

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

FIRST SECTION

DECISION

Application no. 23684/06
Rafael Fagimovich KHANBIKOV against Russia
and 8 other applications
(see list appended)

The European Court of Human Rights (First Section), sitting on 26 November 2013 as a Committee composed of:

Khanlar Hajiyev, *President,*
Julia Laffranque,
Dmitry Dedov, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having regard to the above applications lodged on the dates listed in the appendix,

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

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. A list of the applicants and their representatives is set out in the appendix.

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 applicants complained, among other matters, about poor conditions of their detention in Russian penitentiary facilities. In addition, Mr Bezrukov complained that a period of his pre-trial detention had been unlawful.

4. The applications have been communicated to the Government.

THE LAW

A. Joinder of the applications

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

B. The complaints concerning inhuman or degrading conditions of detention and Mr Bezrukov's complaint about unlawfulness of a period of his detention

6. All the applicants complained that the conditions of their detention in Russian penitentiary facilities 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. Mr Bezrukov also complained under Article 5 of the Convention that his pre-trial detention had been unlawful from 24 to 26 April 2007 as he had been held in custody without a valid court order. The relevant part of Article 5 provides:

> "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..."

8. By letters dated 5 December 2012, 26 March, 17 April, and 3 and 11 June 2013, the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving these issues raised by the applications. They further requested the Court to strike the applications out of the list of cases in accordance with Article 37 of the Convention.

9. By the above declarations, the Russian authorities acknowledged that the applicants were detained in conditions which did not comply with the requirements of Article 3 of the Convention, and also that between 24 and 26 April 2007 Mr Bezrukov had been detained in violation of Article 5 § 1 of the Convention. The Government stated their readiness to pay the following amounts to the applicants as just satisfaction: 4,350 euros (EUR) to Mr Khanbikov, EUR 4,935 to Mr Minderov, EUR 4,960 to Mr Bezrukov, EUR 4,350 to Mr Zhernovoy, EUR 5,000 to Mr Zhikharev, EUR 5,375 to Mr Syafukov, EUR 8,285 to Mr Sevlov, EUR 5,750 to Mr Plotnikov, and EUR 8,750 to Mr Tarasov.

10. The remainder of the declaration in each case 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 their separate letters of various dates, the applicants rejected the Government's offers in whole or in part. Some of them expressed the view that the sums mentioned in the Government's declarations were too low, whereas others insisted that the Court should examine the other complaints unrelated to the issue of their conditions of detention.

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. It also recalls 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.

14. 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).

15. The Court notes at the outset that since its first judgment concerning the inhuman and degrading conditions of detention in Russian pre-trial remand centres (see *Kalashnikov v. Russia*, no. 47095/99, ECHR 2002-VI), it has found a violation of Article 3 on account of similar conditions of detention in more than ninety cases raising comparable issues. Most recently, the Court has adopted a pilot judgment concerning the structural problem of overcrowding and inadequate conditions of detention in Russian penitentiary facilities (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 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.

16. As to the complaint under Article 5 § 1 of the Convention, the Court has already held in many cases against Russia that the practice of keeping defendants in detention without judicial authorisation or clear rules governing their situation was incompatible with the principles of legal certainty and the protection from arbitrariness (see *Mukharev v. Russia*, no. 22921/05, §§ 25-32, 3 April 2012; *Isayev v. Russia*, no. 20756/04, §§ 131-33, 22 October 2009; *Yudayev v. Russia*, no. 40258/03, §§ 59-61, 15 January 2009; *Belov v. Russia*, no. 22053/02, §§ 90-91, 3 July 2008; *Lebedev v. Russia*, no. 4493/04, §§ 55-58, 25 October 2007; *Shukhardin v. Russia*, no. 65734/01, §§ 84-85, 28 June 2007; *Belevitskiy v. Russia*, no. 72967/01, §§ 88-90, 1 March 2007; *Korchuganova v. Russia*, no. 75039/01, § 57, 8 June 2006; and *Khudoyorov v. Russia*, no. 6847/02, §§ 147-51, 8 November 2005). The Court finds therefore that there exists well-established case-law on this issue.

17. 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 the conditions of their detention had been in breach of Article 3 of the Convention, and that a period of Mr Bezrukov's pre-trial detention fell short of the guarantees of Article 5 of the Convention.

18. 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. Even if the method of calculation employed by the Russian authorities did not correspond exactly to the guidelines established by the Court in the pilot judgment (see *Ananyev and Others*, cited above, § 172), what is important is that the proposed sums are not unreasonable in comparison with the awards made by the Court in similar cases (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 105, ECHR 2006-V). 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.

19. The Court therefore considers that it is no longer justified to continue the examination of these cases in the part concerning the complaints about inhuman and degrading conditions of the applicants' detention, and Mr Bezrukov's case also in the part concerning the unlawfulness of his pre-trial detention. As the Committee of Ministers remains competent to supervise, in accordance with Article 46 § 2 of the Convention, the implementation of the *Ananyev and Others* pilot judgment concerning the same issue, 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 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).

20. 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 applicants' detention in Russian penitentiary facilities, and Mr Bezrukov's case also in the part concerning unlawfulness of his detention from 24 to 26 April 2007.

C. The other complaints

21. Some applicants also raised additional complaints with reference to various Articles of the Convention and its Protocols.

22. 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 their applications.

23. It follows that the applications in this part must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to join the applications;

Takes note of the terms of the Government's declarations concerning the applicants' complaints under Article 3 of the Convention and Mr Bezrukov's complaint under Article 5 § 1, 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 in so far as they concerned the complaints about inhuman and degrading conditions of detention in Russian penitentiary facilities and the unlawfulness of Mr Bezrukov's pre-trial detention from 24 to 26 April 2007;

Declares the remainder of the applications inadmissible.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President

APPENDIX

No	Application No	Lodged on	Applicant Date of birth Place of residence	Represented by
1.	23684/06	26/07/2006	**Rafael Fagimovich KHANBIKOV** 21/06/1974 Tolyatti	
2.	31135/07	28/05/2007	**Dmitriy Yuryevich MINDEROV** 02/12/1986 Yoshkar-Ola	
3.	35277/07	10/07/2007	**Konstantin Kirillovich BEZRUKOV** 08/12/1973 Perm	
4.	55896/07	06/11/2007	**Andrey Ivanovich ZHERNOVOY** 01/01/1967 Irkutsk	Leonid Vasilyevich TELEBOKOV
5.	59214/08	21/11/2008	**Aleksandr Leonidovich ZHIKHAREV** 02/08/1975 Nizhniy Tagil	
6.	4917/09	24/12/2008	**Andrey Nyaimovich SYAFUKOV** 06/05/1977 Saransk	Filipp Valeryevich BAGRYANSKIY

No	Application No	Lodged on	Applicant Date of birth Place of residence	Represented by
7.	44992/09	13/07/2009	**Sergey Aleksandrovich SEVLOV** 21/12/1975 Galich	
8.	55328/10	26/08/2010	**Yevgeniy Yuryevich PLOTNIKOV** 04/02/1978 Kuybyshev	Dmitriy Viktorovich KONDRATYEV
9.	8913/11	16/01/2011	**Andrey Borisovich TARASOV** 16/05/1958 St Petersburg	Mikhail Vladimirovich SMIRNOV