

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

THIRD SECTION

DECISION

Applications nos. 13892/13 and 15573/13
Sergey Sergeyevich KANEV against Russia
and Vasiliy Aleksandrovich BOCHEK 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 applications lodged on 4 February 2013,

Having regard to the declarations submitted by the respondent Government on 9 April 2014 requesting the Court to strike the applications out of the list of cases and the applicants' reply to these declarations,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant in the first case, Mr Sergey Sergeyevich Kanev, is a Russian national, who was born in 1984 and lives in Syktyvkar.

The applicant in the second case, Mr Vasiliy Aleksandrovich Bochek, is a Russian national, who was born in 1963 and is detained in Krasnoyarsk.

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

The applicants complained that their pre-trial detention had been unreasonably long and that it had not been based on relevant or sufficient reasons.

The applications were communicated to the Government. The Court informed the Government that Mr Kanev and Mr Bochek had been held in the remand prison at least until 5 September 2013 and 26 April 2013

respectively. It later transpired that they were held in pre-trial detention until they were convicted on 7 March 2014.

On 9 April 2014 the Government informed the Court that they proposed to make unilateral declarations with a view to resolving the issue raised by the applications. They further asked the Court to strike out the applications, in accordance with Article 37 of the Convention.

In the declarations, the Government acknowledged that the applicants had been detained "without well-founded justification on the basis of decisions rendered by the courts", which did "not comply with the requirements of Article 5 § 3 of the Convention". They stated their readiness to pay 4,320 euros (EUR) to Mr Kanev and EUR 3,760 to Mr Bochek for their pre-trial detention. The remainder of the declarations read 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 rejected the Government's offers. They expressed the view that the sums mentioned in the Government's declarations were insufficient.

THE LAW

Having regard to the similarity of the main issues under the Convention in the above cases, the Court decides to join the applications and examine them in a single decision.

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".

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.

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, 18 September 2007).

The Court notes at the outset that since its first judgment concerning the excessive length of 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 a hundred cases against that State (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 200, 10 January 2012). It follows that the complaints raised in the present applications 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 declarations, the Court is satisfied that the Government did not dispute the allegations made by the applicants and explicitly acknowledged that their pre-trial detention had been in breach of Article 5 § 3 of the Convention.

As to the intended redress to be provided to the applicants, the Government have undertaken to pay them certain amounts 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 notes that Mr Kanev's pre-trial detention lasted from 20 July 2011 to 7 March 2014 and Mr Bochek's pre-trial detention lasted from 8 June 2011 to 7 March 2014. The Court is satisfied that the amounts of compensation proposed are consistent with the amounts awarded in similar cases (see *Yuriy Yakovlev v. Russia*, no. 5453/08, § 95, 29 April 2010; *Valeriy Kovalenko v. Russia*, no. 41716/08, § 67, 29 May 2012; and *Kislitsa v. Russia*, no. 29985/05, § 49, 19 June 2012; *Aleksandr Shevchenko v. Russia*, no. 48243/11, § 67, 23 July 2015).

The Court therefore considers that it is no longer justified to continue the examination of these cases. 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 cases. 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 *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 cases out of the list in accordance with Article 37 § 1 (c) of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications,

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

Decides to strike the applications 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