



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

THIRD SECTION

CASE OF RODINA AND OTHERS v. RUSSIA

*(Applications nos. 57219/15 and 2 others –
see appended list)*

JUDGMENT

STRASBOURG

30 September 2021

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

In the case of Rodina and Others 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 list of applicants and the relevant details of the applications are set out in the appended table.

4. The applicants complained of the unlawful detention (deprivation of liberty). In application no. 57219/15 the applicant also raised other complaints under the provisions of the Convention.

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 § 1 OF THE CONVENTION

6. The applicants complained that their unrecorded detention had been unlawful. They relied, expressly or in substance, on Article 5 § 1 of the Convention, which reads as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

(a) the lawful detention of a person after conviction by a competent court;

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(b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.”

7. The Court reiterates that the expressions “lawful” and “in accordance with a procedure prescribed by law” in Article 5 § 1 essentially refer back to national law and state the obligation to conform to the substantive and procedural rules thereof. It is in the first place for the national authorities, notably the courts, to interpret and apply domestic law. However, since under Article 5 § 1 failure to comply with domestic law entails a breach of the Convention, it follows that the Court can and should exercise a certain power to review whether this law has been complied with (see, among numerous other authorities, *Benham v. the United Kingdom*, 10 June 1996, §§ 40-41 *in fine*, Reports of Judgments and Decisions 1996 III). It further reiterates that the absence of an arrest record must in itself be considered a most serious failing, as it has been the Court’s constant view that unrecorded detention of an individual is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and discloses a most grave violation of that provision. The absence of a record of such matters as the date, time and location of detention, the name of the detainee, the reasons for his detention and the name of the person effecting it must be seen as incompatible with the requirement of lawfulness and with the very purpose of Article 5 of the Convention (see, among other authorities, *Fortalnov and Others v. Russia*, nos. 7077/06 and 12 others, § 76, 26 June 2018).

8. In the leading cases of *Fortalnov and Others* (cited above), *Rozhkov v. Russia* (no. 2, (no. 38898/04, §§ 91-96, 31 January 2017), *Butkevich v. Russia* (no. 5865/07, § 67, 13 February 2018), *Kuptsov and Kuptsova v. Russia*, (no. 6110/03, § 81, 3 March 2011) and *Tsvetkova and Others v. Russia* (nos. 54381/08 and 5 others, §§ 121-22, 10 April 2018), 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 applicants were detained in the absence of arrest records, contrary to domestic law requirements and the “lawfulness” guarantee of Article 5 of the Convention.

10. These complaints are therefore admissible and disclose a breach of Article 5 § 1 of the Convention.

III. OTHER ALLEGED VIOLATIONS UNDER WELL-ESTABLISHED CASE-LAW

11. In application no. 57219/15, the applicant submitted other complaints which also raised issues under the Convention, given the relevant well-established case-law of the Court (see the 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 also disclose violations of the Convention in the light of its well-established case-law (see *Dirdizov v. Russia*, no. 41461/10, §§ 108-11, 27 November 2012, concerning pre-trial detention in the absence of relevant and sufficient reasons, and *Idalov v. Russia* [GC], no. 5826/03, §§ 154-58, 22 May 2012, concerning the lack of a speedy review of the detention matters).

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

12. 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.”

13. Regard being had to the documents in its possession and to its case-law (see, in particular, *Biryuchenko and Others v. Russia* [Committee], no. 1253/04 and 2 others, § 96, 11 December 2014), the Court considers it reasonable to award the sums indicated in the appended table and dismisses the remainder of the applicants’ claims for just satisfaction.

14. 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 applications admissible;
3. *Holds* that there has been a violation of Article 5 § 1 of the Convention concerning the unlawful detention (deprivation of liberty);
4. *Holds* that there has been a violation of the Convention as regards the other complaints raised under well-established case-law of the Court (see the appended table);
5. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months, the amounts 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 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 applicants' claims for just satisfaction.

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
Acting Deputy Registrar

Darian Pavli
President

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APPENDIX

List of applications raising complaints under Article 5 § 1 of the Convention
(unlawful detention (deprivation of liberty))

No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Start date of unauthorised detention	End date of unauthorised detention	Specific defects	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros) ¹
1.	57219/15 13/11/2015	Arina Aleksandrovna RODINA 1974	Moskalenko Karinna Akopovna Strasbourg	21/09/2015, 06.40 p.m.	21/09/2015, 10.20 p.m.	<p>Detention (criminal) for more than three hours without any written record (see <i>Fortalnov and Others v. Russia</i>, nos. 7077/06 and 12 others, §§ 76-79, 26 June 2018).</p> <p>Detention without a court order beyond the 48-hour time-limit (see <i>Fortalnov and Others v. Russia</i>, nos. 7077/06 and 12 others, § 82, 26 June 2018) – A court authorised the applicant's arrest and remand in custody on 23/09/2015, that is more than 48 hours after the arrest.</p>	<p>Art. 5 (3) - excessive length of pre-trial detention - since 21/09/2015 to 21/03/2016 (6 months) - fragility of the reasons employed by the courts, use of assumptions, in the absence of any evidentiary basis, of the risks of absconding or obstructing justice, failure to examine the possibility of applying other measures of restraint;</p> <p>Art. 5 (4) - excessive length of judicial review of detention:</p> <p>Gagarinskiy District Court of Moscow, 23/09/2015 (appealed on 25/09/2015) - Moscow City Court, 19/10/2015 (26 days)</p> <p>Gagarinskiy District Court of Moscow, 22/10/2015 (appealed on 25/10/2015) - Moscow City Court, 18/11/2015 (27 days)</p> <p>Gagarinskiy District Court of Moscow, 24/11/2015 (appealed on 27/11/2015) - Moscow City Court, 23/12/2015 (29 days)</p> <p>Gagarinskiy District Court of Moscow, 25/12/2015 (appealed on 27/12/2015) – Moscow City Court, 04/05/2016 (129 days).</p>	3,900

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No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Start date of unauthorised detention	End date of unauthorised detention	Specific defects	Other complaints under well-established case-law	Amount awarded for pecuniary and non-pecuniary damage and costs and expenses per applicant (in euros) ¹
2.	18276/17 23/06/2017	Sergey Yuryevich SHUMKOV 1977	Pakin Konstantin Vladimirovich Velikiy Novgorod	24/11/2016 at 2.50 p.m.	24/11/2016 at 11.30 p.m.	Detention (criminal) for more than three hours without any written record (see Fortalnov and Others v. Russia, nos. 7077/06 and 12 others, §§ 76-79, 26 June 2018)		3,000
3.	13420/18 19/02/2018	Aleksandr Viktorovich YAROSHENKO 1985		29/05/2015 at 2.55 a.m.	31/05/2015 at 1.40 a.m.	Detention as an administrative suspect: beyond the three-hour statutory period (Art. 27.5(1)-(4) CAO) (see Tsvetkova and Others v. Russia, nos. 54381/08 and 5 others, §§ 121-22, 10 April 2018)		3,000

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