

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

THIRD SECTION

DECISION

Applications nos. 9230/09 and 40732/10
Aleksey Yuryevich YEMELYANOV against Russia
and Sergey Nikolayevich BUSHMANOV against Russia

The European Court of Human Rights (Third Section), sitting on 2 February 2016 as a Committee composed of:

Helena Jäderblom, *President,*
Dmitry Dedov,
Branko Lubarda, *judges,*

and Marialena Tsirli, *Deputy Section Registrar,*

Having regard to the above applications lodged on 13 April 2009 and 11 June 2010, respectively,

Having regard to the declarations submitted by the respondent Government requesting the Court to strike the applications out of the list of cases and the first applicant's reply,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

The applicant in the first case, Mr Aleksey Yuryevich Yemelyanov, is a Russian national, who was born in 1971 and lives in Izhevsk.

The applicant in the second case, Mr Sergey Nikolayevich Bushmanov, is a Russian national, who was born in 1972 and is detained in Tomsk.

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 applicants complained under Article 3 of the Convention about allegedly inhuman and degrading conditions of their detention in Russian penitentiary facilities.

The applications had been communicated to the Government.

THE LAW

Having regard to the similarity of the main issue under the Convention in the above cases, the Court decides to join the applications and consider them in a single decision.

By a letter submitted on 19 May 2015, the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by the applications. They further requested the Court to strike the applications out of the list of cases in accordance with Article 37 of the Convention.

By the above declarations, the Russian authorities acknowledged that the violations of the above-mentioned provision of the Convention and stated their readiness to pay the following amounts to the applicants as just satisfaction: 7,875 euros (EUR) to Mr Yemelyanov and EUR 16,250 to Mr Bushmanov.

The remainder of the declaration in each case 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."

The applicants did not accept the Government's offer.

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 recalls 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 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).

The Court notes at the outset that since its first judgment concerning the inhuman and degrading conditions of detention in Russian penitentiary facilities (see *Kalashnikov v. Russia*, no. 47095/99, ECHR 2002-VI), it found a violation of Article 3 of the Convention in more than a hundred cases against Russia. It follows that the complaint raised in the present applications 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 declarations, the Court is satisfied that the Government did not dispute the allegations made by the applicants and explicitly acknowledged the violation of the above-mentioned provision of the Convention.

As to the intended redress to be provided to the applicants, the Government have undertaken to pay them compensation in respect of pecuniary and non-pecuniary damages, as well as costs and expenses. Even if the method of calculation employed by the Russian authorities in respect of the conditions-of-detention complaints did not correspond exactly to the guidelines established by the Court in the pilot judgment (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 172, 10 January 2012), what is important is that the proposed sums are not unreasonable in comparison with the awards made by the Court in similar cases (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 105, ECHR 2006-V). 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 therefore considers that it is no longer justified to continue the examination of these cases. As the Committee of Ministers remains competent to supervise, in accordance with Article 46 § 2 of the Convention, the implementation of the judgments concerning the same issues, the Court is also satisfied that respect for human rights as defined in the Convention (Article 37 § 1 *in fine*) does not require it to continue the proceedings. 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 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 cases out of the list.

For these reasons, the Court unanimously

Decides to join the applications,

Takes note of the terms of the respondent Government's declarations under Article 3 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 3 March 2016.

Marialena Tsirli
Deputy Registrar

Helena Jäderblom
President