

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

THIRD SECTION

CASE OF SHESTUN v. RUSSIA

(Applications nos. 9146/20 and 28758/20)

JUDGMENT

STRASBOURG

30 September 2021

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



In the case of Shestun 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 Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 9 September 2021,

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

4. The applicant complained of the deficiencies in proceedings for review of the lawfulness of detention. He also made additional complaints (see below) stemming from the same set of facts.

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 § 4 OF THE CONVENTION

6. The applicant complained that his appeals against the detention orders of 6 June, 9 September and 9 December 2019 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."

7. The Government submitted that the delays in the review of the applicant's pre-trial detention had been justified and, therefore, not excessive. The applicant had been represented by several lawyers who had appealed against the extensions of his pre-trial detention and each statement of appeal had required detailed and thorough examination. Some of the statements of appeal had been submitted outside the statutory time-limit which had protracted the proceedings.

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, §§ 152-58, 22 May 2012, and *Khodorkovskiy v. Russia*, no. 5829/04, §§ 237-41, 31 May 2011, the Court already found a violation in respect of the 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. REMAINING COMPLAINTS

12. In application no. 28758/20, the applicant also raised other complaints under Article 5 §§ 3 and 4 of the Convention.

13. As to the complaint under Article 5 § 3 of the Convention, 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, it does not meet the admissibility criteria set out in Articles 34 and 35 of the Convention.

14. As to the remaining complaint under Article 5 § 4 of the Convention, the Court considers that it has examined the main legal questions raised in the present application under the same Convention provision. It thus considers that this complaint is admissible but that there is no need to give a separate ruling it (see *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

IV. 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, *Pukhachev and Zaretskiy v. Russia*, nos. 17494/16 and 29203/16, §§ 14-16, 7 November 2017, *Doherty v. the United Kingdom*, no. 76874/11, §§ 113-15, 18 February 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.

17. 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 deficiencies in proceedings for review of the lawfulness of detention under Article 5 § 4 of the Convention admissible and the remainder of application no. 28758/20 inadmissible;

3. *Holds* that these complaints, as set out in the table appended below, 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 is no need to examine the merits of the remaining complaint under Article 5 § 4 of the Convention in application no. 28758/20;

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;

(a) 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 30 September 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina	Darian Pavli
Acting Deputy Registrar	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	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros) [1]
9146/20 30/01/2020 AND 28758/20 08/07/2020	**Aleksandr Vyacheslavovich SHESTUN** 1964	Moskalenko Karinna Akopovna Strasbourg	Moscow City Court, 06/06/2019 Moscow City Court, 09/09/2019 Moscow City Court, 09/12/2019	Moscow City Court, 30/07/2019 Moscow City Court, 17/10/2019 Moscow City Court, 28/01/2020	lack of speediness of review of detention (Idalov v. Russia [GC], no. 5826/03, §§ 154-58, 22 May 2012)	500

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