



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

## THIRD SECTION

### CASE OF GASHKOV AND SATIROV v. RUSSIA

*(Applications nos. 31147/20 and 772/21)*

## JUDGMENT

STRASBOURG

15 December 2022

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

**In the case of Gashkov and Satirov v. Russia,**

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

Darian Pavli, *President,*

Ioannis Ktistakis,

Andreas Zünd, *judges,*

and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 24 November 2022,

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 deficiencies in proceedings for review of the lawfulness of detention. They 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 § 4 OF THE CONVENTION

6. The applicants complained of the deficiencies in the proceedings for review of the lawfulness of detention. They 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 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, *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).

8. In the leading cases of *Idalov v. Russia* [GC], no. 5826/03, §§ 154-58, 22 May 2012; *Khodorkovskiy v. Russia*, no. 5829/04, §§ 246-48, 31 May 2011; and *Lebedev v. Russia*, no. 4493/04, §§ 95-108, 25 October 2007, 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 proceedings for the review of the lawfulness of the applicants’ 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.

10. These complaints are therefore admissible and disclose a breach of Article 5 § 4 of the Convention.

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

11. The applicants submitted other complaints which also raised issues under 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 also disclose violations of the

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 *L.M. and Others v. Russia*, nos. 40081/14 and 2 others, §§ 149-52, 15 October 2015, and *M.D. and Others v. Russia*, nos. 71321/17 and 8 others, §§ 124-27, 14 September 2021, concerning detention pending expulsion ordered under the CAO, that exceeded the duration reasonably required for the purpose pursued).

#### 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, *Mumanzhinova and Others v. Russia*, nos. 724/18 and 8 others, 8 October 2019 (Committee)), 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 further 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 these applications disclose a breach of Article 5 § 4 of the Convention concerning the deficiencies in the proceedings for review of the lawfulness of detention;
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 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, the payment of which is to be made to the applicants' representatives before the Court, for subsequent transmission to the applicants;
  - (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 15 December 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina  
Acting Deputy Registrar

Darian Pavli  
President

List of applications raising complaints under Article 5 § 4 of the Convention  
(deficiencies in proceedings for review of the lawfulness of detention)

No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Relevant first-instance court decision on review of lawfulness of detention	Appeal instance court and date of decision	Procedural deficiencies	Other complaints under well-established case-law	Amount awarded for non-pecuniary damage and costs and expenses (in euros)  [1]
1.	<u>31147/20</u> 18/06/2020	<b>Sergey Viktorovich GASHKOV</b> 1980	Drozdova Yelena Yevgenyevna Georgiyevsk	Oktyabrskiy District Court of 11/10/2019, reviewing the lawfulness of the applicant's detention	Stavropol Regional Court 15/01/2020 on the appeal lodged on 15/11/2019 (registered with the Regional Court on 20/11/2019)	Excessive length of proceedings reviewing lawfulness of the applicant's detention (see <i>Idalov v. Russia</i> [GC], no. <u>5826/03</u> , §§ 154-58, 22 May 2012, <i>Mamedova</i> , no. <u>7064/05</u> , § 96, 1 June 2006)	Art. 5 § 1 (f) - unlawful detention. Placed in detention in view of expulsion by the Oktyabrskiy District Court of Stavropol on 02/03/2019. Released by decision of the Oktyabrskiy District Court of Stavropol, on 22/03/2021. Following the Ukrainian authorities' response of 10 April 2019, reiterated on 10 January 2020 and on 9 and 19 March 2021, that they could not confirm that the applicant - who allegedly lived in Luhank Region - had the Ukrainian citizenship, the Russian authorities did not properly assess whether the applicant's removal to Ukraine or other country remained a "realistic prospect", given also that he claimed to be stateless. In this context, the applicant's detention for almost two years after 10 April 2019 exceeded what was reasonably required for the purpose pursued (see L.M. and Others v. Russia, nos. <u>40081/14</u> and 2 others, §§ 149-52, 15 October 2015, and M.D. and Others v. Russia, nos. <u>71321/17</u> and 8 others, §§ 124-27, 14 September 2021).	6,500
2.	<u>772/21</u> 01/12/2020	<b>Sergey Mikhaylovich SATIROV</b> 1973	Tseytlina Olga Pavlovna St Petersburg	30/03/2020 application for release from	St. Petersburg City Court decisions of	Excessive length of proceedings reviewing	Art. 5 § 1 (f) - unlawful detention – placement in administrative	5,500

				<p>detention with the Frunzenskiy District Court of St Petersburg</p> <p>Frunzenskiy District Court decisions of 09/06/2020 and, after quashing with remittal upon appeal, 14/08/2020, dismissing the request</p>	<p>09/07/2020 (quashing the first-instance judgment of 09/06/2020 with remittal) and 15/10/2020</p>	<p>lawfulness of the applicant's detention (see <i>Idalov v. Russia</i> [GC], no. <u>5826/03</u>, §§ 154-58, 22 May 2012, <i>Mamedova v. Russia</i>, no. <u>7064/05</u>, § 96, 1 June 2006)</p>	<p>detention in view of expulsion by The Frunzenskiy District Court of St Petersburg, 17/05/2019. Released by decision of the Frunzenskiy District Court of St Petersburg, 12/05/2021 (date of release 19/05/2021, according to the applicant). In particular after the Georgian authorities' response of 02/09/2019 that the applicant does not hold Georgian citizenship and they would not issue a certificate for return, the Russian authorities did not assess at regular intervals whether the applicant's removal remained a "realistic prospect", given also that he claimed to be stateless. In this context, the applicant's detention during the above time frame exceeded what was reasonably required for the purpose pursued (see <i>L.M. and Others</i>, cited above, §§ 149-52, and <i>M.D. and Others</i>, cited above, §§ 124-27).</p>
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<sup>[1]</sup> Plus any tax that may be chargeable to the applicants. The payment of the amounts awarded is to be made to the applicants' representatives before the Court, for subsequent transmission to the applicants.