

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

FIRST SECTION

DECISION

Application no. 5250/11
Dmitriy Aleksandrovich PYKHTUNOV
against Russia

The European Court of Human Rights (First Section), sitting on 9 April 2013 as a Committee composed of:

Khanlar Hajiyev, *President,*
Erik Møse,
Dmitry Dedov, *judges,*

and André Wampach, *Deputy Section Registrar,*

Having regard to the above application lodged on 21 October 2010,

Having regard to the declaration submitted by the respondent Government on 15 October 2012 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 Dmitriy Aleksandrovich Pykhtunov, is a Russian national, who was born in 1974 and lived before his arrest in Krasnodar.

The Russian Government ("the Government") were represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

The applicant complained, among other matters, about poor conditions of his detention, alleging overcrowding and poor sanitary conditions.

The application has been communicated to the Government.

THE LAW

A. The complaints concerning inhuman and degrading conditions of detention

The applicant complained that the conditions of his detention for eight months in a special type punishment ward [*единое помещение камерного типа*] in correctional colony no. 43 in the village of Oktyabrskiy, Krasnodar Region, 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."

By a letter dated 15 October 2012, the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the applicant. They further requested the Court to strike the application out of the list of cases in accordance with Article 37 of the Convention.

By the above declaration, the Russian authorities acknowledged that the applicant was "detained during 8 months in the conditions which did not comply with the requirements of Article 3 of the Convention" and stated their readiness to pay the applicant EUR 4610 as just satisfaction.

The remainder of the declaration 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.
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> 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."

In his letter of 29 January 2013, the applicants refused to comment on the Government's offer and left the issue for the Court to decide.

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 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 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.

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).

The Court has established in a number of cases, including those brought against Russia, its practice concerning complaints about a violation of Article 3 on account of similar conditions of detention as those described by the applicant in the present case (see, for example, *Kalashnikov v. Russia*, no. 47095/99, § 97, ECHR 2002-VI, *Labzov v. Russia*, no. 62208/00, § 44, 16 June 2005, *Melnik v. Ukraine*, no. 72286/01, § 103, 28 March 2006, *Andrey Frolov* v. Russia, no. 205/02, §§ 47-49, 29 March 2007; *Kantyrev v. Russia*, no. 37213/02, §§ 50-51, 21 June 2007; *Bragadireanu v. Romania*, no. 22088/04, §§ 92-98, 6 December 2007, *Lind v. Russia*, no. 25664/05, §§ 59-61, 6 December 2007; and *Sulejmanovic v. Italy*, no. 22635/03, § 51, 16 July 2009). It follows that the complaint raised in the present application is based on the clear and extensive case-law of the Court.

Turning next to the nature of the admissions contained in the Government's declaration, the Court is satisfied that the Government did not dispute the allegations made by the applicant and explicitly acknowledged that the conditions of his detention had been in breach of Article 3 of the Convention.

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 therefore considers that it is no longer justified to continue the examination of the case in the part concerning the complaints about inhuman and degrading conditions of the applicant's detention.

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 (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 application 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).

In view of the above, it is appropriate to strike the case out of the list in the part concerning the complaint about inhuman and degrading conditions of the applicant's detention.

B. The other complaints

The applicant also raised additional complaints with reference to various Articles of the Convention.

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 his application.

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

For these reasons, the Court unanimously

Takes note of the terms of the Government's declaration concerning the applicant's complaint under Article 3 of the Convention concerning his conditions of detention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in accordance with Article 37 § 1 (c) of the Convention in so far as it concerned the complaint about inhuman and degrading conditions of the applicant's detention;

Declares the remainder of the application inadmissible.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President