



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

THIRD SECTION

CASE OF KHALAF AND OTHERS v. RUSSIA

(Applications nos. 67967/13 and 3 others - see appended list)

JUDGMENT

STRASBOURG

30 October 2018

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

In the case of Khalaf and Others v. Russia,

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

Branko Lubarda, *President*,

Pere Pastor Vilanova,

Georgios A. Serghides, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 9 October 2018,

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

PROCEDURE

1. The case originated in four applications (nos. 67967/13 and 3 others indicated in the appended table) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Russian nationals.

2. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, the former Representative of the Russian Federation to the European Court of Human Rights, and then by his successor in that office, Mr M. Galperin.

3. On 8 March 2016 and 1 December 2016 notice of the applications was given to the Government.

THE FACTS**THE CIRCUMSTANCES OF THE CASE**

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

5. The applicants complained under Article 5 § 1 of the Convention about their detention extended several times beyond the maximum statutory time period. They also complained under Article 5 § 3 of the Convention about excessive length of their detention.

THE LAW

I. JOINDER OF THE APPLICATIONS

6. 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 § 1 OF THE CONVENTION

7. The applicants complained that their detention in excess of the maximum statutory period was in breach of Article 5 § 1 of the Convention, which reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence ...”

5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.”

A. Admissibility

8. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

9. The Court has previously examined the matter of pre-trial detention being extended for the purpose of studying the case file. It found that, in the absence of an explicit norm providing for repeated extensions of the authorised detention period, any such extension in excess of the maximum statutory time limit would be incompatible with the principle of the protection from arbitrariness enshrined in Article 5 of the Convention (see *Tsarenko v. Russia*, no. 52235/09, §§ 59-63, 3 March 2011, and *Suslov v. Russia*, no. 2366/07, §§ 75-79, 29 May 2012).

10. Having regard to its established case-law, the Court finds that there has been a violation of Article 5 § 1 of the Convention.

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

11. The applicants complained about their unreasonably lengthy detention in breach of Article 5 § 3 of the Convention.

“3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.”

12. The Court notes that these complaints are linked to the ones examined above and must therefore likewise be declared admissible.

13. 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.

14. 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.

15. Accordingly, the Court considers that in the present case there has been a violation of Article 5 § 3 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

16. 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.”

17. Regard being had to the documents in its possession and to its case-law, the Court considers it reasonable to award the sums indicated in the appended table and dismisses the remaining claims for just satisfaction submitted by some of the applicants as unsubstantiated and/or unrelated to the violations of the Convention found by the Court.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Declares* the applications admissible;

3. *Holds* that there has been a violation of Article 5 § 1 of the Convention;
4. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
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;
6. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 30 October 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Branko Lubarda
President

APPENDIX

No.	Application no. and date of introduction	Applicant name date of birth place of residence nationality	Represented by	Period of detention	Duration of detention	Just satisfaction claims	Award under Article 41
1.	67967/13 07/10/2013	Khaled KHALAF 01/01/1962 St Petersburg Russian		20/05/2011 – 03/06/2015	4 years and 15 days	<p>Non-pecuniary damages: EUR 58,500</p> <p>Costs and legal expenses: EUR 2,000 to each of three advocates who represented him in the domestic proceedings (supported by the certificate of the advocates' collegium that the applicant paid one of the advocates RUB 1,520,000 RUB or ~ EUR 24,000 on the date of the certificate)</p>	<p>Non-pecuniary damages: EUR 9,750 (nine thousand seven hundred and fifty euros)</p>
2.	79049/13 26/11/2013	Sergey Viktorovich MAKHIN 20/02/1981 Krasnoznamensk Russian	Inga Anatolyevna ZATEYKINA	22/03/2011 – 20/09/2016	5 years, 6 months and 1 day	<p>Pecuniary damages: EUR 11,190.38 (allegedly spent by the applicant on food and other needs while in detention; supported by a number of payment receipts) EUR 24,667.42 (loss of salary)</p> <p>Non-pecuniary damages: EUR 20,000</p> <p>Costs and legal expenses: - legal services to represent the applicant before the Court: EUR 3,045.46 (supported by a legal services' agreement and payment receipt) - postal services: EUR 88.63 (supported by payment receipts) Total: EUR 3,134.09</p>	<p>Non-pecuniary damages: EUR 9,750 (nine thousand seven hundred and fifty euros)</p> <p>Costs and legal expenses: EUR 3,134.09 (three thousand one hundred and thirty-four euros and nine cents)</p>

No.	Application no. and date of introduction	Applicant name date of birth place of residence nationality	Represented by	Period of detention	Duration of detention	Just satisfaction claims	Award under Article 41
3.	25038/14 22/03/2014	Aleksey Veniaminovich LITVINOV 14/05/1987 Yuzhno-Sakhalinsk Russian	Yevgeniy Aleksandrovich YEFIMCHUK	03/06/2011 – 18/09/2014	3 years, 5 months and 17 days	<p>Pecuniary damages: RUB 1,350,000 (EUR 19,433) (loss of salary)</p> <p>Non-pecuniary damages: EUR 100,000</p> <p>Costs and expenses: RUB 936,031 (EUR 13,474) including - legal services of lawyers representing the applicant during the preliminary investigation and at the court extensions of detention – RUB 850,000 (EUR 12,235); - translator’s services – RUB 5,850 (EUR 84); - an expert review for the criminal proceedings – RUB 75,500; - postal services – RUB 4,681 (EUR 67)</p>	<p>Non-pecuniary damages: EUR 9,750 (nine thousand seven hundred and fifty euros)</p> <p>Costs and legal expenses: EUR 151 (one hundred and fifty-one euros).</p>
4.	8108/15 26/01/2015	Ishat Midkhatovich IVANOV 17/01/1970 Ulan-Ude Russian	Oleg Anatolyevich DYMCHIKOV	14/09/2012 – unknown (presumably until 03/03/2015)	Approximately 2 years, 5 months and 18 days	Non-pecuniary damages: EUR 50,000	Non-pecuniary damages: EUR 9,750 (nine thousand seven hundred and fifty euros)