THIRD SECTION

**CASE OF VINOGRADOV v. RUSSIA**

*(Application no. 27122/10)*

JUDGMENT

STRASBOURG

7 March 2017

*This judgment is final but it may be subject to editorial revision.*

In the case of Vinogradov v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Branko Lubarda, *President,* Dmitry Dedov, Alena Poláčková, *judges,*  
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 7 February 2017,

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

PROCEDURE

1.  The case originated in an application (no. 27122/10) 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 Ivan Vasilyevich Vinogradov (“the applicant”), on 26 April 2010.

2.  The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3.  The applicant alleged, in particular, that the conditions of his detention were inhuman and unsuitable for a partially paralysed detainee such as himself.

4.  On 16 May 2011 the above complaints were communicated to the Government.

5.  The Government objected to the examination of the applications by a Committee. Having considered the Government’s objection, the Court rejects it.

THE FACTS

I.  THE CIRCUMSTANCES OF THE CASE

6.  The applicant was born in 1960 and until his conviction lived in the town of Slantsy in the Leningrad Region.

A.  The applicant’s medical background and his conviction

.  In 1991 the applicant sustained a penetrating head injury, which involved the crushing of brain tissue. This trauma caused paralysis of the entire right side of his body, light speech impairment and post-traumatic epilepsy. To reduce the frequency of epileptic seizures the applicant was obliged to take Benzonal.

8.  The following year the applicant was examined by a social security medical assessment board *(бюро медико-социальной экспертизы*) and certified as having the highest-degree disability on the grounds that he had lost the ability to work, to walk without assistance or to look after himself. Those findings were confirmed by the board during routine re-examinations in 1994, 1996, 1998 and 2000, when the applicant was granted life-long disability status.

.  In 2005 the applicant committed a homicide. On 16 April 2007 the Slantsy Town Court found him guilty of murder and sentenced him to seven years’ imprisonment in a highly secure correctional colony. On 15 August 2007 the Leningrad Region Court upheld the sentence on appeal.

B.  The applicant’s medical treatment and conditions of his detention

.  On 16 April 2007 the applicant was taken to a police ward in the town of Slantsy.

.  Two days later he was transferred to remand prison no. IZ-47/6 in St Petersburg. On admission to that facility the resident prison doctor conducted a general medical check-up of the applicant and noted his disability. The applicant was allowed to take Benzonal supplied by his wife in order to minimise his suffering from epileptic seizures.

.  In the remand prison the applicant was detained in a normal cell block where he allegedly faced great difficulties in his daily routine owing to the lack of special arrangements, in particular when using the squat toilet and shared dormitory shower, which lacked handrails and non-slip flooring.

13.  On 26 September 2007, when the sentence became final, he was transferred to correctional colony no. 7 in the Leningrad Region, where he was also placed in a cell designed for healthy inmates and, allegedly, continued to experience the inconveniences arising from his disability.

.  Having no licence to treat inmates with as strong a medication as Benzonal, the colony’s medical authorities offered the applicant two substitute drugs with similar anticonvulsive effect, but the latter refused, alleging their low efficiency and possible side effects.

15.  On 3 March 2008, at his own request, the applicant was sent to Gaaza prison hospital in St Petersburg (“the prison hospital”) for an in‑depth medical examination and treatment. In the hospital he was subjected to various medical tests which showed that his health was stable. On 1 April 2008 the applicant was discharged from the hospital. In the discharge summary the supervising doctor mentioned that the patient was able to look after himself and to walk without assistance.

.  On 10 October 2008 the deputy head of the correctional colony ordered the applicant’s transfer to a special unit for disabled prisoners. According to the Government’s description, this unit had “enhanced housing conditions” and “less strict security regime”. It accommodated only disabled inmates, who were detained in a prison wing located close to the medical unit.

.  The applicant submitted that even after his transfer to the special unit he had not been provided with nursing assistance. Being unable to dress himself or perform hygiene procedures without assistance, he had asked his inmates for help in exchanging valuable prison products such as tea, coffee, sweets and cigarettes.

18.  On 1 July 2009 the special medical board, at the request of the penal authorities, issued an advisory report confirming the gravity of the applicant’s disability.

19.  On 4 August 2009 the applicant was examined by a medical board composed of the prison hospital management and a neurosurgeon. The doctors noted that the applicant’s health had remained stable, that he was able to look after himself, and that nursing assistance was not required for him. However, due to the gravity of the applicant’s brain condition it was decided to check whether his illness fell within the established list of illnesses warranting early release.

.  Three days later a special medical board confirmed that the applicant’s condition justified his early release.

21.  It appears that the applicant remained in the prison hospital until 8 September 2009.

.  In the meantime the detention authorities applied for his early release on medical grounds.

.  On 28 August 2009 the Smolninskiy District Court of St Petersburg dismissed their application, citing the gravity of the applicant’s offence, the fact that he had developed paralysis and epilepsy prior to his arrest and that in detention his condition had remained stable. The decision was upheld on appeal by the St Petersburg City Court on 17 November 2009.

24.  Between 1 February and 18 March 2010, at his own request, the applicant was admitted to the prison hospital for treatment, and on 16 March 2010 he was re-examined by a medical board, which confirmed his right to early release on medical grounds.

.  On 10 April 2010 the applicant was transferred to correctional colony no. 4 in the Leningrad Region. He was accommodated in a special unit for disabled prisoners. It appears that the conditions of his detention were similar to those in correctional colony no. 7. The applicant continued to receive Benzonal from his wife and refused to take any substitutes.

26.  On 10 June 2010 the Tosnenskiy Town Court dismissed the application for early release on medical grounds, referring to the gravity of the applicant’s offence, the fact that his health status had already been taken into account by the court which sentenced him, and, lastly, to the fact that the applicant’s medical condition had not worsened in detention.

II.  RELEVANT DOMESTIC AND INTERNATIONAL LAW

27.  The relevant provisions of domestic and international law on the detention of disabled inmates are cited in *Topekhin v. Russia* (no. 78774/13, §§ 52-45 and §§ 54-58, 10 May 2016).

28.  The rules on certification of a disability are set out in the Federal Law “On social protection of disabled persons in the Russian Federation”, no. 181-FZ of 24 November 1995. According to Articles 7 and 8 of the Law, a social security medical assessment board carries out an assessment for the purpose of determining the needs of the person under examination and the degree of his or her disability. The examination has to be based on a complex assessment of the clinical, functional, social, professional, psychological and other characteristics of the person concerned. The social security medical assessment board’s decision is binding for State authorities, local authorities, and private and public entities.

THE LAW

I.  ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE QUALITY OF THE MEDICAL TRETMENT

29.  The applicant complained that whilst in detention he had not been afforded adequate medical treatment for his brain condition. He relied on Article 3 of the Convention, which reads:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

A.  The parties’ submissions

.  The Government put forward two lines of argument. Firstly, they argued that the applicant’s claim should be rejected because he had failed to exhaust the domestic remedies. Secondly, they argued that the applicant had received adequate medical treatment. He had had no epileptic seizures in detention and the state of his health had not deteriorated.

.  The applicant maintained his complaints. He stated that owing to the failure of the detention authorities to provide him with Benzonal, his wife had had to step in and to supply the drugs. He further argued that his health had worsened and that he had regularly had epileptic seizures, which had been disregarded by the authorities.

B.  The Court’s assessment

.  The Court notes the Government’s plea of non-exhaustion of domestic remedies, but does not consider it necessary to address it in view of its conclusion that the applicant’s complaint under Article 3 of the Convention is, in any event, inadmissible for the reasons stated below.

.  The Court firstly observes that no significant changes in the applicant’s medical condition were established by the doctors over the period of several years that his detention lasted (see paragraphs 15, 19, and 26 above). In the absence of any evidence challenging the accuracy or veracity of the medical entries in the applicant’s file, the Court cannot accept the allegation that his epileptic seizures became increasingly frequent.

.  Secondly, the Court notes that in detention the applicant had remained under close medical supervision, undergoing various medical tests and inpatient treatment in the prison hospital (see paragraphs 15, 19, 21 and 24 above).

.  Lastly, as regards the availability of anticonvulsants in detention, the Court observes that it is not disputed by the parties that the medical authorities offered the applicant several drugs to reduce the frequency of his epileptic seizures, but the applicant refused to follow the doctors’ recommendations and continued to take Benzonal. The Court sees no legitimate grounds for such a refusal and therefore does not accept the applicant’s argument about the lack of effective medication.

.  In the light of the above, and taking into account that the applicant did not submit any medical opinions suggesting any shortcomings in his treatment, the Court cannot find that he was deprived of adequate medical care (see *Yepishin v. Russia*, no. 591/07, §§ 52-54, 27 June 2013). Accordingly, this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

II.  ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION ON ACCOUNT OF THE CONDITIONS OF THE APPLICANT’S DETENTION

.  The applicant complained that he was detained in conditions unfit for persons with disabilities such as himself, which amounted to degrading treatment prohibited by Article 3 of the Convention, cited above.

A.  The parties’ submissions

.  The Government argued that the conditions of the applicant’s detention had been satisfactory. He had been detained in a special unit for disabled prisoners which offered better-quality living conditions. Referring to the findings of the prison hospitals’ doctors, the Government stated that the applicant had been able to look after himself and therefore no nursing assistance had been required.

.  The applicant maintained his complaints, referring to his inability to look after himself or to perform basic hygiene procedures. He complained of various daily inconveniences and his complete dependence on his inmates’ assistance.

B.  The Court’s assessment

1.  Admissibility

.  The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2.  Merits

(a)  General principles

.  The applicable general principles are set out in *Muršić**v. Croatia* [GC] (no. 7334/13, §§ 96-101, 20 October 2016), and *Topekhin* (cited above, §§ 78-81).

(b)  Application of the above principles to the present case

.  To assess the adequacy of the conditions of the applicant’s detention, the Court must take into account the degree of nursing assistance required to the applicant. The Court reiterates that it is not its task to rule on matters lying exclusively within the field of expertise of medical specialists and to establish whether an applicant in fact required a particular treatment (see *Ukhan v. Ukraine*, no. 30628/02, § 76, 18 December 2008, and *Sergey Antonov v. Ukraine*, no. 40512/13, § 86, 22 October 2015). However, having regard to the vulnerability of applicants in detention, it is for the Government to provide credible and convincing evidence showing that the applicant concerned had received the required medical or nursing assistance in detention.

.  The Court observes that in the present there is conflicting evidence on this issue. On the one hand, the social security medical assessment board concluded that the applicant was unable to walk without assistance or look after himself (see paragraphs 8 and 18 above). On the other hand, the prison hospital’s doctors stated that he was able to walk unaided and to look after himself (see paragraphs 15 and 19 above).

.  The assessment of the degree of a person’s autonomy and his or her need in terms of nursing assistance is based on multiple factors, rather than being limited merely to the medical condition of a damaged organ, and therefore requires specific expertise in the matter, rather than general medical knowledge. This being so, the Court gives credence to the conclusion of the social security medical assessment board. Unlike the prison hospital’s doctors, this board was a specialised body equipped to perform an all-round assessment and to deliver a binding decision on the degree of person’s disability and the level of his or her social and physical limitations thereby implied (see paragraph 28 above). The Court therefore accepts that the applicant was in need of regular nursing assistance.

.  The fact that no such assistance had been arranged in the remand prison or correctional colonies is not disputed by the Government.

.  The Court reiterates that it has previously found violations of Article 3 of the Convention on account of the lack of professional nursing assistance available to partially paralysed prisoners (see *Topekhin,* cited above, §§ 85-88; *Semikhvostov v. Russia*, no. 2689/12, §§ 85-86, 6 February 2014; *Grimailovs v. Latvia*, no. 6087/03, §§ 161-62, 25 June 2013; *D.G. v. Poland*, no. 45705/07, § 177, 12 February 2013; and *Kaprykowski v. Poland*, no. 23052/05, § 74, 3 February 2009). It sees no reason to reach a different conclusion in the present case. The applicant’s dependence on his inmates over a period of several years and the need to ask for their help with hygiene procedures put him in a very uncomfortable position and adversely affected his emotional well-being. The Court therefore finds that the conditions of his detention amounted to inhuman and degrading treatment. There has thus been a violation of Article 3 of the Convention on that account.

III.  OTHER ALLEGED VIOLATIONS OF THE CONVENTION

47.  Lastly, the applicant complained under Articles 6 and 13 of the Convention that the criminal proceedings against him and the proceedings concerning his early release had been lengthy and unfair.

48.  The Court considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, those complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, the Court rejects them as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

49.  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.”

50.  The applicant did not submit a claim for just satisfaction. Accordingly, the Court considers that there is no call to award him any sum on that account.

FOR THESE REASONS, THE COURT, UNANIMOUSLY

1.  *Declares* the complaint concerning the conditions of the applicant’s detention admissible and the remainder of the application inadmissible;

2.  *Holds* that there has been a violation of Article 3 of the Convention on account of the conditions of the applicant’s detention.

Done in English, and notified in writing on 7 March 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı Branko Lubarda  
 Deputy Registrar President