[Tomov and Others v. Russia](http://www.prisonlitigation.org/?email_id=116&user_id=140&urlpassed=aHR0cDovL2h1ZG9jLmVjaHIuY29lLmludC9lbmc%2FaT0wMDEtMTkyMjA5&controller=stats&action=analyse&wysija-page=1&wysijap=subscriptions" \t "_blank) (application nos. 18255/10 and others)

The applicant prisoners complained about the inhuman and degrading conditions in which they had been transported by road and rail and about the lack of effective means of redress for their complaints.

*Complaint under Article 3*

(1) The Government requested that three applications be struck out of the list of cases on the basis of unilateral declarations. Although the Court had already adjudicated similar issues in many previous cases and had clarified the nature of the Russian authorities’ obligations under the Convention, it continued to receive significant numbers of meritorious applications of that kind. Acceptance of the Government’s request would leave the current situation unchanged, without any guarantee that a genuine solution would be found in the near future. Nor would it advance the fulfilment of the Court’s task under Article 19, namely to “ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto”. The request to strike the applications out of the list had therefore to be rejected.

(2)  Merits

(a)  Summary of the approach to be taken – Whether there had been a violation of Article 3 could not be reduced to a purely numerical calculation of the space available to a detainee during the transfer. Only a comprehensive approach to the particular circumstances of the case could provide an accurate picture of the reality for the person being transported. Nevertheless a strong presumption of a violation arose when detainees were transported in conveyances offering less than 0.5 square metres of space per person. The low height of the ceiling, especially of single-prisoner cubicles, which forced prisoners to stoop, could exacerbate physical suffering and fatigue. Inadequate protection from outside temperatures, when prisoner cells were not sufficiently heated or ventilated, would constitute an aggravating factor. The strong presumption of a violation of Article 3 was capable of being rebutted only in the case of a short or occasional transfer. By contrast, the adverse effects of overcrowding had to be taken to increase with longer duration and greater frequency of transfers, making the applicant’s case of a violation stronger.

As regards longer journeys, such as those involving overnight travel by rail, the Court’s approach would be similar to that applicable to detention in stationary facilities for a period of a comparable duration. Even though a restricted floor space could be tolerated because of multi-tier bunk beds, it would be incompatible with Article 3 if prisoners forfeited a night’s sleep on account of an insufficient number of sleeping places or otherwise inadequate sleeping arrangements. Factors such as a failure to arrange an individual sleeping place for each detainee or to secure an adequate supply of drinking water and food or access to the toilet seriously aggravated the situation of prisoners during transfers and were indicative of a violation of Article 3.

(b)  Application in the present cases

(i)  The four male applicants – Each journey had involved at least one overnight train ride during which only six sleeping places had been available in the large compartments and three in the small ones. Prisoners outnumbered the available sleeping places sometimes by a factor of two, and the sixty-centimetre bunks were too narrow to accommodate more than one person under normal conditions. The “bridge” half-bunk was too short for the average person and being positioned, at chest level, it impeded movement in an already overcrowded compartment and prevented passengers from standing upright. The applicants had been deprived of a night’s rest on one or more consecutive nights because of insufficient sleeping places. That in itself was indicative of inhuman and degrading treatment that violated Article 3, but there had been several additional factors which had to have aggravated their plight.

Firstly, three of the applicants had spent at least fifteen hours locked inside an unheated compartment at sub-zero outside temperatures. Secondly, two toilet visits and three pots of water per day for the entire duration of a sixty-two-hour journey could not be considered an adequate arrangement. Thirdly, all four applicants had been transported to and from the train station in multi-prisoner cells of a standard prison van. On each occasion the travel time had been between one and two and a half hours and each prisoner had had less than 0.5 square metres of floor space at his disposal. Such conditions immediately preceded or followed a train journey in conditions which the Court had found to constitute inhuman and degrading treatment.

(ii)  The two female applicants – The applicable regulations required that certain categories of vulnerable detainees, including women, be transferred separately from other prisoners. Multi-prisoner cells were routinely allocated to male prisoners, while female prisoners were relegated to cramped metal cubicles for the duration of transfers. As a consequence, the female applicants had been placed in single-prisoner cubicles measuring 0.325 square metres.

One of the female applicants had had to travel in one such cubicle no fewer than seven times over a three-week period. The fact that she had routinely spent up to two hours in such a confined space was sufficient on its own to justify the finding of a violation of Article 3. In addition, the applicant, who suffered from diabetes and was overweight, and as such required a generous allocation of seating space and good access to ventilation, had had to share the cubicle with another woman.

The second female applicant had undergone at least ten transfers over a two-month period, spending a total of one hour and ten minutes in a single‑prisoner cell on each journey on the way to and from court hearings. The cell had been assembled from metal sheets that formed a fully enclosed cubicle with air holes in the door. There was no heating inside the cell and the cold was transferred from the outside.

(iii)  Conclusion – All the applicants had been transported in conditions that had appeared to be compatible with the requirements of the domestic regulations. It had not been claimed that any officials had sought to cause them hardship or suffering. However, even in the absence of an intention to humiliate or debase the applicants, the actual conditions of transfer had had the effect of subjecting them to distress of an intensity exceeding the unavoidable level of suffering inherent in detention. Those conditions undermined their human dignity, and that treatment had to be characterised as “inhuman and degrading”.

Conclusion: violation (unanimously).

*Complaint under Article 13 in conjunction with Article 3*

The complaints of inhuman or degrading conditions of detention and those concerning conditions of transport were relevantly similar as regards the types of remedies that were in theory available for such grievances in the Russian legal system. The Court’s findings regarding the effectiveness of the domestic remedies in conditions-of-detention cases were accordingly applicable in the applicants’ case with certain qualifications relating to the short duration of transfers.

As regards complaints which detainees could address to commanders of the escorting unit, hierarchical superiors did not have a sufficiently independent standpoint to consider complaints that called into question the way in which they discharged their duty to maintain the appropriate conditions of detention or transport. A complaint could also be sent to the federal or regional ombudsperson’s office or a public monitoring commission. However, those bodies were not vested with the authority to issue legally binding decisions.

Railways fell under the jurisdiction of transport prosecutors who were tasked with supervising the application of laws and ensuring respect for human rights and freedoms. However, infringement reports or orders issued by a prosecutor were primarily matters between the supervising authority and the supervised body and were not geared towards providing preventive or compensatory redress to the aggrieved individual. There was no legal requirement compelling the prosecutor to hear the complainant or to ensure his or her effective participation in the ensuing proceedings.

However diligently the proceedings before courts were conducted, they would normally conclude too late to be able to put an end to a situation involving an ongoing violation. Unlike the conditions in a remand prison or penal facility which the prisoner endured for months or years, transfers took a much shorter time, in the range of days or weeks. Nevertheless, the fact that the courts could take cognisance of the merits of the complaint even after the end of a transfer, establish the facts and make redress tailored to the nature of the violation made the judicial remedy prima facie accessible and capable, at least in theory, of affording appropriate compensatory redress. However, aspects of proceedings before the Russian courts were particularly problematic.

The provisions of the Civil Code on tort liability imposed special rules on compensation for damage caused by State authorities and officials. They required the claimant to show that the damage had been caused through an unlawful action or omission on the part of the specific State authority or official. That requirement established an unattainable burden of proof. The Russian courts’ approach was unduly formalistic based as it was on the requirement of formal unlawfulness of the authorities’ actions. The accessibility of the regulatory framework establishing normative conditions of transport had been classified “for service use only” and as such was not accessible to prisoners claiming a breach of their rights.

The framework of judicial proceedings in its present state did not allow claimants an adequate opportunity to prove their allegations of inhuman or degrading conditions of transport, to prevent repetition of similar violations or to recover damages in that connection. Judicial proceedings in connection with inhuman or degrading conditions of transport did not satisfy the criteria of an effective remedy that offered a reasonable prospect of success.

Conclusion: violation (unanimously).

*Application of Article 46*

(1)  Whether there existed a structural problem calling for the adoption of general measures – The Court had found a violation of Article 3 on account of prisoners’ transport conditions in over fifty cases. In many of those cases it had also found a violation of Article 13 due to the absence of an effective remedy. More than 680 prima facie meritorious applications were now pending before the Court in which the main or secondary complaint related to alleged inadequate conditions of transportation. The above numbers, taken on their own, were indicative of the existence of a recurrent structural problem.

The violations of Article 3 found in the previous judgments had originated in geographically diverse regions of the Russian Federation. However, the set of facts underlying those violations had been substantially similar: an acute lack of personal space during transportation, inadequate sleeping arrangements, dysfunctional heating and restricted access to sanitary facilities. The violations found stemmed chiefly from an unwavering application of the domestic normative framework.

Notwithstanding a trend towards an improvement in the conditions of transport and an overall reduction of the prisoner population in Russia, the urgency of the problem had not abated. It was of grave concern that no domestic remedies had been made available more than six years after the judgment in Ananyev and Others v. Russia in which the Court had required that such remedies be introduced in respect of a relevantly similar issue of inhuman and degrading conditions of detention. Taking into account the recurrent and persistent nature of the problem, the large number of people affected, and the urgent need to grant them speedy and appropriate redress at the domestic level, the Court considered that repeating its findings in similar individual cases would not be the best way to achieve the Convention’s purpose. It was compelled to address the underlying structural problems in greater depth, to examine the source of those problems and to provide further assistance to the respondent State in finding appropriate solutions and to the Committee of Ministers in supervising the execution of the judgments.

(2)  Origin of the problem and general measures required to address it – The recurrent violations of Article 3 resulting from inadequate conditions of transport were an issue of considerable magnitude and complexity. It was a multifaceted problem owing its existence to a large number of negative factors, such as the geographical remoteness of many penal facilities which had been built far from major cities under the former regime, the long distances involved, the ageing rolling stock, exceedingly restrictive regulations and standards, and a lack of transparency during prisoner transportation. That situation required comprehensive general measures at national level, which had to take into consideration a large number of individuals who were currently affected by it.

(a)  Avenues for improving conditions of transport

(i)  Reducing allocation to remote facilities – The emphasis needed to be on placing prisoners as close to their home as possible so as to save them from the hardships of a long railway journey, to reduce the number of prisoners travelling by rail to faraway destinations, and also to avoid the burden of long and expensive journeys for visiting family members.

(ii)  Review of the normative framework and adaptation of vehicles – Efforts had been made by the Russian authorities with a view to improving the conditions of prisoner transportation. Nevertheless, the seating arrangements for prison vans and railway carriages used for short-distance train journeys had to be reviewed with a view to guaranteeing sufficient space per person and a more even distribution of prisoners in compartments. Unless mandated by compelling security considerations, the use of single-prisoner cubicles had to be avoided. Elements that impeded prisoners from standing up, such as bridge bunks in large compartments of prisoner railway carriages, would need to be uninstalled. On longer rail journeys, special care had to be taken to ensure decent sleeping arrangements for prisoners. Each of them should have his or her own sleeping place, and adequate access to sanitary facilities, drinking water and food.

Protection of vulnerable individuals had to be based on their individual characteristics rather than on a formal group classification. The conditions of transport had to be individualised and tailored to the needs of prisoners who could not be transported in ordinary conditions on account of a mental condition or physical characteristics, such as obesity.

(b)  Making available effective remedies – The Russian Federation’s obligations under the Convention compelled it to set up the effective domestic remedies required by Article 13 without further delay.

To be efficient, the system for detainees’ complaints to the domestic authorities had to ensure prompt and diligent handling of complaints, secure prisoners’ effective participation in the examination of grievances, and provide a wide range of legal tools for the purpose of eradicating the identified breach of Convention requirements. Lastly, prisoners had to be able to avail themselves of remedies without having to fear that they would incur punishment or negative consequences for doing so. Lodging a complaint with a supervising authority was usually a more reactive and speedy way of dealing with grievances than litigation. The authority in question had to have the mandate to monitor the violations of prisoners’ rights, be independent, and have the power to investigate the complaints with the participation of the complainant and the right to render binding and enforceable decisions. The Court’s findings in Ananyev and Others, emphasising the important role of supervising prosecutors and the manner in which the procedure before them needed to be modified were also applicable to complaints about conditions of transport. Public monitoring commissions might also be given a more prominent role in upholding the rights of prisoners in transit. To be truly effective, however, they would need an extended mandate and the power to render binding decisions.

A prisoner might also complain to a court of general jurisdiction about an infringement of his or her rights or liberties under the Code of Administrative Procedure. However, it was not certain that these new type of proceedings had equipped the Russian courts with appropriate legal tools allowing them to consider the problem transcending an individual complaint and effectively deal with situations of concurrent violations of prisoners’ rights resulting from the application of an exceedingly restrictive regulatory framework.

In all cases where a violation of Article 3 had already occurred, the wrong caused to the individual was susceptible of being redressed by means of a compensatory remedy. Monetary compensation had to be accessible to any current or former inmate who had suffered inhuman or degrading treatment and had made an application to that effect. A finding that the conditions had fallen short of the requirements of Article 3 would give rise to a strong presumption that they had caused non-pecuniary damage to the aggrieved person, and the level of compensation awarded for non-pecuniary damage could not be unreasonable in comparison with the awards made by the Court in similar cases. In the particular context of the applicants’ case, the domestic courts should be able to appreciate that, even in a situation where every individual aspect of the conditions of transport had complied with the domestic regulations, their cumulative effect could have been such as to constitute inhuman or degrading treatment.

(c)  Time-limit for making effective domestic remedies available – The Court had called on the Russian authorities to make available domestic remedies in respect of a relevantly similar complaint more than six years ago. Having regard to the amount of time that had since elapsed and the apparent lack of progress in that matter, the Court considered that the required remedies had to be made available not later than eighteen months after the judgment became final.

(3)  Processing of similar pending cases – It was appropriate for the Court to adjourn adjudication of applications in which a complaint of inadequate conditions of transport was the main complaint, pending the implementation of the present judgment by the Russian Federation, for a period of eighteen months from the date on which the judgment becomes final.

*Violation of Articles 38 and 6§1*

The Court also found, unanimously, a violation of Article 38 on account of the respondent State’s failure to comply with its obligations and submit requested material, and a violation of Article 6§1 due to one applicant being denied an effective opportunity to present his position, in breach of the principle of a fair trial.

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