

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

THIRD SECTION

CASE OF ASHIKOV v. RUSSIA

(Applications nos. 63458/19 and 24910/20)

JUDGMENT

STRASBOURG

31 March 2022

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



In the case of Ashikov v. Russia,

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

Peeter Roosma, *President,*
Andreas Zünd,
Mikhail Lobov, *judges,*

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 10 March 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 applicant was represented by Ms A. Maralyan, a lawyer admitted to practise in Armenia.

3. The Russian Government ("the Government") were given notice of the applications.

THE FACTS

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

5. The applicant complained of the lack of speedy review of the lawfulness of his detention. He also made additional complaints (see below) stemming from the same set of facts.

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 § 4 OF THE CONVENTION

7. The applicant complained that his appeal against the detention order of 8 February 2020 had not been decided "speedily". He relied on Article 5 § 4 of the Convention, which reads as follows:

> "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

8. The Court reiterates that Article 5 § 4 of the Convention, in guaranteeing to detained persons a right to institute proceedings to challenge the lawfulness of their detention, also proclaims their right, following the institution of such proceedings, to a speedy judicial decision concerning the lawfulness of detention and the ordering of its termination if it proves unlawful (see *Baranowski v. Poland*, no. 28358/95, § 68, ECHR 2000-III). Where an individual's personal liberty is at stake, the Court has very strict standards concerning the State's compliance with the requirement of speedy review of the lawfulness of detention (see, for example, *Kadem v. Malta,* no. 55263/00, §§ 44-45, 9 January 2003, where the Court considered a time period of seventeen days in deciding on the lawfulness of the applicant's detention to be excessive, and *Mamedova v. Russia*, no. 7064/05, § 96, 1 June 2006, where the length of appeal proceedings lasting, *inter alia*, twenty-six days, was found to be in breach of the "speediness" requirement of Article 5 § 4).

9. In the leading cases of *Idalov v. Russia* [GC], no. 5826/03, §§ 154-58, 161-65, 22 May 2012, and *Khodorkovskiy v. Russia,* no. 5829/04, §§ 219-48, 31 May 2011, the Court already found a violation in respect of issues similar to those in the present case.

10. 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 appeal proceedings for the review of the lawfulness of the applicant's detention, as set out in the table appended below, cannot be considered compatible with the requirements set out in Article 5 § 4 of the Convention.

11. These complaints are therefore admissible and disclose a breach of Article 5 § 4 of the Convention.

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

12. The applicant also complained about the length of pre-trial detention under Article 5 § 3 of the Convention (see the appended table). This complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor is it inadmissible on any other ground. Accordingly, it must be declared admissible. Having examined all the material before it, the Court concludes that it also discloses a violation of the Convention in the light of its well-established case-law (see *Dirdizov*, §§ 108-11, cited above).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

13. 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."

14. Regard being had to the documents in its possession and to its case-law (see, in particular, *Oravec v. Croatia,* no. 51249/11, §§ 78-80, 11 July 2017, *Ayboğa and Others v. Turkey,* no. 35302/08, §§ 28-30, 21 June 2016, *Doherty v. the United Kingdom,* no. 76874/11, §§ 113-15, 18 February 2016, *Albrechtas v. Lithuania,* no. 1886/06, §§ 87-89, 19 January 2016 and *Karaosmanoglu and Özden v. Turkey,* no. 4807/08, §§ 89-91, 17 June 2014), the Court considers it reasonable to award the sum indicated in the appended table.

15. 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 deficiencies in proceedings for review of the lawfulness of detention and the other complaint under well-established case-law of the Court, as set out in the appended table, admissible;

3. *Holds* that these complaints disclose a breach of Article 5 § 4 of the Convention concerning the deficiencies in proceedings for review of the lawfulness of detention;

4. *Holds* that there has been a violation of the Convention as regards the other complaint raised under well-established case-law of the Court (see the appended table);

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the amount 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 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 31 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina Acting Deputy Registrar	Peeter Roosma President

APPENDIX

List of applications raising complaints under Article 5 § 4 of the Convention (deficiencies in proceedings for review of the lawfulness of detention)

Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	First-instance court and date of detention order	Appeal instance court and date of decision	Procedural deficiencies	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros)[1]
63458/19 04/12/2019 AND 24910/20 20/06/2020	**Ziyavodin Magomedovich ASHIKOV** 1967	Maralyan Anna Strasbourg	Leninskiy District Court of Valdikavkaz 08/02/2020	Supreme Court of the North Ossetia Republic - Alaniya 20/03/2020	Lack of speediness of review of detention (Idalov v. Russia [GC], no. 5826/03, §§ 154-58, 22 May 2012)	Art. 5 (3) - excessive length of pre-trial detention - since 13/04/2019 - 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; collective detention orders.	3,500

[1] Plus any tax that may be chargeable to the applicant.