

Semikhvostov v Russia

The European Court of Human Rights

(Application no. 2689/12)



<http://disabilityrights.law.hku.hk>



Quick Facts

Applicant: Aleksandr Yuryevich Semikhvostov

Member State: Russia

Court: European Court of Human Rights

Date Decided: 14 January 2014

Issues: (1) Whether there is a violation of Article 13 of the European Convention on Human Rights due to the absence of effective domestic remedy to raise claims of inadequate conditions and failure to provide reasonable accommodation during detention; and

(2) Whether the failure to provide reasonable accommodations and independent mobility for disabled inmate is a violation of Article 3 since the applicant was alleged suffering

from inhuman and degrading treatment.

Case Synopsis: The case was brought by a wheelchair-bound inmate, Mr. Semikhvostov. He alleged to have suffered from inhuman and degrading treatment at correctional facilities due to its unsuitable condition for inmates with disabilities and the denial of reasonable accommodation including a lack of independent access to prison facilities and lack of organized assistance with his mobility.

The Court concluded that the restrictions on the applicant's personal mobility in the facility and lack of reasonable accommodation during his three-year long detention violated Article 3, and the State's failure to provide with effective remedy and stop the degrading treatment violated Article 13.

Procedural Background

Domestic Remedies

The applicant lodged complains to prosecutors, the Service for the Execution of Sentences, the facility governor, Court application for early release.

Admissibility

The Court held that the issues were admissible and were highly related to case merits.

Case Summary

Mr. Semikhvostov, a wheelchair-bound person with numerous health problems including complete paralysis of lower part of his body and extremely poor eyesight, was detained in a regular detention facility for 3 years. He complained that the detention unit was not equipped for wheelchair-bound inmates regarding its accessibility and assistance from authorities. He was at a huge disadvantage as regards to his access to general and sanitation facilities and highly dependent on the goodwill of his fellow inmates for his mobility and hygiene. During his detention, he lodged complaints with various authorities including the facility governor and prosecutor, and made repeated applications for early release due to his health condition. Yet, his application for early released was rejected since the facility failed to arrange a body-check for him, so the difficulties that he faced regarding personal mobility and assistance had not been improved until his release.

He brought a claim against the Russian Government in the European Court of Human Right, while the President of Chamber also granted leave to two NGOs to make a joint written submission on the related issues.

Violation of Article 3 of the Convention

Apart from ill-treatment involving intense physical or mental suffering, the court summarized several authorities to show what would be considered as “inhuman and degrading treatment” under Article 3.

First of all, showing a lack of respect or diminishing of other’s human dignity is characterized as degrading treatment, as held in *Pretty v the United Kingdom*. Although Article 3 cannot be a general principle to release detainees on health grounds, it is the State’s duty to demonstrate special care to correspond to the special needs resulting from the prisoners’ disabilities, and ensure prisoners are detained in conditions which are compatible with respect for human dignity, as held by the Court in *Farbtuhs v Latvia* (judgment available only in French). If the State leaves people with serious physical disabilities to rely on his cellmates for assistance for daily necessities, it would amount to degrading treatment, as established in *Engel v Hungary*.

Applying the above principles, the court found that there is a violation of Article 3 of the Convention. The applicant’s ability to use facilities outside the dormitory building was severely restricted and the accessibility of the sanitation facilities raises a particular concern. The State’s measure, providing him with a special toilet chair, did not improve applicant’s condition and failed to demonstrate special care to the applicant’s need. Meanwhile, he was still highly depending on his inmates’ assistance who have not been trained nor had the necessary qualifications. The State did not take the necessary steps to remove the environmental and attitudinal barriers or provide any organized assistance, which seriously impeded the applicant’s ability to participate in daily activities and precluded his integration. This caused him unnecessary and avoidable mental and physical suffering, diminishing his human dignity, which amounted to inhuman and degrading treatment.

Violation of Article 13 of the Convention

Article 13 stated that applicants should have resources to remedies that are available and sufficient to afford redress in respect of breaches alleged. The existence of remedies in question must be sufficiently not only in theory but also in practice and by law. However, applying to the present case, the court had noted that the domestic legal avenues cannot offer the applicant any redress other than purely compensatory award; and cannot put an end to an on-going violation. At the same time, other non-legal measures, such as complains received by the facility governor and prosecutors, do not have binding powers to make decisions to improve the complaint's situation. With the State government failing to explain a systematic procedures to handle with disabled inmates' complaints and none of the remedies employed by the applicant constituted an effective remedy, the court held that the State government's failure to stop the on-going violation of the Convention i.e. Article 3 in present case, is a violation of Article 13 of the Convention.

Significance

This judgment highlighted the denial of reasonable accommodations for disable inmates as a central issue resulting in inhuman and degrading condition; and also pointed out that mere compensatory award would not be sufficient as effective domestic remedy. It is significant that the European Court of Human Rights had taken up reasonable accommodation in its jurisprudence, and it represented a step toward increased CRPD recognition and compliance. It is a positive sign that the Court is adopting the key concept of "reasonable accommodation".

Cases and Resources

- ***Semikhvostov v Russia*** (Application no. 2689/12)
- European Disability Forum – European Court of Human Rights’ increases its recognition of convention on the rights of persons with disabilities, available at http://www.edf-feph.org/Page_Generale.asp?DocID=13855&thebloc=33483
- International Disability Alliance, Disability Rights’ Bulletin (February 2014)
- European Disability Forum – Written Comments, available at <http://edf.pro.e-presentaciones.net/legal-remedies>