

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

THIRD SECTION

# CASE OF BOLDYREV v. RUSSIA

*(Application no. 52023/08)*

JUDGMENT

STRASBOURG

9 June 2022

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



**In the case of Boldyrev 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 19 May 2022,

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

# PROCEDURE

1. The case originated in an application against Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 13 August 2009.

2. The applicant was represented by Ms I. Zhuravleva, a lawyer practising in Perm.

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

# THE FACTS

4. The applicant's details and information relevant to the application are set out in the appended table.

5. The applicant complained of the deficiencies in proceedings for review of the lawfulness of detention. He also raised other complaints under the provisions of the Convention.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 5 § 4 OF THE CONVENTION

6. The applicant complained that his appeal against the detention order of 3 December 2007 had not been decided "speedily". He relied on Article 5 § 4 of the Convention, which reads as follows:

**Article 5 § 4**

> "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."

7. 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 precisely 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).

8. In the leading cases of *Idalov v. Russia* [GC], no. 5826/03, §§ 154-58, 161-65, 22 May 2012, *Khodorkovskiy v. Russia,* no. 5829/04, §§ 219-48, 31 May 2011 and *Lebedev v. Russia,* no. 4493/04, §§ 75-115, 25 October 2007, 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 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.

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

## II. REMAINING COMPLAINTS

11. The applicant also raised other complaints under various Articles of the Convention.

12. 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.

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

## III. 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 sums 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. *Declares* the complaints concerning the deficiencies in proceedings for review of the lawfulness of detention admissible, and the remainder of the application inadmissible;

2. *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;

3. *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 9 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Viktoriya Maradudina | Darian Pavli |
| Acting Deputy Registrar | President |

# APPENDIX

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

| Application no.<br>Date of introduction | Applicant's name<br>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 | Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros)[1] |
|---|---|---|---|---|---|---|
| 52023/08<br>13/08/2009 | **Andrey Vladimirovich BOLDYREV**<br>1967 | Zhuravleva Inna Valeryevna<br>Perm | Perm Regional Court<br>03/12/2007 | Supreme Court of Russia<br>14/01/2010 | lack of speediness of review of detention (Idalov v. Russia [GC], no. 5826/03, §§ 154-158, 22 May 2012) | 500 |

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