

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

THIRD SECTION

DECISION

Application no. 2134/23
Yelena Ivanovna PIVKINA against Russia
and 6 other applications
(see the list appended)

The European Court of Human Rights (Third Section), sitting on 6 June 2023 as a Chamber composed of:

Pere Pastor Vilanova, *President*,
Jolien Schukking,
Yonko Grozev,
Darian Pavli,
Peeter Roosma,
Ioannis Ktistakis,
Oddný Mjöll Arnardóttir, *judges*,
and Olga Chernishova, *Deputy Section Registrar*,

Having regard to the above applications lodged on the dates indicated in the appended table,

Having regard to the decision of the President of the Section to appoint one of the sitting judges of the Court to act as an *ad hoc* judge, applying by analogy Rule 29 § 2 of the Rules of the Court (see, for a similar situation and an explanation of the background, *Kutayev v. Russia*, no. 17912/15, §§ 5-8, 24 January 2023),

Having deliberated, decides as follows:

INTRODUCTION

1. The decision concerns the limits of the Court's jurisdiction with respect to cases against the Russian Federation.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

THE FACTS

I. CESSATION OF RUSSIA'S MEMBERSHIP OF THE COUNCIL OF EUROPE

2. On 16 March 2022 the Committee of Ministers of the Council of Europe, in the context of a procedure launched under Article 8 of the Statute of the Council of Europe, adopted Resolution CM/Res(2022)2, by which the Russian Federation ceased to be a member of the Council of Europe as from 16 March 2022.

3. On 22 March 2022 the Court, sitting in a plenary session in accordance with Rule 20 § 1 of the Rules of Court, adopted the Resolution of the European Court of Human Rights on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights, which declared as follows:

> "1. The Russian Federation ceases to be a High Contracting Party to the Convention on 16 September 2022.
>
> 2. The Court remains competent to deal with applications directed against the Russian Federation in relation to acts or omissions capable of constituting a violation of the Convention provided that they occurred until 16 September 2022."

II. CIRCUMSTANCES OF INDIVIDUAL APPLICATIONS

4. The facts of the cases, as submitted by the applicants, may be summarised as follows.

A. Ms Pivkina (application no. 2134/23)

5. On 6 March and 2 and 29 April 2022 Ms Pivkina took part in mass protests against Russia's war in Ukraine. On each occasion the police detained her during the event and took her to a police station for the preparation of an offence report. She spent five hours, seven hours and fifteen hours, respectively at the police station.

6. On 15 April 2022 the Lefortovskiy District Court of Moscow fined her 10,000 Russian roubles (RUB) for breaching the procedure for holding a public event, an offence under Article 20.2 of the Code of Administrative Offences ("the CAO"); on 6 April 2022 the Kuzminskiy District Court fined her RUB 20,000 on the same charge, and on 30 April 2022 the Tverskoy District Court gave her a fifteen-day custodial sentence on the charge of minor disorderly acts under Article 19.3 of the CAO.

7. In her grounds of appeal, Ms Pivkina complained in particular that her arrest during the protests and her escorting to the police station had been unnecessary and had exceeded the statutory three-hour time-limit. She further

complained that the proceedings had been conducted in the absence of a prosecutor and that the trial court had refused to take evidence from the arresting police officers. She also complained that the Tverskoy District Court's custodial sentence had been immediately enforced, without her being given time to lodge an appeal. On 17 August (the first set of proceedings) and 29 September 2022 (the second and third sets of proceedings) the Moscow City Court dismissed her appeals.

B. Mr Korolev (application no. 2156/23)

8. In April 2022 Mr Korolev, a civil society activist, shared his views on the war in Ukraine through his social media account. Specifically, he wrote that Donetsk had been fired at from Russian-controlled territory and that "people who refused to believe that the massacres in Bucha and Borodyanka had been perpetrated by the Russian military displayed a remarkable degree of naïvety".

9. On 11 July 2022 an investigator from the Investigative Committee in St Petersburg opened a criminal case in response to those social media posts. He charged Mr Korolev with the offence of "public dissemination of deliberately false information about the use of Russian military forces" (Article 207.3 of the Criminal Code). Mr Korolev was taken into custody on the same day.

10. On 13 July 2022 the Vyborgskiy District Court of St Petersburg remanded Mr Korolev in pre-trial detention until 11 September 2022. On 1 September the St Petersburg City Court upheld the detention order.

11. On 8 September 2022 the District Court extended the detention until 11 October 2022. On 4 October the City Court upheld the extension.

12. On 10 October 2022 the District Court approved a further extension until 2 April 2023.

13. At every detention hearing before the District Court, Mr Korolev was held in a fully enclosed glass booth which was allegedly narrow and stifling.

C. Mr Kazusev (application no. 4556/23)

14. On 21 September 2022 the President of Russia, by a decree, announced the "partial mobilisation" of Russian reservists for the war effort in Ukraine.

15. Mr Kazusev initiated administrative proceedings to challenge the legal basis of the decree before the Supreme Court of the Russian Federation. The Supreme Court declined to consider the complaint and the subsequent appeals, with the final decision being delivered on 23 December 2022.

D. Ms Yudina-Klyugvant (application no. 7800/23)

16. On 16 March 2022 Ms Yudina-Klyugvant posted anti-war stickers on the rear window of her car, stating: "Silence is a crime. No to war! Don't stay silent! Stop this madness! People are dying right now! I refuse to let people be killed in my name! Fuck off!" On the same day the police charged her with the administrative offence of "publicly discrediting the use of Russian military forces for upholding international peace and security" (Article 20.3.3 of the CAO).

17. On 24 March 2022 the Golovinskiy District Court of Moscow found Ms Yudina-Klyugvant guilty as charged and imposed a fine of RUB 35,000. On 21 September 2022 the Moscow City Court dismissed her appeal.

E. Ms Viktorova (application no. 11065/23)

18. On 21 April 2021, as she made her way to a rally protesting against the arrest of opposition politician Mr Navalnyy, Ms Viktorova was forcibly apprehended by the police. Officers used a rubber truncheon and a stun gun against her. She was then taken to a police station for the preparation of an offence report. The following day she visited a doctor, who documented her injuries.

19. On 15 May 2021 Ms Viktorova lodged a criminal complaint against the police. On 27 July 2021 the investigator issued a decision declining to initiate criminal proceedings. Ms Viktorova unsuccessfully challenged the investigator's refusal in the courts. On 23 June 2022 a supervising prosecutor ordered an additional inquiry. On 28 July 2022 the investigator again refused to open a criminal case.

20. On 5 October 2022 Ms Viktorova appealed against the refusal. By a decision of 2 November 2022, as upheld on appeal on 18 January 2023, the Oktyabrskiy District Court of St Petersburg dismissed her appeal.

F. Mr Navalnyy (application no. 12899/23)

21. On 19 January 2022 an investigator charged Mr Navalnyy with misappropriating money gifted by private donors to his non-profit organisation, the Anti-Corruption Foundation. Additionally, Mr Navalnyy faced two counts of contempt of court in relation to a previous trial in 2021.

22. On 22 March 2022 the Lefortovskiy District Court of Moscow conducted a mobile court hearing in penal colony IK-2 in the Vladimir Region, where Mr Navalnyy was serving a custodial sentence previously imposed on him. The District Court found Mr Navalnyy guilty as charged. On 24 May 2022 the Moscow City Court dismissed an appeal by him.

23. Mr Navalnyy lodged a cassation appeal, arguing in particular that the trial had been improperly held on the premises of a penal facility. This

location had deprived his lawyers of access to electronic devices, thereby limiting their ability to adequately prepare his defence.

24. On 18 October and 28 December 2022 the Second Cassation Court of General Jurisdiction and the Supreme Court of the Russian Federation, respectively, dismissed his cassation appeals, finding no irregularities.

G. Mr Yasaveyev (application no. 13850/23)

25. In May 2022 a video showing protesters in Warsaw hurling red paint at the Russian ambassador to Poland was shared on social media. A criminal investigation was instituted in Russia on the charge of public justification of terrorism. On 8 August 2022 the Federal Security Service identified Mr Yasaveyev, a journalist who had been designated a "foreign agent", as a person of interest who might have shared the video. An investigator applied to a court for a search warrant for Mr Yasaveyev's flat and summer cottage. On 11 August 2022 the Sovetskiy District Court in Kazan issued the warrant. On 17 August 2022 the police searched Mr Yasaveyev's summer cottage, residence and car, and seized his laptops, smartphones and bank cards.

26. On 26 August 2022 Mr Yasaveyev lodged an appeal against the search warrant. On 17 October 2022 the Supreme Court of the Tatarstan Republic dismissed his appeal.

27. On 3 February 2023 the seized items were returned to Mr Yasaveyev.

RELEVANT LAW AND PRACTICE

I. INTERNATIONAL LAW

28. In its judgment in *Ivcher-Bronstein v. Peru* (competence), (24 September 1999, Series C No. 54), the Inter-American Court of Human Rights considered the validity of the Peruvian Government's withdrawal of its declaration recognising the contentious jurisdiction of that court (footnotes omitted):

> "32. The Court must settle the question of Peru's purported withdrawal of its declaration recognizing the contentious jurisdiction of the Court and of its legal effects. The Inter-American Court, as with any court or tribunal, has the inherent authority to determine the scope of its own competence (*compétence de la compétence/Kompetenz-Kompetenz*).
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> ...
>
> 34. The jurisdiction of the Court cannot be contingent upon events extraneous to its own actions. The instruments consenting to the optional clause concerning recognition of the Court's binding jurisdiction (Article 62(1) of the Convention) presuppose that the States submitting them accept the Court's right to settle any controversy relative to its jurisdiction. An objection or any other action taken by the State for the purpose of somehow affecting the Court's jurisdiction has no consequence whatever, as the Court retains the *compétence de la compétence*, as it is master of its own jurisdiction.

...

36. Acceptance of the Court's binding jurisdiction is an ironclad clause to which there can be no limitations except those expressly provided for in Article 62(1) of the American Convention. Because the clause is so fundamental to the operation of the Convention's system of protection, it cannot be at the mercy of limitations not already stipulated but invoked by States Parties for internal reasons.

37. The States Parties to the Convention must guarantee compliance with its provisions and its effects (*effet utile*) within their own domestic laws. This principle applies not only to the substantive provisions of human rights treaties (in other words, the clauses on the protected rights), but also to the procedural provisions, such as the one concerning recognition of the Tribunal's contentious jurisdiction ...

...

46. The optional clause recognizing the contentious jurisdiction of the Inter-American Court is of particular importance to the operation of the system of protection embodied in the American Convention. When a State consents to that clause, it binds itself to the whole of the Convention and is fully committed to guaranteeing the international protection of human rights that the Convention embodies. A State Party may only release itself from the Court's jurisdiction by renouncing the treaty as a whole ... The instrument whereby it recognizes the Court's jurisdiction must, therefore, be weighed in light of the object and purpose of the Convention as a human rights treaty.

...

50. A State that recognized the binding jurisdiction of the Inter-American Court under Article 62(1) of the Convention, is thenceforth bound by the Convention as a whole ...

54. For the foregoing reasons, the Court considers inadmissible Peru's purported withdrawal of the declaration recognizing the contentious jurisdiction of the Court effective immediately, as well as any consequences said withdrawal was intended to have ..."

29. Advisory opinion OC-26/20 of the Inter-American Court of Human Rights on *Denunciation of the American Convention on Human Rights and the Charter of the Organization of American States and the consequences for State human rights obligations* (Series A No. 26, 9 November 2020) reads as follows, in so far as relevant (footnote omitted):

"77. Accordingly, the protection organs of the inter-American system are authorized to continue processing petitions and contentious cases related to alleged violations of the American Convention and for internationally wrongful acts committed prior to the denunciation taking effect. Thus, the [Inter-American] Commission and the Inter-American Court may examine, within the framework of the system of individual petitions and contentious cases, an international wrongful act committed by a State that has denounced the Convention, even after the denunciation produces effects, (i) for any acts or omissions before and up to the date on which the denunciation takes effect; (ii) for acts of a continuous nature that commenced before the date on which the denunciation takes effect, such as in cases of enforced disappearance of persons, or (iii) for 'continuous or manifest' effects of acts that predate the moment in which the denunciation takes effect. ..."

II. DOMESTIC LAW

30. Russia's Federal Law no. 43-FZ of 28 February 2023 on termination of the application to the Russian Federation of the Council of Europe's international treaties provides that the Convention is to be regarded as having ceased to apply to the Russian Federation as of 16 March 2022.

COMPLAINTS

31. Ms Pivkina alleged several violations of the Convention. First, she submitted that her detention during the protests had constituted a violation of her right to freedom of peaceful assembly under Article 11. Secondly, she complained under Article 5 § 1 that her detention and escorting to the police station had been unnecessary and unlawful and had also exceeded three hours. Thirdly, she submitted that there had been a violation of Article 6 due to the courts' partiality, referring to the absence of a prosecutor during the proceedings and the courts' refusal to take oral evidence from the police officers who had detained her. Lastly, she complained of a violation of Article 2 of Protocol No. 7, in that that the custodial sentence had been enforced immediately, in breach of her right to lodge an appeal.

32. Mr Korolev submitted that his pre-trial detention had violated Article 5 § 3 of the Convention and had interfered with his right to freedom of expression under Article 10. He also alleged that his being placed in a cramped glass booth during detention hearings had violated his rights under Article 3 of the Convention.

33. Mr Kazusev complained of a violation of Articles 6 and 13 of the Convention, stating that he had been denied access to a court and had no effective domestic remedy to appeal against the denial of access.

34. Ms Yudina-Klyugvant alleged violations of Articles 10 and 18 of the Convention, arguing that there had been an interference with her right to freedom of expression and politically motivated persecution.

35. Ms Viktorova complained of a violation of Articles 3, 10 and 11 of the Convention, alleging that she had been ill-treated by the police ahead of the dispersal of the protest on 21 April 2021. She argued that this had deprived her of her rights to freedom of expression and freedom of peaceful assembly, and that no effective investigation had been carried out following the ill-treatment.

36. Mr Navalnyy claimed violations of Articles 6, 7 and 18 of the Convention, alleging that the criminal proceedings against him had been unfair and politically motivated. Firstly, he claimed that holding the trial in a penal colony had prevented his lawyers from using any electronic devices and had undermined their ability to prepare his defence. Secondly, he claimed that the courts had incorrectly merged the sentences previously imposed on him in two other criminal cases with the sentence in the present case.

37. Mr Yasaveyev claimed a violation of Article 8, taken alone and in conjunction with Article 13 of the Convention, and also of Article 10, alleging that the search of his home and cottage had been unlawful and unjustified, and that the removal of his laptops and smartphones had interfered with his journalistic activities.

THE LAW

I. THE COURT'S JURISDICTION IN CASES AGAINST THE RUSSIAN FEDERATION – GENERAL CONSIDERATIONS

38. The Court notes that the Russian Federation ceased to be a member of the Council of Europe on 16 March 2022 and that it also ceased to be a Party to the Convention on 16 September 2022 ("the termination date"). It further notes that at least some facts in the present applications took place after the termination date.

39. In those circumstances, the Court is called upon to determine whether it has jurisdiction to deal with the present applications. Since the scope of the Court's jurisdiction is determined by the Convention itself, in particular by its Article 32, rather than by the parties' submissions in a particular case, the Court must satisfy itself that it has jurisdiction in any case brought before it, and examine the question of its jurisdiction at every stage of the proceedings, of its own motion where necessary (see *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III, and *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 201, ECHR 2014).

40. Article 58 of the Convention provides:

> "1. A High Contracting Party may denounce the ... Convention only after the expiry of five years from the date on which it became a party to it and after six months' notice contained in a notification addressed to the Secretary General of the Council of Europe, who shall inform the other High Contracting Parties.
>
> 2. Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under [the] Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.
>
> 3. Any High Contracting Party which shall cease to be a member of the Council of Europe shall cease to be a Party to [the] Convention under the same conditions ..."

41. The Court has held that the text of Article 58, specifically the second and third paragraphs, indicates that a State ceasing to be a Party to the Convention owing to its cessation of membership of the Council of Europe is not released from its obligations under the Convention concerning any act performed by that State before the date on which it ceases to be a Party to the Convention (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, § 71, 17 January 2023).

42. This reading of Article 58 of the Convention was also confirmed in the Court's Resolution on the consequences of the cessation of membership of the Russian Federation to the Council of Europe in light of Article 58 of the European Convention on Human Rights, adopted by the Plenary Court on 22 March 2022. The Court stated that it "remain[ed] competent to deal with applications directed against the Russian Federation in relation to acts or omissions capable of constituting a violation of the Convention provided that they occurred until 16 September 2022" (see paragraph 2 of the Resolution).

43. The cessation of a Contracting Party's membership of the Council of Europe does not release it from its duty to cooperate with the Convention bodies. This duty continues for as long as the Court remains competent to deal with applications arising out of acts or omissions capable of constituting a violation of the Convention (see *Georgia v. Russia (II)* (just satisfaction) [GC], no. 38263/08, § 27, 28 April 2023).

44. Under the terms of Article 32 of the Convention, the Court's jurisdiction "extend[s] to all matters concerning the interpretation and application of the Convention and the Protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47". "In the event of dispute as to whether the Court has jurisdiction", the decision is a matter for the Court (see *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 53, 17 September 2009). Its principal role, as defined by Article 19, is "[t]o ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto". The Court is, moreover, the master of its own procedure and its own rules (see *Ukraine and the Netherlands v. Russia* (dec.) [GC], nos. 8019/16 and 2 others, § 383, 30 November 2022, with further references).

45. The Court's ability to determine its own jurisdiction is essential to the Convention's protection system. By acceding to the Convention, the High Contracting Parties have undertaken to comply not just with its substantive provisions but also with its procedural provisions, including Article 32, which gives the Court exclusive authority over disputes regarding its jurisdiction. The Court's jurisdiction cannot therefore be contingent upon events extraneous to its own operation, such as domestic legislation that seeks to affect or limit its jurisdiction in pending cases. Accordingly, Russia's domestic legislation, such as the Federal Law of 28 February 2023 (see paragraph 30 above), cannot change or diminish the scope of the Court's jurisdiction.

II. THE COURT'S JURISDICTION IN INDIVIDUAL CASES

A. Acts or omissions occurring up until the termination date

46. In cases where all acts and judicial decisions leading to the alleged Convention violations had occurred up until the termination date, the Court

has determined that it had jurisdiction to deal with them (see, among other authorities, *Fedotova and Others*, cited above, § 73; *Svetova and Others v. Russia*, no. 54714/17, § 28, 24 January 2023; *Kogan and Others v. Russia*, no. 54003/20, § 49, 7 March 2023; and *Ossewaarde v. Russia*, no. 27227/17, § 28, 7 March 2023).

B. Acts or omissions occurring after the termination date

47. In the case of Mr Kazusev, both the triggering act – the President's decree announcing a draft of reservists – and the applicant's judicial challenge to it occurred after the termination date (see paragraphs 14-15 above).

48. The Court reiterates that, in accordance with Article 58 of the Convention and the Plenary Court's resolution of 22 March 2022, the provisions of the Convention only bind a Contracting Party in relation to the acts and omissions that occurred up until the termination date (see paragraph 41 above). Consequently, the Court does not have jurisdiction to examine applications against the Russian Federation in so far as the alleged violations are based on acts or omissions that occurred after the termination date, such as those in the case of Mr Kazusev.

49. It follows that, as the respondent State was no longer a Party to the Convention at the time of the acts complained of, Mr Kazusev's application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

C. Acts or omissions spanning across the termination date

50. In the other cases now before the Court, the acts or omissions giving rise to the alleged violations of the Convention occurred or began before the termination date but their effects or a chain of appeals extended beyond that date. The question of whether an alleged violation is based on a fact occurring prior or subsequent to a particular date gives rise to difficulties when, as in the present case, the facts relied on fall partly within and partly outside the period of the Court's competence. Although this scenario is novel, it is similar to situations where the acts or omissions giving rise to the alleged violations spanned across the ratification date. In formulating the appropriate test, the Court will therefore draw upon its previous case-law, such as the judgment in *Blečić* (cited above).

1. The appropriate test

51. The Court reiterates that its temporal jurisdiction is to be determined in relation to the facts constitutive of the alleged interference. Thus far, the Court has had to address complaints where the violation took place prior to

the entry into force of the Convention for the respective State but where domestic remedies were finalised after the entry into force of the Convention. The Court held that the subsequent failure of remedies aimed at redressing that interference cannot bring it within the Court's temporal jurisdiction (ibid., § 77).

52. Thus, while an applicant who considers that a State has violated his or her rights guaranteed under the Convention is usually expected to have resort first to the means of redress available to him or her under domestic law, this exhaustion is not decisive for the issue of jurisdiction. If domestic remedies prove unsuccessful and the applicant subsequently applies to the Court, a possible violation of his or her rights under the Convention will not be caused by the failure to remedy the interference, but by the interference itself, it being understood that this may be in the form of a court judgment (ibid., § 78).

53. Therefore, in cases where the interference occurs before the termination date but the failure to remedy it occurs after the termination date, it is the date of the interference that must be retained for determining the Court's temporal jurisdiction. This approach avoids a situation where a State might evade its responsibility for the wrongs or damage caused while the Convention was in effect, prior to its termination. It also ensures that complaints are not treated differently based solely on the amount of time the exhaustion process may have taken, and it prevents the respondent State from evading responsibility by protracting remedial proceedings. Furthermore, this approach is compatible with the position of other international courts in a similar situation (see paragraph 29 above).

54. In order to establish the Court's temporal jurisdiction, it is therefore essential to identify, in each specific case, the exact time of the alleged interference. In doing so, the Court must consider both the facts of which the applicant complains and the scope of the Convention right alleged to have been violated (see *Blečić*, cited above, § 82).

2. Application of the test

(a) Complaints under Article 3 of the Convention: the case of Ms Viktorova

55. Ms Viktorova complained, in particular, that she had been ill-treated by the police ahead of the dispersal of the protest n 21 April 2021 and that no effective investigation had been conducted into the alleged ill-treatment (see paragraphs 18-20 above).

56. The Court is satisfied that the alleged ill-treatment of Ms Viktorova by the police was an instantaneous act which occurred before the termination date, when the Convention was in effect in respect of the respondent State. Accordingly, the issue of the Russian authorities' compliance with the substantive aspect of Article 3 falls within the Court's temporal jurisdiction.

57. Regarding the procedural aspect of Article 3, the Court reiterates that the obligation to conduct a prompt and effective investigation has evolved

into a separate and autonomous duty. Although triggered by acts concerning the substantive aspect, this obligation can give rise to a finding of a separate and independent "interference" within the meaning of the *Blečić* judgment (cited above, § 88, and see also *Šilih v. Slovenia* [GC], no. 71463/01, § 159, 9 April 2009). As regards the Court's jurisdiction over an investigation that spans across the termination date, the Court considers that the "significant proportion" test established for situations spanning across the ratification date is applicable. Thus, what is important for determining the Court's temporal jurisdiction is that a significant proportion of the required procedural steps – encompassing acts undertaken in the framework of criminal, civil, administrative or disciplinary proceedings capable of leading to the identification and punishment of those responsible or an award of compensation to the injured party – were or ought to have been carried out during the period when the Convention was in effect in respect of the respondent State (see *Šilih*, cited above, § 163, and *Janowiec and Others v. Russia* [GC], nos. 55508/07 and 29520/09, §§ 142-44, ECHR 2013).

58. Although in Ms Viktorova's case, the final judicial decision concluding the chain of appeals against a refusal to open a criminal investigation was given after the termination date (see paragraph 20 above), a significant proportion of the procedural steps had already been taken or ought to have been taken prior to the termination date. Ms Viktorova promptly reported her injuries to the competent authorities, provided medical evidence, and challenged the refusal to investigate before the courts and supervising authorities. In these circumstances, the Court finds that the procedural aspect of her complaint under Article 3 of the Convention also falls within the scope of its temporal jurisdiction.

59. The Court considers that it cannot, on the basis of the case file, determine whether Ms Viktorova's complaint of alleged ill-treatment and the lack of an effective investigation complied with the other admissibility criteria and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of Court, to give notice of this part of the application to the respondent Government.

(b) Complaints under Article 3 and Article 5 § 3 of the Convention relating to a "continuous situation": the case of Mr Korolev

60. Mr Korolev complained, in particular, that he had been held in inhuman conditions during each detention hearing, in breach of Article 3 of the Convention, and that his pre-trial detention had been imposed and extended in breach of Article 5 § 3 of the Convention (see paragraphs 8-13 above).

61. The Court considers that a "continuing situation" that spans across the termination date falls within its temporal jurisdiction only for the part occurring before that date. The reason for that approach lies in the understanding that from the day following the termination date, the

respondent State is no longer bound by the Convention, for example to ensure Convention-compliant conditions or to conduct judicial proceedings within a reasonable time. The result should be different, however, where it can be demonstrated that the situation was a "continuous" effect of an act that preceded the termination date (see, for a similar approach, the Advisory opinion of the Inter-American Court of Human Rights in paragraph 29 above). Thus, a period of detention approved before the termination date but extending beyond it will fall within the Court's temporal jurisdiction in its entirety on account of the "continuous" effect of the detention order. In contrast, a factual situation such as allegedly inhuman conditions of confinement, even if continuous, has no "overflowing" effects and stops at the termination date.

62. Applying this approach to Mr Korolev's case, the Court finds that his complaint under Article 3 about the conditions of his confinement in the courthouse falls within its jurisdiction only in the part concerning the hearings on 13 July and 8 September 2022. This part of the complaint must be notified to the respondent Government in accordance with Rule 54 § 2 (b) of the Rules of Court. In so far as the complaint concerns the conditions of his confinement at the hearing on 10 October 2022, it is incompatible *ratione temporis* with Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

63. As regards the complaint under Article 5 § 3 of the Convention, the period falling within the Court's jurisdiction extends from 11 July 2022, when Mr Korolev was taken into custody, to 11 October 2022. The latter date is the date until which the latest extension was approved before the termination date (see paragraph 14 above). This part of the complaint must be notified to the respondent Government in accordance with Rule 54 § 2 (b) of the Rules of Court. In so far as the complaint concerns Mr Korolev's detention after 11 October 2022, it is incompatible *ratione temporis* with Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4.

(c) Complaints under Article 6 of the Convention relating to the fairness of a trial: the cases of Ms Pivkina and Mr Navalnyy

64. Ms Pivkina complained under Article 6 § 1 of the Convention of a breach of fair-trial guarantees in three sets of administrative proceedings (see paragraphs 6-7 above). Mr Navalnyy complained of a violation of his right to a fair trial in criminal proceedings (see paragraphs 21-24 above).

65. The Court notes at the outset that the administrative proceedings against Ms Pivkina should be classified as "criminal" within the autonomous meaning of Article 6 of the Convention owing to the possibility – which in fact materialised – of a custodial sentence in connection with the charges on which she was tried (see *Mikhaylova v. Russia*, no. 46998/08, §§ 57-74, 19 November 2015).

66. The Court's primary concern under Article 6 § 1 is to evaluate the overall fairness of the proceedings. Compliance with the requirements of a fair trial must be examined in each case having regard to the development of the proceedings as a whole and not on the basis of an isolated consideration of one particular aspect or one particular incident, although it cannot be ruled out that a specific factor may be so decisive as to enable the fairness of the trial to be assessed at an earlier stage in the proceedings (see *Ibrahim and Others v. the United Kingdom* [GC], nos. 50541/08 and 3 others, §§ 250-51, 13 September 2016).

67. As a general rule, a defendant cannot claim to be a victim of a violation of Article 6 before he or she is finally convicted (see *Sakhnovskiy v. Russia* [GC], no. 21272/03, § 77, 2 November 2010, and, more recently, *Webster v. the United Kingdom* (dec.), no. 32479/16, § 28, 24 March 2020).

68. As regards the criminal proceedings conducted under Russian law, the Court has found that the two-tier cassation procedure is the last level of jurisdiction which provides defendants with an opportunity to seek judicial review and obtain an acknowledgment of any violation of their rights, as well as domestic redress (see *Anikeyev and Yermakova v. Russia* (dec.), nos. 1311/21 and 10219/21, §§ 26-27, 13 April 2021). In administrative proceedings the last ordinary level of jurisdiction is a court of appeal (see *Smadikov v. Russia* (dec.), no. 10810/15, 31 January 2017).

69. In Ms Pivkina's case, the appeal judgment in the first set of proceedings was given on 17 August 2022, that is, before the termination date, and the other two on 29 September 2022, after that date. In Mr Navalnyy's case, the judgment of the highest cassation court was handed down on 28 December 2022.

70. Accordingly, only the complaint by Ms Pivkina concerning the first set of administrative proceedings falls within the Court's jurisdiction. This complaint must be notified to the respondent Government in accordance with Rule 54 § 2 (b) of the Rules of Court. The remainder of Ms Pivkina's and Mr Navalnyy's complaints under this provision fall outside the Court's jurisdiction. They are incompatible *ratione temporis* with Article 35 § 3 of the Convention and must be rejected in accordance with Article 35 § 4. This finding also applies to Mr Navalnyy's complaints under Articles 7 and 18 of the Convention, which arise from the same set of proceedings.

(d) Complaints under Articles 8, 10 and 11 of the Convention: the cases of Ms Pivkina, Mr Korolev, Ms Viktorova, Ms Yudina-Klyugvant and Mr Yasaveyev

71. Mr Yasaveyev relied on Articles 8 and 10 of the Convention to complain of a search in his home and cottage and the seizure of his electronic devices. Mr Korolev and Ms Yudina-Klyugvant complained of a violation of their right to freedom of expression under Article 10 of the Convention.

Ms Pivkina and Ms Viktorova alleged a violation of Article 11 of the Convention.

72. In these cases, the acts that gave rise to the complaints – expressive conduct, participation in a protest or a search of the home – occurred before the termination date, while the final appeal decision was given after that date. Accordingly, the Court needs to determine which facts were constitutive of the alleged interference (see paragraphs 53-54 above).

(i) Article 8 of the Convention

73. The Court reiterates that search and seizure of an applicant's possessions are instantaneous acts which, despite their enduring effects, do not give rise to any continuous situation (see *Veeber v. Estonia (no. 1)*, no. 37571/97, § 55, 7 November 2002).

74. In the case of Mr Yasaveyev, the search of his home and summer cottage took place on 17 August 2022, before the termination date. The determination of his appeal against the search warrant – which occurred after that date – should be regarded as the exercise of an available domestic remedy rather than a new instance of interference (see paragraphs 25-26 above). His complaint therefore falls within the scope of the Court's jurisdiction and must be notified to the respondent Government in accordance with Rule 54 § 2 (b) of the Rules of Court.

(ii) Article 10 of the Convention

75. Interference with the right to freedom of expression may take a variety of forms. Criminal-law measures that have a chilling effect on freedom of expression can confer in certain situations the status of a "victim" of an alleged violation on affected individuals, even if criminal proceedings against them have not ended in a conviction (see *Yefimov and Youth Human Rights Group v. Russia*, nos. 12385/15 and 51619/15, § 34, 7 December 2021, with further references). While a deprivation of liberty can decisively indicate the existence of interference in some cases, in other cases the indication results from the cumulative effect of the proceedings as a whole or the existence of other "genuine and effective restrictions" affecting the applicants (ibid., § 36).

76. It follows that the acts constitutive of interference must be taken to encompass any restrictive measures taken against an applicant in connection with his or her expressive conduct, and the Court's jurisdiction will be based on whether such acts occur before or after the termination date.

77. Applying this test to the circumstances of the present cases, the Court notes that Mr Korolev was arrested and detained on remand in connection with his statements on social media (see paragraphs 8-12 above) and that administrative-offence proceedings were instituted against Ms Yudina-Klyugvant in connection with the anti-war stickers she had put on her car (see

paragraphs 16-17 above). The Court also takes into account the fact that the proceedings against Ms Yudina-Klyugvant ended in her conviction (see, by contrast, *Metis Yayıncılık Limited Şirketi and Sökmen v. Turkey* (dec.), no. 4751/07, §§ 35-36, 20 June 2017), which was pronounced at the time when the Convention was still in force in respect of the respondent State, even though it became final after that date. As the acts constitutive of interference with the right to freedom of expression occurred before the termination date, they fall within the scope of the Court's temporal jurisdiction.

78. In the case of Mr Yasaveyev, the search of his places of residence and seizure of his smartphones and laptops appear to have been connected with his journalistic activities (see paragraph 25 above) and could therefore, on arguable grounds, constitute interference with his right to freedom of expression (see *Avaz Zeynalov v. Azerbaijan*, nos. 37816/12 and 25260/14, § 98, 22 April 2021). As the search and seizure occurred before the termination date, they also fall within the Court's jurisdiction.

79. The complaints by Mr Korolev, Ms Yudina-Klyugvant and Mr Yasaveyev of an alleged violation of the right to freedom of expression must therefore be notified to the respondent Government in accordance with Rule 54 § 2 (b) of the Rules of Court.

(iii) Article 11 of the Convention

80. As for the interference with the right to freedom of assembly, the Court reiterates that it does not have to involve an outright ban, whether legal or *de facto*. It can take various forms, such as measures taken by authorities before or during an assembly, as well as punitive measures taken afterwards. For example, a refusal to allow an individual to travel to attend a meeting also constitutes interference (see *Kasparov v. Russia*, no. 53659/07, § 66, 11 October 2016). Similarly, measures taken by authorities during a rally, such as dispersing the rally or arresting participants, and the imposition of penalties on those who took part in it, amount to interference (see *Kasparov and Others v. Russia*, no. 21613/07, § 84, 3 October 2013, with further references).

81. Ms Viktorova was arrested on her way to a protest, and Ms Pivkina was arrested during three protests she attended (see paragraphs 18 and 5 above). The arrests brought about an end to their participation in an assembly, thus constituting an interference with their right to freedom of assembly. Since those acts occurred before the termination date, they fall within the scope of the Court's jurisdiction and must therefore be notified to the respondent Government in accordance with Rule 54 § 2 (b) of the Rules of Court.

(e) Remaining complaints under Article 5 of the Convention and Article 2 of Protocol No. 7: the case of Ms Pivkina

82. There remain two complaints by Ms Pivkina: firstly, that her escorting to the police station and her detention there were unnecessary and irregular from the standpoint of domestic law; and, secondly, that the custodial sentence was enforced immediately, undermining her right of appeal.

83. All the instances of deprivation of liberty which Ms Pivkina complained of occurred before the termination date. The Court reiterates that both an excessive and unrecorded detention at a police station and the immediate enforcement of a custodial sentence are acts capable of constituting a violation under Article 5 of the Convention and Article 2 of Protocol No. 7 respectively (see *Navalnyy and Yashin v. Russia*, no. 76204/11, §§ 92-97, 4 December 2014, and *Martynyuk v. Russia*, no. 13764/15, §§ 37-41, 8 October 2019). Her subsequent complaints about those matters to the courts of appeal, which gave their decisions partly before and partly after the termination date, should be regarded as the exercise of an available domestic remedy rather than a new or independent instance of interference.

84. Since the acts constitutive of interference fall within the scope of the Court's jurisdiction, notice of these complaints must be given to the respondent Government in accordance with Rule 54 § 2 (b) of the Rules of Court.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

85. Lastly, as regards the remaining complaints by Mr Yasaveyev and Ms Yudina-Klyugvant, having regard to all the material in its possession, and in so far as these complaints fall within its jurisdiction, the Court finds that there is no appearance of a violation of the provisions relied on. It follows that this part of their applications must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

1. *Decides* to adjourn the examination of the complaints concerning:
   (a) alleged ill-treatment and the lack of an effective investigation in the case of Ms Viktorova;
   (b) the allegedly inhuman conditions of Mr Korolev's confinement at the courthouse during the period prior to the termination date;
   (c) the allegedly excessive length of Mr Korolev's detention in the period up until 11 October 2022;
   (d) the alleged breach of the right to a fair trial in the first set of administrative proceedings against Ms Pivkina;
   (e) the search of Mr Yasaveyev's places of residence;

(f) the alleged interference with Mr Korolev's, Ms Yudina-Klyugvant's and Mr Yasaveyev's right to freedom of expression;
(g) the alleged interference with Ms Pivkina's and Ms Viktorova's right to freedom of assembly; and
(h) the deprivation of liberty to which Ms Pivkina was subjected by the police and the alleged breach of her right of appeal in criminal matters;

2. *Declares* the remainder of the applications inadmissible.

Done in English, and notified in writing on 29 June 2023.

Olga Chernishova
Deputy Registrar

Pere Pastor Vilanova
President

Appendix

List of applications:

No.	Application no.	Case name	Lodged on	Applicant Year of birth Place of residence	Represented by
1.	2134/23	Pivkina v. Russia	03/12/2022	**Yelena Ivanovna PIVKINA** 1997 Moscow	
2.	2156/23	Korolev v. Russia	31/12/2022	**Vsevolod Anatolyevich KOROLEV** 1987 St Petersburg	Mariya Sergeyevna ZYRYANOVA
3.	4556/23	Kazusev v. Russia	16/01/2023	**Vladimir Yevgenyevich KAZUSEV** 1963 St Petersburg	
4.	7800/23	Yudina-Klyugvant v. Russia	19/01/2023	**Yuliya Grigoryevna YUDINA-KLYUGVANT** 1974 Moscow	Ilnur Ilgizovich SHARAPOV
5.	11065/23	Viktorova v. Russia	21/02/2023	**Kseniya Vladimirovna VIKTOROVA** 1977 St Petersburg	Dmitriy Georgiyevich GERASIMOV
6.	12899/23	Navalnyy v. Russia	15/02/2023	**Aleksey Anatolyevich NAVALNYY** 1976 Moscow	Olga Olegovna MIKHAYLOVA
7.	13850/23	Yasaveyev v. Russia	06/02/2023	**Iskender Gabdrakhmanovich YASAVEYEV** 1971 Kazan	Stanislav Aleksandrovich SELEZNEV