



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

FIRST SECTION

DECISION

Applications nos. 32701/11 and 44476/13
Vladimir Vladimirovich KOLESNIKOVICH
against Russia

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

Khanlar Hajiyev, *President*,

Erik Møse,

Dmitry Dedov, *judges*,

and Søren Prebensen, *Acting Deputy Section Registrar*,

Having regard to the above applications lodged on 3 March 2008 and 7 February 2013 respectively,

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

Having deliberated, decides as follows:

FACTS AND PROCEDURE

1. The applicant, Mr Vladimir Vladimirovich Kolesnikovich, is a Russian national, who was born in 1978 and lived in Kansk before his arrest.

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

3. The applicant complained about poor conditions of his detention in a police ward, a remand prison and in convoy cells of a court, as well as about those of his transport between the detention facilities and the court. He further alleged that one of the appeal hearings extending his pre-trial detention fell short of the requirement of "speediness" and was conducted in the absence of the applicant and his counsel. Lastly, the applicant

complained about restrictions on family visits during the trial and a lack of an effective remedy against that grievance.

4. The applications have been communicated to the Government.

THE LAW

A. Joinder of the applications

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

B. The Government's unilateral declaration

6. The applicant raised a number of complaints under various Articles of the Convention (see paragraph 3 above).

7. By letter of 8 May 2014, 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.

8. By the above declaration, the Russian authorities acknowledged that there had been a violation of Articles 3, 5 § 4, 8 and 13 of the Convention as alleged by the applicant. The Government stated their readiness to pay to him 26,000 euros (EUR) 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.”

9. By letter of 30 June 2014, the applicant rejected the Government’s offer, claiming that that the sum mentioned in the Government’s declaration was too low.

10. The Court reiterates that Article 37 § 1 (c) of the Convention enables it 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”.

11. 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.

12. 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).

13. The Court is satisfied that the Government did not dispute the allegations made by the applicant and explicitly acknowledged the breaches of several Articles of the Convention as claimed by him.

14. As to the intended redress to be provided to the applicant, the Government have undertaken to pay EUR 26,000 in respect of pecuniary and non-pecuniary damages, as well as costs and expenses. The Court notes that even if that amount did not exactly correspond to the awards made by the Court in similar cases, what is important is that the proposed sum is not unreasonable in comparison with them (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 105, ECHR 2006-V). The Government have committed themselves to effecting the payment of that sum within three months of the Court's decision, with default interest to be payable in case of delay of settlement.

15. The Court notes that it has previously found violations of Articles 3, 5 § 4, 8 and 13 of the Convention on account of inadequate conditions of detention in Russian custodial facilities (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 10 January 2012), inadequate conditions of transport (see *Idalov v. Russia* [GC], no. 5826/03, §§ 103-108, 22 May 2012), various procedural irregularities in the proceedings for extension of pre-trial detention (see *Yevgeniy Gusev v. Russia*, no. 28020/05, §§ 91-100, 5 December 2013 and *Pyatkov v. Russia*, no. 61767/08, §§ 121-133, 13 November 2012), restrictions on family visits and a lack of an effective remedy in that respect (see *Tereshchenko v. Russia*, no. 33761/05, §§ 114-137, 5 June 2014). It follows that the complaints raised in the present applications are based on the clear case-law of the Court.

16. The Court further notes that 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. Therefore, the Court is satisfied that the respect for human rights as defined in the Convention (Article 37 § 1 *in fine*) does not require it to

continue the examination of these applications. 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). The Court thus considers that it is no longer justified to continue the examination of these cases.

17. 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 Government's declaration concerning the applicant's complaints under Articles 3, 5 § 4, 8 and 13 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