CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

CASE OF SUKHOVOY v. RUSSIA

(Application no. 63955/00)

JUDGMENT

STRASBOURG

27 March 2008

FINAL

27/06/2008

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

In the case of Sukhovoy 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,
Giorgio Malinverni, *judges*,
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 6 March 2008,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 63955/00) 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 Kirill Yuryevich Sukhovoy ("the applicant"), on 8 August 2000.

2. The applicant, who had been granted legal aid, was represented by Ms E. Liptser, a lawyer with the International Protection Centre in Moscow. The Russian Government ("the Government") were represented by Mr P. Laptev, former Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that the conditions of his detention amounted to a violation of Article 3 of the Convention.

4. By a decision of 24 November 2005 the Court declared the application partly admissible.

5. The applicant and the Government each filed further written observations (Rule 59 § 1).

THE FACTS

6. The applicant was born in 1982 and lives in Ivanovo.

7. On 6 January 2000 the applicant was remanded in custody on suspicion of having committed robbery. By a final judgment of the Oktyabrskiy District Court of Ivanovo of 26 June 2000 he was convicted of

robbery and sentenced to eight years' imprisonment. On 20 July 2000 the Ivanovo Regional Court upheld the judgment.

8. From 8 January 2000 to 2 August 2000 the applicant was held in pre-trial detention facility IZ 33/1 in Ivanovo, also referred to as SIZO 33/1. He was first held in cells no. 50 and no. 53 and then, from 10 May 2000, in cell no. 42.

9. The parties' descriptions of the conditions of detention in IZ 33/1 were different.

A. The applicant's account

10. The applicant's cell held thirty-five detainees instead of the eight for whom it was designed. As the number of detainees exceeded the number of beds the detainees slept in turns, having five hours' sleep at most. Cells were poorly lit and ventilated and were infested with bed-bugs and lice. In many cells the floor was made of concrete. Unhygienic conditions promoted the fast spread of skin and other diseases. Food and medical care were below standard.

11. On 12 March 2004 the applicant's lawyer obtained statements from two individuals, M and T, who were detained in SIZO 33/1 at the same time, from January 2000 to June-July 2000.

12. According to M, thirty-five persons were held in cell no. 82, in which there were 14 bunks. Therefore the detainees slept in turns. The floor was made of concrete. There were bed-bugs and lice. All the detainees were infected with scabies more than once. The only access to medication was if supplied by families. Bedding was also supplied by families. Three shower cubicles were made available for thirty-five detainees for a maximum of twenty minutes.

13. According to T, there were 14 bunks in a cell while the number of people was two or three times higher. Therefore people slept in turns. Medication was supplied by families. The cell was infested with bed-bugs and lice. The 20 to 25 minutes allowed for a shower was insufficient.

14. Following the applicant's complaint about the conditions of his detention, the prosecutor's office of the Ivanovo Region examined his allegations. Its letter no. 17-81-2000 of 16 October 2000 stated as follows:

> "... In connection with significant overcrowding of the detention facility [IZ 33/1] at present, particularly during a period before July 2000, not all prisoners were provided with an individual bunk and bedding. At the same time, all prisoners under the age of 18 were provided with an individual bunk and bedding..."

15. The prosecutor's office further stated that food complied with standards. The medical centre was sufficiently supplied with medicines. The premises were regularly disinfected. The conditions of detention were subject to the regional prosecutor's monthly inspections to ensure their compliance with statutory standards.

B. The Government's account

16. According to the Government, cell no. 50 measured 29.4 square metres and had 12 beds, cell no. 53 measured 22.6 sq. m and had 10 beds and cell no. 42 measured 20.46 sq. m and had 16 beds.

17. The average number of detainees in the facility was 1311 while its maximum accommodation capacity was 1030 detainees. The average living space per person was about 3.14 sq. m. The statutory standard of four sq. m. per person could not be complied with during the period in question for reasons beyond the prison administration's control. The exact number of inmates could not be established because the relevant documents had been destroyed after the expiry of the time-limit for their storage.

18. All juvenile detainees had an individual bed and bedding. They had at least two hours' daily exercise outside their cells and access to bathing facilities for 15 to 20 minutes a week.

19. The sanitary condition of the cells was satisfactory. They were cleaned daily and disinfected weekly. Natural and electrical lighting complied with standards. Clothing and bedding were regularly subjected to disinfection treatment. No infectious or parasitic diseases were registered in the cells in question.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

20. The applicant complained that the conditions of his detention in remand facility IZ-33/1 in Ivanovo from 8 January to 2 August 2000 amounted to inhuman and degrading treatment. He relied on Article 3 of the Convention which reads as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

21. The Government considered that the conditions of detention, as described by them, did not infringe the applicant's rights guaranteed under Article 3.

22. The applicant maintained his complaints. He noted that the Government's information concerning the cells' size and the number of beds in the cells suggested that there had been 2.45, 2.26 and 1.28 square metres per person in his cells.

23. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of 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, to fall under 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 *Valašinas v. Lithuania*, no. 44558/98, §§ 100-101, ECHR 2001-VIII).

24. The Court has consistently stressed 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 (see *Labzov v. Russia*, no. 62208/00, § 42, 16 June 2005). Measures depriving a person of his liberty may often involve such an element. Nevertheless, under this provision 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 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* [GC], no. 30210/96, § 94, ECHR 2000-XI).

25. When assessing conditions of detention, account has to be taken of the cumulative effects of those conditions, as well as the specific allegations made by the applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II).

26. The parties disagreed as to the specific conditions of the applicant's detention. However, there is no need for the Court to establish the truthfulness of each and every allegation, because it finds that there has been a violation of Article 3 on the basis of the facts which have been presented or undisputed by the respondent Government, for the following reasons.

27. The main allegation, which the parties have in principle agreed upon, is that the cells were overpopulated, although they gave different information in this respect. The applicant alleged that the actual number of detainees had been from two to four times higher than the number of beds in the cells. The Government did not indicate the exact number of detainees held in the applicant's cells. However they submitted information on the cells' surface area and specified that there had been between 10 and 16 beds in each cell. They also acknowledged that the actual number of detainees at the material time – 1311 persons – had exceeded the detention facility's maximum accommodation capacity of 1030 persons. They further stated, contrary to what was suggested by the applicant, that the juvenile detainees, including the applicant, had all been provided with a separate bed.

28. Even assuming, based on the above information and in the absence of any indication to the contrary, that the number of detainees had been equal to the number of beds, it can be seen from the information submitted by the Government that there was 2.45 sq. m of space per inmate in cell no. 50, 2.26 sq. m per inmate in cell no. 53 and 1.28 sq. m per inmate in cell no. 42.

29. The Court observes further that the applicant was allowed two hours' exercise outside his cell a day and 15 to 20 minutes' access to bathing facilities once a week. For the rest of the time he was confined to his cell.

30. The Court has frequently found a violation of Article 3 of the Convention on account of the lack of personal space afforded to detainees (see, in particular, *Kalashnikov v. Russia*, no. 47095/99, §§ 97 et seq., ECHR 2002-VI; *Labzov*, cited above, §§ 44 et seq.; *Mayzit v. Russia*, no. 63378/00, §§ 39 et seq., 20 January 2005; *Khudoyorov v. Russia*, no. 6847/02, §§ 104 et seq., 8 November 2005; *Novoselov v. Russia*, no. 66460/01, §§ 41 et seq., 2 June 2005; and *Popov v. Russia*, no. 26853/04, §§ 215 et seq., 13 July 2006). In those cases the Court considered the extreme lack of space to be the focal point for its analysis of compatibility of the conditions of applicants' detention with Article 3. It found that the fact that an applicant was obliged to live, sleep, and use the toilet in the same cell with so many other inmates was itself sufficient to cause distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention, and arouse in him feelings of fear, anguish and inferiority capable of humiliating and debasing him.

31. The Court reiterates that irrespective of the reasons for the overcrowding, it is incumbent on the respondent Government to organise its penitentiary system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Mamedova v. Russia*, no. 7064/05, § 63, 1 June 2006, and *Benedictov v. Russia*, no. 106/02, § 37, 10 May 2007).

32. Having regard to its case-law on the subject and the material submitted by the parties, the Court notes that the Government have not put forward any fact or argument capable of persuading it to reach a different conclusion in the present case.

33. In the light of the above, having regard to the applicant's young age and the duration of his detention, which lasted about seven months, the Court finds that the applicant's conditions of detention amounted to degrading treatment within the meaning of Article 3.

34. Therefore, there has been a violation of Article 3 of the Convention on account of the conditions of the applicant's detention in remand facility IZ-33/1 in Ivanovo from 8 January to 2 August 2000.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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

36. The applicant submitted that during his detention in IZ-33/1 he had developed chronic streptococcal impetigo and needed lengthy treatment. On the basis of that allegation he claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

37. The Government averred that the applicant had never been ill with chronic streptococcal impetigo while in detention facility IZ-33/1 and his submissions were therefore irrelevant to the present case. Since the disease was the only ground for the applicant's claim this claim should be dismissed.

38. The Court notes that the documents submitted by the applicant in support of his allegation concerning his illness have no relation to the applicant's detention in pre-trial detention facility IZ-33/1 in respect of which the Court has found a violation of the Convention in the present case. They concern his detention in penitentiary establishment OK-3/6 in which he served his sentence. Furthermore, according to a medical certificate of 9 August 2000, the applicant was healthy and did not need any medical treatment upon his arrival at establishment OK-3/6 on 2 August 2000, immediately after his detention in IZ-33/1.

39. However the Court accepts that the applicant suffered humiliation and distress because of the degrading conditions of his detention. Making its assessment on an equitable basis, having regard to its case-law on the subject and, taking into account, in particular, the length of the applicant's detention, the Court awards the applicant EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

40. The applicant also claimed EUR 2,000 for his representation before the Court and EUR 300 for medication bought for him by his family in connection with his chronic streptococcal impetigo.

41. The Government considered that the claim for medical expenses should be rejected for reasons similar to those stated in paragraph 37 above. The claim for legal expenses should be rejected because no agreement for legal services was submitted. Moreover, two documents submitted by the

applicant's representative – a payment receipt for 2,500 Russian roubles of 25 October 2002 and a statement by the applicant's mother Ms O.A. Sukhovaya in which she undertook to pay the advocate Ms E. Liptser for the applicant's representation before the Court in connection with the present application in case of the Court's positive judgment – were signed by the applicant's mother, who did not have any authority document from the applicant. The Government further argued that no list of the counsel's services or the cost of such services had been submitted to the Court, which deprives the Court of the opportunity to assess whether the expenses were reasonable as to quantum.

42. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum.

43. As regards the fees for the legal representation in the Strasbourg proceedings, the Court observes that the applicant was granted EUR 701 in legal aid. It notes that the applicant failed to submit any schedule of fees from his counsel which would describe services provided and their cost. Nor did he submit any agreement between him and his counsel which would indicate the total cost of the applicant's representation by his counsel before the Court. In these circumstances the Court considers that the applicant did not justify having incurred any expenses exceeding the amount of the legal aid. Therefore the Court makes no award under this head.

44. As regards the medical expenses, the Court rejects the claim since the applicant's allegation that he had fallen ill with chronic streptococcal impetigo in facility IZ-33/1 is manifestly ill-founded (see paragraph 38 above).

C. Default interest

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

2. *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 3,000 (three thousand euros) in

respect of non-pecuniary damage, to be converted into the national currency of the respondent State 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;

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

Done in English, and notified in writing on 27 March 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen
Registrar

Christos Rozakis
President