



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

FIRST SECTION

DECISION

Application no. 48881/08
Dmitriy Iosifovich BUSHMILEV against Russia
and 6 other applications
(see list appended)

The European Court of Human Rights (First Section), sitting on 7 October 2014 as a Committee composed of:

Khanlar Hajiyeu, *President*,

Julia Laffranque,

Erik Møse, *judges*,

and Søren Prebensen, *Acting Deputy Section Registrar*,

Having regard to the above applications lodged on the dates listed in the appendix,

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 applicants' reply to those declarations,

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. A list of the applicants and their representatives is set out in the appendix.

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

3. The applicants complained that their detention on remand had been unreasonably long or that it had not been based on relevant or sufficient reasons.

4. On 12 and 19 December 2013 and 3 February 2014 the applicants' complaints were communicated to the Government for observations.

5. By letters of 2 and 9 April 2014 the Government informed the Court that they proposed to make unilateral declarations with a view to resolving

the issue raised by the applications. They further requested the Court to strike out the applications in accordance with Article 37 of the Convention.

6. In the declarations, the Government acknowledged that all the applicants had been detained “without well-founded justification on the basis of the 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 the following amounts to the applicants as just satisfaction:

(a) 6,080 euros (EUR) to Mr Bushmilev for his detention on remand “between 30 December 2006 and 15 January 2011”;

(b) EUR 4,400 to Mr Sharafeyev for his detention on remand “between 12 July 2008 and 15 September 2010”;

(c) EUR 6,080 to Mr Dudnik, a for his detention on remand “between 12 January 2007 and 3 February 2011”;

(d) EUR 2,480 to Mr Filenko for his detention on remand “between 8 September 2010 and 5 December 2011”;

(e) EUR 4,400 to Mr Osotskiy for his detention on remand “between 25 September 2010 and 4 December 2012”;

(f) EUR 4,240 to Mr Gulmamadov for his detention on remand “from 25 June 2010 to 23 August 2011, from 21 February 2012 to 25 September 2012 and from 21 February 2013 to 1 July 2013”; and

(g) EUR 2,160 to Mr Makarenko for his detention on remand “between 22 April 2012 and 22 May 2013”.

7. The remainder of their declarations provided 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.”

8. By their separate letters of various dates, the applicants rejected the Government’s offers in whole or in part. They expressed the view that the sums mentioned in the Government’s declarations were insufficient.

9. In addition, some applicants objected to the striking-out of their complaints on the basis of the Government’s unilateral declarations because the latter do not contain any undertaking to make an official apology for the violation of their Convention rights.

THE LAW

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

11. 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”.

12. 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.

13. 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).

14. The Court notes at the outset that since its first judgment concerning the lengthy detention on remand 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 on account of an excessively lengthy detention on remand without proper justification in more than eighty cases against Russia (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 200, 10 January 2012). It follows that the complaints raised in the present applications are based on the clear and extensive case-law of the Court.

15. 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 that their detention on remand had been in breach of Article 5 § 3 of the Convention.

16. As to the intended redress to be provided to the applicants, the Government have undertaken to pay them certain amounts of compensation in respect of pecuniary and non-pecuniary damages, as well as costs and expenses. 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.

17. The Court is satisfied that the proposed sums are not unreasonable in comparison with the awards made by the Court in respect of pecuniary and non-pecuniary damage in similar Russian cases (see *Valeriy Kovalenko v. Russia*, no. 41716/08, 29 May 2012; *Kislitsa v. Russia*, no. 29985/05, 19 June 2012; *Dolgova v. Russia*, no. 11886/05, §§ 54-56, 2 March 2006; *Shcheglyuk v. Russia*, no. 7649/02, §§ 50-53, 14 December 2006; *Yuriy Yakovlev v. Russia*, no. 5453/08, §§ 93-95, 29 April 2010; and, by contrast, *Topčić-Rosenberg v. Croatia*, no. 19391/11, § 29, 14 November 2013).

18. 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 examination 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 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).

19. In view of the above, it is appropriate to strike the cases out of the list in accordance with Article 37 § 1 (c) of the Convention.

For these reasons, the Court unanimously

Decides to join the applications,

Takes note of the terms of the Government's declarations concerning the applicants' complaints under Article 5 § 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.

Søren Prebensen
Acting Deputy Registrar

Khanlar Hajiyev
President

APPENDIX

No	Application No	Lodged on	Applicant Date of birth Place of residence Nationality	Represented by
1.	48881/08	10/09/2008	Dmitriy Iosifovich BUSHMILEV 14/06/1973 Ufa Russian	
2.	23162/10	29/03/2010	Danil Gaytulovich SHARAFEYEV 21/04/1964 Chelyabinsk Russian	Nadezhda Sergeevna PYSHKINA
3.	39864/10	18/05/2010	Dmitriy Yuryevich DUDNIK 15/04/1976 Ufa Russian	Andzhela Ilfatovna KHAMITOVA
4.	62837/11	15/09/2011	Yevgeniy Sergeevich FILENKO 29/11/1977 Volgograd Russian	
5.	60170/12	17/08/2012	Denis Aleksandrovich OSOTSKIY 10/09/1979 Razdolnoye Russian	
6.	65616/12	26/09/2012	Daler Gulakhmadovich GULMAMADOV 30/11/1975 Krasnoyarsk Tajikistani	
7.	39171/13	22/05/2013	Aleksandr Anatolyevich MAKARENKO 26/09/1954 Novocherkassk Russian	