



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

THIRD SECTION

CASE OF BORISENKO AND OTHERS v. RUSSIA

*(Applications nos. 18682/09, 58052/09, 49397/10, 41901/11,
19251/13 and 13382/14)*

JUDGMENT

STRASBOURG

24 November 2016

This judgment is final but it may be subject to editorial revision.

In the case of Borisenko and Others v. Russia,

The European Court of Human Rights (Third Section), sitting as a Committee composed of:

Helena Jäderblom, *President*,

Dmitry Dedov,

Branko Lubarda, *judges*,

and Hasan Bakırcı *Deputy Section Registrar*,

Having deliberated in private on 3 November 2016,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in applications against Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on the various dates indicated in the appended table.

2. The applications were communicated to the Russian Government (“the Government”).

THE FACTS

3. The list of applicants and the relevant details of the applications are set out in the appended table.

4. The applicants complained of the excessive length of their pre-trial detention. In applications nos. 18682/09 and 49397/10, the applicants also raised other complaints under the provisions of the Convention.

THE LAW**I. JOINDER OF THE APPLICATIONS**

5. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

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

6. The applicants complained principally that their pre-trial detention had been unreasonably long. They relied on Article 5 § 3 of the Convention, which read as follows:

Article 5 § 3

“3. 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. Release may be conditioned by guarantees to appear for trial.”

7. The Court observes that the general principles regarding the right to trial within a reasonable time or to release pending trial, as guaranteed by Article 5 § 3 of the Convention, have been stated in a number of its previous judgments (see, among many other authorities, *Kudła v. Poland* [GC], no. 30210/96, § 110, ECHR 2000-XI, and *McKay v. the United Kingdom* [GC], no. 543/03, §§ 41-44, ECHR 2006-X, with further references).

8. In the leading case of *Dirdizov v. Russia*, no. 41461/10, 27 November 2012, the Court already found a violation in respect of issues similar to those in the present case.

9. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the applicants’ pre-trial detention was excessive.

10. These complaints are therefore admissible and disclose a breach of Article 5 § 3 of the Convention.

III. REMAINING COMPLAINTS

11. In applications nos. 18682/09 and 49397/10, the applicants submitted other complaints which also raised issues under the Convention, in accordance with the relevant well-established case-law of the Court (see appended table). These complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other ground. Accordingly, they must be declared admissible. Having examined all the material before it, the Court concludes that they also disclose violations of the Convention in the light of its findings in *Lebedev v Russia*, no. 4493/04, 25 October 2007; *Khodorkovskiy v. Russia*, no. 5829/04, 31 May 2011; *Idalov v. Russia* [GP], no. 5826/09, 22 May 2012.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

12. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

13. Regard being had to the documents in its possession and to its case-law (see, in particular, *Pastukhov and Yelagin v. Russia*, no. 55299/07, 19 December 2013), the Court considers it reasonable to award the sums indicated in the appended table.

14. 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,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that these applications disclose a breach of Article 5 § 3 of the Convention concerning the excessive length of pre-trial detention;
4. *Holds* that there has been a violation as regards the other complaints raised under well-established case-law of the Court (see appended table);
5. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the amounts indicated in the appended table, to be converted into the currency of the respondent State at the rate applicable at 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 amounts 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 24 November 2016, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Deputy Registrar

Helena Jäderblom
President

APPENDIX

*List of applications raising complaints under Article 5 § 3 of the Convention
(excessive length of pre-trial detention)*

No.	Application no. Date of introduction	Applicant name Date of birth	Representative name and location	Period of detention	Length of detention	Other complaints under well- established case-law	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros) ¹
1.	18682/09 16/03/2009	Aleksandr Aleksyevich BORISENKO 22/03/1986		16/10/2008 to 16/06/2009	8 month(s) and 1 day(s)	Art. 5 (4) - excessive length of judicial review of detention	1,300
2.	58052/09 29/09/2009	Andrey Nikolayevich SUVOROV 25/05/1967		28/05/2004 to 25/01/2010	5 year(s) and 7 month(s) and 29 day(s)		5,800
3.	49397/10 28/07/2010	Dmitriy Mikhaylovich KAGALOVSKIY 28/04/1968	Preobrazhenskaya Oksana Vladimirovna Strasbourg	14/05/2010 to 15/11/2010	6 month(s) and 2 day(s)	Art. 5 (4) - excessive length of judicial review of detention	1,300
4.	41901/11 28/06/2011	Magomedkhan Mukhtarovich SAYPUDINOV 15/12/1987	Stichting Russian Justice Initiative Moscow	01/12/2010 to 29/04/2011	4 month(s) and 29 day(s)		1,000
5.	19251/13 05/03/2013	Mikhail Karpovich BASHARATYAN 16/09/1952	Yerin Alexey Fedorovich Moscow	31/10/2012 to 28/03/2013	4 month(s) and 29 day(s)		1,000
6.	13382/14 27/01/2014	Andrey Viktorovich KRUZHELENKOV 24/03/1978		26/04/2013 to 12/12/2013	7 month(s) and 17 day(s)		1,000

1. Plus any tax that may be chargeable to the applicants.