gromovoy 11/10/1983	Dunayeva Alla Igorevna Chelyabinsk	IK-2 Chelyabinsk 13/08/2015 to 18/12/2015 4 month(s) and 6 day(s)		lack of or insufficient natural light, lack of or insufficient electric light, overcrowding, lack of fresh air, lack of privacy for toilet, lack of or insufficient physical exercise in fresh air	Art. 13 - lack of any effective remedy in respect of inadequate conditions of detention -	2,500

No.	Application no. Date of introduction	Applicant name Date of birth	Representative name and location	Facility Start and end date Duration	Inmates per brigade Sq. m. per inmate Number of toilets per brigade	Specific grievances	Other complaints under well- established case- law	Amount awarded for pecuniary and non- pecuniary damage and costs and expenses per applicant (in euros) ¹
4.	57399/16 14/09/2016	Aleksey Nikolayevich Perenesenko 23/02/1982	Vinogradov Aleksandr Vladimirovich Kostroma	FKU IK-1 Kostroma 05/09/2014 to 09/08/2016 1 year(s) and 11 month(s) and 5 day(s)	100 inmate(s) 1.5 m ²	overcrowding, lack of or insufficient electric light, lack of fresh air, poor quality of food, no or restricted access to running water, infestation of cell with insects/rodents, mouldy or dirty cell, sharing cells with inmates infected with contagious disease, lack of or insufficient physical exercise in fresh air		5,000
5.	58980/16 30/09/2016	Nikita Olegovich Yerogodskiy 08/08/1990	Mezak Ernest Aleksandrovich Syktyvkar	IK-25 Syktyvkar 18/09/2015 to 02/04/2016 6 month(s) and 16 day(s) IK-25 Syktyvkar 28/05/2016 to 22/07/2016 1 month(s) and 25 day(s)	2.5 m ² 2.3 m ²	overcrowding, lack of or insufficient physical exercise in fresh air, lack of fresh air lack of fresh air, overcrowding, lack of or insufficient physical exercise in fresh air	Art. 13 - lack of any effective remedy in respect of inadequate conditions of detention -	3,900
6.	60797/16 07/10/2016	Pavel Nikolayevich Petlenko 01/06/1974	Vinogradov Aleksandr Vladimirovich Kostroma	FKU IK-1 Kostroma 07/02/2014 pending More than 3 year(s) and 8 month(s) and 18 day(s)	130 inmate(s) 1.5 m ²	overcrowding, mouldy or dirty cell, infestation of cell with insects/rodents, lack of fresh air, lack of space outdoor, lack of or insufficient electric light, lack of or insufficient natural light, sharing cells with inmates infected with contagious disease, no or restricted access to shower, poor quality of food		8,300

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7.	61695/16 08/10/2016	Oleg Borisovich Ryapyev 10/09/1971	Vinogradov Aleksandr Vladimirovich Kostroma	IK-1 Kostroma 29/02/2016 pending More than 1 year(s) and 7 month(s) and 27 day(s)	100 inmate(s) 1.9 m ²	overcrowding, lack of or insufficient natural light, lack of fresh air, lack of or insufficient electric light, poor quality of food, no or restricted access to running water, infestation of cell with insects/rodents, mouldy or dirty cell, sharing cells with inmates infected with contagious disease, lack of or insufficient physical exercise in fresh air		7,000
8.	64181/16 24/10/2016	Aleksey Valentinovich Gridin 11/04/1990	Vinogradov Aleksandr Vladimirovich Kostroma	IK-1 Tver Region 09/02/2011 pending More than 6 year(s) and 8 month(s) and 16 day(s)	60 inmate(s) 1 m ² 3 toilet(s)	poor quality of food, infestation of cell with insects/rodents		8,300

¹ Plus any tax that may be chargeable to the applicants.