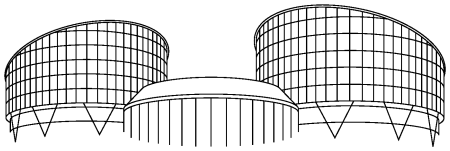

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 1618/06
Yuriy Borisovich ZABODALOV
against Russia

The European Court of Human Rights (First Section), sitting on 23 September 2014 as a Committee composed of:

Khanlar Hajiyev, *President,*
Julia Laffranque,
Erik Møse, *judges,*

and Søren Prebensen, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 14 December 2005,

Having regard to the declaration submitted by the respondent Government requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Mr Yuriy Borisovich Zabodalov, is a Russian national, who was born in 1966 and lived in St Petersburg before his conviction. He was represented before the Court by Mr F. Bagryanskiy and Mr M. Ovchinnikov, lawyers practising in Vladimir.

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

3. The applicant complained, among other matters, about poor conditions of his detention in a remand prison, an excessive length of his pre-trial detention, and about an unreasonably long judicial review of pre-trial detention orders.

4. The application had been communicated to the Government, who submitted their observations on the admissibility and merits of the case, followed by the applicant's observations in reply.

5. Subsequently the Government made a unilateral declaration with a view to resolving the issues raised by the application and requested to strike the application out of the Court's list of cases.

THE LAW

A. The applicant's complaints under Articles 3 and 5 of the Convention

6. The applicant complained that the conditions of his detention in prison T-2 of the Vladimir Region amounted to inhuman and degrading treatment prohibited under Article 3 of the Convention which provides as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

7. He also complained under Article 5 § 3 of the Convention that his pre-trial detention had been excessively long and that there existed no relevant and sufficient grounds for it and that the judicial review of his detention orders fell short of the requirement of speediness guaranteed by Article 5 § 4. The relevant parts of Article 5 provide:

> "1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:
>
> ...
>
> (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
>
> ...
>
> 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.
>
> 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

8. By letter submitted on 17 January 2014, the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by the application. They further requested the Court to strike the application out of the list of cases in accordance with Article 37 of the Convention.

9. By the above declaration, the Russian authorities acknowledged violations of Articles 3 and 5 §§ 3 and 4, as alleged by the applicant, and stated their readiness to pay him 7,315 euros (EUR) as just satisfaction.

10. The remainder of the declaration read as follows:

> "The authorities therefore invite the Court to strike the present case out of the list of cases. They suggest that the present declaration might be accepted by the Court as 'any other reason' justifying the striking of the case out of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention.
>
> The sum referred to above, which is to cover any pecuniary and non-pecuniary damage, as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the Convention. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.
>
> This payment will constitute the final resolution of the case."

11. By letter of 14 April 2014 the applicant, who had been invited to comment on the Government's unilateral declaration, rejected their offer, considering that the sum mentioned in the Government's declaration was too low.

12. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. In particular, Article 37 § 1 (c) enables the Court to strike a case out of its list if:

> "...for any other reason established by the Court, it is no longer justified to continue the examination of the application".

13. To this end, the Court will examine carefully the declaration in the light of the principles established in its case-law, in particular the *Tahsin Acar* judgment (see *Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Spółka z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007, and *Sulwińska v. Poland* (dec.), no. 28953/03).

14. The Court recalls that it has routinely found violations of Articles 3 and 5 §§ 3 and 4 of the Convention in cases against Russia on account of inhuman and degrading conditions of applicants' pre-trial detention, its excessive length and absence of relevant and sufficient grounds for it, as well as on account of an excessive length of its judicial review (see, among other authorities, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2012, *Shukhardin v. Russia*, no. 65734/01, 28 June 2007 and *Kalashnikov v. Russia*, no. 47095/99, ECHR 2002-VI). It follows that the complaints raised in the present application are based on the clear and extensive case-law of the Court.

15. Turning next to the nature of the admissions contained in the Government's declaration, the Court is satisfied that the Government did not dispute the allegations made by the applicant and explicitly acknowledged the violations of Articles 3 and 5 §§ 3 and 4 of the Convention.

16. As to the intended redress to be provided to the applicant, the Court notes that even if the amount of the non-pecuniary compensation did not exactly correspond to the awards made by the Court in similar cases, what is important is that the proposed sum is not unreasonable in comparison with them (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 105, ECHR 2006-V). The Government have committed themselves to effecting the payment of that sum within three months of the Court's decision, with default interest to be payable in case of delay of settlement. As regards the legal costs and expenses, referred to by the applicant, the Court notes that it has a discretion to award legal costs when it strikes out an application (see Rule 43 § 4 of the Rules of Court and, for example, *Zakirov v. Russia* (dec.), no. 50799/08, 18 February 2014; *M.C.E.A. Voorhuis v. the Netherlands* (dec.), no. 28692/06, 3 March 2009; *Shevanova v. Latvia* (striking out) [GC], no. 58822/00, §§ 52-56, 7 December 2007; *Sisojeva and Others v. Latvia* [GC], no. 60654/00, §§ 130-133, ECHR 2007-I; and *Meriakri v. Moldova* (striking out), no. 53487/99, § 33, 1 March 2005).

17. The Court therefore considers that it is no longer justified to continue the examination of this case in the parts concerning the complaints about inhuman and degrading conditions of the applicant's pre-trial detention, the existence of relevant and sufficient grounds for it or its excessive length and the length of judicial review of the orders extending it. As the Committee of Ministers remains competent to supervise, in accordance with Article 46 § 2 of the Convention, the implementation of the judgments concerning the same issues, the Court is also satisfied that respect for human rights as defined in the Convention (Article 37 § 1 *in fine*) does not require it to continue the examination of these parts of the case. In any event, the Court's decision is without prejudice to any decision it might take to restore, pursuant to Article 37 § 2 of the Convention, the application to its list of cases, should the Government fail to comply with the terms of their unilateral declaration (see *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008, and *Aleksentseva and 28 Others v. Russia* (dec.), nos. 75025/01 et al., 23 March 2006).

18. In view of the above, it is appropriate to strike the case out of the list in the part concerning the complaints about inhuman and degrading conditions of the applicant's pre-trial detention, the existence of relevant and sufficient grounds for it, its excessive length, as well as the excessive length of the judicial review of the orders extending that detention.

B. Alleged violation of other Convention rights

19. The applicant also raised additional complaints with reference to Article 6 of the Convention.

20. Having regard to all the material in its possession, and in so far as it has jurisdiction to examine the allegations, the Court has not found any appearance of a breach of the rights and freedoms guaranteed by the Convention or its Protocols in that part of his application.

21. It follows that the remainder of the application must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

C. Award of costs

22. Rule 43 § 4 of the Rules of Court provides:

> "When an application has been struck out, the costs shall be at the discretion of the Court..."

23. The applicant submitted that costs and expenses incurred in the proceedings before the Court had exceeded the sum offered by the Government. He submitted a copy of a legal-services agreement with Mr Bagryanskiy and Mr Ovchinnikov whereby he undertook to pay them EUR 7,000 for his representation before the Court following the adoption of a decision or a judgment in his case.

24. The Government submitted that there was no evidence that that the applicant paid the above sum and that, in any event, those expenses appear to be unreasonable and unnecessary.

25. The Court observes that, when an application has been struck out in accordance with Article 37 of the Convention, the costs shall be at the discretion of the Court. The Court reiterates that when making an award under Rule 43 § 4 of the Rules of Court, the general principles governing reimbursement of costs are essentially the same as under Article 41 of the Convention (see *Pisano v. Italy* (striking out) [GC], no. 36732/97, §§ 53-54, 24 October 2002, *M.C.E.A. Voorhuis*, cited above, no. 28692/06, 3 March 2009, and *Youssef* v. *the Netherlands* (dec.) no. 11936/08, 27 September 2011). In other words, in order to be reimbursed, the costs must relate to the alleged violation, have been actually and necessarily incurred and be reasonable as to quantum. That is, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the violation found or to obtain redress.

26. The Court notes that the Government produced their unilateral declaration after the applicant's representatives had submitted their observations on the admissibility and merits of the case as well as other pleadings. The Court thus accepts that some of the costs were actually and

necessarily incurred. It further notes that according to the conditions of the unilateral declaration, the compensation was to cover these costs. However, the Court considers that the sum proposed by the Government is insufficient for that purpose and decides to use its discretion under Rule 43 § 4 of the Rules of Court (see *Scholvien and Others v. Germany* (dec.), no. 13166/08, 12 November 2013; *Święch v. Poland* (dec.), no. 60551/11, 1 July 2013; and *Gil v. Poland* (dec.), no. 46161/11, 4 June 2013).

27. Taking account of the costs genuinely and necessarily incurred in the proceedings before it, the Court awards the applicant reimbursement for costs and expenses in the amount of EUR 2,000. 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

Takes note of the terms of the Government's declaration concerning the applicant's complaints under Articles 3 and 5 §§ 3 and 4 of the Convention, and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention in so far as it concerned the complaints about inhuman and degrading conditions of the applicant's pre-trial detention, the existence of relevant and sufficient grounds for it, its excessive length, as well as the excessive length of the judicial review of the orders extending that detention;

Declares *the remainder of the application inadmissible;*

Holds

(a) that the respondent State is to pay to the applicant, within three months, in addition to the sum contained in the unilateral declaration submitted by the Government on 17 January 2014, EUR 2,000 (two thousand euros) for additional costs and expenses incurred in the proceedings before the Court;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the overall amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Søren Prebensen	Khanlar Hajiyev
Acting Deputy Registrar	President