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

THIRD SECTION

DECISION

Application no. 58968/09
Anatoliy Severyanovich TEDORADZE
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 application lodged on 17 September 2009,

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 Anatoliy Severyanovich Tedoradze, is a Russian national, who was born in 1977 and lived, prior to his detention, in Tambov. He was represented before the Court by Mr Y. Sherstnev, a lawyer practising in Kotovsk, Tambov 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 had been communicated to the Government.

On 30 September 2015 the Government 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 2,000 euros (EUR) to the applicant for his pre-trial detention which lasted one year, seven months, and twenty-eight days.

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 a letter of 19 November 2015, the applicant rejected the Government's offer. He expressed the view that the sum mentioned in the Government's declaration was insufficient.

THE LAW

A. Complaint under Article 5 § 3 of the Convention

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) of the Convention 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, §§ 104-21 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 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 the 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 in so far as it relates to the above complaint.

B. Other complaints

The applicant also complained about unlawfulness of his detention, length and unfairness of the criminal proceedings against him, and interception of his communications. He referred to Articles 5, 6 and 8 of the Convention and Article 1 of Protocol No. 4 to the Convention. However, having regard to all the material in its possession and in so far as the complaints fall within its competence, the Court finds that that there is no

appearance of a violation of the rights and freedoms set out in the Convention. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 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 a part of the application relating to the length of pre-trial detention 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 13 October 2016.

Fatoş Aracı
Deputy Registrar

Branko Lubarda
President