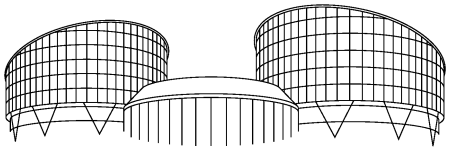

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

DECISION

Application no. 38717/13
Nikolay Arkadyevich SKVORTSOV
against Russia

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

Khanlar Hajiyev, *President,*
Julia Laffranque,
Erik Møse, *judges,*

and Søren Prebensen, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 6 May 2013,

Having regard to the declaration submitted by the respondent Government on 9 April 2014 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

1. The applicant, Mr Nikolay Arkadyevich Skvortsov, is a Russian national, who was born in 1957 and is currently serving a prison sentence in correctional colony IK-5 in the Republic of Mordovia. He was represented before the Court by Mrs A. Bazayeva, a lawyer practicing in Saransk, Republic of Mordovia.

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 applicant complained that his detention on remand had not been based on relevant or sufficient reasons.

4. On 12 December 2013 the applicant's complaint was communicated to the Government for observations.

5. By letter of 9 April 2014 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the

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

6. In that declaration, the Government acknowledged that the applicant 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 1,800 euros (EUR) to Mr Skvortsov for his detention on remand "between 24 December 2011 and 6 November 2012".

7. The remainder of their declaration 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. On 6 June 2004 the applicant submitted his comments on the above declaration. He rejected the Government's offer, claiming, in particular, that the amount of the compensation was insufficient, as it did not take into account the costs and expenses incurred in the domestic proceedings and before the Court.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

9. The applicant complained under Article 5 § 3 of the Convention that his detention on remand between 24 December 2011 and 6 November 2012 had not been based on relevant and sufficient reasons. Article 5 § 3 provides as follows:

> "Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be ... entitled to trial within a reasonable time or to release pending trial ..."

10. The Court takes note of the Government's declaration and 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".

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 submitted by the Government 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).

13. 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 complaint raised in the present application is based on the clear and extensive case-law of the Court.

14. Turning next to the nature of the admissions contained in the Government's declaration, the Court is satisfied that the Government did not dispute the allegations made by the applicant and explicitly acknowledged that his detention on remand had been in breach of Article 5 § 3 of the Convention.

15. As to the intended redress to be provided to the applicant, the Court notes that the proposed sum is not unreasonable in comparison with the awards made by the Court in similar Russian cases (see, for example, Kislitsa v. Russia, no. 29985/05, 19 June 2012). 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.

16. As regards the legal costs and expenses, referred to by the applicant, the Court notes that it has a discretion to award legal costs when it strikes out an application (see Rule 43 § 4 of the Rules of Court and, for example, *M.C.E.A. Voorhuis v. the Netherlands* (dec.), no. 28692/06, 3 March 2009; *Shevanova v. Latvia* (striking out) [GC], no. 58822/00, §§ 52-56, 7 December 2007; *Sisojeva and Others v. Latvia* [GC], no. 60654/00, §§ 130-133, ECHR 2007-I; and *Meriakri v. Moldova* (striking out), no. 53487/99, § 33, 1 March 2005).

17. The Court therefore considers that it is no longer justified to continue the examination of the case. 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).

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

II. AWARD OF COSTS

19. Rule 43 § 4 of the Rules of Court provides:

> "When an application has been struck out, the costs shall be at the discretion of the Court..."

20. The applicant submitted that costs and expenses incurred at the domestic level and in the proceedings before the Court exceeded the sum offered by the Government. He claimed EUR 3,908.85 and EUR 2,941.84, respectively. To that effect, he submitted the copies of two legal-services agreements with Mr V. Kamayev, a lawyer practising in Saransk, and Mr O. Anishchik, a legal specialist practising in St Petersburg, and the receipts showing that the sums had been paid.

21. The Court observes that, when an application has been struck out in accordance with Article 37 of the Convention, the costs shall be at the discretion of the Court. The Court reiterates that when making an award under Rule 43 § 4 of the Rules of Court, the general principles governing reimbursement of costs are essentially the same as under Article 41 of the Convention (see *Pisano v. Italy* (striking out) [GC], no. 36732/97, §§ 53-54, 24 October 2002, *M.C.E.A. Voorhuis v. the Netherlands* cited above, no. 28692/06, 3 March 2009 and *Youssef* v. *the Netherlands* (dec.), no. 11936/08, 27 September 2011). In other words, in order to be reimbursed, the costs must relate to the alleged violation, have been actually and necessarily incurred and be reasonable as to quantum.

22. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers that reasonable legal costs incurred in the Strasbourg proceedings are covered by the Government's declaration.

23. The Court notes that the legal costs incurred in the domestic proceedings are relevant only in so far as they were incurred in order to remedy the violation of Article 5 § 3 of the Convention, which is at stake in

the present case. The expenses incurred by the applicant which are not relevant to that complaint must therefore be rejected.

24. The Court accepts that some of the costs were actually and necessarily incurred in the domestic proceedings. It further notes that according to the conditions of the unilateral declaration, the compensation was to cover these costs. However, the Court considers that the sum proposed by the Government is insufficient for that purpose and decides to use its discretion under Rule 43 § 4 of the Rules of Court (see *Zakirov v. Russia* (dec.), no. 50799/08, 18 February 2014; *Scholvien and Others v. Germany* (dec.), no. 13166/08, 12 November 2013; *Święch v. Poland* (dec.), no. 60551/11, 1 July 2013; and *Gil v. Poland* (dec.), no. 46161/11, 4 June 2013).

25. Taking note of the costs genuinely and necessarily incurred in the domestic proceedings, the Court awards the applicant reimbursement for costs and expenses in the amount of EUR 700 euros.

26. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

For these reasons, the Court unanimously

Takes note of the terms of the Government's declaration concerning the applicant's complaint under Article 5 § 3 of the Convention 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;

Holds

(a) that the respondent State is to pay to the applicant, within three months, in addition to the sum contained in the unilateral declaration submitted by the Government on 9 April 2014, EUR 700 (seven hundred euros) for costs and expenses incurred in the domestic proceedings;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the overall amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Søren Prebensen
Acting Deputy Registrar

Khanlar Hajiyev
President