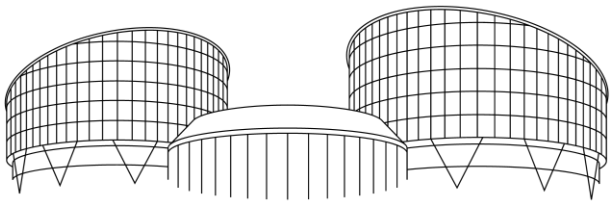

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF LUTOKHIN v. RUSSIA

(Application no. 12008/03)

JUDGMENT

STRASBOURG

8 April 2010

FINAL

08/07/2010

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

In the case of Lutokhin v. Russia,

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

Christos Rozakis, *President,*
Anatoly Kovler,
Elisabeth Steiner,
Dean Spielmann,
Sverre Erik Jebens,
Giorgio Malinverni,
George Nicolaou, *judges,*
and Søren Nielsen, *Section Registrar*,

Having deliberated in private on 18 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 12008/03) 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 Andrey Borisovich Lutokhin ("the applicant"), on 12 March 2003.

2. The applicant, who had been granted legal aid, was represented by Ms O. Preobrazhenskaya. The Russian Government ("the Government") were represented by Mr P. Laptev and Mrs V. Milinchuk, former Representatives of the Russian Federation at the European Court of Human Rights.

3. On 18 September 2006 the President of the First Section decided to give notice of the application to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3). The Government objected to the joint examination of the admissibility and merits of the application. Having examined the Government's objection, the Court dismissed it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant was born in 1968 and lives in Gatchina, Leningrad Region.

A. Criminal proceedings

5. On 10 July 2002 the Leningrad Regional Court convicted the applicant of abduction, robbery, aggravated robbery and extortion, and sentenced him to seven years' imprisonment.

6. The conviction and sentence were upheld on appeal on 19 December 2002.

7. By a decision of 27 October 2006 the Volgograd Town Court of the Volgograd Region released the applicant on parole.

B. Conditions of the applicant's detention

8. The applicant was apprehended on 12 April 2001 and was placed in a temporary confinement ward of the police department of Gatchina (*изолятор временного содержания отдела внутренних дел г. Гатчины*). On 16 April 2001 he was transferred to remand centre IZ-47/1 of Saint Petersburg (*следственный изолятор ИЗ-47/1 г. Санкт-Петербурга)* where he was detained until 11 March 2003.

9. The parties' descriptions of the conditions of his detention differ on a number of counts.

1. The applicant's account

10. The applicant submitted that his cell in the temporary confinement ward of the police department of Gatchina ("the temporary confinement ward") had measured 20 m^2, had been equipped with twenty-four sleeping places and had been shared by thirty-six people at the time. Inmates had received no bedding. The only window had been blocked with an iron blind that had allowed almost no ventilation.

11. As regards his detention in the remand centre, he had been held in six cells that had measured 8 m^2 and had had six sleeping places. One of them, used for transfer purposes, had been shared by twenty-five people. The others had accommodated from eight to thirteen people. Inmates had received no individual bedding.

12. Ventilation had hardly been existent. The cells had been stuffy and damp. Iron blinds attached to cell windows had become extremely hot in the summer. During the winter time, inefficient heating had resulted in icing up of the exterior wall. The average inside temperature in the summer had risen up to +50° C and had fallen to -10° C in the winter.

13. The lighting had been insufficient and had been turned on round the clock.

14. A forty-minute walk in a small yard had been allowed only occasionally.

15. He had never witnessed any disinfection measures.

16. Hygiene conditions had been inadequate. A lavatory pan in the cells had not been partitioned from the living room and had allowed no privacy. It had not worked properly for a lack of pressure. Hot water had not been provided in the cells. Detainees had been allowed to shower in a common room for fifteen minutes once in ten-twelve days.

17. The nutrition and medical assistance had been poor.

2. The Government's account

18. The Government submitted no information as regards the conditions of the applicant's detention in the temporary confinement ward.

19. As to his detention in the remand centre, during the relevant period of time the applicant had been held in six cells. The size of the cells had been 8 m^2. The exact number of inmates could not be established owing to a destruction of the facility's relevant records.

20. All cells had been equipped with six sleeping places and a dining table. A sink and a lavatory pan installed in the cells had been separated from the living area by a partition.

21. Each cell had had a window measured 1 x 1,1 m^2 and had been equipped with ventilating shafts.

22. The cells had been lit with artificial lighting. The natural light coming through the windows had been sufficient to allow reading.

23. The applicant had been provided with an individual sleeping place and bedding.

24. Sanitary inspections, with regard to the monitoring of the average inside temperature and of the overall sanitary state of the cells, had been carried out on a regular basis.

25. Meals had been served three times a day. The nourishment had met official standards. The quality of the food had been controlled by a medical unit of the facility.

26. The applicant had received parcels. His state of health had regularly been monitored and he had been provided with medical assistance when that had been necessary.

27. He had never complained about conditions of his detention while in the remand centre

II. RELEVANT DOMESTIC LAW

Law on Detention on Remand

28. Article 8 of the Law on Detention on Remand (Federal Law no. 103-FZ of 15 July 1995) provides that persons detained in accordance with a court order should be held in remand centres.

29. According to Article 9, persons whose detention pending trial has not yet been ordered by the competent court should be held in temporary confinement wards. In exceptional circumstances, persons detained in remand centres can be transferred to and detained in temporary confinement wards for a period of no longer than ten days during a month (Article 13).

30. Article 23 provides that detainees should be kept in conditions which satisfy health and hygiene requirements. They should be provided with an individual sleeping place and be given bedding, tableware and toiletries. Each inmate should have no less than four square metres of personal space in his or her cell. Detainees should be given free of charge sufficient food for maintaining them in good health in line with the standards established by the Government of the Russian Federation (Article 22).

III. RELEVANT INTERNATIONAL DOCUMENTS

31. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited the Russian Federation from 2 to 17 December 2001. The section of its Report to the Russian Government (CPT/Inf (2003) 30) dealing with the conditions of detention in remand establishments and the complaints procedure read as follows:

> 45. It should be stressed at the outset that the CPT was pleased to note the progress being made on an issue of great concern for the Russian penitentiary system: overcrowding.
>
> When the CPT first visited the Russian Federation in November 1998, overcrowding was identified as the most important and urgent challenge facing the prison system. At the beginning of the 2001 visit, the delegation was informed that the remand prison population had decreased by 30,000 since 1 January 2000. An example of that trend was SIZO No 1 in Vladivostok, which had registered a 30% decrease in the remand prison population over a period of three years.
>
> ...
>
> The CPT welcomes the measures taken in recent years by the Russian authorities to address the problem of overcrowding, including instructions issued by the Prosecutor General's Office, aimed at a more selective use of the preventive measure of remand in custody. Nevertheless, the information gathered by the Committee's delegation shows that much remains to be done. In particular, overcrowding is still rampant and regime activities are underdeveloped. In this respect, the CPT reiterates the recommendations made in its previous reports (cf. paragraphs 25 and 30 of the report on the 1998 visit, CPT (99) 26; paragraphs 48 and 50 of the report on the 1999 visit, CPT (2000) 7; paragraph 52 of the report on the 2000 visit, CPT (2001) 2).
>
> ...
>
> 125. As during previous visits, many prisoners expressed scepticism about the operation of the complaints procedure. In particular, the view was expressed that it

was not possible to complain in a confidential manner to an outside authority. In fact, all complaints, regardless of the addressee, were registered by staff in a special book which also contained references to the nature of the complaint. At Colony No 8, the supervising prosecutor indicated that, during his inspections, he was usually accompanied by senior staff members and prisoners would normally not request to meet him in private 'because they know that all complaints usually pass through the colony's administration'.

In the light of the above, the CPT reiterates its recommendation that the Russian authorities review the application of complaints procedures, with a view to ensuring that they are operating effectively. If necessary, the existing arrangements should be modified in order to guarantee that prisoners can make complaints to outside bodies on a truly confidential basis."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

32. The applicant complained that the conditions of his pre-trial detention 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

1. The Government's submissions

33. The Government stated that the detention conditions in remand centre IZ-47/1 of Saint Petersburg had been compatible with Article 3 of the Convention. In support of their assertion, the Government adduced certificates by the governor of the centre confirming that the applicant had been provided with an individual sleeping place, bedding, sufficient nutrition and medical assistance and that the sanitary, hygiene and temperature norms had been duly met.

34. They further submitted that the applicant had never challenged the adequateness of the conditions of his detention before the domestic authorities. He could have complained to a prosecutor's office or to administrative authorities of the Federal Service for the Execution of Sentences but had failed to avail himself of these opportunities.

35. For these reasons the Government concluded that, apart from being manifestly ill-founded, the applicant's complaint was also inadmissible for his failure to exhaust domestic remedies.

2. The applicant's submissions

36. The applicant contested the Government's description of his detention conditions as factually incorrect. He claimed in particular that the cell in the temporary confinement ward had allowed 0,5 m^2 of personal space per inmate. At the remand centre, in five cells the personal space available to detainees in average had fluctuated between 0,5 m^2 and 0,8 m^2. He had spent one day in the remand centre's "transfer" cell that had measured 8 m^2 and had housed at the time twenty-five people.

37. In addition to the severe overcrowding, the applicant underlined the lack of fresh air and lighting and the fact that a toilet in the cells in the remand centre had not afforded any privacy and had not functioned properly. His account of the conditions in both detention facilities is set out in paragraphs 10-17 above. In support of his allegations, the applicant adduced photographs picturing two cells and a recreation yard.

38. As regards the Governments' objection of non-exhaustion, he stated, as a matter of fact, that any remedies in respect of detention conditions envisaged under domestic law had proved to be ineffective. In particular, he referred to the Court's case-law concerning conditions in Russian penitentiary facilities. He also alleged that on a number of occasions he had appealed to competent officials but to no avail.

39. The applicant accordingly maintained his complaint.

B. The Court's assessment

1. Admissibility

(a) Simultaneous examination of the complaints about the conditions of detention in both detention facilities

40. The Court observes that the applicant complained of two periods of detention in poor conditions, that is from 12 to 16 April 2001 in the temporary detention facility of the police department of Gatchina and from 16 April 2001 to 11 March 2003 in remand centre IZ-47/1 of Saint Petersburg. In describing the conditions of his detention, he primarily alleged overcrowding beyond the design capacity and shortage of sleeping places in both facilities. According to the applicant, during the two years of his detention he was afforded less than 1 square metre of personal space, irrespective of the place of his detention.

41. It is noted that the application was lodged on 12 March 2003 that is approximately two years after the applicant's detention at the police department of Gatchina had ended.

42. The Court reiterates that continuous detention in similar conditions, though in different facilities, may in certain circumstances warrant examination of the period of detention as a whole (see *Benediktov v. Russia*, no. 106/02, § 31, 10 May 2007; *Guliyev v. Russia*, no. 24650/02, § 33, 19 June 2008; and *Sudarkov v. Russia*, no. 3130/03, § 40, 10 July 2008).

43. Having regard to the continuous nature of the applicant's detention and the allegation of severe overcrowding as the main characteristic of the detention conditions in both facilities, the Court finds that the two periods construe a "continuing situation" which brings the events concerning the applicant's detention at the police department of Gatchina within its competence.

(b) Exhaustion of domestic remedies

44. 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, §§ 157 and 159, ECHR 2000-XI).

45. In the present case the respondent Government indicated such remedies as complaining to a prosecutor's office and the Federal Service for the Execution of Sentences. The Court reiterates that it has already on a number of occasions examined the same objection by the Russian Government and dismissed it. The Court held in particular that the Government had not demonstrated what redress could have been afforded to the applicant by a prosecutor, a court, or another State agency, bearing in mind that the problems arising from the conditions of the applicant's detention were apparently of a structural nature and did not concern the applicant's personal situation alone (see *Moiseyev v. Russia* (dec.), no. 62936/00, 9 December 2004 and *Guliyev*, cited above § 34).

46. The Court observes that in the present case the Government also failed to substantiate the effectiveness of the suggested remedies and adduce satisfactory evidence. For that reason, it considers that the mere mention of a remedy is too speculative to be deemed a fulfilment of the Government's burden of proof. Accordingly, it dismisses their plea of non-exhaustion.

(c) Compliance with other admissibility criteria

47. On the basis of the material submitted, the Court observes that the applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) General principles

48. 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).

49. 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. 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*, no. 30210/96, §§ 92-94, ECHR 2000-XI).

50. 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 *Kalashnikov v. Russia*, no. 47095/99, § 102, ECHR 2002-VI, and *Kehayov v. Bulgaria*, no. 41035/98, § 64, 18 January 2005).

51. 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).

52. Lastly, the Court reiterates that it must be satisfied that the conditions of the applicant's detention constituted treatment which exceeded the minimum threshold for Article 3 of the Convention (see *Maltabar and Maltabar v. Russia*, no. 6954/02, § 96, 29 January 2009) and in assessing the circumstances of the case and the evidence presented, the Court has generally applied the standard of proof "beyond reasonable doubt" (see *Ireland*, 18 January 1978, § 161, Series A no. 25).

(b) Application of these principles to the present case

53. The Court observes that the applicant did not support his allegations as to the appalling detention conditions with sufficient evidence. The Government, in turn, submitted no information regarding the applicant's four-day detention in the temporary confinement ward, as had the exact number of detainees per cell held together with the applicant in the remand centre.

54. In this connection, it should be noted that Convention proceedings do not in all cases lend themselves to a rigorous application of the principle *affirmanti incumbit probatio* (he who alleges something must prove that allegation), because in certain instances the respondent Government alone have access to the information capable of corroborating or refuting the applicant's allegations. A failure on the Government's part to submit such information without a satisfactory explanation may give rise to the drawing of inferences as to the well-foundedness of these allegations (see *Timurtaş v. Turkey*, no. 23531/94, §§ 66 and 70, ECHR 2000-VI).

55. Having regard to the above principles and the fact that the Government did not submit any convincing relevant data, the Court accepts the applicant's argument that his cell in the temporary confinement ward had been severely overcrowded.

56. As regards the conditions in the remand centre from 16 April 2001 until 11 March 2003, the Court will concentrate on the allegations that have been presented or are undisputed by the respondent Government (see §§ 18-27 above).

57. The Court observes that the applicant was detained in six cells that measured 8 m^2 and had six sleeping places. It follows that the design capacity of these cells allowed 1,3 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. This state of affairs in itself constituted a violation of Article 3 of the Convention (see § 51 above).

58. 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 approximately one year and eleven months in a cramped cell 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.

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

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

60. The applicant raised various complaints, regarding the criminal proceedings against him, under Article 6 of the Convention and Article 4 of Protocol No. 7 to the Convention.

61. 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 and its Protocols.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

63. 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

64. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

65. He also claimed 297,350 roubles (RUB) and 4,000 dollars (USD) in respect of pecuniary damage that he linked to university's fees that he had lost because of his arrest, the value of parcels he had received from his relatives while in detention and, finally, costs for a dental treatment he had had after his release.

66. The Government considered the applicant's claims for pecuniary and non-pecuniary damages unsubstantiated and excessive respectively.

67. The Court notes that it has found in the present case a violation of Article 3 on account of the inhuman and degrading conditions of the applicant's detention in the temporary confinement ward and the remand centre during one year and eleven months. It considers that the applicant's suffering cannot be compensated for by a mere finding of a violation. At the same time, the amount claimed by the applicant appears excessive. Making assessment on an equitable basis, the Court awards the applicant EUR 18,000 (eighteen thousand euros), plus any tax may be chargeable on it.

68. On the other hand, the Court does not discern a causal link between the violation found and the pecuniary damage alleged. It therefore rejects this claim.

B. Costs and expenses

69. Without mentioning a particular sum, the applicant claimed reimbursement for legal costs incurred in the proceedings before the Court.

70. 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 are reasonable as to quantum. Taking into account that the amount of EUR 850 has already been paid to the applicant by way of legal aid, the Court does not consider it necessary to make an award under this head.

C. Default interest

71. 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 the temporary confinement ward of the police department of Gatchina and remand centre IZ-47/1 of Saint Petersburg admissible and the remainder of the application inadmissible;

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

3. *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 18,000 (eighteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles 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 amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 8 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren Nielsen Registrar	Christos Rozakis President