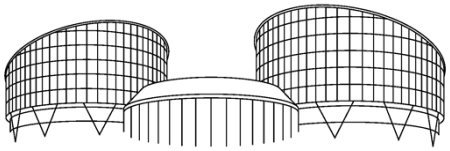

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF SHLYKOV AND OTHERS v. RUSSIA

(Applications nos. 78638/11 and 3 others – see appended list)

JUDGMENT

Art 3 • Degrading treatment • Insufficient justification for prolonged systematic handcuffing of life prisoners without regular and individualised review of specific security concerns Art 3 • Degrading treatment • Cumulative factors of isolation and limited outdoor exercise during life imprisonment • Possible risk of institutionalisation syndrome Art 6 § 1 (civil) • Fair hearing • Applicants' inability to attend hearings in civil proceedings which they instituted to challenge systematic handcuffing

STRASBOURG

19 January 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Shlykov and Others v. Russia,

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

Paul Lemmens, *President,*
Georgios A. Serghides,
Dmitry Dedov,
María Elósegui,
Darian Pavli,
Anja Seibert-Fohr,
Peeter Roosma, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 78638/11, 6086/14, 11402/17 and 82420/17) 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 four Russian nationals ("the applicants") listed in the appended table (Appendix I);

the decision to give notice to the Russian Government ("the Government") of the complaints concerning handcuffing, prison regime, fair hearing and lack of an effective remedy and to declare inadmissible the remainder of the applications;

the parties' observations;

Having deliberated in private on 8 December 2020,

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

INTRODUCTION

1. The cases concern the routine handcuffing of life prisoners, lack of remedy to complain about routine handcuffing, prison regime and the authorities' failure to allow some of the applicants to attend hearings in civil proceedings.

THE FACTS

2. The applicants' names and the dates on which they lodged their applications are set out in Appendix I. The applicants were represented by the lawyers whose names are listed in Appendix I. Mr Shlykov, Mr Kerekesha and Mr Pulyalin were granted legal aid.

3. The Government were initially represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. SUMMARY OF FACTS

5. The applicants were convicted of various crimes and sentenced to life imprisonment (see details below). After their conviction they were detained in correctional colonies and remand prisons, where they were routinely handcuffed every time they left their cells on the grounds that they had been sentenced to life imprisonment for violent crimes, had disciplinary records or had been placed under surveillance as dangerous prisoners by a commission on preventive measures (the "prison commission"). In some cases, the prison commissions held hearings in the applicants' absence.

6. The staff of the detention facilities used handcuffs when the applicants were taken to the shower, for a walk, to meet defence lawyers, investigators and prosecutors, as well as during search of their cells and personal belongings. The applicants' hands were cuffed behind their backs and pulled up by a warden, which forced them to bend down. Their particular circumstances are indicated in the table below.

Application number and name	Prison facility	Handcuffing period	Grounds for handcuffing
78638/11, Mr Shlykov	IK-2	Since 04/03/2001	Conviction for robbery, three murders and one attempted murder, including the murder of a teenager
6086/14, Mr Kerekesha	UP-288/T	22/07/2005 – 23/05/2013	Conviction for murder and robbery; being under surveillance as someone aggressive towards prison officers; twelve unspecified violations of prison rules
11402/17, Mr Pulyalin	IZ-11/1	21/12/2011 – 10/12/2013	Conviction for causing damage to persons and property, murder under aggravating circumstances; being under surveillance as a prisoner who could abscond or harm himself or others
82420/17, Mr Korostelev	IZ-11/1	21/12/2011 – 10/12/2013	Conviction for causing damage to persons and property, murder under aggravating circumstances; refusing to allow a prison officer to enter his cell; being under surveillance as a prisoner who could abscond or harm himself or others

7. Mr Shlykov and Mr Kerekesha did not complain about their handcuffing to the domestic courts because they believed that the existing remedies were ineffective.

8. Mr Pulyalin and Mr Korostelev complained about their routine handcuffing to the domestic courts, which held that the measure had been justified by the severity of their sentences, their conduct or the fact that they had been under surveillance. They did not establish whether the use of handcuffs had been regularly reviewed by the prison commission (see paragraphs 23-25 and 32-34 below).

II. FACTS OF INDIVIDUAL CASES

A. Mr Shlykov (application no. 78638/11)

9. On 28 July 1997 the Khabarovsk Regional Court convicted the applicant on several counts of murder, threats to kill, armed robbery and theft and sentenced him to death. On 30 October 1997 the Supreme Court of the Russian Federation upheld the conviction on appeal.

10. On 3 June 1999 the President of the Russian Federation replaced the death penalty with life imprisonment.

11. Since 4 March 2001 the applicant has been serving his sentence in IK-2 maximum security correctional colony for life prisoners in Solikamsk, Perm Region, where inmates are held in isolation in cells, may only walk once or twice per week for about an hour and a half, have to stand with their faces turned to the wall and their hands raised every time a guard enters the cell, are allowed to shower once a week for ten minutes, are allowed only one telephone call per week, and are not allowed to close their eyes during the day, stretch themselves or take off their slippers. Their hair is completely shaved off every two months or so. Their prison overalls are washed every three or four months and they cannot wash them themselves. They may only wash their underwear in cold water. Artificial lighting is not switched off overnight. The television may only be switched on with the permission of the guards.

B. Mr Kerekesha (application no. 6086/14)

12. On 24 December 1998 the Khabarovsk Regional Court convicted the applicant of murder, robbery and illegal possession of firearms by a group and sentenced him to death. On 26 November 1999 the Supreme Court of Russia commuted the sentence of capital punishment to life imprisonment.

13. Between 22 July 2005 and 23 May 2013 the applicant was held in prison no. UP-288/T in Minusinsk, Krasnoyarsk Region. On 10 June 2013 he arrived to correctional colony IK-5.

14. On 10 June 2012 a prison commission placed the applicant under surveillance as someone who could abscond or be aggressive towards prison officers.

15. On 24 May 2013 the prison commission cancelled its surveillance of the applicant.

16. On 12 August 2013 Mr Kerekesha asked the Federal Service for the Execution of Sentences ("the FSIN") to inform him of the grounds for handcuffing in prison.

17. On 12 September 2013 he received a letter stating that, under the Internal Rules of Penal Facilities, prisoners should move outside their cells in handcuffs, in a position allowing prison officers to see their hands. The FSIN referred to a decision delivered on 9 November 2011 by the Sol-Iletskiy District Court of the Orenburg Region relating to another prisoner. The court had held that such a measure of restraint was lawful, was applied for security purposes for short periods of time and was not aimed at humiliating prisoners. Given that the applicant had been placed under surveillance as an inmate at risk of absconding and being aggressive, his hands were handcuffed behind the back every time he left the cell.

C. Mr Pulyalin and Mr Korostelev (applications nos. 11402/17 and 82420/17)

18. On 17 June 2009 the Supreme Court of Komi Republic convicted the applicants of causing damage to persons and property, murder under aggravating circumstances and for an arson attack on a shopping centre. They were sentenced to life imprisonment.

1. Mr Pulyalin

19. On 10 April 2009 the prison commission of IZ-11/1 placed the applicant under surveillance as someone who could abscond or harm himself or others. He attended the hearing.

20. After his conviction the applicant was transferred to correctional colony IK-56, where on 25 March 2010 he was placed under surveillance as a prisoner who could abscond.

21. On 21 December 2011 the applicant was transferred to IZ-11/1.

22. On 26 December 2011 the prison commission examined the materials of the applicant's case in his absence and decided to place him under surveillance in IZ-11/1 as someone who could abscond.

23. On 18 January 2013 Mr Pulyalin brought proceedings in the Syktyvkar Town Court, challenging the use of handcuffs and asking for compensation in respect of non-pecuniary damage. The applicant asked the court for permission to attend the hearings.

24. On 7 May 2013 the Syktyvkar Town Court dismissed the applicant's claims in his absence, stating that his ability to attend the hearings was not

provided for by law and that his handcuffing had been necessary as a security measure because he was officially classified as a prisoner who could abscond and harm others. The applicant lodged an appeal against this decision, asking that it be examined in his presence.

25. On 8 July 2013 the Supreme Court of the Komi Republic dismissed the appeal in his absence.

26. On 10 December 2013 the applicant left IZ-11/1.

2. Mr Korostelev

27. On 26 December 2008 the prison commission of IZ-11/1 placed the applicant under surveillance as someone who could abscond or harm himself or others. He attended the hearing.

28. On 28 July 2009 the applicant prevented a prison officer from entering his cell by swinging his arms and trying to grab the prison officer's clothes.

29. Between 21 December 2009 and 21 December 2011 he served his sentence in IK-56.

30. On 21 December 2011 the applicant was transferred to IZ-11/1.

31. On 26 December 2011 the prison commission of IZ-11/1 examined the materials of the applicant's case in his absence and decided to place him under surveillance as someone who could abscond.

32. On 20 March 2013 Mr Korostelev challenged the use of handcuffs before the Syktyvkar Town Court.

33. On 6 May 2013 it dismissed his claim in his absence, holding that the use of handcuffs had been justified by the fact that he was registered as someone who could abscond.

34. The applicant lodged an appeal with the Supreme Court of the Komi Republic, which was dismissed on 29 July 2013. He did not attend the hearing.

35. On 10 December 2013 the applicant left IZ-11/1.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. HANDCUFFING

36. Under Article 86 of the Code of Execution of Criminal Sentences of 8 January 1997 ("the CES"), measures of restraint may be applied to prisoners who put up physical resistance to prison officers, refuse to follow the lawful orders of staff, engage in aggressive behaviour, mass unrest, hostage-taking, assaults or other dangerous activity, or try to escape or harm themselves or others.

37. Section 30 of the Penal Institutions Act (Federal Law no. 5473-1 of 21 July 1993) provides that handcuffs may be used to suppress mass unrest or group violations of public order by detainees, as well as to apprehend

offenders who persistently disobey or resist officers. They may also be used when moving and escorting prisoners whose behaviour indicates that they could abscond or harm themselves or others.

38. Paragraph 41 of the Internal Rules of Penal Facilities, approved by Order of the Ministry of Justice no. 205 on 3 November 2005, provides that if the behaviour of persons serving a life sentence indicates that they could abscond or cause harm to themselves or others, their hands must be cuffed behind their backs when they leave their cells. Under paragraph 47 of the new Internal Rules of Penal Facilities, approved by Order of the Ministry of Justice no. 295 of 16 December 2016, life prisoners should move outside their cells with their hands behind their backs, measures of restraint (handcuffs) being subject to the Penal Institutions Act.

39. Under the Instructions on the Prevention of Crimes Committed by Detainees, approved by Orders of the Ministry of Justice no. 333 of 20 November 2006 and no. 72 of 20 May 2013, a prison officer may draft a report to be approved by the prison governor, after carrying out the necessary checks, with regard to a prisoner allegedly engaged in or planning activities in breach of prison rules. A prison commission then examines the report in the presence of the prisoner and decides whether he should be placed under surveillance to prevent him offending or harming himself, and appoints a prison officer to monitor him. The prison officer reports quarterly on the situation with the prisoner to the prison commission, which may make recommendations or cancel surveillance. In particular, the prison commission may cancel surveillance if the prisoner has complied with prison rules.

40. When a prisoner placed under surveillance in a prison is transferred to another detention facility, he will be also placed under surveillance in that facility. The prison commission decides whether to apply preventive measures and appoints a prison officer to monitor the prisoner for six months. Six months later the prison commission reassesses the prisoner's conduct and decides whether to continue applying preventive measures.

II. PARTICIPATION OF DETAINEES IN COURT HEARINGS

41. For domestic provisions relating to the participation of detainees in court hearings, see *Yevdokimov and Others v. Russia* (nos. 27236/05 and 10 others, §§ 9-15, 16 February 2016).

RELEVANT COUNCIL OF EUROPE MATERIAL

42. On 11 January 2006 the Committee of Ministers of the Council of Europe adopted Recommendation Rec(2006)2 to member States on the European Prison Rules, which replaced Recommendation No. R (87) 3 on the European Prison Rules, accounting for developments which had

occurred in penal policy, sentencing practice and the overall management of prisons in Europe. Under the amended European Prison Rules, handcuffs may not be used except if necessary, as a precaution against escape during a transfer, provided that they are removed when the prisoner appears before a judicial or administrative authority unless that authority decides otherwise; or by order of the director, if other methods of control fail, in order to protect a prisoner from self‑injury, injury to others or to prevent serious damage to property, provided that in such instances the director immediately informs the medical practitioner and reports to the higher prison authority (paragraph 68.2). Instruments of restraint may not be applied for any longer time than is strictly necessary (paragraph 68.3).

43. The relevant extracts from the 25th General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf (2016) 10) read as follows:

> "71. The CPT has visited a large number of prison establishments across Europe in which life-sentenced prisoners were accommodated. The conditions under which such prisoners were being held varied significantly from one establishment to another ... in several countries, life-sentenced prisoners were systematically handcuffed and/or strip-searched whenever they left their cells. In some establishments, the prisoners concerned were additionally escorted by two officers and a guard dog during any movement outside their cell ...
>
> 81. The CPT calls upon member States to review their treatment of life-sentenced prisoners to ensure that this is in accordance with their individual risk they present, both in custody and to the outside community, and not simply in response to the sentence which has been imposed on them. In particular, steps should be taken by the member states concerned to abolish the legal obligation of keeping life sentenced prisoners separate from other (long-term) sentenced prisoners and to put an end to the systematic use of security measures such as handcuffs inside the prison."

44. In its individual country report on its visit to Bulgaria (CPT/Inf (2010) 29 [Bulgaria], § 77), the CPT considered that there could be no justification for routinely handcuffing a prisoner within a secure environment, provided there was proper staff supervision, and recommended that the Bulgarian authorities review the policy of handcuffing life-sentenced prisoners when outside their cells.

45. In its report on its visit to Ukraine (CPT/Inf (2017) 15 [Ukraine], § 62), the CPT called upon the Ukrainian authorities to put an immediate end to the practice of routinely handcuffing life-sentenced prisoners within the prison perimeter, stating that it should be an exceptional measure, always based on an individual risk assessment and should be reviewed on a regular and frequent basis.

46. In its report on its visit to Russia (CPT/Inf (2013) 41 [Russia], § 111), the CPT found that the management of a Kazan remand centre had decided to put an end to the practice of routine handcuffing of lifers when the inmates concerned were taken out of their cells. By contrast, the measure of routine handcuffing applied to all lifers held at "Vladimirskiy

Tsentral" prison. In both establishments, all out-of-cell movements were carried out in the presence of a guard dog and a member of staff of the dog support unit. The CPT considered the above security arrangements to be grossly excessive and recommended that the routine handcuffing of all life-sentenced prisoners when taken out of their cells be discontinued at establishments applying this measure to such inmates. In its view, the application of such a measure should be exceptional, on the basis of an assessment carried out by appropriately trained staff.

THE LAW

I. JOINDER OF THE APPLICATIONS

47. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

48. The applicants complained that they had been routinely subjected to handcuffing on account of their status as life prisoners. Mr Shlykov (application no. 78638/11) also complained about other aspects of the detention regime applied to him (described in paragraph 11 above). They relied on 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. Admissibility

1. Exhaustion of domestic remedies

49. The Government submitted that Mr Kerekesha (application no. 6086/14) had failed to exhaust effective domestic remedies in respect of his complaint. In particular, he could have filed a complaint with the prosecutor's office or the courts.

50. Mr Kerekesha submitted that he had not had any effective remedies for complaining about his routine handcuffing. The prison authorities had dissuaded him from bringing proceedings by informing him that the domestic courts had approved the routine handcuffing of life prisoners.

51. The Court notes that the Government did not raise the issue of non-exhaustion with regard to Mr Shlykov (application no. 78638/11). When notice of an application has been given to the respondent Government and they have not raised the question of non-exhaustion, the Court cannot examine it of its own motion. The Government must raise an explicit plea of inadmissibility on grounds of failure to exhaust domestic remedies (see *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08,

§ 79, ECHR 2014 (extracts)). Therefore, the Court will examine the issue of exhaustion of domestic remedies with regard to Mr Kerekesha only.

52. The Court reiterates that an applicant is normally required to have recourse only to those remedies that are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness. 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, was one which was capable of providing redress in respect of the applicant's complaints and offered reasonable prospects of success. However, once this burden of proof has been satisfied it falls to the applicant to establish that the remedy advanced by the Government had in fact been used or was for some reason inadequate and ineffective in the particular circumstances of the case or that there existed special circumstances absolving him or her from the requirement (see *Johnston and Others v. Ireland*, 18 December 1986, § 22, Series A no. 112; *Vernillo v. France*, 20 February 1991, § 27, Series A no. 198; and *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 94, 10 January 2012).

53. The Government referred in their submissions to two domestic remedies allegedly available to the applicant: a complaint to a prosecutor and a judicial complaint.

54. The Court has already held that a complaint to the supervising prosecutor falls short of the requirements of an effective remedy because of the procedural shortcomings that have been previously identified in the Court's case-law. There is no legal requirement on the prosecutor to hear the complainant or ensure his or her effective participation in the ensuing proceedings that would entirely be a matter between the supervising prosecutor and the supervised body. The complainant would not be a party to any proceedings and would only be entitled to obtain information about the way in which the supervisory body dealt with the complaint (see *Ananyev and Others*, cited above, § 104).

55. As regards judicial proceedings, where a violation of Article 3 has already occurred, the use of a compensatory remedy, such as civil action for damages, can constitute an effective remedy (see *Shmelev and Others v. Russia* (dec.), no. 41743/17, §§ 87 and 89, 17 March 2020). However, in the present case, it appears that there has been at least some practice at the relevant time to endorse routine handcuffing of life prisoners (see paragraph 17 above). The Court would like to reserve the question of whether judicial proceedings, and in particular, compensation proceedings, would be an effective remedy to be exhausted for instances of past handcuffing. Given the specific circumstances of the case and the absence of any examples of

the judicial practice to the contrary, the applicant in the present case cannot be expected to have had recourse to this remedy.

56. The Court therefore considers that the Government did not demonstrate what redress could have been afforded by a prosecutor, court or any other State agencies to the applicants in the present case.

2. Compliance with the six-month time-limit

57. The Government submitted that Mr Shlykov (application no. 78638/11) and Mr Kerekesha (application no. 6086/14) had not complied with the six-month rule. The purpose of the rule was to enable the Court to ascertain the facts of a case before that possibility faded away. Applicants, for their part, had a duty to act promptly to bring their grievance to the attention of the national authorities and the Court without undue delay. In the present case, however, the applicants had taken no action for an extended period of time before lodging their complaints with the Court. It therefore appeared that the applicants had had no interest in putting an end to the continuing violation of their rights before filing their applications with the Court. The Government argued that the complaint was therefore belated and inadmissible.

58. Mr Shlykov and Mr Kerekesha submitted that systematic handcuffing amounted to a continuing situation and that the six-month period should be calculated according to the approach applied to conditions of detention cases.

59. The Court observes that the Government did not raise the issue of Mr Pulyalin and Mr Korostelev's compliance with the six-month rule. Having jurisdiction to apply the six-month rule of its own motion, the Court considers it appropriate to address this issue in all the present cases (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 29, 29 June 2012, and *Svinarenko and Slyadnev*, cited above, § 85).

60. The Court reiterates that, as a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Where no effective remedy is available to the applicant, the period runs from the date of the acts or measures complained of, or from the date of the knowledge of that act or its effect on or prejudice to the applicant (see *Dennis and Others v. the United Kingdom* (dec.), no. 76573/01, 2 July 2002). In cases featuring a continuing situation, the six-month period runs from the cessation of that situation (see *Seleznev v. Russia*, no. 15591/03, § 34, 26 June 2008, and *Koval v. Ukraine* (dec.), no. 65550/01, 30 March 2004).

61. The concept of a "continuing situation" refers to a state of affairs in which there are continuous activities by or on the part of the State which render the applicant a victim (see *Posti and Rahko v. Finland*, no. 27824/95, § 39, ECHR 2002‑VII). Complaints having as their source specific events

which occurred on identifiable dates cannot be construed as referring to a continuing situation (see *Nevmerzhitskiy v. Ukraine* (dec.), no. 54825/00, 25 November 2003, where the applicant was subjected to force-feeding, and *Tarariyeva v. Russia* (dec.), no. 4353/03, 11 October 2005, where the applicant's son was denied medical assistance). However, in the event of a repetition of the same events, such as applicants' handcuffing every time they left their cells, even if this did not last all day long, the absence of any marked variation in the restraint measures to which they had been routinely subjected created a "continuing situation" which brought the periods complained of within the Court's competence.

62. It would be excessively formalistic to demand that an applicant denouncing such a situation file a new application at regular intervals for as long as this situation persists (compare *Novokreshchin v. Russia*, no. 40573/08, § 15, 27 November 2014).

63. As regards Mr Shlykov (application no. 78638/11), he lodged his application on 27 October 2011 and complained about a period of handcuffing which started on 4 March 2001 and is still ongoing. The problems he complained about remained essentially the same throughout the entire period up to the date of his application. It would have been preferable if he had acted with greater expedition in bringing his case before the Court for examination (see *Artyomov v. Russia*, no. 14146/02, § 115, 27 May 2010), yet as long as his detention constituted a "continuing situation" and the Court is not prevented from establishing the facts on account of the amount of time that has already lapsed, his complaint cannot be rejected as belated.

64. As regards Mr Kerekesha (application no. 6086/14), he complained about routine handcuffing during the period from 22 July 2005 to 23 May 2013. He lodged his application on 21 November 2013, that is, within six months of the date when the "continuing situation" ended.

65. Mr Pulyalin (application no. 11402/17) and Mr Korostelev (application no. 82420/17) complained about handcuffing between 21 December 2011 and 10 December 2013. They lodged their applications with the Court on 29 September and 15 October 2013 respectively, and therefore also complied with the six-month rule.

3. Conclusion as to admissibility

66. The Court rejects the Government's objections as to the non-exhaustion of domestic remedies and non-compliance with the six-month rule. It notes that the applicants' complaints are neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. They must therefore be declared admissible.

B. Merits

67. The applicants submitted that the restraint measures had been applied to them on the only ground that they had been sentenced to life imprisonment and had not been justified by their actual conduct.

68. The Government argued that the measures taken in respect of the applicants did not amount to inhuman or degrading treatment. The measures had been lawful, based on reasoned orders of the prison authorities and fully warranted in view of the gravity of the offences committed by them, their conduct, and the need to maintain order and discipline in prison. In particular, they referred to Mr Kerekesha, who had been sanctioned twelve times for violating disciplinary rules.

1. General principles

69. The Court reiterates that Article 3 of the Convention enshrines one of the most fundamental values of 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, for example, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV, and *Muršić v. Croatia* [GC], no. 7334/13, § 96, 20 October 2016).

70. In the context of deprivation of liberty, the Court has consistently stressed that, to fall under Article 3, the suffering and humiliation involved must in any event go beyond that inevitable element of suffering and humiliation connected with detention. The State must ensure that a person is detained in conditions which are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject him or her 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 or her health and well-being are adequately secured (see *Kudła v. Poland* [GC], no. 30210/96, §§ 92-94, ECHR 2000-XI, and *Mozer v. the Republic of Moldova and Russia* [GC], no. 11138/10, § 178, 23 February 2016).

71. Even the absence of an intention to humiliate or debase a detainee by placing him or her in poor conditions, though a factor to be taken into account, does not conclusively rule out a finding of a violation of Article 3 of the Convention. Indeed, it is incumbent on the respondent Government to organise its prison system in such a way as to ensure respect for the dignity of detainees, regardless of financial or logistical difficulties (see *Tomov and Others v. Russia*, nos. 18255/10 and 5 others, § 114, 9 April 2019, with further references).

72. In the context of restraint measures, the Court has held that the use of handcuffs or other instruments of restraint does not normally give rise to an issue under Article 3 of the Convention where the measure has been imposed in connection with lawful detention and does not entail the use of

force or public exposure exceeding what is reasonably considered necessary (see *Raninen v. Finland*, 16 December 1997, § 56, *Reports of Judgments and Decisions* 1997-VIII; *Mouisel v. France*, no. 67263/01, § 47, ECHR 2002-IX; *Hénaf v. France*, no. 65436/01, § 48, ECHR 2003-XI; *Mathew v. the Netherlands*, no. 24919/03, § 180, ECHR 2005-IX; and *Kashavelov v. Bulgaria*, no. 891/05, § 38, 20 January 2011). The Court must always have regard to the specific facts of the case (see *Avcı and Others v. Turkey*, no. 70417/01, § 38, 27 June 2006).

73. The use of handcuffs could be warranted on specific occasions, such as for transfers outside prison (see *Garriguenc v. France* (dec.), no. 21148/02, 15 November 2007); when used for short periods of time (see *Kuzmenko v. Russia*, no. 18541/04, § 45, 21 December 2010, where the applicant remained handcuffed to a radiator in the corridor of a dormitory building for few hours); or when it constitutes an individual and periodically reviewable measure in respect of the applicant which relates to a personal risk assessment based on his behaviour (see *Julin v. Estonia*, nos. 16563/08 and 3 others, §§ 129-130, 29 May 2012, where the handcuffs were applied in response to the applicant's disorderly conduct and the measure was to be reviewed once a month).

74. The systematic handcuffing of a prisoner when taken out of his cell was in itself considered treatment in violation of Article 3 of the Convention when the measure lacked sufficient justification and was used over periods of thirteen years (see *Kashavelov*, cited above, §§ 39-40), fourteen years (see *Enache v. Romania*, no. 10662/06, § 61, 1 April 2014), more than five years (see *N.T. v. Russia*, no. 14727/11, § 53, 2 June 2020) and five months (see *Goriunov v. the Republic of Moldova*, no. 14466/12, § 33, 29 May 2018).

75. The Court has also held on many occasions that handcuffing of an ill or otherwise weak person is disproportionate to the requirements of security and implies an unjustifiable humiliation, whether or not intentional (see *Okhrimenko v. Ukraine*, no. 53896/07, § 98, 15 October 2009; *Salakhov and Islyamova v. Ukraine*, no. 28005/08, §§ 155 and 156, 14 March 2013; *Korneykova and Korneykov v. Ukraine*, no. 56660/12, §§ 112-16, 24 March 2016).

76. To sum up, when assessing the level of severity in the context of handcuffing, the Court has taken into account the gravity of the applicant's sentence, his criminal record and his history of violence (see *Paradysz v. France*, no. 17020/05, § 95, 29 October 2009, and *Kaverzin v. Ukraine*, no. 23893/03, § 156, 15 May 2012); compliance of the measure with domestic law (see *Julin*, cited above, § 130); proportionality of the measure to the prisoner's conduct (see *Goriunov*, cited above, § 33); the lawfulness of the detention, public nature of the treatment, consequences for health (see *Raninen*, cited above, §§ 57-58), the applicant's state of health and other security arrangements applied, such as wardens and dogs (see *Kaverzin*,

cited above, §§ 159-60); and the period of time the handcuffs were applied (see *Kashavelov*, cited above, § 39).

2. Application of the above principles to the present case

77. In the present case, each applicant was convicted of several serious crimes (see the table above and paragraphs 9, 12 and 18 above). Their criminal records arguably called for their placement in the highest security conditions. However, the question which must be addressed is whether the specific measures applied to the applicants in those conditions, in particular their handcuffing, were justified given the security concerns and their personal situation.

78. There is nothing in the case material to suggest that the applicants were ill or that the application of handcuffs caused any harm to their mental or physical health.

79. However, the measure complained of was imposed on them for long periods of time every time they left their cells. Mr Shlykov (application no. 78638/11) has been routinely handcuffed since 4 March 2001 (for about nineteen years) and there is no evidence in the case materials to suggest that the measure has been subject to regular review or discontinued. Mr Kerekesha (application no. 6086/14) was handcuffed for seven years and ten months. Mr Pulyalin (application no. 11402/17) and Mr Korostelev (application no. 82420/17) were subjected to this measure of restraint for one year, eleven months and twenty days.

80. While their handcuffing was not exposed to the public (since the only people who saw them were presumably either detainees or prison staff), the Court cannot overlook the fact that, particularly for a convict sentenced to a lengthy term of imprisonment, his appearance and relationship with others may be important to his own self-esteem. Therefore, any measure which diminishes such self-esteem or self-image in the eyes of others, especially when lasting for extended periods of time, must be considered as potentially "degrading" (see *Goriunov*, cited above, § 33).

81. In the present case, the relevant domestic provisions, in particular the Penal Institutions Act and the Internal Rules of Penal Facilities, do not require that inmates sentenced to life imprisonment be handcuffed each time when they leave their cells. To the contrary, the legislation in question presupposes discretion in this respect, and the handcuffing of a life prisoner is called for if he represents a danger or could abscond (see paragraphs 36-39 above). The degree of the above risks is to be assessed by prison staff and prison commissions, which can place the prisoners under surveillance after examining their files. The practice suggests that handcuffing is not applied automatically in all detention facilities housing inmates serving a life sentence (see paragraph 46 above).

82. Thus the Court finds that the *de facto* presumption of routine handcuffing of persons sentenced to life imprisonment does not seem to be

based on the domestic legislation and is not uniformly followed in practice. Nevertheless, where such presumption is applied, it appears that the prisoners concerned will find it very difficult to obtain a change in their situations.

83. The Court finds particularly worrying the situation of Mr Shlykov (application no. 78638/11), where the Government did not refer to any decision of a prison commission or any other documents containing the grounds for his continued handcuffing. It appears that the very fact that he was a life prisoner was sufficient for him to be handcuffed.

84. As regards Mr Kerekesha (application no. 6086/14), the case-file indicates that he was under surveillance between 10 June 2012 and 24 May 2013; however his handcuffing started in July 2005. It can thus appear that at least for a part of the period in respect of which the complaint is brought his handcuffing was not based on the individual security concerns, but on his status of a life prisoner.

85. As to Mr Pulyalin (application no. 11402/17) and Mr Korostelev (application no. 82420/17), their routine handcuffing lasted for nearly two years and was grounded on prison commissions' decisions. However in both cases it seems that commissions' hearings were held only once and there was no reassessment of the applicants' conduct during the periods complained of.

86. The Court notes in this regard that although the domestic regulations provide that the use of restraint measures must be regularly reviewed, there is no evidence that this was systematically done during the applicants' detention. The prison officers monitoring the applicants did not submit any reports to the prison commissions on the progress of the applicants' behaviour nor did the prison commissions review their decisions to place the applicants under surveillance with sufficient regularity, as required by the regulations (see paragraphs 39-40 above).

87. Furthermore, the modalities of such review can vary significantly, in so far as the inmates can be excluded from review both before the prison commissions (see paragraphs 22 and 31 above) and before the domestic courts conducting judicial review of such measures (see paragraphs 24-25 and 33-34 above).

88. The Government in their submissions did not refer to any particular case of recent or regular disorderly conduct in the facilities or threats against other inmates or warders which would justify the routine use of handcuffs upon any of the applicants for extended periods of time.

89. In the absence of any evidence in the case file of any risk assessment by the authorities in charge of the applicants, it is unclear how the prison administration and the domestic courts could have reached and maintained their conclusions that the measure applied had been prompted by such a risk.

90. The Court is mindful of the difficulties States may encounter in maintaining order and discipline in penal institutions and that disobedience by detainees may quickly degenerate into violence (see *Gömi and Others v. Turkey*, no. 35962/97, § 77, 21 December 2006; *Sapožkovs v. Latvia*, no. 8550/03, § 64, 11 February 2014; and *Tali v. Estonia*, no. 66393/10, § 75, 13 February 2014). The authorities need to exercise caution when dealing with individuals who have been convicted of violent offences, refuse to accept the fact of their imprisonment, and are consequently hostile towards prison staff and other inmates (see *Kashavelov*, cited above, § 39). However, even a life sentence cannot justify routine and prolonged handcuffing that would not be based on the specific security concerns and the inmate's personal circumstances and not be subject to regular review.

91. The Court notes, in this respect, the CPT's concerns that restraint measures cannot be used systematically against life-sentenced prisoners. They can only be undertaken as a proportionate response to a specific risk and they should last only for the time strictly necessary to counter that risk (see paragraph 43 above).

92. To sum up, the Court finds that the applicants were handcuffed for prolonged periods of time, without a proper evaluation of their individual situation, in the absence of any regular assessment of whether the application of the measure in question was appropriate or pursued any specific aim.

93. On the strength of the above, the Court concludes that systematic handcuffing of the applicants in a secure environment was a measure which lacked sufficient justification and can thus be regarded as degrading treatment. There has therefore been a violation of Article 3 of the Convention on that account.

3. Other aspects of prison regime (application no. 78638/11)

94. Mr Shlykov referred to various aspects of prison regime which, taken cumulatively, caused him sufferings (see paragraph 11 above). The Court notes that the applicant was confined to his cell most of the time. The applicant's situation was further aggravated by the very limited amount of time he was able to spend outside his cell and the lack of any purposeful activity. Short periods of outdoor exercise exacerbate the situation of prisoners confined to their cells for the rest of the time (see *Harakchiev and Tolumov v. Bulgaria*, nos. 15018/11 and 61199/12, § 208, ECHR 2014 (extracts)).

95. Taken cumulatively, the factors referred to above (in particular, the applicant's isolation and limited outdoor exercise during his life imprisonment) resulted in intense and prolonged feeling of loneliness and boredom, which caused significant distress to the applicant and due to the lack of appropriate mental and physical stimulation could result in

institutionalisation syndrome, that is to say the loss of social skills, and individual personal traits. The Court concludes that there has been a violation of Article 3 of the Convention on account of the prison regime applied to the applicant.

III. ALLEGED VIOLATIONS OF ARTICLE 13 OF THE CONVENTION ON ACCOUNT OF LACK OF EFFECTIVE REMEDY

96. Mr Kerekesha (application no. 6086/14) complained under Article 13 of the Convention that he had not had an effective remedy with regard to his complaint about handcuffing. He relied on Article 13 of the Convention:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

97. The Government submitted that the applicant had had effective domestic remedies at his disposal.

98. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible. However, having regard to its earlier conclusion (see paragraph 93 above), the Court considers that it is not necessary to examine this complaint separately.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

99. Mr Pulyalin (application no. 11402/17) and Mr Korostelev (application no. 82420/17) complained that the civil proceedings in which they had challenged their handcuffing had been conducted in their absence on the grounds that domestic law did not provide for the participation of convicted detainees in civil proceedings. They relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

100. The Government stated that as the applicants' complaints were the subject of the Court's well-established case-law, there was no need to submit any observations.

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

102. The Court reiterates that the applicants were not afforded an opportunity to attend hearings in civil proceedings to which they were parties. The Court observes that the general principles regarding the right to present one's case effectively before the court and to enjoy equality of arms with the opposing side, as guaranteed by Article 6 § 1 of the Convention, have been stated in a number of its previous judgments (see, among many other authorities, *Steel and Morris v. the United Kingdom*, no. 68416/01, §§ 59-60, ECHR 2005-II). The Court's analysis of an alleged violation of the right to a fair trial in respect of cases where incarcerated applicants complain about their absence from hearings in civil proceedings includes the following elements: examination of the manner in which domestic courts assessed the question whether the nature of the dispute required the applicants' personal presence and determination whether domestic courts put in place any procedural arrangements aiming at guaranteeing their effective participation in the proceedings (see *Yevdokimov and Others*, cited above, § 48).

103. In the leading case of *Yevdokimov and Others*, cited above, the Court found a violation in respect of issues similar to those in the present case.

104. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion in the present case. Having regard to its case-law on the subject, the Court considers that, in the instant case, the domestic courts deprived the applicants of the opportunity to present their case effectively, and failed to meet their obligation to ensure respect for the principle of a fair trial.

105. There has therefore been a violation of Article 6 § 1 of the Convention.

V. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

106. The relevant parts of Articles 41 and 46 of the Convention provide:

Article 41

"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."

Article 46

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution..."

A. Damage

107. The applicants claimed various sums in respect of non-pecuniary damage, indicated in Appendix II.

108. The Government contested the claims as unsubstantiated and excessive.

109. The Court has already held in many cases that where a law, procedure or practice was found to fall short of Convention standards this was enough to put matters right and no monetary compensation for non-pecuniary damage was awarded (see *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 120, ECHR 2002-VI; *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 93, ECHR 2005-IX; *Saadi v. Italy* [GC], no. 37201/06, § 188, ECHR 2008; *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 134, ECHR 2008; and *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, § 136, ECHR 2013 (extracts)).

110. In the present case, the practice of prolonged handcuffing of the applicants by the prison authorities, without sufficient regard to the specific security concerns and in the absence of regular review, violated their rights under Article 3 of the Convention. It will be for the respondent State to implement, under the supervision of the Committee of Ministers, such measures as it considers appropriate to secure the rights of the applicants and other persons in their position, in order to discharge its legal obligation under Article 46 of the Convention. It is thus inevitable that the Court's judgment will have effects extending beyond the confines of these particular cases.

111. In such circumstances, in the case of Mr Kerekesha (application no. 6086/14), the Court considers that the finding of a violation constitutes sufficient just satisfaction for any non-pecuniary damage sustained due to the routine handcuffing (see *Gorlov and Others v. Russia*, nos. 27057/06 and 2 others, § 120, 2 July 2019).

112. As regards other applicants, the Court considers that Mr Shlykov (application no. 78638/11), Mr Pulyalin (application no. 11402/17) and Mr Korostelev (application no. 82420/17) have suffered non-pecuniary damage on account of prison regime restrictions and exclusion from the civil proceedings. Making its assessment on an equitable basis, the Court awards Mr Shlykov EUR 3,000, plus any tax that may be chargeable. In the cases of Mr Pulyalin and Mr Korostelev, the Court awards each applicant EUR 1,950 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

113. The applicants also claimed reimbursement of costs and expenses in the amounts indicated in Appendix II.

114. The Government stated that these expenses had not been actually and necessarily incurred and were not reasonable as to quantum.

115. 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 850 euros (EUR) has already been paid to Mr Shlykov (application no. 78638/11), Mr Pulyalin (application no. 11402/17) and Mr Kerekesha (application no. 82420/17) by way of legal aid, the Court does not consider it necessary to make an award to these applicants under this head (see *Pitalev v. Russia*, no. 34393/03, § 66, 30 July 2009). As regards Mr Korostelev, the Court awards him EUR 850, plus any tax that may be chargeable, for legal costs, to be paid into the bank account of his representative, as requested by him (see *Fartushin v. Russia*, no. 38887/09, § 67, 8 October 2015, and *Gorshchuk v. Russia*, no. 31316/09, § 45, 6 October 2015). As regards other expenses, regard being had to the documents in the Court's possession and the above criteria, the Court considers it reasonable to award the applicants the sums indicated in Appendix II, plus any tax that may be chargeable to the applicants.

C. Default interest

116. The Court considers it appropriate that the default interest rate 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. *Decides* to join the applications;

2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 3 of the Convention in respect of each of the applicants on account of their routine handcuffing;

4. *Holds* that there has been a violation of Article 3 of the Convention in respect of applicant in application no. 78638/11 on account of the conditions of the prison regime;

5. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of applicants in applications nos. 11402/17 and 82420/17;

6. *Holds* that there is no need to examine separately the complaint under Article 13 of the Convention;

7. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant in application no. 6086/14;

8. *Holds*
   (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the amounts indicated in Appendix II, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

9. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 19 January 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova
Deputy Registrar

Paul Lemmens
President

APPENDIX I

List of cases

No.	Application no.	Case name	Lodged on	Applicant Year of Birth Place of Residence Nationality	Represented by
1	78638/11	Shlykov v. Russia	27/10/2011	**Vladislav Yuryevich SHLYKOV** 1973 Solikamsk, Perm Region Russian	Eduard Valentinovich MARKOV
2	6086/14	Kerekesha v. Russia	21/11/2013	**Aleksandr Livonovich KEREKESHA** 1976 Khabarovsk Russian	Olga Vladimirovna DRUZHKOVA
3	11402/17	Pulyalin v. Russia	29/09/2013	**Aleksey Aleksandrovich PULYALIN** 1986 Ukhta, Komi Republic Russian	Aleksey Nikolayevich LAPTEV
4	82420/17	Korostelev v. Russia	15/10/2013	**Anton Alekseyevich KOROSTELEV** 1987 Kharp, Yamalo-Nenetskiy Region Russian	Aleksey Nikolayevich LAPTEV

APPENDIX II

Just satisfaction claims

App no.	Name	Non-pecuniary damage (EUR)		Costs and expenses	
		Claimed	Awarded	Claimed	Awarded (EUR)
78638/11	Mr Shlykov	30,000	3,000	EUR 3,610	24
6086/14	Mr Kerekesha	368,000	0	RUB 11,600	191
11402/17	Mr Pulyalin	30,000	1,950	EUR 10,000; RUB 18,489	0
82420/17	Mr Korostelev	30,000	1,950		850