

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

THIRD SECTION

DECISION

Application no. 46958/12
Gennadiy Nikolayevich PUTENEV
against Russia

The European Court of Human Rights (Third Section), sitting on 28 June 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 28 June 2012,

Having regard to the declaration submitted by the respondent Government on 9 April 2014 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 Gennadiy Nikolayevich Putenev, is a Russian national, who was born in 1974 and lived, prior to his arrest, in Kulunda, Altay 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 that his pre-trial detention had been unreasonably long and that it had not been based on relevant or sufficient reasons.

The application was communicated to the Government. The Court informed the Government that the applicant had been held in the remand prison at least until 24 October 2013.

On 9 April 2014 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 asked 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 "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" and stated their readiness to pay 3,920 euros to the applicant for his pre-trial detention.

The remainder of the declaration 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."

By the letter of 10 September 2014, the applicant rejected the Government's offer. He expressed the view that the sum mentioned in the Government's declaration was insufficient. He also informed the Court that his pre-trial detention had ended on 29 July 2014. The Court notes that it lasted two years, nine months, and two days.

THE LAW

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 carefully examine the declaration 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 a violation of Article 5 § 3 of the Convention in more than one hundred cases against Russia on account of an excessively lengthy pre-trial detention without proper justification. It follows that the complaint raised in the present application is based on clear and extensive Court's case-law.

Turning next to the nature of the admissions contained in the Government's declaration, the Court is satisfied that the Government does not dispute the allegations made by the applicant and has explicitly acknowledged that his pre-trial detention was in breach of Article 5 § 3 of the Convention.

As to the intended redress to be provided to the applicant, the Government have undertaken to pay him a certain amount as just satisfaction. The Government have committed themselves to effecting the payment of this sum 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 sum is 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 this case. 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 case. In any event, the Court's decision is without prejudice to any decision it might take pursuant to Article 37 § 2 of the Convention to restore the application to its list of cases, should the Government fail to comply with the terms of their unilateral declaration (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 case out of the list.

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 undertaking referred to therein;

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

Done in English and notified in writing on 21 July 2016.

Fatoş Aracı
Deputy Registrar

Helena Jäderblom
President