



## Russian State must address systemic problem of prisoner transportation as Court finds multiple rights violations

The case concerned complaints brought by seven Russian nationals about the conditions of their transfer between remand prisons and correctional facilities.

In today's **Chamber** judgment<sup>1</sup> in the case of **Tomov and Others v. Russia** (application nos. 18255/10, 63058/10, 10270/11, 73227/11, 56201/13, and 41234/16) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 3 (prohibition of inhuman or degrading treatment)** of the European Convention on Human Rights as concerned the conditions of transport of six of the applicants, excluding one pre-trial period for one of those applicants ;

**a violation of Article 13 (right to an effective remedy) taken in conjunction with Article 3** as concerned a complaint by three of the applicants that there were no effective remedies in domestic law for them to challenge their conditions of transport; and,

**a violation of Article 6 § 1 (right to a fair hearing)** as concerned one applicant, who had not been given the opportunity to present a court claim for compensation for inadequate detention conditions.

It also held, unanimously, that the Russian State had failed to comply with their obligations under **Article 38 (obligation to furnish necessary facilities for the examination of the case)** because it had refused to submit regulations requested by the Court (in application no. 18255/10).

The Court found that the violations had chiefly stemmed from the authorities' adherence to outdated standards on prisoner transportation which meant in particular that some detainees had been transported in solid metal cubicles in prison vans, while others had had to travel overnight in train compartments without enough sleeping places.

Under **Article 46 (implementation)** the Court outlined measures for improving what is a recurrent structural problem and gave Russia 18 months from the date of the judgment becoming final to set up effective domestic remedies to prevent similar violations.

### Principal facts

The applicants, Aleksey Tomov, Yuliya Punegova, Natalya Kostromina, Yevgeniy Rakov, Dmitriy Vasilyev, Nikolay Roshka, Nikita Barinov are Russian nationals who were born in 1966, 1985, 1978, 1969, 1958, 1965, and 1990 respectively.

While serving sentences Mr Tomov, Mr Vasilyev, Mr Roshka and Mr Barinov were transported over long distances by both road and rail. They were taken to remote detention facilities which were located 900 to 2,200 kilometres away. The railway leg of their journeys included at least one night's stay, meaning they were deprived of a night's rest because prisoners outnumbered sleeping places. Three of the applicants who underwent the longest journey were only allowed two toilet visits and

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

three pots of water per day and, at one point, were left for about 15 hours at sub-zero temperatures without heating while the train was stationary.

When transferred by prison van during their detention, Ms Punegova and Ms Kostromina had to travel in a single-prisoner cubicle, known as a “*stakan*”, which is a solid metal box measuring 65 cm by 50 cm with one seat inside. They were confined to that isolation box because they were women: under the relevant regulations, certain categories of prisoners classified as vulnerable, such as women prisoners or former police officers, had to be transported separately.

Ms Punegova complained that warm air from the heating unit in the central aisle of the van did not reach her cubicle, which was sealed off by a solid metal door, and that she had thus suffered badly from the cold in winter months.

Ms Kostromina who suffers from obesity caused by diabetes had to take at least seven one- to two-hour trips in a “*stakan*” cubicle which she shared with another woman prisoner. Each trip lasted one to two hours.

In February 2011 Mr Rakov was transferred to Vladivostok, 200 kilometres away from where he was serving his sentence. He complained to various authorities and the courts about the conditions on that trip but the courts rejected his claims without hearing Mr Rakov or his representative.

Mr Rakov, as well as two of the other applicants, also unsuccessfully challenged the guidelines set down by the Ministry of Justice and the Ministry of the Interior for transporting prisoners. The Supreme Court of Russia rejected their complaints that the maximum number of detainees allowed in railway carriages was too high and led to overcrowding, finding in particular that such conditions conformed to domestic regulations and did not result in actual physical injuries.

## Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) of the Convention, all seven applicants complained of the inadequate conditions of their transportation. Mr Rakov, Mr Tomov, Mr Roshka and Mr Barinov also complained under Article 13 (right to an effective remedy) that there had been no effective remedies in domestic law for them to challenge their conditions of transport.

Mr Rakov relied on Article 6 § 1 (right to a fair hearing) to complain that he had not been given the opportunity to present a claim for compensation for inadequate conditions of detention to the courts.

The applications were lodged with the European Court of Human Rights on various dates between 2010 and 2016.

Judgment was given by a Chamber of seven judges, composed as follows:

Vincent A. **De Gaetano** (Malta), *President*,  
Helen **Keller** (Switzerland),  
Dmitry **Dedov** (Russia),  
Alena **Poláčková** (Slovakia),  
Georgios A. **Serghides** (Cyprus),  
Jolien **Schukking** (the Netherlands),  
María **Elósegui** (Spain),

and also Stephen **Phillips**, *Section Registrar*.

## Decision of the Court

The Court held that Mr Rakov’s complaints under Articles 3 and 13 had been submitted more than

six months after the last day of his transfer. As the subsequent judicial proceedings were not considered an effective remedy in the Russian legal system, those complaints were belated and inadmissible.

### Article 3 (inhuman and degrading transportation conditions)

The Court took a comprehensive approach to cases concerning prisoner transportation, and focused on the actual conditions of transfer and their effect on the applicants.

It pointed out that a strong presumption of a violation of the Convention would arise when detainees were transported in vans with less than 0.5 square metres of space per person. It was irrelevant whether such cramped conditions were the result of faulty design or a guard's decision to put too many detainees in one vehicle. Such a presumption could only be rebutted in the case of short or occasional transfers.

Sleep deprivation, inadequate heating or ventilation, low ceilings forcing prisoners to stoop, especially in single-prisoner cubicles, and restricted access to water, food and toilets during long trips would constitute aggravating factors.

Bearing that approach in mind, the Court examined the remaining six applicants' individual situations.

It found that Mr Tomov, Mr Vasilyev, Mr Roshka and Mr Barinov had been deprived of a night's rest on one or more consecutive nights during their journeys by rail because of insufficient sleeping places, which in itself had amounted to inhuman and degrading treatment. Their plight had been aggravated by being locked overnight inside an unheated compartment at sub-zero temperatures, having restricted access to water and toilets, and by being transported in overcrowded vans immediately before or after their train trips.

It also considered that the two women applicants, Ms Punegova and Ms Kostromina, had had to endure particularly harsh transport conditions. The escorting officers had followed the regulations requiring separation of the sexes to the letter when putting them in the "*stakan*" cubicle, but that had been in disregard for their well-being as well as respect for human dignity.

Ms Kostromina, who suffered from obesity, had thus had to routinely spend up to two hours in the confined space of a "*stakan*", with another woman, in the hot summer months without ventilation. Ms Punegova had been subjected to as many as 10 transfers in a "*stakan*" with no heating in the low temperatures of the winter months when her trial had taken place.

The Court found, on the other hand, that Ms Punegova had not been transferred many times during the pre-trial period of her detention and the transfers had sometimes been as short as three minutes, which rebutted the presumption of a violation of Article 3 due to restricted personal space.

No officials had apparently sought to cause the applicants hardship or suffering. However, the actual conditions of their transfer had subjected them to distress of an intensity exceeding the unavoidable level of suffering inherent in detention, which had undermined their human dignity, and had to be characterised as "inhuman and degrading", in violation of Article 3. That violation had chiefly stemmed from the domestic regulations which had left no room for an individual assessment of each applicant's situation.

### Article 13 (lack of effective remedies)

The Court found that there were no effective remedies offering a reasonable prospect of success in the Russian legal system for complaints concerning conditions of prisoner transportation. It was not therefore prepared to change its position, as expressed in many previous cases, where it had examined the remedies suggested by the Government and had found them to be lacking.

There had therefore been a violation of Article 13 in conjunction with Article 3, in respect of Mr Tomov, Mr Roshka and Mr Barinov.

#### Article 6 (lack of opportunity to present claim for compensation)

In Mr Rakov's case the courts, whether at first instance or on appeal, had not assessed whether the nature of his claim had called for his testimony in person. Nor did they ascertain why his lawyer could not attend or consider alternative arrangements to hear Mr Rakov, such as *via* a video-link. As a result, the courts had only heard submissions from the prison authorities. Mr Rakov had therefore been denied an effective opportunity to state his case, in breach of the principle of a fair trial.

#### Article 38 (refusal to submit documents requested by the Court)

When giving notice of the first application (no. 18255/10), brought by Mr Tomov and which was at the origin of the present case, the Court requested that the Russian Government provide a copy of the official standards for transporting prisoners.

Instead, they had submitted a unilateral declaration acknowledging a violation of the European Convention and had argued that there was therefore no need to provide the documents. They have not submitted any such documentation since or given any explanation for their failure to do so, despite the Court having rejected the unilateral declaration and reiterating its request.

The Court therefore considered that the Russian State had failed to comply with its obligations under Article 38 owing to a failure to submit the evidence requested of it.

#### Article 46 (enforcement)

The Court's findings in this case, as well as in 50 previous ones and a continuing flow of similar applications, currently amounting to more than 680, illustrated that there was a recurrent structural problem in Russia.

The Court recognised that the problem was complex, involving factors such as the remoteness of many penal facilities, which had been built far from major cities under the former regime, an ageing rolling stock and exceedingly restrictive regulations and standards.

It thus outlined measures for improving the conditions of prisoner transportation.

First, the authorities had to change their practice of allocating prisoners, such as some of the applicants in this case, to remote facilities. They should be placed as close to their homes as possible to save them from the hardships of a long railway journey and reduce the number of prisoners travelling that way.

Second, the current thorough review of the regulatory framework on prisoner transportation had to continue so as to guarantee sufficient space per person in prison vans and railway carriages; to avoid the use of *stakan*-type cubicles; to remove installations that prevent prisoners from standing up; to ensure adequate sleeping arrangements for prisoners on longer journeys; and to provide sufficient access to toilets, drinking water and food. Moreover, the regulations had to provide for individual assessments of prisoners with special needs.

The Court also identified a structural problem concerning the availability of effective remedies for complaints about conditions of prisoner transportation.

Given the large number of people affected and the urgent need to grant them speedy and appropriate redress at national level, the Court held that the Russian State was to set up, without delay and no later than 18 months from this judgment becoming final, a combination of effective domestic remedies to prevent similar violations and to provide adequate compensation.

Lastly, it held that, pending the implementation of such domestic remedies, it would adjourn its processing of similar cases, also for a maximum of 18 months from the judgment becoming final.

### Article 41 (just satisfaction)

The Court held that Russia was to pay, in respect of non-pecuniary damage, 5,000 euros (EUR) each to Mr Tomov and Ms Kostromina, EUR 3,500 each to Mr Roshka and Mr Barinov and EUR 1,500 each to Ms Punegova and Mr Vasilyev. It awarded EUR 10,000 to their representative Mr Mezak in respect of costs and expenses.

*The full text of the judgment is available in English and the Court's findings under Article 3 also in French.*

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