FIFTH SECTION

DECISION

Application no. 52168/12
Shakria ZURASHVILI
against Georgia

The European Court of Human Rights (Fifth Section), sitting on 19 September 2017 as a Committee composed of:

 Síofra O’Leary, *President,* Nona Tsotsoria, Lәtif Hüseynov, *judges,*
and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having regard to the above application lodged on 13 August 2012,

Having regard to the declaration submitted by the respondent Government on 28 October 2016 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 Shakria Zurashvili, is a Georgian national, who was born in 1964 and lives in Tbilisi. He was represented before the Court by Ms T. Mikeladze, Ms N. Katsitadze, Mr Ph. Leach and Ms J. Gavron, lawyers practising in Tbilisi and London.

2.  The Georgian Government (“the Government”) were represented by their Agent, Mr B. Dzamashvili, of the Ministry of Justice.

3.  The applicant complained under Article 3 of the Convention about his alleged ill-treatment during police custody on 26 May 2011 (hereinafter “the incident of 26 May 2011”) and the relevant authorities’ failure to launch a criminal investigation into that incident.

4.  After failure of attempts to reach a friendly settlement, by a letter of 28 October 2016 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the application. They further requested the Court to strike out the application in its relevant part in accordance with Article 37 of the Convention.

5.  Notably, after having explicitly acknowledged a violation of Article 3 of the Convention under both substantive and procedural limbs in relation to the incident of 26 May 2011, the Government undertook to comply with the following terms:

“– to ensure the conduct of an effective investigation into the applicant’s allegations of ill-treatment in full compliance with the principles established by the Court;

– to pay to the applicant EUR 5,000 (five thousand euros) to cover any and all pecuniary or non-pecuniary damages as well as costs and expenses, plus any tax that may be chargeable to them. This sum will be converted into the national currency at the rate applicable on the date of payment, and 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. In the event of failure to pay this within the said three-month period, the Government undertook to pay simple interest on it, from the 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.”

6.  By a letter of 25 November 2016, the applicant indicated that he was not satisfied with the terms of the unilateral declaration on the ground that the Government’s undertaking to conduct an effective investigation into his allegations of ill-treatment was formulated in general terms. He argued that the Government should have specified in the declaration that a number of particular investigative measures ought to be undertaken, that the applicant would be granted victim status and sufficiently involved in the investigation and that the investigation would be finalised within a reasonable period of time. The applicant further denounced the amount of the compensation as inadequate. He submitted a set of financial documents showing that he was expected to pay 3,545.21 United Kingdom pounds sterling (GBP) (approximately 4,167 euros (EUR)) for the legal services provided by his British lawyers in the proceedings before the Court (see paragraph 1 above).

THE LAW

A. The Government’s unilateral declaration

7.  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. 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”.

8.  It also reiterates 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.

9.  To this end, the Court has examined the declaration in the light of the principles established in its case-law (see, in particular, *Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75‑77, ECHR 2003-VI; *WAZA Sp. z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007, and *Sulwińska v. Poland* (dec.), no. 28953/03, 18 September 2007).

10.  The Court recalls that it has already established in many cases, including those brought against Georgia, its practice concerning complaints about the allegations of ill-treatment by the police and lack of adequate investigation in that respect (see, amongst many others, *Davtyan v. Georgia*, no. 73241/01, §§ 35-47, 27 July 2006, and *Danelia v. Georgia*, no. 68622/01, §§ 40-65, 17 October 2006). As regards the applicant’s arguments, the Court does not consider them as valid objections capable of outweighing the significance of the Government’s unilateral declaration. The Court considers that, in the particular circumstances of the present case, the Government’s acknowledgement of a violation of Article 3 of the Convention under its substantive and procedural limbs, coupled with their undertaking to conduct an effective investigation, is rational and comprehensive enough to embrace the core of the matter and would no longer allow the applicant to claim to be a victim of a continued violation under this provision.

11.  Thus, having regard to the nature of the admissions and undertakings contained in the Government’s declaration, as well as the amount of compensation proposed – which is acceptable in the particular circumstances of the present case – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

12.  Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

13.  Finally, the Court emphasises that, should the Government fail to comply with the terms of their unilateral declaration, the application could be restored to the list in accordance with Article 37 § 2 of the Convention (*Josipović v. Serbia* (dec.), no. 18369/07, 4 March 2008).

14.  In view of the above, it is appropriate to strike the case out of the list.

B. Costs and expenses

15.  The Court has the discretion to award legal costs when it strikes out an application (Rule 43 § 4 of the Rules of Court). The general principles governing reimbursement of costs under Rule 43 § 4 are essentially the same as under Article 41 of the Convention (see, among others, *Pisano v. Italy* (striking out) [GC], no. 36732/97, §§ 53-54, 24 October 2002, and also *Union of Jehovah’s Witnesses and Others v. Georgia* (dec.), no. 72874/01, §§ 33 and 34, 21 April 2015). In other words, an award can be made to an applicant in respect of costs and expenses only in so far as they have been actually and necessarily incurred and are reasonable as to quantum (see, among other authorities, *Nikolova v. Bulgaria* [GC], no. 31195/96, § 79, ECHR 1999-II).

16.  In the present case, having regard to the amount of work carried out by the applicant’s lawyers, to the information concerning the actual costs in its possession and to the criteria set out above, the Court considers it reasonable to award the sum of EUR 1,000 in respect of legal costs and expenses, plus any tax that may be chargeable. This amount is to be converted into the national currency at the rate applicable on the date of payment.

For these reasons, the Court, unanimously,

*Takes note* of the terms of the respondent Government’s declaration under Article 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 the applicant, within three months, EUR 1,000 (one thousand euros) plus any tax that may be chargeable in respect of costs and expenses to him, to be converted into the national currency at the rate applicable on the date of settlement;

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

Done in English and notified in writing on 12 October 2017.

 Anne-Marie Dougin Síofra O’Leary
 Acting Deputy Registrar President