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

FIRST SECTION

DECISION

Application no. 10403/04
Vitaliy DMITRENKO against Russia
and two other applications
(see list appended)

The European Court of Human Rights (First Section), sitting on 18 September 2012 as a Chamber composed of:

Nina Vajić, *President*,
Anatoly Kovler,
Peer Lorenzen,
Elisabeth Steiner,
Khanlar Hajiyev,
Linos-Alexandre Sicilianos,
Erik Møse, *judges*,
and Søren Nielsen, *Section Registrar*,

Having regard to the above applications lodged on the dates set out 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' replies to those declarations,

Having deliberated, decides as follows:

THE FACTS

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

2. The facts of the cases, as submitted by the parties, may be summarised as follows.

A. The case of Mr Dmitrenko (no. 10403/04)

3. The applicant, Mr Vitaliy Pavlovich Dmitrenko, is a Russian national who was born in 1972.

4. Between 1 June 2000 and 28 August 2003 the applicant was held in remand prison IZ-69/1 in Tula. The facility was overcrowded. Cells 47 and 16, in which the applicant stayed, all measured approximately 45 sq. m and were designed for holding up to twelve prisoners but actually accommodated up to twenty detainees.

B. The case of Mr Chibotar (no. 10674/09)

5. The applicant, Mr Andrey Viktorovich Chibotar, is a Russian national who was born in 1984.

6. Between 15 November 2006 and 6 August 2008 the applicant was held in remand prison IZ-66/1 in Yekaterinburg. The facility was overcrowded. In particular, cells 116 and 149, in which the applicant stayed, measured approximately 35 sq. m and were designed for holding twenty-two prisoners but actually accommodated up to forty detainees.

C. The case of Mr Yerezhipaliyev (no. 15516/10)

7. The applicant, Mr Ildar Gumarbekovich Yerezhipaliyev, is a Russian national who was born in 1960. He was represented before the Court by Ms O. Druzhkova, a legal specialist resident in Strasbourg.

8. Between 23 August 2008 and 5 November 2009 the applicant was held in remand prison IZ-30/1 in Astrakhan. The facility was overcrowded. Cells 21, 59 and 73, in which the applicant stayed, all measured no more than 15 sq. m and were designed for holding six prisoners but actually accommodated up to eight detainees.

COMPLAINTS

9. The applicants complained, among other matters, of a violation of Article 3 of the Convention on account of inhuman and degrading conditions of detention.

THE LAW

A. Joinder of the applications

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 consider them in a single decision.

B. The complaints concerning inhuman or degrading conditions of detention

11. The applicants complained that the conditions of their detention in Russian penitentiary facilities amounted to inhuman and degrading treatment prohibited under Article 3 of the Convention which provides as follows:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

12. By letters dated 10 April and 15 and 30 May 2012, the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue 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.

13. By the above declarations, the Russian authorities acknowledged that the applicants were "detained in the conditions which did not comply with the requirements of Article 3 of the Convention" and stated their readiness to pay the following amounts to the applicants as just satisfaction: 11,025 euros (EUR) to Mr Dmitrenko, EUR 6,525 to Mr Chibotar and EUR 5,625 to Mr Yerezhepaliyev.

14. 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.
>
> 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."

15. In their separate letters of 29 May and 11 and 12 July 2012, the applicants expressed the view that the sums mentioned in the Government's declaration were unacceptably low and considered that the Court would make a larger award if it continued the examination of their cases.

16. The Court reiterates that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an applications 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. Article 37 § 1 (c) enables the Court in particular 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".

17. 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 wish the examination of the case to be continued.

18. To this end, the Court will examine carefully the declaration in the light of the principles emerging from 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).

19. The Court notes at the outset that since its first judgment concerning the inhuman and degrading conditions of detention in Russian pre-trial remand centres (see *Kalashnikov v. Russia*, no. 47095/99, ECHR 2002-VI), it has found a violation of Article 3 on account of similar conditions of detention in more than ninety cases raising comparable issues. Most recently, the Court has adopted a pilot judgment concerning the structural problem of overcrowding and inadequate conditions of detention in Russian penitentiary facilities (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, 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.

20. 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 the conditions of their detention had been in breach of Article 3 of the Convention.

21. 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. Even if the method of calculation employed by the Russian authorities did not correspond exactly to the guidelines established by the Court in the pilot judgment (see *Ananyev and Others*, cited above, § 172),

what is important is that the proposed sums are not unreasonable in comparison with the awards made by the Court in similar cases. 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.

22. The Court therefore considers that it is no longer justified to continue the examination of the case in the part concerning the complaints about inhuman and degrading conditions of the applicants' detention. As the Committee of Ministers remains competent to supervise, in accordance with Article 46 § 2 of the Convention, the implementation of the *Ananyev and Others* pilot judgment concerning the same issue, 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 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).

23. In view of the above, it is appropriate to strike the case out of the list in the part concerning the complaints about inhuman and degrading conditions of the applicants' detention in Russian penitentiary facilities.

C. The other complaints

24. The applicants also raised additional complaints with reference to various Articles of the Convention and its Protocols.

25. 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.

26. It follows that the applications in this part must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to join the above applications;

Takes note of the terms of the Government's declarations concerning the applicants' complaints 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 in so far as they concerned the complaints about inhuman and degrading conditions of detention in Russian penitentiary facilities;

Declares the remainder of the applications inadmissible.

Søren Nielsen Registrar	Nina Vajić President

APPENDIX

No	Application No	Lodged on	Applicant Date of birth Place of residence	Represented by
1.	10403/04	02/02/2004	**Vitaliy Pavlovich DMITRENKO** 02/11/1972 Budovo	
2.	10674/09	10/01/2009	**Andrey Viktorovich CHIBOTAR** 28/05/1984 Yekaterinburg	
3.	15516/10	18/02/2010	**Ildar Gumarbekovich YEREZHIPALIYEV** 27/10/1960 Osypnoy Bugor	Olga DRUZHKOVA