

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

THIRD SECTION

CASE OF BORISOVSKIY v. RUSSIA

(Applications nos. 41248/17 and 75083/17)

JUDGMENT

STRASBOURG

19 July 2022

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Borisovskiy 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 Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the applications (nos. 41248/17 and 75083/17) 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") on 24 May 2017 and 2 October 2017 respectively by a Russian national, Mr Sergey Aleksandrovich Borisovskiy, born in 1986 and detained in Slavyanovka ("the applicant"), who was represented in application no. 75083/17 by Ms M.M. Alekseyeva, a lawyer practising in Moscow;

the decision to give notice to the Russian Government ("the Government"), initially represented by Mr M. Galperin, former Representative of the Russian Federation to the European Court of Human Rights, and later by his successor in this office, Mr M. Vinogradov, of the complaints concerning the placement of the applicant in metal cages and glass cabins during the trial, the length of his pre-trial detention, the speediness of review of a detention order and the restrictions on family visits and to declare inadmissible the remainder of the applications;

the parties' observations;

Having deliberated in private on 26 April 2022,

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

SUBJECT-MATTER OF THE CASE

1. The present case concerns the placement of the applicant in metal cages and glass cabins during the criminal trial, the length of his pre-trial detention, the speediness of review of a detention order and the restrictions on family visits.

2. On 20 February 2014, the applicant was arrested on suspicion of abuse of office and provocation of bribery and was placed in pre-trial detention which was extended at regular intervals. Domestic courts mainly relied on the gravity of the charges against the applicant and the risk of his absconding or interfering with the administration of justice as the factors that militated in favour of maintaining him in pre-trial detention.

3. The applicant's appeal against the detention order of 12 January 2017 was examined on 21 March 2017 (within 68 days).

4. On 22 December 2016, 21 March and 27 June 2017 the applicant took part in hearings before the Moscow City Court. He was placed in a metal cage on those days, and on 12 and 30 January 2017 into a glass cabin.

5. On 27 April 2017, the Moscow City Court convicted the applicant and sentenced him to a term of imprisonment. The length of his pre-trial detention thus amounted to three years, two months and six days.

6. Pending the trial and appeal proceedings, the applicant was detained in remand prisons IZ-77/2 (from 1 February 2014 to 10 September 2017) and IZ-77/6 (from 10 September 2017 to 16 February 2018) in Moscow. He was authorised to receive forty-eight short-term visits from members of his family (mother, father, sister and wife). All visits were carried out under the supervision of a warden while the applicant was separated from the visitors by a glass partition. The applicant spoke with the visitors via interphone and an officer listened in on their conversations.

7. On 30 July 2017, the applicant asked the Moscow City Court to authorise a long-term visit from his wife.

8. By a letter of 15 August 2017, the judge in charge of the criminal case against the applicant returned to him his application. She informed the applicant that pursuant to Article 89 of Code of Execution of Sentences, long-term family visits could be granted only to convicted prisoners. The applicant lodged an appeal against the judge's decision.

9. By a letter of 7 September 2017, the same judge returned the appeal to the applicant informing him that according to Article 389.2 of the Code of Criminal Procedure the impugned decision was not amenable to appeal.

THE COURT'S ASSESSMENT

I. JOINDER OF THE APPLICATIONS

10. 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 8 OF THE CONVENTION

11. Relying on Article 8 of the Convention, the applicant complained about the refusal to grant him a long-term visit from his wife.

12. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

13. The Court has already found that the impossibility for the applicants to benefit from long-term family visits during their placement in remand prisons which lasted for more than ten years, coupled with the rigidity of the domestic legal framework as regards the modalities of short-term visits which excluded any physical contact, constituted an interference with the right of the persons concerned to respect for their private and family life, which was not necessary in a democratic society (see *Pshibiyev and Berov v. Russia*, no. 63748/13, §§ 43-53, 9 June 2020). The Court has distinguished the

situation of the applicants in that case from that of *Nazarenko v. Latvia* (no. 76843/01, §§ 68-76, 1 February 2007) where it declared inadmissible the complaint under Article 8 of the Convention as regards the impossibility for the applicant, placed in pre-trial detention, to obtain a conjugal visit during a period of four months.

14. Having examined all the material submitted to it, and taking into account its case-law on the subject of family visits in prison, the Court considers that the conclusions which it arrived at in the abovementioned *Pshibyev and Berov* case can be transposed to the present one.

15. Indeed, while the applicant benefitted from short-term family visits throughout his detention in the remand prisons, he was unable to have physical contact with his wife due to the separation by glass partition, for more than four years (see paragraph 6 above). While in the *Pshibiyev and Berov* case similar restrictions lasted for more than ten years, the Court finds that the period at issue in the present case was sufficiently long to entail grave consequences on the applicant's capacity to maintain and develop family relationships (see *Pshibiyev and Berov*, cited above, § 49). In view of the length of these restrictions, it cannot be said that the applicant had an "acceptable" or "reasonably good" level of contact with his wife (ibid., § 51, see also, *mutatis mutandis*, *Costel Gaciu v. Romania*, no. 39633/10, §§ 60-61, 23 June 2015, where the applicant was denied conjugal visits for one year and ten months). The Court also notes that in dealing with the applicant's requests the domestic authorities failed to justify the prohibition of long-term family visits beyond reference to domestic legislation without any explanation as to why this prohibition had been necessary and justified in the applicant's specific situation. Therefore, the Court considers that the refusal of a long-term visit from the applicant's wife constituted an interference with his right to respect of private and family life which was not necessary in a democratic society.

16. There has accordingly been a violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

17. The applicant also complained under Article 13 of the Convention that he had no effective remedy for his complaint under Article 8. Having regard to the findings under Article 8 of the Convention, the Court considers that, although the complaint under Article 13 of the Convention appears to be arguable and therefore has to be declared admissible, it is not necessary to examine it separately on the merits (see *Roman Zakharov v. Russia* [GC], no. 47143/06, § 307, ECHR 2015).

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION UNDER THE WELL-ESTABLISHED CASE-LAW

18. The applicant also complained under Article 3 of the Convention about the use of metal cages (see paragraph 4 above), under Article 5 § 3 of the Convention about the allegedly excessive length of his pre-trial detention (see paragraph 2 above) and under Article 5 § 4 of the Convention about the alleged lack of speediness of the judicial review of the detention order of 12 January 2017 (see paragraph 3 above). 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 well-established case-law (see *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, ECHR 2014 (extracts), concerning the use of metal cages during court hearings; *Dirdizov v. Russia*, no. 41461/10, 27 November 2012, concerning the excessive length of pre-trial detention; and *Idalov v. Russia* [GC], no. 5826/03, §§ 154-58, 22 May 2012, concerning the lack of a speedy review of detention matters).

19. The applicant also complained under Article 3 of the Convention about his placement in a glass cabin during several judicial hearings (see paragraph 4 above). However, the applicant failed to describe, even in a summary manner, the dimensions of the cabin and the amount of space afforded to him in it. In those circumstances, the Court finds that this complaint is manifestly ill-founded and must be rejected, pursuant to Article 35 §§ 3 and 4 of the Convention (see *Barabanov v. Russia*, nos. 4966/13 and 5550/15, § 41, 30 January 2018, and *Yaroslav Belousov v. Russia*, nos. 2653/13 and 60980/14, § 127, 4 October 2016).

V. JUST SATISFACTION

20. The applicant claimed 7,000 euros (EUR) in respect of non-pecuniary damage.

21. The Court awards the applicant EUR 7,000 in respect of non-pecuniary damage plus any tax that may be chargeable to the applicant.

22. The applicant claimed EUR 2,000 for costs and expenses. He requested that the above amount be transferred directly to his representative's bank account.

23. Regard being had to the documents in its possession, the Court considers it reasonable to award the sum of EUR 850 for costs and expenses, plus any tax that may be chargeable to the applicant, to be paid into the applicant's representative's bank account.

24. 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. *Declares* the complaints concerning the placement of the applicant in metal cages during the trial, the length of his pre-trial detention, the speediness of review of a detention order and the restrictions on family visits admissible and the remainder of the applications inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that there is no need to examine the merits of the complaint under Article 13 of the Convention;

4. *Holds* that there has been a violation of Articles 3, 5 §§ 3 and 4 of the Convention as regards the other complaints raised under the well-established case-law of the Court;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 7,000 (seven thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 850 (eight hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses to be paid to the applicant's representative's bank account;
   (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 applicant's claim for just satisfaction.

Done in English, and notified in writing on 19 July 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova	Darian Pavli
Deputy Registrar	President