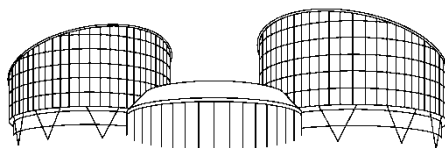


## **La Corte EDU condanna l'eccessiva e irragionevole durata della custodia cautelare (CEDU, sez. III, sent. 28 luglio 2022, ric. n. 75115/17 e altri)**

Con la decisione resa al caso in esame, la Corte di Strasburgo ha condannato la Federazione russa per violazione dell'art. 5 §3 della Convenzione. I ricorrenti avevano lamentato l'eccessiva e irragionevole durata della loro custodia cautelare e, quindi, il pregiudizio subito per non aver ottenuto entro un termine plausibile lo svolgimento del processo. Nel decidere il caso di specie, i giudici di Strasburgo hanno rinviato ai principi generali concernenti il diritto al processo entro un termine ragionevole, enucleati in seno alla pregressa giurisprudenza.

In generale, infatti, la questione se un periodo di detenzione sia ragionevole o meno non può essere valutata in astratto, ma piuttosto caso per caso tenuto conto delle specifiche circostanze. La prosecuzione della detenzione può essere giustificata in un determinato caso solo se vi sono indicazioni puntuali circa la sussistenza di un reale interesse pubblico che, nonostante la presunzione di innocenza, prevale sulla regola del rispetto della libertà individuale sancita dall'articolo 5 della Convenzione. Inoltre, spetta alle autorità giudiziarie nazionali garantire che, in casi specifici, la custodia cautelare di un imputato non superi un termine ragionevole. A tal fine esse devono, tenendo debitamente conto del principio della presunzione di innocenza, esaminare tutti i fatti a favore o contro l'esistenza del predetto requisito di interesse pubblico che giustifichi una deroga all'articolo 5, la quale deve essere debitamente motivata nell'atto di rilascio. In applicazione di tali regole generali, e sulla base del materiale a essa sottoposto, la Corte ha ritenuto che nel caso di specie la durata della custodia cautelare dei ricorrenti sia stata eccessiva e, per conseguenza, in base alle doglianze prospettate vi sia stata violazione dell'Articolo 5 § 3 della Convenzione.

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

THIRD SECTION

**CASE OF XXX v. RUSSIA**

*(Applications nos. 75115/17 and 11 others – see appended list)*

JUDGMENT  
STRASBOURG

18 June 2019

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

**In the case of XXX v. Russia,**

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

Darian Pavli, *President*,

Andreas Zünd,

Mikhail Lobov, *judges*,

and Viktoriya Maradudina, *Acting Deputy Section Registrar*,

Having deliberated in private on 2 June 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 excessive length of their pre-trial detention. Some applicants 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 § 3 OF THE CONVENTION
  6. The applicants complained principally that their pre-trial detention had been unreasonably long. They 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 these complaints. Having regard to its case-law on the subject, the Court considers that in the instant case the length of the applicants' pre-trial detention was excessive.

10. These complaints are therefore admissible and disclose a breach of Article 5 § 3 of the Convention.

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

11. Some 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 Convention in the light of its findings in *Idalov v. Russia* [GC], no. 5826/03, §§ 154-158, 22 May 2012.

### IV. REMAINING COMPLAINTS

12. In applications nos. 2957/19 and 62921/19 the applicants also raised other complaints under various Articles of the Convention.

13. The Court has examined the applications listed in the appended table 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, these complaints either do not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or do not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto.

14. It follows that this part of the applications must be rejected in accordance with Article 35 § 4 of the Convention.

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

17. 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 complaints concerning the excessive length of pre-trial detention and the other complaints under well-established case-law of the Court, as set out in the appended table, admissible, and the remainder of applications nos. 2957/19 and 62921/19 inadmissible;
3. *Holds* that these complaints disclose a breach of Article 5 § 3 of the Convention concerning the excessive length of pre-trial 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;
  - (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.

Done in English, and notified in writing on 28 July 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Viktoriya Maradudina Acting Deputy Registrar  
Darian Pavli President