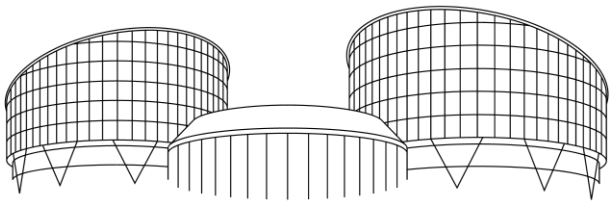

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF PETRENKO v. RUSSIA

(Application no. 30112/04)

JUDGMENT

STRASBOURG

20 January 2011

FINAL

20/04/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Petrenko v. Russia**,**

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

Christos Rozakis, *President,*
Nina Vajić,
Anatoly Kovler,
Khanlar Hajiyev,
Dean Spielmann,
Sverre Erik Jebens,
George Nicolaou, *judges,*

and Søren Nielsen, *Section Registrar,*

Having deliberated in private on 14 December 2010,

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

PROCEDURE

1. The case originated in an application (no. 30112/04) 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 Oleg Olegovich Petrenko ("the applicant"), on 15 March 2004.

2. The applicant, who had been granted legal aid, was represented by Ms O.V. Preobrazhenskaya, a lawyer practising in Strasbourg and Moscow. The Russian Government ("the Government") were represented by Ms V. Milinchuk and subsequently by Mr G. Matyushkin, the former and current Representatives of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that he had been detained in inhuman and degrading conditions and that the length of the criminal proceedings against him had been excessive.

4. On 28 February 2008 the President of the First Section decided to give notice of the application to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1952 and lives in Sosnovyy Bor in the Leningrad Region.

A. Criminal proceedings against the applicant

6. On 20 May 2001 the applicant was arrested. On 23 May 2001 he was placed in detention.

7. By judgment of 6 September 2001 the Sosnovyy Bor Town Court of the Leningrad Region convicted him of robbery and sentenced him to five years and three months' imprisonment. On 27 March 2002 the Leningrad Regional Court quashed the judgment on appeal and ordered that the case be remitted for an additional investigation.

8. On 8 August 2002 the Town Court again convicted the applicant of robbery. It sentenced him to four years and eight months' imprisonment. The applicant brought an appeal.

9. On 11 February 2004 the Regional Court held an appeal hearing. By a decision of the same date, it changed the crime's qualification and upheld the rest of the trial court's judgment.

B. Conditions of detention

10. In the period from 30 May 2001 to 2 March 2004 the applicant was detained in remand prison IZ-47/1 of St Petersburg.

1. The applicant's account

11. The applicant submitted that he had been detained in overcrowded cells and that the prisoners had had to take turns to sleep. Besides, his cells had been dirty and had lacked ventilation. He also submitted that the food had been of poor quality.

2. The Government's account

12. According to the Government's submissions, the applicant was held in following cells:

(a) cell no. 840 that measured 7,568 square metres and accommodated seven detainees;

(b) cell no. 844 that measured 7,568 square metres and accommodated seven detainees;

(c) cell no. 941 that measured 21,367 square metres and accommodated thirteen detainees;

(d) cell no. 859 that measured 7,568 square metres and accommodated seven detainees.

13. The Government conceded that the cells had been “overcrowded”. They pointed out, however, that the applicant at all times had been provided with an individual sleeping place and bed linen and that there had been enough space to move around and to do exercises in the cells.

14. They further submitted that the cells had been naturally and artificially ventilated and lit. The average air temperature in winter had been +18ºC and in summer +22ºC. The cells had been equipped with heating devices and a dining table. Toilet facilities had been separated from the cells' living area by a partition of 1.5 m in height. The applicant had never complained to the authorities of any insects or rodents.

15. The food had been of a proper quality. The applicant had never been limited in fresh water. He had had a possibility of taking a daily one-hour walk. As to the medical assistance, he had undergone various medical examinations and had been treated against tuberculosis. The appropriate treatment had resulted in the favourable dynamics of his disease.

II. RELEVANT DOMESTIC LAW

16. The Civil Code

Article 151. Compensation for non-pecuniary damage

"If a person has sustained non-pecuniary damage (physical or mental suffering) as a result of actions violating his personal non-pecuniary rights or other non-material benefits enjoyed by citizens, and also in other instances provided for by law, the court may require the perpetrator to afford monetary compensation for the said damage."

Article 1064. General grounds for liability for causing loss or harm

"1. Loss or harm caused to a person or to a company shall be compensated in full by the wrongdoer.

The law may impose responsibility to compensate for loss or harm on a person other than the wrongdoer"

Article 1069. Liability for damage caused by State authorities, local authorities and their officials

"Damage caused to an individual or a legal entity by the unlawful actions (inactions) of State, municipal bodies or their officials ... must be compensated. The compensation shall be paid out of the funds of the Treasury of the Russian Federation, the treasury of the constituent element of the Russian Federation or the treasury of the municipal entity respectively".

Article 1071. Agencies and persons acting on behalf of the treasury in awarding compensation for damage at its expense

"In instances where, in accordance with the present Code or other laws, the damage caused is subject to compensation at the expense of the treasury of the Russian Federation, the treasury of the subject of the Russian Federation or the treasury of the

municipal authority, the respective financial agencies shall act on behalf of the treasury ...”

Article 1099. General provisions

“1. The grounds and amount of compensation payable to an individual for non-pecuniary damage shall be determined by the rules laid down in the present Chapter and in Article 151 of the present Code.

2. ...

3. Compensation for non-pecuniary damage shall be awarded irrespective of any award for pecuniary damage.”

Article 1100. Grounds for compensation for non-pecuniary damage

“Compensation for non-pecuniary damage shall be awarded irrespective of the fault of the perpetrator, when:

... the damage is caused to a person as a result of his or her unlawful conviction, unlawful criminal prosecution, unlawful application, as a measure of restraint, of remand in custody or of a written undertaking not to leave a specified place, or unlawful imposition of an administrative penalty in the form of arrest or corrective labour.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

17. The applicant complained that the conditions of his detention in remand centre IZ-47/1 of St Petersburg from 30 May 2001 to 2 March 2004 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. The parties' submissions

18. The Russian Government submitted that the applicant had not complied with the admissibility requirements defined in Article 35 § 1 of the Convention which stipulates:

“The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final decision was taken”.

19. Firstly, according to the national authorities, the applicant had failed to exhaust domestic remedies as he had not brought a civil action for damage caused by the allegedly unsatisfactory detention conditions. In support of the effectiveness of that remedy, they referred to several precedents in the domestic practice when in similar circumstances persons had brought court proceedings and had been awarded compensation.

20. In their additional submissions, the Government stated that the applicant could have also applied to relevant prosecution authorities. They claimed that in several regions, for instance in Novosibirsk, Vladimir, Khabarovsk and Kaluga Regions, such applications lodged by detainees and convicts had proven to be successful as the prosecution authorities had effectively taken various measures in order to improve the detention conditions of the persons concerned.

21. Furthermore, the Government expressed doubts as to the date when the applicant had lodged his application with the Court.

22. As to the merits of the complaint, the Government stated that the living space afforded to detainees in the applicant's cells "had felt short of standards established in the European Court's case-law which had resulted in a violation of the applicant's rights guaranteed by Article 3 of the Convention". They further submitted that, apart from the overcrowding aspect, his complaint was unsubstantiated as he had been provided with an individual sleeping place, had been detained in satisfactory sanitary conditions, had been properly fed and medically assisted.

23. Having admitted the overcrowding in the applicant's cells during the entire period at issue, the national authorities, however, insisted that they could be held accountable only for the period of six months that had preceded the date when the applicant had complained to the Court.

24. The applicant maintained his complaint.

B. The Court's assessment

1. Admissibility

(a) Exhaustion of domestic remedies

25. The Court reiterates that Article 35 § 1 of the Convention provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available in theory and in practice at the relevant time, that is to say that it was accessible, capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII). The Court further

reiterates that the domestic remedies must be "effective" in the sense either of preventing the alleged violation or its continuation, or of providing adequate redress for any violation that had already occurred (see *Kudła v. Poland* [GC], no. 30210/96, § 158, ECHR 2000-XI).

26. As to the effectiveness of the first remedy suggested by the Government, namely a civil action for damages, the Court notes that in principle the Russian Civil Code, in particular Articles 151 and 1069, provides for a possibility of redress in case of appalling detention conditions. However, the Court takes cognisance of the fact that the State authorities, in relevant situations, can be held accountable for damage caused only by their culpable conduct or omission (see paragraph 16 above). It follows that a person, having brought a court action against authorities for compensation for unsatisfactory detention conditions, need to articulate facts and submit evidence that there was, for instance, a positive intention to humiliate or debase him or her.

27. In this connection, the Court refers to the recent case of *Artyomov v. Russia* in which it examined whether a civil action for damages can be considered an effective remedy. In that case the applicant brought three such actions complaining of poor detention conditions, in three separate periods, in remand prison IZ-39/1 of Kalingrad. One action was discontinued without the examination on the merits. Two others were dismissed as being manifestly ill-founded. The domestic courts' findings were based on the grounds that, firstly, the overcrowding, which was the subject of the complaints, had been caused by a lack of financial resources needed for reconstruction of, and repair works in, the remand prison; secondly, the facility administration had not been responsible for the lack of financing, and, thirdly, the administration could not refuse to admit detainees "when the maximum capacity of the facility had been exceeded" (see *Artyomov v. Russia*, no. 14146/02, §§16, 18, 31 and 33, 27 May 2010). The Court, having observed the circumstances of that case and the domestic civil law, came to a conclusion that as a remedy, civil proceedings for damage caused by poor detention conditions could rather be considered theoretical and illusory than adequate and effective in the sense of Article 35 § 1 of the Convention (see ibid, §§ 110-112).

28. As to the possibility to lodge an application to prosecution authorities, the Court notes that in the present case the Government listed examples of prosecution authorities' activity regarding only four Russian regions out of currently eighty-three. This fact casts serious doubts as to the availability of this remedy across the country.

29. Furthermore, the Court reiterates that in a number of Russian cases it has found that problems arising from conditions of detention, in particular detention in overcrowded remand prisons, were apparently of a structural nature, for which no effective domestic remedy had been shown to exist (see *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004, *Guliyev*

v. Russia, no. 24650/02, § 34, 19 June 2008 and *Nazarov v. Russia* no. 13591/05, § 77, 26 November 2009). In the recent case *Lutokhin v. Russia*, the Court has found a violation of Article 3 on account of overcrowding in the same facility – IZ-47/1 of St Petersburg – and approximately at the same time – from 16 April 2001 to 11 March 2003 (see *Lutokhin v. Russia*, no. 12008/03, §§ 8 *in fine* and 56-59, 8 April 2010).

30. With regard to the foregoing considerations, the Court concludes that the Government failed to substantiate the effectiveness of the suggested remedies. Accordingly, it dismisses their plea of non-exhaustion.

(b) Compliance with the six-month rule

31. The applicant's detention in the remand prison lasted from 30 May 2001 until 2 March 2004. The relevant complaint was lodged with the Court on 15 March 2004, that is to say within a period of six months from the date when the continuing situation ended.

32. The Court further notes that the complaint relates to a set of uninterrupted events which took place in the same prison over a period of two years, nine months and three days. Having regard to the fact that during the entire period complained of the applicant was detained in the overcrowded cells (see paragraph 21 above) and to the Court's finding that the domestic law and practice did not provide for an effective domestic remedy available in respect of the alleged breach (see paragraphs 25-29 above), the Court considers that the whole period at issue falls within its competence *ratione temporis*.

33. Accordingly, the Government's argument concerning the application of the six-month rule should be dismissed.

(c) Compliance with other admissibility criteria and conclusion

34. On the basis of the material submitted, the Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established. It must therefore be declared admissible.

2. Merits

35. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of a democratic society. It prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the circumstances and the victim's behaviour (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). However, in order to fall within the scope of Article 3, ill-treatment must attain a minimum level of severity. The assessment of this minimum level of severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical

and mental effects and, in some cases, the sex, age and state of health of the victim (see *Ireland v. the United Kingdom*, 18 January 1978, § 162, Series A, no. 25).

36. The Court reiterates that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. Yet it cannot be said that detention on remand in itself raises an issue under Article 3 of the Convention. Nevertheless, the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured (see *Kudła v. Poland*, no. 30210/96, §§ 92-94, ECHR 2000-XI).

37. The extreme lack of space in a prison cell 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 (see *Karalevičius v. Lithuania*, no. 53254/99, § 36, 7 April 2005). In its previous cases where applicants had at their disposal less than 3 m² of personal space, the Court found that the overcrowding was so severe as to justify of itself a finding of a violation of Article 3 of the Convention (see, among many others, *Lind v. Russia*, no. 25664/05, §§ 59-60, 6 December 2007; *Kantyrev v. Russia*, no. 37213/02, § 50-51, 21 June 2007; *Andrey Frolov v. Russia*, no. 205/02, §47-49, 29 March 2007; *Labzov v. Russia*, no. 62208/00, §§ 44-46, 16 June 2005).

38. In the present case the respondent Government admitted that during the period from 30 May 2001 to 2 March 2004 the applicant had been detained in the overcrowded cells. They alleged, however, that in terms of food quality, medical assistance and sanitary conditions, the applicant's detention had been in compliance with the standards set forth in Article 3 of the Convention and applicable domestic laws.

39. The Court observes that the applicant was detained in four cells, three of which measured approximately 7,5 m^2 and housed seven detainees and the fourth cell measured approximately 21,3 m^2 and housed thirteen detainees. It follows that the capacity of those cells allowed 1-1,6 m^2 of floor area per inmate. Given the fact that each cell was equipped with bunks, a dining table, a sink and a lavatory pan which took their space, it appears that the actual living area per inmate was dramatically small.

40. Having regard to its case-law on the subject, the material submitted by the parties and the findings above, the Court concludes that, though not ill-intended, the detaining of the applicant for two years, nine months and three days in cramped cells twenty-four hours a day, save for one-hour daily

walk, must have caused him such intense physical discomfort and mental suffering which the Court considers amounted to inhuman and degrading treatment within the meaning of Article 3 of the Convention.

41. There has accordingly been a violation of this provision.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

42. The applicant complained that the length of the criminal proceedings in his case had been incompatible with the "reasonable time" requirement, laid down in Article 6 § 1 of the Convention, which, in so far as relevant, reads as follows:

> "In the determination of ... any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

A. The parties' submissions

43. The Government acknowledged a violation of Article 6 with regard to the appeal proceedings. They submitted that delays during the period from 25 October 2002 (the date when the applicant had lodged his appeal) until 11 February 2004 (the date when the appeal hearing had been held) had been caused by logistical, organisational and financial difficulties relating to a moving of the appeal court's judges from one building to another, a lack of escort officers and the judge-rapporteur's sickness.

44. The applicant made no specific comment in that respect.

B. The Court's assessment

1. Admissibility

45. Taking into account the respondent Government' submissions, the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established. It must therefore be declared admissible.

2. Merits

46. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the complexity of the case, the conduct of the applicant and the relevant authorities and, finally, to what was at stake for the applicant in the dispute (see, among many other authorities, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 67, ECHR 1999-II).

47. It further notes that that an accused in criminal proceedings should be entitled to have his case conducted with special diligence. It has been a consistent approach of the Conventions institutions that Article 6, in respect of criminal matters, was designed to avoid that a person charged should remain too long in a state of uncertainty about his fate (see *Nakhmanovich v. Russia*, no. 55669/00, § 89, 2 March 2006).

48. The criminal proceedings in the applicant's case, from his arrest on 20 May 2001 until his conviction was confirmed on appeal on 11 February 2004, lasted a total of two years, eight months and twenty-three days. During that period, the charges against him were examined twice at two levels of jurisdiction. The overall length of the proceedings does not, as such, appear unreasonable. The only phase that gives rise to misgivings is that between 25 October 2002, when the applicant lodged his appeal, and 11 February 2004, when the appeal court decided to uphold his sentence. The respondent Government conceded that the delays during that period should be attributable to the State. The Court sees no reason to hold otherwise.

49. Accordingly there has been a violation of Article 6 of the Convention.

III. OTHER ALLEGED VIOLATION OF ARTICLE OF THE CONVENTION

50. The applicant raised various complaints under Articles 5 and 6 of the Convention.

51. Having considered his submissions in the light of all the material in its possession, the Court finds that, in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention.

52. It follows that this part of the application must be declared inadmissible as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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."

A. Damage

54. The applicant claimed 35,000 euros (EUR) in respect of non-pecuniary damage.

55. The Government submitted that these claims were unfounded and generally excessive.

56. The Court considers that the applicant must have sustained stress and frustration as a result of the violations found. Making an assessment on an equitable basis, the Court awards the applicant EUR 15,300 (fifteen thousand three hundred euros) in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

57. The applicant, who was represented before the Court by a lawyer from the International Protection Centre in Moscow, claimed EUR 1,680 for fees and costs involved in bringing his application to the Court.

58. The Government submitted that the applicant's claims were unsubstantiated and should not, therefore, be granted.

59. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. As regards the fees for the legal representation in the Strasbourg proceedings, the Court observes that the applicant was granted EUR 850 in legal aid. It considers that the applicant did not justify having incurred any expenses exceeding that amount.

C. Default interest

60. The Court considers it appropriate that the default interest 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. *Declares* the complaint concerning the conditions of the applicant's detention in remand centre IZ-47/1 of St Petersburg and the complaint concerning the excessive length of the criminal proceedings admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 3 of the Convention;

3. *Holds* that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 15,300 (fifteen thousand three hundred euros) in respect of non-pecuniary damage, to be converted into to be converted into Russian roubles at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 January 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President