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

# THIRD SECTION

# DECISION

Application no. 36985/07
Resan Resulovich GOGITIDZE
against Russia

The European Court of Human Rights (Third Section), sitting on 20 September 2016 as a Committee composed of:

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

Having regard to the above application lodged on 14 June 2007,

Having regard to the declaration submitted by the respondent Government on 30 September 2015 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

The applicant, Mr Resan Resulovich Gogitidze, is a Russian national, who was born in 1949 and lives in Volgograd. He was represented before the Court by Mr E. Isetskiy, a lawyer practising in Volgograd.

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

The applicant complained that his pre-trial detention had been unreasonably long, that it had not been based on relevant or sufficient reasons and that he could not receive compensation for the excessive length of his detention.

On 19 December 2013 the application had been communicated to the Government.

By the letter submitted on 30 September 2015 the Government informed the Court that they proposed to make unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

In the declaration, the Government acknowledged that the applicant had been detained without well-founded justification on the basis of the decisions rendered by the courts which did not comply with the requirements of Article 5 § 3 of the Convention and that the applicant did not have an enforceable right to compensation for his detention in breach of Article 5 § 5 of the Convention. They stated their readiness to pay 4,095 euros (EUR) as just satisfaction for the applicant's detention from 22 December 2004 to 29 May 2007 and for violation of his right to compensation.

The remainder of their declaration provided as follows:

> "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 European Convention on Human Rights. 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."

The applicant was invited to comment on the Government's unilateral declaration, if he so wishes. He submitted no comments in reply.

## THE LAW

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) of the Convention 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".

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

To this end, the Court will examine carefully the declaration in the light of the principles established in its case-law (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, 18 September 2007).

The Court notes at the outset that since its first judgment concerning the lengthy pre-trial detention in Russia (see *Kalashnikov v. Russia*, no. 47095/99, §§ 104-21 ECHR 2002 VI), it has found a violation of Article 5 § 3 of the Convention on account of an excessively lengthy pre-trial detention without proper justification in more than one hundred cases against Russia.

As regards the complaint under Article 5 § 5, the Court has earlier found that Russian law precludes any legal possibility for applicants to receive compensation for the detention which was effected in breach of Article 5 § 3 of the Convention (see *Govorushko v. Russia*, no. 42940/06, §§ 57-61, 25 October 2007, *Korshunov v. Russia*, no. 38971/06, §§ 59-63, 25 October 2007; *Alekhin v. Russia*, no. 10638/08, §§ 151-55, 30 July 2009; and *Chuprikov v. Russia*, no. 17504/07, § 99, 12 June 2014).

It follows that the complaints raised in the present application are based on the clear and extensive case-law of the Court.

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 applicants and explicitly acknowledged a violation of Article 5 §§ 3 and 5 of the Convention.

As to the intended redress to be provided to the applicant, the Government have undertaken to pay him a certain amount of compensation in respect of pecuniary and non-pecuniary damages, as well as costs and expenses. 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.

The Court is satisfied that the proposed sum is not unreasonable.

The Court therefore considers that it is no longer justified to continue the examination of this case. The Court is 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 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 *Aleksentseva and 28 Others v. Russia* (dec.), nos. 75025/01 et al., 23 March 2006, and *Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

In view of the above, it is appropriate to strike the case out of the list.

For these reasons, the Court, unanimously,

*Takes note* of the terms of the respondent Government's declaration under Article 5 §§ 3 and 5 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.

Done in English and notified in writing on 13 October 2016.

Fatoş Aracı
Deputy Registrar

Helena Jäderblom
President