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

THIRD SECTION

DECISION

Application no. 34728/06
Konstantin Viktorovich CHIRYEV and others
against Russia

The European Court of Human Rights (Third Section), sitting on 11 October 2016 as a Committee composed of:

Helena Jäderblom, *President,*
Dmitry Dedov,
Branko Lubarda, *judges,*
and Fatoş Aracı, *Deputy Sectio Registrar,*

Having regard to the above application lodged on 12 July 2006,

Having regard to the declarations submitted by the respondent Government requesting the Court to strike the applications out of the list of cases and to the applicants' reply,

Having deliberated, decides as follows:

THE FACTS

1. The applicants are three Russian nationals, Mr Konstantin Viktorovich Chiryev, Ms Oksana Anatolyevna Chiryeva and Ms Nadezhda Konstantinovna Chiryeva. The first and second applicants were born in 1976 and 1980 respectively. They are the parents of the third applicant.

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

3. On 31 March 2004 the first and second applicant were arrested in Moscow on suspicion of their involvement in an armed robbery of a jewellery shop. In April 2004 they were taken into the IZ-71/1 remand prison in Tula.

4. On 28 May, 22 July, 28 September 2004, 22 March, 24 May, 25 August and 29 November 2005, 15 February, 23 May, 13 July and

28 November 2006, 21 May 2007 and on other dates the domestic courts extended the authorised detention period for the first and second applicants and their co-defendants, without making a distinction between their individual situations. The first and second applicants' appeals against the detention orders of 13 July and 28 November 2006 and 21 May 2007 were examined more than two months later.

5. On 16 September 2004 the second applicant gave birth to a daughter, the third applicant, who stayed together with her in the remand prison until June or July 2007. The second applicant indicated that she had been initially placed in Cell 158, moved to Cell 168 in October 2004 and later to Cell 145 in April 2005. The cell measured 15 square metres, it had a large window, an adult bed and a baby cot, a cooking stove, a fridge, a sink and a toilet. Sometime later wardens replaced the baby cot with a second adult bed and brought in another mother with a baby. In late summer 2005 the other mother left the cell. On 5 December 2005 the second and third applicants contracted scabies. The second applicant did not provide any information about the conditions of her detention after that date.

6. On 27 September 2007 the Tsentralnyy District Court in Tula found the first and second applicants guilty and sentenced them to eleven and seven years' imprisonment, respectively. On 6 August 2008 the Tula Regional Court upheld the conviction on appeal.

THE LAW

A. Alleged violations of Articles 3 and 5 of the Convention in respect of the first and second applicants

7. The first and second applicants complained that the conditions of their detention in the remand prison had been inhuman and degrading in breach of Article 3 of the Convention, that the length of their detention on remand had been excessive in violation of Article 5 § 3 of the Convention, and their appeals against detention orders had not been examined "speedily", contrary to the requirements of Article 5 § 4 of the Convention.

8. The Government submitted two unilateral declarations in respect of the first and second applicants, inviting the Court to strike the case out of its list. They acknowledged that the first and second applicants had been detained in the IZ-71/1 remand prison in conditions which did not comply with the requirements of Article 3 of the Convention, that their detention had been effected in breach of Article 5 § 3 of the Convention, and that the length of the judicial review of detention orders had not complied with the requirements of Article 5 § 4 of the Convention. They offered to pay 15,000 euros (EUR) to each of the first and second applicants.

9. The first and second applicants rejected the Government's offer, as it did not cover the third applicant, the conditions of their post-conviction detention and an alleged violation of their right to a fair trial.

10. 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".

11. It also reiterates that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

12. To this end, the Court will examine carefully the declarations 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).

13. Since its first judgment concerning the inhuman and degrading conditions of detention in Russian penitentiary facilities and an excessive length of pre-trial detention (see *Kalashnikov v. Russia*, no. 47095/99, ECHR 2002-VI), the Court found similar violations in many cases against Russia (see, in general, *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2012, and *Dirdizov v. Russia*, no. 41461/10, 27 November 2012; and also, as regards the conditions of detention obtaining in the IZ-71/1 remand prison at the material time, *Kozhokar v. Russia*, no. 33099/08, §§ 95-98, 16 December 2010, and *Shcherbakov v. Russia (no. 2)*, no. 34959/07, §§ 67-74, 24 October 2013). The issue of an excessive length of appeal proceedings in detention matters has also been addressed by the Court on many occasions (see *Idalov v. Russia* [GC], no. 5826/03, § 157, 22 May 2012, and *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006). It follows that the complaints raised in this part of the application are based on the clear and extensive case-law of the Court.

14. Turning next to the nature of the admissions contained in the Government's declarations, the Court is satisfied that the Government did not dispute the allegations made by the first and second applicants and explicitly acknowledged the violations of the above-mentioned provisions of the Convention.

15. As to the intended redress to be provided to the first and second applicants, the Government have undertaken to pay them compensation in respect of pecuniary and non-pecuniary damages, as well as costs and expenses. The proposed sums are reasonable both in absolute terms and in

relation to the Court's awards in similar cases. The Government have committed themselves to effecting the payment of those sums within three months of the Court's decision, with default interest to be payable in case of delay of settlement.

16. The Court therefore considers that it is no longer justified to continue the examination of the case in the part concerning the above-mentioned complaints. 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 this part 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 applications to its list of cases, should the Government fail to comply with the terms of their unilateral declarations (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).

17. In view of the above, it is appropriate to strike the case out of the list in the part concerning the above-mentioned complaints.

B. Alleged violation of Article 3 of the Convention in respect of the third applicant

18. A further complaint concerns the conditions of the third applicant's detention.

19. The Government did not make any submissions on this point. The Court reiterates that, in contrast to an objection as to the non-exhaustion of domestic remedies which must be raised by the respondent Government, it cannot set aside the application of the six-month rule solely because a government have not made an objection to that effect. 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. In cases featuring a continuing situation, the six-month period runs from the cessation of that situation (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, §§ 71-72, 10 January 2012).

20. The Court observes that the applicants made detailed submissions on the conditions of the third applicant's detention in the period from her birth on 16 September 2004 and until approximately the end of 2005. However, neither the initial application form of 12 July 2006 nor their post-communication submissions of 5 April 2016 gave any information whatsoever about the conditions of her detention after that date. The Court reiterates that, despite the objective difficulties experienced by applicants in

collecting evidence to substantiate their claims about the conditions of their detention, it is incumbent on them to provide an elaborate and consistent account of the conditions of his or her detention mentioning the specific elements, which would enable the Court to determine that the complaint is not manifestly ill-founded or inadmissible on any other grounds (see *Ananyev and Others*, cited above, § 122). In the instant case such information has been provided only in respect of the period until the end of 2005, which preceded the lodging of the application by more than six months. It follows that the complaint about that period is belated and that the complaint about the remaining period of the third applicant's detention is unsubstantiated and manifestly ill-founded. This part of the application is therefore inadmissible and must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

C. Other alleged violations of the Convention

21. In their submissions of 5 April 2016, the applicants raised additional complaints concerning the conditions of post-conviction detention, various irregularities in the judicial proceedings and other issues. The Court notes that, in so far as these complaints had formed part of their original application, they were declared inadmissible on its communication and must be rejected pursuant to Article 35 §§ 2 (b) and 4 of the Convention as being substantially the same as the matter that has already been examined by the Court. In so far as these complaints did not form part of the original application, they were raised for a first time more than six months after the events the applicants complained about, and must be rejected as belated in accordance with Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court, unanimously,

Takes note of the terms of the respondent Government's declarations under Articles 3 and 5 of the Convention and of the arrangements for ensuring compliance with the undertakings referred to therein;

Decides to strike a part of the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

Done in English and notified in writing on 10 November 2016.

Fatoş Aracı
Deputy Registrar

Helena Jäderblom
President