



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

THIRD SECTION

CASE OF CHALDAYEV v. RUSSIA

(Application no. 33172/16)

JUDGMENT

STRASBOURG

28 May 2019

FINAL

28/08/2019

This judgment became final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Chaldayev v. Russia,

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

Vincent A. De Gaetano, *President*,

Branko Lubarda,

Helen Keller,

Dmitry Dedov,

Pere Pastor Vilanova,

Alena Poláčková,

Georgios A. Serghides, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 28 May 2019,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 33172/16) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Artur Rinatovich Chaldayev (“the applicant”), on 3 February 2016.

2. The applicant was represented by Mr M.V. Tolmacheva, a lawyer practising in Saransk. The Russian Government (“the Government”) was represented by its agents, Mr A. Fedorov, former representative of the Russian Federation with the European Court of Human Rights, and then by Mr M. Galperin, its current representative.

3. The applicant alleged that his right to respect for his private and family life had been violated by various restrictions on family visits imposed on him during his detention, and complained that he had suffered discriminatory treatment in exercising that right.

4. On 27 April 2017 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1986 and is currently detained in Ruzayevka.

6. On 24 January 2013 the applicant was placed under judicial investigation on suspicion of involvement in armed robbery. On the same day he was ordered not to leave town as a preventive measure.

7. On 29 March 2013 the order not to leave town was replaced with a pre-trial detention order.

8. Between 29 March 2013 and December 2015 the applicant was detained alternately in remand prisons nos. IZ-13/1 and IZ-13/2 in the town of Saransk, and prison hospital no. LPU-21.

9. By judgment of 18 May 2015, Oktiabrski district court in Saransk (“the court”) sentenced the applicant to thirteen years’ imprisonment. He appealed against that decision.

10. On 1 June 2015 the applicant’s parents requested permission to visit their son.

11. By letter of 3 June 2015, Judge P. of the court rejected that request on the grounds that the parents had already visited their son on 28 May 2015. On 8 June 2015 the applicant’s parents received the letter from Judge P. rejecting their request. They complained about that decision before the President of the court, arguing that no reasons had been given for rejecting their request. In their complaint they reiterated their request for permission to visit their son.

12. By letter of 29 July 2015, received by the applicant’s parents on 4 August 2015, the acting President of the court rejected their complaint. In his letter he pointed out that pursuant to section 18 (3) of Law no. 103-FZ of 15 July 1995 on the pre-trial detention of persons suspected or accused of criminal offences (“Law no. 103-FZ”), the applicant was only entitled to two short visits per month, provided that he had obtained the relevant authorisation from the court responsible for the criminal case against him. Emphasising that the limitation of the number of family visits was one of the restrictions laid down in the regulations on pre-trial detention, the President of the court asserted that there had been no reason to allow the applicant’s parents to pay him a short visit.

13. On 10 August 2015 the applicant requested leave to receive a visit from his parents.

14. By letter of 12 August 2015 the acting President of the court rejected the applicant’s request without providing reasons for that refusal.

15. On 5 October 2015 the applicant’s parents submitted to the Supreme Court of the Republic of Mordovia (“the Supreme Court”), before which the appeal lodged by their son against his conviction was pending, two requests for authorisation to visit their son, one for a short visit and the other for a long visit.

16. By letter of 6 October 2015 the Supreme Court rejected those requests. The letter stated that only persons whose criminal conviction had become final and who had been placed in a prison in order to serve their sentence were entitled to long family visits. Furthermore, relying on Article 77-1 of the Code of criminal sentence enforcement and having regard to the fact that the applicant’s conviction had not become final, the Supreme Court considered that the type and number of visits to which the applicant was entitled should be established pursuant to section 18 (3) of the Law on pre-trial detention. It

concluded that the applicant was not entitled to a long visit and that, moreover, there was no call to authorise him to receive a short visit from his parents.

17. On 16 October 2015 the governor of remand prison no. IZ-13/1 refused to allow the applicant's parents to pay him a long visit for the same reasons as those given by the Supreme Court in its letter of 6 October 2015.

18. Meanwhile, on 11 October 2015, the applicant had lodged a complaint with the Public Prosecutor of the Republic of Mordovia concerning the number of and arrangements for the short visits which he had received so far. More specifically, as regards the conduct of those visits, he alleged that they had taken place in a room fitted with a separating wall which had prevented any physical contact with his parents, and also that he had only been able to converse with them over a telephone tapped by prison officers.

19. On 29 October 2015 the prosecutor forwarded that complaint to the governor of remand prison no. IZ-13/1. By letter of 13 November 2015, the governor replied to the applicant that the arrangements of the impugned visits had complied with section 16 of the rules on the detention regime in remand prisons. The letter stated, in particular, that during the visits paid to him in the aforementioned prison his visitors had had to be separated from him by a wall, and it had been permissible to listen in on his conversations with his parents.

20. On 29 October 2015 the applicant's conviction was upheld by the appellate court, and consequently became final.

21. On 27 November 2015 the applicant was transferred to a correctional colony to serve his prison sentence.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Arrangements for visits to detainees suspected or accused of criminal offences

1. Law no. 103-FZ of 15 July 1995 on the pre-trial detention of persons suspected or accused of criminal offences

22. Law no. 103-FZ lays down the rights and obligations of persons placed in pre-trial detention.

23. Section 17 (1) 5 of that law states that detainees are entitled to be visited by their relatives and other persons specified in section 18 of the same law.

24. Section 18 of Law no. 103-FZ provides that a detainee may, with the written authorisation of the official or body responsible for the criminal case against him or her, receive up to two visits per month from his family or other persons, lasting a maximum three hours each (see paragraph 3). The visits are conducted under the supervision of a prison guard. In the event of attempts to hand over prohibited objects, substances or food items to the detainee or to

communicate information liable to impede the judicial investigation or contribute to the commission of offences, the visit must be interrupted (see paragraph 4).

2. Remand prison regulations

25. By Decree no.189 of 14 October 2005, the Ministry of Justice approved the remand prison regulations (“the regulations”), complementing the provisions of Law no. 103-FZ.

26. Paragraph 139 of the regulations provides that a detainee is only entitled to two visits per month, lasting a maximum three hours each and limited to two adult visitors per visit, and that written authorisation is required detailing the visitors’ identities for each visit. The provision in question states that a detainee who has not been finally convicted can obtain authorisation for a visit by contacting the judge presiding over the judicial bench which delivered judgment or the president of the court of first instance.

27. Paragraph 143 of the regulations provides that visits must take place in the presence of a remand prison guard in a specially adapted room, the detainees and their visitor(s) being separated by a dividing wall preventing the handing over of any item but not preventing visual and aural contact. The same provision specifies that conversations between detainees and their visitor(s) must be channelled via a communications facility which can be tapped by the prison officers.

1. Case-law of the Constitutional Court

28. By decision no.176-O of 13 June 2002, the Constitutional Court rejected a complaint lodged by Mr S., who was being held in pre-trial detention and who challenged the constitutionality of section 18 (3) of Law no.103-FZ. Mr S. had complained that that provision had allowed the judge responsible for considering the criminal case against him to reject his request for a short visit by his wife. The Constitutional Court pointed out that the need for legislative rules governing family visits was based on the provisions of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, approved by the General Assembly of the United Nations on 9 December 1998, and in particular on Principe 19 thereof, and resulted from the specific features of criminal proceedings and the aim sought to be achieved by pre-trial detention. The Constitutional Court considered that the limitations on the frequency and length of, and the arrangements for, prison visits were the inevitable consequences of pre-trial detention, which consisted in confining a detained person in a specific place under surveillance, and that, from that angle, sections 17 (1) 5 and 18 (3) of Law no.103-FZ did not *per se* represent extra restrictions in addition to those stemming from the very essence of the measure in question. It nevertheless pointed out that section 18 (3) of Law no.103-FZ could not be interpreted as

conferring on the officer or body responsible for the criminal case against the person concerned discretionary powers to refuse a visit without giving reasons for doing so. According to the Constitutional Court, any decision to refuse a visit should be reasoned, and could be challenged before the public prosecutor or appealed against before a court, which, taking all the relevant facts into account, should assess the merits of each rejection of a request by the detainee for a visit.

29. Subsequently, the Constitutional Court reiterated that interpretation of section 18 (3) of Law no. 103-FZ on several occasions, and in particular in its decision no. 351-O of 16 October 2003 (which concerned the case of Ts., a pre-trial detainee whose request for a long visit by his wife had been rejected by both the investigating agencies and the courts responsible for considering the criminal proceedings against him), in its decision no. 1053-O-O of 1 October 2009 (which concerned the case of K., a detainee convicted by a court of first instance who was awaiting consideration of his appeal, and whose request for a short visit by two persons who did not fall into the “relatives” category had been rejected by the court having convicted him), its decision no. 807-O-O of 17 June 2010 (which concerned the case of N., a pre-trial detainee who had submitted a request for a short visit by his partner had been rejected by the court responsible for considering the criminal case against him), and its decision no. 1334-O of 17 July 2012 (which concerned the case of B., a detainee convicted by a court of first instance awaiting the examination of his appeal whose request for a family visit had been rejected by letter from the court having convicted him).

B. Arrangements for visits to convicted prisoners

30. A number of domestic legal provisions concerning the arrangements for visits to convicted prisoners were summarised in *Khoroshenko v. Russia* ([GC], no. 41418/04, §§ 33-57, ECHR 2015).

1. General provisions

31. Pursuant to Article 89 §§ 1 and 2 of the Code of Execution of Criminal Sentences of 8 January 1997 (“CECS”), convicted prisoners are entitled to receive, on the prison premises, maximum four-hour short visits, and maximum three-day long visits. Short visits provide prisoners with an opportunity to meet with family members and other persons. They last for four hours and are supervised by a prison guard. Long visits are aimed at enabling prisoners to meet with their spouses, parents, children, parents-in-law, sons- and daughters-in-law, siblings, grandparents, grandchildren and, with the Prison Director’s permission, certain other persons. In very specific circumstances convicted prisoners may be authorised to receive a maximum five-day long visit outside of the prison premises.

32. Under Article 77-1 CECS, a convicted prisoner serving his sentence in a prison may be transferred to a remand prison in order to participate in an investigative measure as a witness, victim or accused person, at the request of the person responsible for a criminal investigation (paragraph 1), or to a court in order to appear in a trial as a witness, victim or accused person at the request of a judge or by decision of a court (paragraph 2). According to paragraph 3 of that provision, the prison regime for convicted prisoners placed in remand prisons for the purposes of paragraphs 1 and 2 of the provision must be established in conformity with Law no. 103-FZ and with the conditions of detention in the prison chosen by the court when imposing the sentence. Under the same provision, a convicted prisoner transferred as an accused person to a remand prison is entitled to receive visits in accordance with the arrangements set out in Law no. 103-FZ. A convicted prisoner who is transferred to a remand prison as a witness or victim is eligible not for long visits but only for short visits and phone calls.

2. *Types of prison premises and regimes*

33. Pursuant to Article 58 of the Penal Code of 13 June 1996 (PC), prisoners must serve their sentences in one or another of the existing types of prison establishments, depending on the seriousness of the offences of which they have been found guilty. In the various types of correctional colonies, convicted prisoners are subject to three levels of prison regime, namely ordinary, facilitated and strict regimes, depending on various factors, including the gravity of the crimes they have committed and their behaviour in prison. Those prisons have two coexisting types of regime, namely strict and ordinary.

34. Pursuant to Articles 120-131 CECS, the number of short and long visits available to convicted prisoners depends on the type of prison facility and the regime applicable to the individual prisoners, varying between two and six short and long visits per year. Article 89 CECS prescribes an invariable length of time for short visits, that is, four hours, which does not depend on the above-mentioned factors. The only exception in respect of the number of long visits concerns life prisoners subject to the strict regime in special-regime correctional colonies, who are not entitled to such visits for the first ten years of their prison sentence (see, for further details, *Khoroshenko*, cited above, §§ 42-53).

III. RELEVANT INTERNATIONAL DOCUMENTS

35. A number of international documents concerning visiting rights to prisoners and detainees were summarised in *Khoroshenko* (cited above, §§ 58-80).

36. The relevant parts of Recommendation Rec(2006)2 of the Committee of Ministers to the member States on the European Prison Rules, adopted on 11 January 2006, read as follows:

“Part I

Basic principles

1. All persons deprived of their liberty shall be treated with respect for their human rights.
2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.
3. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.
4. Prison conditions that infringe prisoners’ human rights are not justified by lack of resources.
5. Life in prison shall approximate as closely as possible the positive aspects of life in the community.
6. All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty.

...

Scope and application

10.1 The European Prison Rules apply to persons who have been remanded in custody by a judicial authority or who have been deprived of their liberty following conviction.

Part II

Conditions of detention

...

Contact with the outside world

24.1. Prisoners shall be allowed to communicate as often as possible – by letter, telephone or other forms of communication – with their families, other persons and representatives of outside organisations, and to receive visits from these persons.

24.2 Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.

...

24.4 The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible

...

Part VII

Untried prisoners

CHALDAYEV v. RUSSIA JUDGMENT

Status as untried prisoners

94.1. For the purposes of these rules, untried prisoners are prisoners who have been remanded in custody by a judicial authority prior to trial, conviction or sentence.

94.2 A State may elect to regard prisoners who have been convicted and sentenced as untried prisoners if their appeals have not been disposed of finally.

Approach regarding untried prisoners

95.1. The regime for untried prisoners may not be influenced by the possibility that they may be convicted of a criminal offence in the future.

95.2 The rules in this part provide additional safeguards for untried prisoners.

95.3 In dealing with untried prisoners, prison authorities shall be guided by the rules that apply to all prisoners and allow untried prisoners to participate in various activities for which these rules provide.

...

Contact with the outside world

99. Unless there is a specific prohibition for a specified period by a judicial authority in an individual case, untried prisoners:

- a. shall receive visits and be allowed to communicate with family and other persons in the same way as convicted prisoners;
- b. may receive additional visits and have additional access to other forms of communication; and
- c. shall have access to books, newspapers and other news media.”

37. On 17 December 2013 the European Committee for the Prevention of Torture and Inhuman or Degrading Punishment or Treatment (“the CPT”) published its report on its visit to Russia from 21 May to 3 June 2012. The relevant passages of the report read as follows:

“c. Out-of-cell activities and contact with the outside world

90. The CPT is very concerned by the fact that, despite the ongoing reform of the penitentiary system of the Russian Federation, there have been no noteworthy improvements as regards out-of-cell activities and possibilities to maintain contact with the outside world for remand prisoners. Adult remand prisoners continued to spend 23 hours per day in their cells with hardly anything to occupy their time and were not allowed association with prisoners other than their cellmates (this was of particular concern as regards the inmates accommodated alone, including those accused of crimes for which a long [including life] sentence could be imposed [as well as those already sentenced, who were awaiting the outcome of their appeal]); further, phone calls were not allowed and investigators rarely authorised visits ...

The CPT has recommended many times in the past that the current regime for remand prisoners, based on the flawed concept of “isolation”, be fundamentally reviewed. The starting point for considering regimes for remand prisoners must be the presumption of innocence and the principle that prisoners should be subject to no more restrictions than are strictly necessary to secure their safe confinement and the interests of justice. Any restrictions should be kept to a minimum and be of the shortest possible duration. The current almost total lack of constructive activities for remand prisoners, taken together with the restrictions on contact with the outside world and association, produce a regime

which is oppressive, stultifying and threatening to the maintenance of physical and mental health.

91. The CPT once again calls upon the Russian authorities to give the highest priority to a fundamental review of the regime for remand prisoners taking into account the elements already identified by the Committee in paragraph 66 ...

Any restriction/prohibition placed on remand prisoners as regards contact with other inmates and the outside world (visits, phone calls and correspondence) must be specifically substantiated by the needs of the investigation, require the approval of a judicial authority, and be applied for a specified period of time, with reasons stated.”

38. The Russian Government’s response to the latter report, published on 17 December 2013, includes the following information:

“Clause No. 90 and 91 of the CPT Report:

During the period of detention rights and freedoms of the citizens of the Russian Federation are guaranteed to suspects and accused persons with exceptions and restrictions established by the criminal, criminal procedure and other legislation of the Russian Federation. No other restrictions or impairment of their rights and freedoms are not allowed, therefore in detention facilities all conditions are created to give suspects and accused persons the opportunity to exercise their rights and legitimate interests.

...

Persons in custody also have the right to short meetings with relatives and other people subject to availability of an appropriate permission from the person or the body in charge of the criminal case proceedings. Meetings take place in specially equipped premises outside secure blocks.

...

Based on the written permit from an official or a body in charge of the criminal case suspects and accused persons may be granted not more than two meetings with relatives or other persons in a month for up to three hours each, in specially equipped premises. When arranging meetings with relatives, the administration takes into account the reasons of preservation and strengthening of family, kinship and other social connections of suspects and accused persons detained in custody.

Moreover, based on the written permit from an official or a body in charge of the criminal case, suspects and accused persons may be granted the right to telephone calls up to 15 minutes.

...

At present, the Concept of development of the penal system, suggests introducing new forms of contacts of suspects and accused persons with the outside world (granting to persons in custody of a technical capability to use the wide range of telecommunication services, including video conference communication, e-mail, etc.).

The draft Federal Law “On Amending the Federal Law “On Detention in Custody of Suspects and Individuals Charged with Criminal Offenses” and Other Legislative Acts of the Russian Federation” is intended to amend the said regulatory legal acts, in particular, taking into account the judgments of the European Court of Human Rights taken on the case *Ananyev and other vs. the Russian Federation*. One of the most important amendments suggested for introduction in the Federal Law is the changes in the procedure to allow suspects and accused persons to meet their relatives: these

meetings will not be subject to a special permit of a person or a body in charge of the criminal case...”.

LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

39. The applicant complained of a violation of his right to respect for his private and family life on account of the small number of visits by his parents which he had been able to receive in remand prison no. IZ-13/1, as well as the arrangements for those visits. In that regard, he criticised, in particular, the facts that he could have no physical contact with his family members and that the communications facility used to converse with them had been tapped. He relied on Article 8 of the Convention, which provides:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. The parties’ submissions

1. The Government

40. The Government submitted, first of all, that pre-trial detention as a custodial measure imposed on a person accused of a criminal offence pursued the aim of preventing the commission of new offences and risks of absconding, collusion and threats against witnesses or other parties to the criminal proceedings, and entailed restrictions on the detainees’ right to send and receive mail and parcels, as well as to receive visits. Relying on the case-law of the Constitutional Court, and in particular on its decisions nos. 176-O of 13 June 2002, 1053-O-O of 1 October 2009 and 1334-O of 17 July 2012 (see paragraphs 28 and 29 above), the Government argued that the limitations on the frequency and length of, and the arrangements for, prison visits were the inevitable consequences of pre-trial detention and that any decision to refuse a prison visit could be challenged before the public prosecutor or appealed against before a court.

41. In connection with the installation of dividing walls in the visiting rooms, the Government explained that those rooms were fitted out on the basis of internal instructions and that the walls separating visitors from the detainees helped prevent the transmission of prohibited items during visits.

42. As regards the applicant's situation the Government pointed out that he had been held in remand prison no. IZ-13/1 from 23 to 29 April and from 11 to 17 October 2013, from 4 February 2014 to 19 January 2015, and from 12 February to 11 June and from 20 July to 23 November 2015. They supported their argument with a series of documents drawn up on 7 June 2017 by the remand prison governor's office. Those documents showed that the applicant had received four short family visits on 19 February and 24 March 2014 and 2 June and 3 November 2015, and that those visits had lasted for about one hour each. The Government stated that the visits had taken place in visiting rooms fitted in accordance with the regulations in force. Having regard to the number of and the conditions for the visits which the applicant had received, the Government considered that there had been no infringement of his right to respect for his private and family life.

2. The applicant

43. The applicant upheld his complaints. He added that even if the restrictions on visiting rights had been inevitable consequences of detention, the restrictions had been unreasonable in his case because he had only received four visits during his stay in remand prison no. IZ-13/1. He considered that the decisions refusing him visits had not been reasoned and that the remedies for challenging those refusals had been ineffective.

44. As regards the arrangements for the visits received, and in particular, the installation of dividing walls in the visiting rooms, the applicant pointed out that the Government had referred to internal instructions without making those regulations available to the parties to the proceedings, which, in his view, made it impossible to verify their compatibility with the characteristics of the walls installed in remand prison no. IZ-13/1. He submitted that it had not been necessary to prevent physical contact with his family members during their visits because they had in any case been monitored by a prison guard, who would have terminated the visits in question in the event of any attempt to hand over a prohibited item.

B. The Court's assessment

1. Admissibility

45. The Court notes at the outset that in his application form lodged on 3 February 2016, and in his observations on the admissibility and the merits of the case submitted on 8 November 2017 the applicant only complained about the restrictions on his visiting rights during his detention in remand prison no. IZ-13/1. Neither the Government nor the applicant mentioned whether or not the latter had been able to receive visits during his detention in remand prison no. IZ-13/2 and prison hospital no. LPU-21 (see paragraph 8 above). Having regard to the factual allegations thus advanced by the

applicant and to the principles as regards delimiting the subject matter of the case before it (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 101-127, 20 March 2018), the Court considers that the scope of the complaint under Article 8 of the Convention concerns only the restrictions on the applicant's visiting rights during his detention in remand prison no. IZ-13/1.

46. Even though the Government did not argue that the applicant had failed to comply with the six-month rule the Court reiterates that that is a matter which goes to the Court's jurisdiction and which it is not prevented from examining of its own motion (see *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 85, ECHR 2014 (extraits)).

47. The Court reiterates that as a rule, the six-month period starts running on the date of the final decision in the process of exhaustion of domestic remedies. Where it is clear from the outset however that no effective remedy is available to the applicant, the period runs as from the date of the acts or measures complained of, or from the date of knowledge of that act or its effect on or prejudice to the applicant (see *Svinarenko and Slyadnev*, cited above, § 86).

48. In the instant case it notes that the applicant complains of the rejections on 3 June, 29 July and 6 October 2015 of his parents' requests for family visits, the rejection on 12 August 2015 of his own request, and also of the arrangements for the visits conducted on 19 February and 24 March 2014 and on 2 June and 3 November 2015.

49. In connection, first of all, with the denials of visits signified to the applicant and to his parents, the Court considers that they were instantaneous acts. It notes that the request of 1 June 2015 was rejected by letter from Judge P. on 3 June 2015 and that the applicant's parents took cognisance of its content on 8 June 2015 (see paragraph 11 above). Therefore, considering that the applicant's parents acted in the interests of their son, the Court considers that those concerned took cognisance on 8 June 2015 of the measure about which the applicant subsequently complained before it.

50. The Court notes that according to the case-law of the Russian Constitutional Court, any decision to refuse a visit can be challenged before the public prosecutor or appealed against before a court (see paragraph 28 above). It notes that neither the applicant nor his parents applied to the prosecutor, nor did they bring any judicial proceedings to challenge Judge P.'s letter of 3 June 2015. However, since the Government did not plead the non-exhaustion of domestic remedies, the Court does not consider that it must determine this matter. As regards the complaint lodged by the applicant's parents with the President of the court (see paragraph 12 above), the Court considers that it cannot be seen as equivalent to an appeal to a court. There is nothing to suggest that in lodging the said complaint the applicant and his parents could reasonably have expected that it would lead to an effective examination of their grievances. Indeed, in his application form of 3 February

2016 the applicant stated that the restrictions on his right to receive visits in prison had stemmed from the state of Russian law, and in particular Law no. 103-FZ, and that there had therefore been no effective remedies under which to challenge the aforementioned restrictions.

51. It follows that, as regards the rejection of the 1 June 2015 request for a visit, the six-month time-limit within the meaning of Article 35 § 1 of the Convention began running on 8 June 2015, the date on which the applicant's parents took cognisance of Judge P.'s letter rejecting that request, and ended on 8 December 2015. The application having been lodged on 3 February 2016, the Court considers that the part of the complaint concerning the rejection of the 1 June 2015 request for a visit is out of time and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

52. In connection with the request for a visit sent by the applicant's parents to the President of the court on 27 July 2015, the Court notes that it was rejected by letter of 29 July 2015, which letter was received by those concerned on 4 August 2015 (see paragraph 12 above). Noting that the applicant lodged his application within six months of the receipt of the said letter, the Court consequently considers that it is competent to consider the part of the complaint concerning the rejection of the 27 July 2015 request for a visit.

53. As regards the letters of 12 August and 6 October 2015 rejecting the requests for visits submitted by the applicant and his parents respectively, the Court sees no need to establish the dates on which those concerned had had cognisance of the rejections in question because the present application was lodged in any event within six months of the writing of the letters in question.

54. Turning next to the part of the complaint concerning the arrangements for the visits which took place on 19 February and 24 March 2014 and on 2 June and 3 November 2015, the Court observes that it transpires from the Government's observations that the impugned measures, particularly the dividing wall between the visitors and the use of a communications facility for their conversations, had been automatically implemented in respect of every suspect or accused person in pre-trial detention pursuant to current legislation (see paragraph 42 above).

55. In that regard, the Court reiterates that in cases of legal provisions which have given rise to individual decisions against applicants creating a continuing situation for which there is no domestic remedy, the problem of the six-month time-limit specified in Article 35 § 1 of the Convention can arise only after this state of affairs has ceased to exist; in the circumstances, it is exactly as though the alleged violation was being repeated daily, thus preventing the running of the six-month time-limit (see *Paksas v. Lithuania* [GC], no. 34932/04, § 83, ECHR 2011). Moreover, the Court has applied the principle of a "continuing situation" in cases concerning the conditions of an applicant's transfer between his detention facility and the court (see *Fetisov and Others v. Russia*, nos. 43710/07, 6023/08, 11248/08, 27668/08, 31242/08

and 52133/08, § 75, 17 January 2012), or the confinement of applicants in a metal cage in the courtroom each time they were brought from their detention facility to the courthouse for examination of their case (see *Svinarenko and Slyadnev*, cited above, § 86). It ruled, in particular, that in the situation of a repetition of the same events, the absence of any marked variation in the conditions to which the applicant had been routinely subjected created a “continuing situation” which brought the entire period complained of within the Court’s competence (*ibid.*).

56. In the present case, the Court notes that the Government did not claim that there was an effective remedy against the domestic legal provisions governing the use of dividing walls and the use of communications facilities in prison visiting rooms. Nor does it note any major variations in the conditions for visits to the applicant during his detention in the remand prison between 29 March 2013 and 27 November 2015. The Court considers therefore that the situation complained of by the applicant was continuous and that the six-month time-limit ran from the end of that period, that is to say 27 November 2015, on which date the applicant was transferred to a correctional colony to serve his prison sentence (see paragraph 20 above). Accordingly, since the application was lodged within six months of that date, the impugned period falls within the scope of the Court’s examination.

57. Having regard to the foregoing considerations, the Court considers that it is competent to consider the parts of the complaint under Article 8 of the Convention concerning the rejections of the applicant’s and his parents’ requests for visits on 29 July, 12 August and 6 October 2015 and concerning the arrangements for the visits which took place on 19 February and 24 March 2014 and on 2 June and 3 November 2015.

58. Noting that the complaint thus declared admissible is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds, the Court declares it admissible.

2. Merits

59. The Court reiterates that restrictions on the frequency and length of and the arrangements for family visits constitute interference with the right to respect for private and family life (see *Messina v. Italy* (no. 2), no. 25498/94, §§ 61-62, ECHR 2000-X; *Moiseyev v. Russia*, no. 62936/00, § 247, 9 October 2008; *Bogusław Krawczak v. Poland*, no. 24205/06, § 112, 31 May 2011; and *Andrey Smirnov v. Russia*, no. 43149/10, § 38, 13 February 2018).

60. It reiterates that it has already found a violation of Article 8 of the Convention in many cases on account of denials of family visits signified by the Russian authorities to persons held in pre-trial detention (see *Moiseyev*, cited above, §§ 248-25; *Vlassov v. Russia*, no. 78146/01, §§ 123-127, 12 June 2008; *Tereshchenko v. Russia*, no. 33761/05, §§ 119-137, 5 June 2014; and *Andrey Smirnov*, cited above, §§ 39-43), as well as on account of the

separation of visitors by means of dividing walls (see *Moiseyev*, cited above, §§ 257-259, and *Andrey Smirnov*, cited above, §§ 51-56). The Court has held, in particular, that section 18 of Law no. 103-FZ (see paragraph 24 above) does not meet the “quality” and “foreseeability” criteria because it conferred on the domestic authorities unlimited discretionary powers in the sphere of prison visits and failed to define the circumstances in which the latter could be refused (see *Andrey Smirnov*, cited above, § 42, with the references therein). The Court further ruled that separating the visitors with a dividing wall preventing any physical contact was unjustified in the absence of any factual elements pointing to the danger posed by the prisoner or the existence of a security risk of a danger of collusion (*ibid.*, § 55).

61. Having regard to the information at its disposal, the Court considers that the Government has failed to provide any factual or legal elements capable of persuading it to reach a different conclusion in the present case.

62. Indeed, it is undisputed between the parties that on 29 July, 12 August and 6 October 2015 the courts dealing with the applicant’s criminal case rejected his and his parents’ requests for a visit (see paragraphs 12, 14 and 17 above). The Court noted that the impugned decisions taking the form of letters, had not set out any reasons for rejecting the said requests. The domestic authorities had merely referred to section 18 (3) of Law no. 103-FZ, without demonstrating the need to prevent contact between the applicant and his parents. The remand prison authorities adopted the same approach to the applicant’s complaint transmitted to them by the public prosecutor (see paragraph 19 above).

63. As regards the arrangements for the visits authorised, the Court notes that the Government did not dispute that during those visits the applicant and his parents had been separated by a glass wall and had communicated via a telephone under the supervision of a prison guard. The Government did not state whether the conversations between those concerned using that communication facility had been tapped. However, the Court sees no need to decide on that aspect of the complaint separately because the presence of a prison guard would in any event have ruled out any privacy in respect of the conversations.

64. The Court notes that the restrictions on visits to the applicant were based on paragraph 143 of the remand prison regulations and were applied automatically to all detainees (see paragraph 27 above). In that connection it reiterates that in the sphere of visiting rights, the State does not have a free hand in introducing restrictions in a general manner without affording any degree of flexibility for determining whether limitations in specific cases are appropriate or indeed necessary (see *Khoroshenko*, cited above, §§ 123 and 126). However, it notes that in the instant case no prior assessment was made of whether the nature of the offence, the applicant’s specific individual characteristics or the security regulations in force in the prison justified keeping the applicant physically separate from his family and ensuring the

proximity of a prison guard during their visits throughout the applicant's detention and prison term.

65. Those considerations are sufficient for the Court to conclude that there has been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION READ IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

66. The applicant claims to have suffered discriminatory treatment in the exercise of his right to respect for his private and family life. He complains that the short visits which he received were of a maximum duration of only three hours, although in practice they had never exceeded one hour. He also complained that he had not been authorised, as a person detained in a remand prison who had not been finally convicted, to receive a long visit from his parents. He stated that a prisoner who had been convicted under a final judgment and was serving his or her sentence in a prison was entitled to receive long visits and maximum four-hour short visits. He relies on Article 14 of the Convention taken in conjunction with Article 8 of the Convention, the relevant parts of which provide:

Article 8

“1. Everyone has the right to respect for his private and family life, his home and his correspondence...”

Article 14

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

67. The Government did not make any submissions on this point.

A. Admissibility

68. Noting that that complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds, the Court declares it admissible.

B. Merits

69. The Court will consider this aspect of the case in the light of the applicable principles in matters of prohibition of discrimination reiterated in its judgment in the case of *Fábián v. Hungary* ([GC], no. 78117/13, §§ 112-117, 5 September 2017).

1. The applicability of Article 14 of the Convention to the facts of the present case

70. The Court observes that the applicant complains of the allegedly discriminatory effect of the domestic legal provisions concerning detainees' visiting rights, and in particular section 18 of Law no. 103-FZ (see paragraph 24 above) and section 89 CECS (see paragraph 31 above). It notes that, as pointed out in paragraphs 60 and 64 above, persons deprived of their liberty do not forfeit their right to respect for their family life, so that any restriction on those rights must be justified in each individual case (see *Khoroshenko*, cited above, § 117). The restrictions on the frequency and length of, and the arrangements for, prison visits had an impact on the applicant's right to respect for his private and family life as protected by Article 8 of the Convention. The Court accepts therefore that the facts of the case fall "within the scope" of Article 8 of the Convention for the purposes of the applicability of Article 14 (see, to similar effect, *Laduna v. Slovakia*, no. 31827/02, § 54, ECHR 2011; *Varnas v. Lithuania*, no. 42615/06, § 111, 9 July 2013; *Costel Gaciu v. Romania*, no. 39633/10, § 51, 23 June 2015; and *Alexandru Enache v. Romania*, no. 16986/12, §§ 54-58, 3 October 2017).

2. Whether the applicant fitted into the "other status" category

71. The Court has established in its case-law that only differences based on an identifiable, objective or personal characteristic, or "status", can be considered discriminatory for the purposes of Article 14. The expression "other status" (in French "toute autre situation") has generally been given a wide meaning, and its interpretation has not been limited to characteristics which are personal in the sense that they are innate or inherent (see *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, § 61, 24 January 2017).

72. The Court reiterates that detaining a person on remand may be regarded as placing the individual in a distinct legal situation, which even though it may be imposed involuntarily and generally for a temporary period, is inextricably bound up with the individual's personal circumstances and existence (see *Costel Gaciu*, cited above, § 52, and *Laduna*, cited above, § 55). In the present case it notes that the applicant was held in pre-trial detention until the appellate court upheld his conviction on 29 October 2015 (see paragraph 20 above). Given that the restrictions on the applicant's visiting rights had been linked to his status as an accused person detained in a remand prison, it considers that his pre-trial detention falls within the "other status" category within the meaning of Article 14 of the Convention.

3. *Whether the applicant's status was comparable with that of a convicted prisoner*

73. The applicant's complaints as examined by the Court relate to the legal provisions governing visiting rights. The applicant, as a person detained in a remand prison whose conviction had not yet become final, was entitled to maximum three-hour short visits, and was not entitled to long visits, pursuant to section 18 (3) of Law no. 103-FZ, whereas a convicted prisoner serving his or her sentence in a prison was entitled to a maximum four-hour short visit and a maximum three-day long visit, pursuant to section 89 CECS (see paragraphs 24 and 31 above).

74. There are therefore two groups of persons deprived of their liberty at different stages in criminal proceedings: on the one hand, detainees whose convictions have not yet become final, and on the other hand, prisoners whose convictions have become *res judicata*. Nevertheless, in the Court's view, the fact that the status of the applicant, who belonged to the former group, is not completely analogous to that of convicted prisoners, who belong to the second group, and that there are differences between the various groups based on the purpose of their deprivation of liberty, does not preclude the application of Article 14 of the Convention (see *Laduna*, cited above, §§ 56-58; *Varnas*, cited above, §§ 111-114; and *Costel Gaciu*, cited above, §§ 53-55; cf. also *Clift v. the United Kingdom*, no. 7205/07, §§ 66-68, 13 July 2010). In other words, even though detainees held in pre-trial detention are not in an identical position to that of prisoners sentenced to a prison term as regards the respective aims of their detention, their situations may nonetheless be relevantly similar as regards their right to respect for their private and family lives. In that connection, the Court has regard to the European Prison Rules, whose scope, pursuant to Rule 10.1, covers all detainees, that is to say both persons who have been remanded in custody by a judicial authority or who have been deprived of their liberty following conviction (see paragraph 36 above).

75. Indeed, as persons deprived of their liberty, both detainees whose conviction has not become final and prisoners whose convictions have become final still benefit from their right to respect for their private and family lives. The provisions of Law no. 103-FZ and of the CECS, criticised by the applicant, thus delimit the extent of any restrictions on private and family life inherent in deprivation of liberty. The Court holds therefore that the applicant was in a situation comparable to that of a convicted prisoner.

4. *Whether the difference of treatment was justified*

76. Differential treatment is discriminatory if it is not objectively and reasonably justified, that is, if it does not seek to achieve a legitimate aim or where there is no reasonable proportionality between the means used and the aim pursued. The Contracting States enjoy a certain margin of appreciation

in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. The scope of the margin will vary according to the circumstances, the subject-matter and the background (see *Fábián*, cited above, §§ 114-115). The Court has accepted the principle that a wide margin of appreciation applies in questions of prisoner and penal policy (see *Clift*, cited above, § 73).

77. In the instant case the Court notes that pursuant to section 18 (3) of Law no. 103-FZ (see paragraph 24 above), the length of the visits granted to detainees in remand prisons, including those with non-final convictions, is one hour shorter (three hours) than that granted under section 89 (1) CECS (see paragraph 31 above) to convicted prisoners (four hours). By the same token, Law no. 103-FZ does not entitle persons detained in remand prisons to long visits, whereas the CECS, under Articles 89 and 120-131 taken together, grants convicted prisoners at least two long visits per year (see paragraphs 33 and 34 above). The said restrictions on the rights of accused persons in the sphere of visits are applicable generally, irrespective of the reasons for their pre-trial detention, of the stage in the criminal proceedings against them and of any security considerations.

78. In the absence of any relevant arguments from the Government, the Court can discern no objective justification for such differential treatment in connection both with the length of the short visits and with entitlement to long visits (see, to similar effect, *Laduna*, cited above, §§ 59-73; *Varnas*, cited above, §§ 115-123; and *Costel Gaciu*, cited above, §§ 56-63).

79. As regards the applicant's inability to obtain a long visit by his parents, the Court considers that his prison regime as a detainee in a remand prison was largely equivalent to that of life prisoners subject to the strict regime in a special-regime correctional colony, that is, persons convicted of extremely reprehensible and dangerous actions whose imprisonment was primarily aimed at keeping them apart from society (see *Khoroshenko*, cited above, §§ 131 and 144). Now, even though that category of convicted prisoners is not entitled to long visits, like the applicant, the Court considers that such a similarity in the two situations only reinforces the finding of no objective and reasonable justification for subjecting the applicant to the same kind of restrictions as life prisoners. Although, in principle, one cannot rule out the possibility of correlating, at least to some extent, the severity of a prison sentence with a certain type of prison regime, the Court can discern no such correlation in the case of accused persons whose conviction, as in the applicant's case, was not final, and who must be presumed innocent until proved guilty.

80. In that regard, the Court has regard to the viewpoint expressed by the CPT in paragraph 90 of its report of 17 December 2013 on its visit to Russia, to the effect that the current regime for remand prisoners, including those who have not yet been finally convicted, as regards, in particular, their right to

receive visits, was based on the flawed concept of “isolation”, and that it should be “fundamentally reviewed” (see paragraph 37 above).

81. Nor can the Court see any justification for the three-hour limit on short visits, which seems to be based on the “isolation” concept criticised by the CPT. Indeed, it notes that assigning a person the status of suspect or accused person and detaining him or her in a remand prison pursuant to Law no. 103-FZ automatically places a three-hour time-limit on the short visits to which the person is entitled. Moreover, convicted prisoners transferred to a remand prison under Article 77-1 CECS automatically lose entitlement to long visit, and short visits for persons transferred as suspects or accused persons for the purposes of a criminal investigation are, again automatically, reduced from four to three hours (see paragraph 32 above). As the Court observed above, all restrictions on detainees’ visiting rights must in each individual case be justified by reasons, in particular, of order, security and safety or the need to protect the legitimate interests of investigations (see paragraphs 60 and 64 above).

82. In that regard, the Court cannot overlook the relevant international instruments, particularly the European Prison Rules. Thus it reiterates that under Rule no. 99, unless there is a specific prohibition for a specified period by a judicial authority in an individual case, untried prisoners must be allowed to receive visits and communicate with family and other persons in the same way as convicted prisoners. Furthermore, they may receive additional visits and have additional access to other forms of communication (see paragraph 36 above).

83. Having regard to the foregoing considerations, the Court concludes that there has been a violation of Article 14 read in conjunction with Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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.”

A. Damage

85. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage.

86. The Government considered that were the Court to find a violation of the Convention in the present case, the award in respect of just satisfaction should be established in conformity with its case-law.

87. The Court considered that the applicant should be awarded EUR 10,000 in respect of non-pecuniary damage.

B. Costs and expenses

88. The applicant also claimed 10,500 Russian roubles (RUB) in respect of costs and expenses incurred before the Court and RUB 4,836.1 in respect of postage.

89. The Government did not comment on this point.

90. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 210 covering costs under all heads.

C. Default interest

91. 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. *Declares* the application admissible as regards the complaint under Article 8 of the Convention concerning the rejections of the applicant's and his parents' requests for visits submitted on 29 July, 12 August and 6 October 2015, as well as concerning the arrangements for the visits which took place on 19 February and 24 March 2014 and 2 June and 3 November 2015, and also the complaint under Article 14 of the Convention read in conjunction with Article 8, and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds* that there has been a violation of Article 14 of the Convention read in conjunction with Article 8;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:

- (i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
- (ii) EUR 210 (two hundred and ten euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
- (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;

5. *Rejects* the remainder of the claim for just satisfaction.

Done in French, and notified in writing on 28 May 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Vincent A. De Gaetano
President