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

THIRD SECTION

DECISION

Applications nos. 31038/09 and 3899/10
Yevgeniy Vyacheslavovich ONISHCHENKO against Russia
and Aleksandr Gennadyevich BERDNIKOV against Russia

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

Branko Lubarda, *President,*
Pere Pastor Vilanova,
Georgios A. Serghides, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above applications lodged on 30 September 2009 and 16 March 2010 respectively,

Having regard to the declarations submitted by the respondent Government on 27 February 2015 requesting the Court to strike the applications out of the list of cases,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant in the first case, Mr Yevgeniy Vyacheslavovich Onishchenko, is a Russian national, who was born in 1989 and lived, prior to his arrest, in Kislovodsk, Stavropol Region.

The applicant in the second case, Mr Aleksandr Gennadyevich Berdnikov, is a Russian national, who was born in 1971 and is detained in Chelyabinsk.

The Russian Government ("the Government") were represented 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 their right to judicial review of detention had been violated.

The applications had been communicated to the Government.

By letter submitted on 27 February 2015, the Government informed the Court that they proposed to make unilateral declarations with a view to resolving the issues raised by the applications. They further requested that the Court 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 the decisions rendered by the courts which did not comply with the requirements of Article 5 § 3 of the Convention and that the applicants' right under Article 5 § 4 had been violated. They stated their readiness to pay the following amounts to the applicants as just satisfaction:

(a) 4,400 euros (EUR) to Mr Onishchenko for his pre-trial detention "between 6 March 2008 and 31 December 2010", delayed review of the appeal against detention order of 9 September 2009 and absence at the detention hearing;

(b) 4,000 EUR to Mr Berdnikov for his pre-trial detention "between 11 July 2008 and 30 December 2010" and delayed review of the appeal against detention order of 26 May 2010.

The remainder of their declarations 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 applicants were invited to comment on the Government's unilateral declarations, if they so wished. They submitted no comments in reply.

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.

In respect of unreasonable length of appeal proceedings against detention orders the Court has found a violation of Article 5 § 4 in many Russian cases (see *Butusov v. Russia*, no. 7923/04, §§ 32-35, 22 December 2009; *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006; *Pichugin v. Russia*, no. 38623/03, §§ 154-156, 23 October 2012), stressing that their entire duration was attributable to the authorities.

In respect of the detention appeal hearing held in the absence of an applicant and his representatives while the prosecutor was present, the Court has found a violation of Article 5 § 4 in Russian cases on account of a breach of the equality of arms principle (see, for example, *Idalov v. Russia* [GC], no. 5826/03, §§ 162-64, 22 May 2012; *Yudayev v. Russia*, no. 40258/03, §§ 80-83, 15 January 2009; *Pyatkov v. Russia*, no. 61767/08, §§ 130-33, 13 November 2012; *Koroleva v. Russia*, no. 1600/09, §§ 113-16, 13 November 2012; *Gubin v. Russia*, no. 8217/04, §§ 67-68, 17 June 2010; and *Butusov*, cited above, §§ 25-28).

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 and 4 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 is satisfied that the amounts of compensation proposed are consistent with the amounts awarded in similar cases (see *Aleksandr Shevchenko v. Russia*, no. 48243/11, § 67, 23 July 2015, *Kovyazin and Others v. Russia*, nos. 13008/13, 60882/12 and 53390/13, § 116, 17 September 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 declaration under Article 5 §§ 3 and 4 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	Branko Lubarda
Deputy Registrar	President