

Г-ну ПОЛОВИНКИНУ А.Г.

РОССИЯ / RUSSIE

FILTERING SECTION

ECHR-LE20.2cR
ETA/OOR/ebn

21/07/2022

BY E-TRANSMISSION ONLY

Application no. 28521/21

Semenov v. Russia

Joined to application no. 24847/20 – Boyko-Velikiy v. Russia

Dear Sir,

In accordance with Rule 77 §§ 2 and 3 of the Rules of Court, I enclose a copy of the Committee's judgment in the above application. This notification constitutes delivery of the judgment.

The judgment is final and cannot therefore be referred to the Grand Chamber. The judgment is now available on the Court's Internet site (www.echr.coe.int). When it is placed on the Internet site the judgment is deemed to have been published for the purposes of Article 44 § 3 of the Convention and Rule 78 of the Rules of Court.

I would draw your attention to the fact that execution of final judgments is within the competency of the Committee of Ministers (Article 46 § 2 of the Convention). Any question in this respect, including, where relevant, payment of just satisfaction and possible default interest, should be addressed to the Department for the Execution of Judgments of the Court at the DGI (Directorate General of Human Rights and Rule of Law) of the Council of Europe:

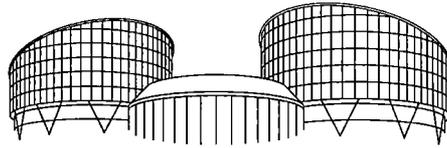
- Fax number: 33 (0) 3 88 41 27 93
- Website: www.coe.int/t/dghl/monitoring/execution
- Email just satisfaction: dgl_execution_just_satisfaction@coe.int
- Address: Council of Europe, Department for the Execution of ECHR judgments, F-67075 Strasbourg Cedex.

Furthermore, you are requested to forward the applicant's bank account details directly to the Government Agent Office (Mr M. Vinogradov, Head of the General Department of International Legal Cooperation, General Prosecutor's Office of the Russian Federation, Representative of the Russian Federation at the European Court of Human Rights, Bolshaya Dmitrovka str., 15A build. 1, 125993 Moscow, Russia).

Yours faithfully,

Viktoriya Maradudina
Deputy Head of the Filtering Section

Enc: Judgment



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

THIRD SECTION

CASE OF BOYKO-VELIKIY AND OTHERS v. RUSSIA

*(Applications nos. 24847/20 and 6 others –
see appended list)*

JUDGMENT

STRASBOURG

21 July 2022

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

In the case of Boyko-Velikiy and Others v. Russia,

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

Darian Pavli, *President*,

Andreas Zünd,

Mikhail Lobov, *judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar*,

Having deliberated in private on 30 June 2022,

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 Russian Government (“the Government”) were given notice of the applications.

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

11. In applications nos. 24847/20, 28534/20, 29459/20, 26415/21 and 28521/21, 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 *Idalov v. Russia* [GC], no. 5826/03, §§ 154-58, 22 May 2012, as regards lengthy review of detention matters; *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, ECHR 2014 (extracts) and *Mariya Alekhina and Others v. Russia*, no. 38004/12, §§ 145-50, 17 July 2018, as regards detention in a metal cage or glass cabin during court hearings; *Korshunov v. Russia*, no. 38971/06, §§ 59-63, 25 October 2007, concerning absence of an enforceable right to compensation for a violation of a right to trial within a reasonable time; *Tomov and Others v. Russia*, nos. 18255/10 and 5 others, §§ 92-156, 9 April 2019, related to inadequate conditions of transport; *Gorlov and Others v. Russia*, nos. 27057/06 and 2 others, 2 July 2019, as regards video surveillance in prison; *Chaldayev v. Russia*, no. 33172/16, 28 May 2019 and *Mukhametov and Others*, nos. 53404/18 and 3 others, §§ 22-42, 14 December 2021, as regards family visits in prison and discrimination.

IV. REMAINING COMPLAINTS

12. In application no. 28534/20 the applicant also raised other complaints under various Articles of the Convention.

13. The Court has examined the application 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.

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

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

15. 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.”

16. 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.

17. The Court further 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 application no. 28534/20 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);

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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 21 July 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.



Viktoriya Maradudina
Acting Deputy Registrar



Darian Pavli
President

BOYKO-VELIKIY AND OTHERS v. RUSSIA JUDGMENT

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's name Year of birth	Representative's name and location	Period of detention	Court which issued detention order/examined appeal	Length of detention	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.	24847/20 13/05/2020	Vasily Vadimovich BOYKO- VELIKIY 1959	Zuber Igor Lvovich Moscow	19/06/2019 to 28/06/2021	Basmany District Court of Moscow, Moscow City Court	2 year(s) and 10 day(s)	fragility of the reasons employed by the courts; failure to assess the applicant's personal situation reducing the risks of re-offending, colluding or absconding; failure to examine the possibility of applying other measures of restraint; use of assumptions, in the absence of any evidentiary basis, of the risks of absconding or obstructing justice	Art. 5 (4) - excessive length of judicial review of detention - The applicant's appeal complaint lodged on 19/02/2020 against the court decision of 17/02/2019 was considered by the Moscow City Court on 06/04/2020	2,600
2.	28197/20 02/07/2020	Yuliya Aleksandrovna BOGDANOVA 1975	Terbalyan Edgar Slavikovich Tomsk	30/03/2018 pending	Zavodskoy District Court of Kemerovo, Tsentralnyy District Court of Kemerovo, Kemerovo Regional Court	More than 4 year(s) and 2 month(s) and 10 day(s)	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 re-offending, colluding 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		4,300

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No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Period of detention	Court which issued detention order/examined appeal	Length of detention	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)
3.	28534/20 11/06/2020	Anton Aleksandrovich KHODKO 1977	Laptev Aleksey Nikolayevich Moscow	28/09/2018 pending	Basmannyy District Court of Moscow; Moscow City Court	More than 3 year(s) and 8 month(s) and 14 day(s)	failure to conduct the proceedings with due diligence during the period of detention; "white collar" charges - failure to assess the applicant's personal situation reducing the risks of re-offending, colluding or absconding; failure to examine the possibility of applying other measures of restraint;	Art. 5 (4) - excessive length of judicial review of detention – it took the appeal court each time more than a month to examine an appeal against the detention extension orders issued by the Basmannyy District Court of Moscow; Art. 5 (5) - lack of, or inadequate compensation, for the violation of Article 5 § 3 of the Convention Art. 5 (5) - lack of, or inadequate compensation, for the violation of Article 5 § 4 of the Convention	5,100
4.	29459/20 23/06/2020	Ismatullo Kudratulloyevich MUSOYEV 1986	Dzhabirov Asad Sadykhovich Moscow	10/05/2018 to 06/11/2020	Lyublinskiy District Court of Moscow; Moscow City Court; First Appellate Court of General Jurisdiction	2 year(s) and 5 month(s) and 28 day(s)	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 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 - Detention orders of the Lyublinskiy District Court of Moscow issued on 13/11/2019, 09/01/2020, 27/01/2020, 20/03/2020 were reviewed on appeal by the Moscow City Court with delays of more than 39 days (on 25/12/2019, 04/03/2020, 12/03/2020, 29/04/2020, respectively)	3,100
5.	954/21 05/01/2021	Nazar Igorevich GULEVICH 1982	Sukhareva Tatyana Viktorovna Moscow	24/08/2018 to 27/07/2020	Khoroshevskiy District Court of Moscow, Savelovskiy District Court of Moscow, Moscow City Court	1 year(s) and 11 month(s) and 4 day(s)	use of assumptions, in the absence of any evidentiary basis, of the risks of absconding or obstructing justice; fragility of the reasons employed by the courts; failure to examine the possibility of applying other measures of restraint		2,000

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No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Period of detention	Court which issued detention order/examined appeal	Length of detention	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)
6.	26415/21 04/05/2021	Aleksandr Viktorovich GERASIMOV 1984		11/12/2020 pending	Arkhangelsk Regional Court, Second Appellate Court of General Jurisdiction	More than 1 year(s) and 5 month(s) and 29 day(s)	failure to conduct the proceedings with due diligence during the period of detention; On 10/12/2020 the Court has found a violation of the applicant's rights under Art. 5 § 3 on account of his pre-trial detention in excess of 5 years in the application no. 46737/19 for the period preceding the one examined in the present case, forming a continuous situation (<i>Dvirnik and Others v. Russia</i> , [CTE], 21552/19 and 3 others, 10/12/2020)	<p>Art. 13 - lack of any effective remedy in domestic law in respect of placement in a metal cage during court hearings and the refusal of family visits during the detention in the remand prison;</p> <p>Art. 3 - use of metal cages and/or other security arrangements in courtrooms - The applicant has been held in a glass cabin during the trial hearings since 01/01/2017. The applicant invokes overcrowding (9 defendants, 0.5 m2 per person), 490 hearings, over the period exceeding 4 years.</p> <p>Art. 8 (1) - restrictions on family visits in pre-trial facilities - refusal of long-term family visits during his detention in remand prison since November 2014. Last response from the authorities is of 14/04/2021. Family members - wife, son, mother</p> <p>Art. 14 - in conjunction with art. 8 - discriminatory treatment compared with convicted prisoners as regards duration of short-term family visits and absence of long-term family visits</p>	9,750

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No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Period of detention	Court which issued detention order/examined appeal	Length of detention	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)
								Art. 5 (4) - excessive length of judicial review of detention - Arkhangelsk Regional Court 12/03/2021 Second Appellate Court 14/04/2021 lack of speediness of review of detention	
7.	28521/21 18/05/2021	Aleksandr Yuryevich SEMENOV 1978	Polovinkin Artem Grigoryevich Moscow	06/09/2019 to 19/07/2021	Kuybyshevskiy District Court of St Petersburg, St Petersburg City Court	1 year(s) and 10 month(s) and 14 day(s)	use of assumptions, in the absence of any evidentiary basis, of the risks of absconding or obstructing justice; failure to examine the possibility of applying other measures of restraint; fragility of the reasons employed by the courts	Art. 5 (4) - excessive length of judicial review of detention - appeal against the detention order of 02/10/2020 (received by the court on 12/10/2020) was considered only on 18/11/2020; Art. 3 - use of metal cages and/or other security arrangements in courtrooms - placement in a metal cage since 2019 during the hearings in the Kuybyshevskiy District Court of St Petersburg and the St Petersburg City Court (via video-link); Art. 8 (1) - permanent video surveillance of detainees in pre-trial or post-conviction detention facilities - permanent video surveillance in SIZO-1 St Petersburg and Leningrad Region by opposite-sex operators since 06/09/2019;	9,750

BOYKO-VELIKIY AND OTHERS v. RUSSIA JUDGMENT

No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Period of detention	Court which issued detention order/examined appeal	Length of detention	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
								<p>Art. 13 - lack of any effective remedy in domestic law in respect of placement in a metal cage during court hearings, in respect of permanent video surveillance in the remand prison as well as in respect of the conditions of transport.,</p> <p>Art. 3 - inadequate conditions of detention during transport - from 06/09/2019 to 19/07/2021 the applicant was transported on numerous occasions from the remand prison to the courthouse and back (approximately 50 times). On those days he spent standing several hours in assembly cells at the remand prison waiting for the convoy; he did not receive hot meals and was transported in overcrowded vans</p>	

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