

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

THIRD SECTION

CASE OF PRISHCHENKO v. RUSSIA

(Applications nos. 28563/17 and 2 others - see appended list)

JUDGMENT

STRASBOURG

26 November 2020

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Prishchenko v. Russia,

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

Darian Pavli, *President,*
Dmitry Dedov,
Peeter Roosma, *judges,*

and Liv Tigerstedt, *Acting Deputy Section Registrar,*

Having deliberated in private on 5 November 2020,

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

PROCEDURE

1. The case originated in three 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 by one applicant, Mr Dmitry Vasilyevich Prishchenko (see the appended table).

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

THE FACTS

3. The list of the applications with the relevant details is set out in the appended table.

4. The applicant complained of the excessive length of his pre-trial detention and of excessive length of judicial review of detention.

THE LAW

I. JOINDER OF THE APPLICATIONS

5. Having regard to the similar subject matter of the applications and the fact that they were lodged by one and the same applicant, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 5 § 3 OF THE CONVENTION

6. In application no. 28563/17 the applicant complained principally that his pre-trial detention had been unreasonably long. He 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 this complaint. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the applicant's pre-trial detention was excessive.

10. This complaint is 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. 4997/18 and 42630/18 the applicant complained about the excessive length of the review of the detention orders in violation of the requirements of Article 5 § 4 of 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 disclose a violation of Article 5 § 4 of the Convention in the light of its findings in *Idalov v. Russia* [GC], no. 5826/03, §§ 154-164, 22 May 2012, *Khodorkovskiy v. Russia,* no. 5829/04, §§ 219-248, 31 May 2011, and *Lebedev v. Russia,* no. 4493/04, §§ 75-115, 25 October 2007.

IV. REMAINING COMPLAINTS

12. In application no. 28563/17 the applicant also complained under Article 5 § 1 of the Convention about excessively lengthy detention in violation of the domestic law. Having regard to the facts of the cases, the submissions of the parties, and its findings under Article 5 §§ 3 and 4 of the Convention, the Court considers that it has examined the main legal questions raised in the present application with regard to Article 5 of the Convention. It thus considers that the applicant's complaint is admissible but that there is no need to give a separate ruling on the complaint under Article 5 § 1 of the Convention (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

V. 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, *Pastukhov and Yelagin v. Russia,* no. 55299/07, 19 December 2013), the Court considers it reasonable to award the sum indicated in the appended table.

15. 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 excessive length of judicial review of detention, as set out in the appended table, admissible;

3. *Holds* that there has been a violation of Article 5 § 3 of the Convention concerning the excessive length of the applicant's pre-trial detention;

4. *Holds* that there has been a violation of Article 5 § 4 of the Convention as regards the other complaints under the well-established case-law (see appended table);

5. *Holds* that there is no need to examine the complaint under Article 5 § 1 of the Convention;

6. *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 26 November 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt	Darian Pavli
Acting Deputy Registrar	President

APPENDIX

List of applications raising complaints under Article 5 § 3 of the Convention (excessive length of pre-trial detention)

Applications nos. Date of introduction	Applicant's name Date of birth	Representative's name and location	Period of detention	Length of detention	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage and costs and expense per applicant (in euros)[1]
28563/17 04/04/2017 **4997/18** 13/12/2017 **42630/18** 29/08/2018	**Dmitriy Vasilyevich PRISHCHENKO** 06/12/1988	Panfilov Dmitriy Vladimirovich Moscow	23/10/2014 to 11/03/2019	4 year(s) and 4 month(s) and 18 day(s)	Art. 5 (4) - excessive length of judicial review of detention: - detention orders of the Mytishchi Town Court of 14/07/2017, 26/10/2017, 02/10/2018 upheld on appeal by the Moscow Regional Court on 14/09/2017, 21/12/2017, 08/11/2018, respectively; - detention orders of the Moscow Regional Court of 05/06/2018, 06/09/2018 upheld on appeal on 05/07/2018, 02/10/2018, respectively.	6,400

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