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

THIRD SECTION

DECISION

Application no. 3205/09
Nikolay Ivanovich PSHENICHNYY
against Russia

The European Court of Human Rights (Third Section), sitting on 11 October 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 16 December 2008,

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 Nikolay Ivanovich Pshenichnyy, is a Russian national, who was born in 1954 and is detained in Stavropol. He was represented before the Court by Mr V. Shikhov, a lawyer practising in Tuapse, Krasnodar 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 applicant complained, *inter alia*, under Article 5 § 3 of the Convention about the length of his pre-trial detention.

The part of the application concerning the length of the applicant's pre-trial detention had been communicated to the Government.

THE LAW

The applicant complained about the excessive length of his pre-trial detention. He relied on Article 5 § 3 of the Convention.

By a letter of 30 September 2015 the Government informed the Court that they proposed to make a 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 "in violation Article 5 § 3 of the Convention" and stated their readiness to pay the EUR 1,850 to him as just satisfaction for his pre-trial detention between 14 July 2007 and 5 February 2009.

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 for the Protection of Human Rights and Fundamental Freedoms and shall be converted into Russian roubles at the rate applicable on the date of payment. 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 did not respond.

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. Article 37 § 1 (c) enables the Court in particular 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 even if the applicants wish the examination of the case to be continued.

To this end, the Court has examined the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Sp. 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 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 Russia (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 application are based on the clear and extensive case-law of the Court.

Having regard to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed - which is consistent with the amounts awarded in similar cases - the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

The Court considers that this amount should be converted into the currency of the respondent State at the rate applicable at the date of payment, and paid within three months from the date of notification of the Court's decision issued in accordance with Article 37 § 1 of the European Convention on Human Rights. In the event of failure to settle within this period, simple interest shall be payable on the amounts in question at a rate equal to the marginal lending rate of the European Central Bank plus three percentage points.

Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

In view of the above, it is appropriate to strike this part of the application out of the list.

The applicant complained under Articles 3 and 14 of the Convention about the conditions of his detention; under Article 5 of the Convention about the allegedly unlawful arrest and lack of compensation; under Article 6 of the Convention; and under Article 8 of the Convention of his telephone tapping. The Court has examined those complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. Accordingly, the Court rejects them as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

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

Decides to strike that part of the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

Done in English and notified in writing on 10 November 2016.

Fatoş Aracı
Deputy Registrar

Helena Jäderblom
President