



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

FIRST SECTION

DECISION

Application no. 4903/10
Yuriy Nikolayevich GAYDUKOV
against Russia

The European Court of Human Rights (First Section), sitting on 6 May 2014 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 12 January 2010,

Having regard to the declaration submitted by the respondent Government 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 Yuriy Nikolayevich Gaydukov, is a Russian national, who was born in 1962 and lives in the city of Moscow. He is represented before the Court by Mr D.V. Agranovskiyy and Mr Ariel Gascon-Rétoré, lawyers practising in the town of Elektrostal and the city of Paris, respectively.

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 the courts' unwillingness to release him on bail earlier in the proceedings and that between 6 and 11 November 2009 his detention had been unlawful. The applicant also made a number of complaints about the alleged unfairness of the criminal proceedings against him under Article 6 of the Convention and the quality of medical care during his imprisonment.

THE LAW

A. Complaints concerning the applicant's detention

The applicant complained that the courts had refused to release him on bail and that his detention on remand between 6 and 11 November 2009 had been unlawful, in breach of Articles 5 §§ 1 (c) and 3 of the Convention. This provision provides, in so far as relevant, as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

By a letter submitted on 8 November 2013, the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issues raised by the application. 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 declarations, the Russian authorities acknowledged that the applicant's detention in the specified period was not lawful, in breach of Article 5 § 1 and also that his detention was in breach of Article 5 § 3 of the Convention. The Government stated their readiness to pay 5320 euros (EUR) to the applicant 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.

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.”

By a letter of 23 December 2013, the applicant rejected the Government's offer in whole, having expressed the view that the sum mentioned in the Government's declaration was too low.

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) 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, 18 September 2007).

The Court notes at the outset that starting from the *Kalashnikov* judgment (no. 47095/99, §§ 104-121, ECHR 2002-VI), the Court has held in over eighty cases against Russia that a lengthy pre-trial detention devoid of relevant and sufficient grounds was incompatible with the guarantees of Article 5 of the Convention. Having regard to the recurrent nature of this grievance (see *Zherebin and 9 Other Applications* (dec.), no. 51445/09, § 3, 13 November 2012), the Court finds it to be the subject of its well-established case-law. It reaches the similar conclusion regarding the complaint about the applicant's unlawful detention between 6 and 11 November 2009, as it has previously examined such questions extensively in over twenty cases against Russia (see, for example, *Khudoyorov v. Russia*, no. 6847/02, §§ 124-158, ECHR 2005-X (extracts); *Nakhmanovich v. Russia*, no. 55669/00, §§ 62-72, 2 March 2006; *Korchuganova v. Russia*, no. 75039/01, §§ 46-64, 8 June 2006). It follows that the complaints raised in the present application are 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 applicant and explicitly acknowledged that his detention had been in breach of Article 5 § 1 of the Convention, and that his pre-trial detention fell short of the guarantees of Article 5 § 3 of the Convention.

As to the intended redress to be provided to the applicants, the Government have undertaken to pay them a certain amount of compensation in respect of pecuniary and non-pecuniary damage, as well as costs and expenses. The Court finds 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 in the part concerning the complaints under Article 5 §§ 1 (c) and 3 of the Convention. 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 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 *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 cases out of the list in the part concerning the complaints under Article 5 §§ 1 (c) and 3 of the Convention.

B. The other complaints

With reference to various Articles of the Convention, the applicant also raised a number of complaints concerning the criminal proceedings against him and the quality of medical care during his imprisonment.

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 declarations concerning the applicant's complaints under Articles 5 §§ 1 and 3, 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 they concerned the complaints about the existence of relevant and sufficient grounds for the applicant's pre-trial detention and its lawfulness between 6 and 11 November 2009;

Declares the remainder the application inadmissible.

André Wampach
Deputy Registrar

Khanlar Hajiyev
President