

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

THIRD SECTION

DECISION

Applications nos. 23751/06 and 10978/11
Andrey Anatolyevich KLIMENTYEV against Russia
and Viktor Vladimirovich NADTOCHIYEV against Russia

The European Court of Human Rights (Third Section), sitting on 2 February 2016 as a Committee composed of:

Helena Jäderblom, *President,*
Dmitry Dedov,
Branko Lubarda, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above applications lodged on 25 May 2006 and 11 January 2011 respectively,

Having regard to the declarations submitted by the respondent Government on 10 April 2015 and 16 January 2015 requesting the Court to strike the applications out of the list of cases and the applicants' reply to those declarations,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant in the first case, Mr Andrey Anatolyevich Klimentyev, is a Russian national, who was born in 1954 and lived, prior his arrest, in Nizhniy Novgorod. He was represented before the Court by Mr S. Ostroumov, a lawyer practising in Nizhniy Novgorod.

The applicant in the second case, Mr Viktor Vladimirovich Nadtochiyev, is a Russian national, who was born in 1981 and is detained in Mikhaylovskoye, Tver Region.

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.

By letters submitted on different dates, 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 above-mentioned declarations, the Government acknowledged that all the applicants 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 stated their readiness to pay the following amounts to the applicants as just satisfaction:

(a) 750 euros (EUR) to Mr Klimentyev for his pre-trial detention between 19 January 2006 and 31 August 2006;

(b) EUR 750 to Mr Nadtochiyev for his pre-trial detention between 26 March 2010 and 12 November 2010".

The remainder of each 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."

By separate letters of various dates, the applicants 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 observes 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.

To this end, the Court will examine carefully the declarations 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 lengthy pre-trial detention in Russia (see *Kalashnikov v. Russia*, no. 47095/99, §§ 104-121 ECHR 2002 VI), it has found in more than one hundred cases against Russia a violation of Article 5 § 3 of the Convention on account of an excessively lengthy pre-trial detention without proper justification. 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 does not dispute the allegations made by the applicants and has explicitly acknowledged that their pre-trial detention was 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 as just satisfaction. 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 the event of a delay in settlement.

The Court is satisfied that the proposed sums are not unreasonable in comparison with the awards made by the Court 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; *Kislitsa v. Russia*, no. 29985/05, § 49, 19 June 2012).

The Court therefore considers that it is no longer justified to continue examining 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.

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 pursuant to Article 37 § 1 (c) of the Convention.

Done in English and notified in writing on 3 March 2016.

Marialena Tsirli
Deputy Registrar

Helena Jäderblom
President