



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

THIRD SECTION

CASE OF UTIMISHEV AND OTHERS v. RUSSIA

*(Applications nos. 15783/10 and 8 others –
see appended list)*

JUDGMENT

STRASBOURG

26 July 2018

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

In the case of Utimishev and Others v. Russia,

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

Alena Poláčková, *President*,

Dmitry Dedov,

Jolien Schukking, *judges*,

and Liv Tigerstedt, *Acting Deputy Section Registrar*,

Having deliberated in private on 5 July 2018,

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. Some 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:

“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. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

11. In applications nos. 15783/17, 34056/17, 34062/17, 34621/17 and 56482/17 the applicants submitted other complaints which also raised issues under the Convention, given 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 *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, ECHR 2014 (extracts), related to the use of a metal cage or other security arrangements in courtrooms; *Zubkov and Others v. Russia*, nos. 29431/05 and 2 others, §§ 146-149, 7 November 2017, dealing with the lack of speedy review of detention matters; *Yevdokimov and Others v. Russia*, nos. 27236/05 and 10 others, 16 February 2016, concerning the absence of detained applicants from civil proceedings to which they were a party; *Moiseyev v. Russia*, no. 62936/00, §§ 250- 256, 9 October 2008, dealing with restrictions on family visits in detention; and *Yuriy Rudakov v. Russia*, no. 48982/08, §§ 64-65, 15 January 2015, regarding unlawful detention.

IV. REMAINING COMPLAINTS

12. In applications nos. applications nos. 15783/10, 34056/17 and 34161/17 the applicants also raised other complaints under various Articles of the Convention.

13. The Court has examined the applications listed in the appended table and considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

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

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

14. 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.”

15. 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.

16. 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 complaints concerning the excessive length of pre-trial detention and the other complaints under well-established case-law of the Court, as set out in the appended table, admissible, and the remainder of applications nos. 15783/10, 34056/17 and 34161/17 inadmissible;
3. *Holds* that these complaints 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 of the Convention 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 26 July 2018, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt
Acting Deputy Registrar

Alena Poláčková
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	Courts which issued detention orders/examined appeals	Specific defects	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.	15783/10 01/03/2010	Sergey Igorevich Utimishev 19/09/1972		16/02/2008 to 15/07/2011 3 year(s) and 5 month(s)	Sovetskiy District Court of Krasnoyarsk / Krasnoyarsk Regional Court	- fragility of the reasons employed by the courts, as the case progressed; - failure to examine the possibility of applying other measures of restraint, as the case progressed; - failure to conduct the proceedings with due diligence during the period of detention.	Art. 5 (4) - excessive length of judicial review of detention - detention order of 25/05/2010 - appeal examined on 27/07/2010; detention order of 26/02/2010 - appeal examined on 25/03/2010; detention order of 28/02/2011 - appeal examined on 21/04/2011; detention order of 30/05/2011 - appeal examined on 19/07/2011, Art. 8 (1) - lack of practical opportunities for or restriction on prison visits - restriction or no more than 2 short family visits during the entire period of pre- trial detention (see, Moiseyev v. Russia, no. 62936/00, §§ 250 - 256, 9 October 2008), Art. 6 (1) - absence of detainees from civil proceedings - applicant was not brought to civil proceedings concerning conditions of his transport (Tsentralniy District Court of Krasnoyarsk on 12/20/2011; Krasnoyarsk Regional Court on 21/12/2011)	4,600

No.	Application no. Date of introduction	Applicant name Date of birth	Representative name and location	Period of detention Length of detention	Courts which issued detention orders/examined appeals	Specific defects	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros) ¹
2.	34056/17 19/04/2017	Denis Sergeevich Siver 21/01/1982	Mikhaylova Yuliya Nikolayevna Krasnoyarsk	05/11/2013 to 10/07/2017 3 year(s) and 8 month(s) and 6 day(s) 15/02/2018 pending More than 3 month(s) and 24 day(s)	Sovetskiy District Court of Krasnoyarsk / Krasnoyarsk Regional Court	- collective detention orders; -failure to assess the applicant's personal situation reducing the risks of reoffending, colliding or absconding, particularly in view of the length and stage of the criminal proceedings; - failure to examine the possibility of applying other measures of restraint, particularly in view of the length and stage of the criminal proceedings; - failure to conduct the proceedings with due diligence during the period of detention.	Art. 5 (4) - excessive length of judicial review of detention - examination of appeals against detention orders by the Krasnoyarsk Regional Court with a delay of up to several months	5,200
3.	34062/17 14/04/2017	Irek Rishatovich Tagirov 05/04/1989	Ablayeva Olga Valeryevna Ufa	04/02/2015 pending More than 3 year(s) and 4 month(s) and 4 day(s)	Kirovskiy Distirct Court of Ufa / Privolzhye Circuit Military Court / Appellate Division of the Privolzhye Circuit Military Court / Supreme Court of the Bashkortostan Republic	- collective detention orders; - fragility of the reasons employed by the courts, as the case progressed; - failure to examine the possibility of applying other measures of restraint, as the case progressed; - failure to conduct the proceedings with due diligence during the period of detention.	Art. 5 (1) (c) - unlawful pre-trial detention - repeated extensions of the applicant's detention from 04/08/2016 pending study of the case file (see <i>Yuriy Rudakov v. Russia</i> , no. 48982/08, §§ 64-65, 15 January 2015)	4,600
4.	34161/17 27/04/2017	Vasiliy Sergeevich Kasatov 02/09/1977	Sychugov Anton Petrovich Volgograd	22/04/2015 pending More than 3 year(s) and 1 month(s) and 17 day(s)	Sovetskiy District Court of Volgograd / Volgograd Regional Court	- fragility of the reasons employed by the courts; - use of assumptions, in the absence of any evidentiary basis, of the risks of absconding or obstructing justice; - failure to assess the applicant's personal situation reducing the risks of reoffending, colliding or absconding; - failure to examine the possibility of applying other measures of restraint.		3,200

No.	Application no. Date of introduction	Applicant name Date of birth	Representative name and location	Period of detention Length of detention	Courts which issued detention orders/examined appeals	Specific defects	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros) ¹
5.	34621/17 19/04/2017	Yevgeniy Leonidovich Sodovskiy 02/03/1979	Mikhaylova Yuliya Nikolayevna Krasnoyarsk	05/11/2013 to 10/07/2017 3 year(s) and 8 month(s) and 6 day(s) 15/02/2018 pending More than 3 month(s) and 24 day(s)	Sovetskiy District Court of Krasnoyarsk / Krasnoyarsk Regional Court	-collective detention orders; - fragility of the reasons employed by the courts; - use of assumptions, in the absence of any evidentiary basis, of the risks of absconding or obstructing justice; - failure to assess the applicant's personal situation reducing the risks of reoffending, colliding or absconding; - failure to examine the possibility of applying other measures of restraint; - failure to conduct the proceedings with due diligence during the period of detention.	Art. 5 (4) - excessive length of judicial review of detention - examination of appeals against detention orders by the Krasnoyarsk Regional Court with a delay of up to several months	5,200
6.	53786/17 17/07/2017	Vasily Anatolyevich Shatalov 12/10/1968	Suntsov Andrey Andreyevich Izhevsk	16/07/2015 pending More than 2 year(s) and 10 month(s) and 23 day(s)	Nizhegorodskiy District Court of Nizhniy Novgorod / Pervomayskiy District Court of Izhevsk / Ustinovskiy District Court of Izhevsk / Supreme Court of the Udmurtiya Republic	-collective detention orders; - fragility of the reasons employed by the courts; - use of assumptions, in the absence of any evidentiary basis, of the risks of absconding or obstructing justice; - failure to assess the applicant's personal situation reducing the risks of reoffending, colliding or absconding; - failure to examine the possibility of applying other measures of restraint; - failure to conduct the proceedings with due diligence during the period of detention		3,100
7.	55286/17 18/07/2017	Vadim Kadrgaliyevich Zhalilov 05/07/1980	Denisov Dmitriy Arkadyevich Astrakhan	28/10/2016 to 06/09/2017 10 month(s) and 10 day(s)	Kirovskiy District Court of Astrakhan / Astrakhan Regional Court / Presidium of the Astrakhan Regional Court	- fragility of the reasons employed by the courts; - failure to examine the possibility of applying other measures of restraint; - failure to conduct the proceedings with due diligence during the period of detention.		1,000

No.	Application no. Date of introduction	Applicant name Date of birth	Representative name and location	Period of detention Length of detention	Courts which issued detention orders/examined appeals	Specific defects	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros) ¹
8.	56482/17 30/07/2017	Oleg Gennadyevich Filkov 02/11/1974	Osipov Artem Leonidovich Moscow	24/12/2014 to 05/05/2016 1 year(s) and 4 month(s) and 12 day(s) 31/08/2016 to 31/01/2017 5 month(s) and 1 day(s)	Nikulinskiy District Court of Moscow / Moscow City Court	- fragility of the reasons employed by the courts; - use of assumptions, in the absence of any evidentiary basis, of the risks of absconding or obstructing justice; - failure to assess the applicant's personal situation reducing the risks of reoffending, colliding or absconding; - failure to examine the possibility of applying other measures of restraint.	Art. 3 - use of metal cages and/or other security arrangements in courtrooms - confinement of the applicant in a metal cage during court hearings before the Nikulinskiy District Court of Moscow	9,750
9.	70654/17 18/09/2017	Aleksandra Valeryevna Toskina 04/12/1998	Bocharov Anton Mikhaylovich Ufa	29/03/2017 pending More than 1 year(s) and 2 month(s) and 10 day(s)	Oktyabrskiy District Court of Ufa / Supreme Court of the Bashkortostan Republic	- fragility of the reasons employed by the courts; - use of assumptions, in the absence of any evidentiary basis, of the risks of absconding or obstructing justice; - failure to assess the applicant's personal situation reducing the risks of reoffending, colliding or absconding; - failure to examine the possibility of applying other measures of restraint.		1,300

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