



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

THIRD SECTION

CASE OF PAVLOVA v. RUSSIA

(Application no. 8578/12)

JUDGMENT

Art 8 • Family life • Remand prisoner denied family visits for the entire duration of his trial • Domestic law conferring unrestricted discretion to authorities to grant or refuse prison visits
Art 13 (+ Art 8) • Effective remedy • Applications for prison visits rejected by means of unreasoned non-procedural letters not amenable to review

STRASBOURG

18 February 2020

FINAL

18/06/2020

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Pavlova v. Russia,

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

Paul Lemmens, *President*,

Paulo Pinto de Albuquerque,

Dmitry Dedov,

Alena Poláčková,

María Elósegui,

Gilberto Felici,

Lorraine Schembri Orland, *judges*,

and Stephen Phillips, *Section Registrar*,

Having regard to:

the application 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, Ms Dina Viktorovna Pavlova (“the applicant”), on 19 January 2012;

the decision to give notice to the Russian Government (“the Government”) of the complaints concerning restrictions on prison visits and the existence of an effective remedy and to declare inadmissible the remainder of the application;

the unilateral declaration submitted by the Government and the applicant’s comments on the declaration;

Having deliberated in private on 28 January 2020,

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

INTRODUCTION

The case concerns a ban on family visits for the entire duration of a trial and the impossibility to obtain a judicial review of the ban.

THE FACTS

1. The applicant was born in 1974 and lives in Naberezhnyye Chelny. She was represented before the Court by Ms N. Sarkarova, a lawyer practising in the Tatarstan Republic.

2. The Government were represented by Mr M. Galperin, the Representative of the Russian Federation to the European Court of Human Rights.

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicant is the wife of Mr Yunzel who was a defendant in criminal proceedings (see *Yunzel v. Russia*, no. 60627/09, 13 December 2016). In August 2009 the applicant visited Mr Yunzel in the IZ-16/3 remand prison.

5. On 21 October 2010 Mr Yunzel was transferred to a remand prison in Kazan and his trial opened ten days later before the Supreme Court of the Tatarstan Republic.

6. On 2 November 2010 the applicant came to Kazan to see her husband. She was told she would not be able to visit him.

7. On 20 January 2011 the applicant submitted a written application for a prison visit to the Supreme Court of Tatarstan. She enclosed their marriage certificate. On 26 January 2011 the trial judge N. sent her a one-line letter rejecting her application:

“I inform you that permission to visit the defendant Yunzel will be given after the delivery of the judgment.”

8. On 5 February and 18 March 2011 the applicant complained to the President of the Supreme Court of Tatarstan and the President of the Supreme Court of Russia. She submitted that Judge N. had not given any reasons for the refusal or referred to any legal acts restricting the right to family visits up until the delivery of the judgment. Her complaints were forwarded to Judge N. who replied to her, on 18 April 2011, that –

“Section 18 of the Defendants’ Detention Act (*«О содержании под стражей подозреваемых и обвиняемых в совершении преступлений»*) provides for a possibility, rather than an obligation, to authorise a short-term family visit. In the particular circumstances of the present case, such possibility does not appear to be available. Besides, neither the case-file nor your submissions contain any evidence of a close family relationship between you and the defendant Yunzel.”

9. On 17 May 2011 the applicant sent a new complaint to the President of the Supreme Court of Russia. She pointed out that her first complaint had been given for reply to the judge whose conduct she had impugned, that he had failed to explain what “particular circumstances of the case” outweighed her right to see her husband, that the discretion to give or refuse permission under section 18 of the Defendants’ Detention Act was unlimited and unregulated, and that the failure to consider the marriage certificate as evidence of a family relationship disclosed the judge’s bias.

10. On the same day she filed a new application to see her husband. Three days later Judge N. refused her application. His letter reproduced the text of the letter of 18 April 2011.

11. The applicant’s complaint to the Supreme Court of Russia was returned to the Supreme Court of Tatarstan. On 9 June 2011 the first deputy President of the Supreme Court of Tatarstan informed her that permission to visit could be granted after the delivery of the judgment, having regard to the “particular circumstances of the case which involved charges of armed robbery and organised crime and in the interests of ensuring the safety of parties to the proceedings”.

12. On 11 November 2011 the applicant made a new application to visit her husband. She stated that examination of charges against him had been finished and that Judge N. had removed him from the courtroom. On

21 November 2011 Judge N. reiterated that no visit would be allowed until after the judgment had been delivered.

13. On 25 November 2011 the applicant filed an appeal against Judge N.'s decision to the Criminal Chamber of the Supreme Court of Tatarstan. On 21 December 2011 Judge N. returned the statement of appeal to her and stated that "a refusal of family visit [was] not amenable to appeal".

14. On 29 December 2011 the President of the Supreme Court of Tatarstan wrote to the applicant that no family visits would be authorised for her husband or his co-defendants until the delivery of the judgment.

15. The applicant was able to see her husband again on 29 March 2013.

RELEVANT LEGAL FRAMEWORK

16. Section 18 of the Defendants' Detention Act (Federal Law no. 103-FZ of 15 July 1995) provides as follows:

"Subject to written authorisation from the official or authority in charge of the criminal case, suspects and defendants may have no more than two visits per month from their family members and other persons ..."

17. The Constitutional Court held that the refusal of an application for a prison visit should take the form of a reasoned decision (*мотивированное постановление*). It could be challenged before a supervising prosecutor or a court of general jurisdiction which would be called upon to verify, in the light of factual circumstances of the case, whether or not the refusal was justified (see decisions no. 176-O of 13 June 2002, no. 351-O of 16 October 2003, and no. 807-O-O of 17 June 2010).

THE LAW

I. THE GOVERNMENT'S REQUEST TO STRIKE THE CASE OUT ON THE BASIS OF A UNILATERAL DECLARATION

18. On 19 July 2019 the Government submitted a unilateral declaration in which they acknowledged a violation of Article 8 of the Convention, offered to pay a sum of money to the applicant and invited the Court to strike the case out of the list of cases in accordance with Article 37 § 1 (c) of the Convention. The applicant did not accept the Government's offer.

19. The criteria for assessment of unilateral declarations are well-established in the Court's case-law (see *Tahsin Acar v. Turkey* (preliminary objections) [GC], no. 26307/95, §§ 75-76, ECHR 2003-VI; *Gerasimov and Others v. Russia*, nos. 29920/05 and 10 others, § 130, 1 July 2014; and *Jeronovičs v. Latvia* [GC], no. 44898/10, §§ 64-71, 5 July 2016). The existence of a structural deficiency which – in the absence of effective domestic remedies – forces large groups of people to seek redress in the Court for repetitive violations of their Convention

rights, is a relevant consideration for deciding whether the Court should continue examination of the case (see *Tomov and Others v. Russia*, nos. 18255/10 and 5 others, §§ 98-100, 9 April 2019).

20. The instant case concerns a ban on prison visits enforced in the Supreme Court of Tatarstan and the lack of avenues to complain about it. The Court has recently received a number of applications concerning the same restrictions on prison visits in the same regional court and the absence of domestic remedies for that grievance (see *Ionov and Others v. Russia*, no. 34663/17 and 9 Others, communicated on 26 October 2018, and *Bikbulatov v. Russia*, no. 72792/17, communicated on 10 December 2018). The Government's declaration does not acknowledge a violation of Article 13 or contain any undertaking to address the substantive issue under the Convention. Accordingly, the Court considers that the terms of the Government's declaration do not provide a sufficient basis for concluding that respect for human rights does not require it to continue its examination of the case. Their request to strike the case out of the list must therefore be rejected.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

21. The applicant complained of a violation of Article 8 of the Convention on account of a restriction on visiting her husband in prison for the entire duration of the trial. Article 8 reads as follows:

“1. Everyone has the right to respect for his ... family life ...

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. Admissibility

22. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

23. As is well established in the Court's case-law, on imprisonment a person forfeits the right to liberty but continues to enjoy all other fundamental rights and freedoms, including the right to respect for family life, so that any restriction on those rights must be justified in each individual case. Detention entails inherent limitations on his family life, and some measure of control of the detainee's contacts with the outside world is called for and is not of itself incompatible with the Convention. However, it

is an essential part of a prisoner's right to respect for family life that the authorities enable him or, if need be, assist him to maintain contact with his close family. This principle applies *a fortiori* to untried prisoners who must be considered innocent by virtue of Article 6 § 2 of the Convention (see *Trosin v. Ukraine*, no. 39758/05, § 39, 23 February 2012; *Khoroshenko v. Russia* [GC], no. 41418/04, §§ 116-17, ECHR 2015, and *Andrey Smirnov v. Russia*, no. 43149/10, §§ 35-36, 13 February 2018).

24. The applicant complained that she had been unable to visit her detained husband for three and a half years, from August 2009 till March 2013. Her applications for permission to see him in that period had been invariably rejected. The Court has established that denial of visits amounts to interference with the right to respect for family life (see *Moiseyev v. Russia*, no. 62936/00, § 247, 9 October 2008, and *Andrey Smirnov*, cited above, § 38). It remains to be seen whether the interference was “in accordance with the law”, pursued one or more of the legitimate aims listed in paragraph 2 and was also “necessary in a democratic society”.

25. The letters refusing the applicant's requests for prison visits referred to section 18 of the Defendants' Detention Act (see paragraphs 8 and 9 above). It has been the Court's settled position in similar cases against Russia that section 18 falls short of the “quality of law” requirement in so far as it confers on the authority in charge of the criminal case unrestricted discretion to grant or refuse prison visits. It does nothing to limit the scope of the discretion and the manner of its exercise, and deprives the detainee of the minimum degree of protection against arbitrariness or abuse to which citizens are entitled under the rule of law in a democratic society (see *Vlasov v. Russia*, no. 78146/01, §§ 125-26, 12 June 2008; *Moiseyev*, cited above, §§ 249-50; *Andrey Smirnov*, cited above, §§ 40-42, and, most recently, *Resin v. Russia*, no. 9348/14, §§ 36-38, 18 December 2018, and *Chaldayev v. Russia*, no. 33172/16, §§ 60-61, 28 May 2019).

26. The above-cited cases illustrated the manner in which that unlimited discretion could be, and had been, abused by investigators at the pre-trial stage of proceedings. In the instant case, once the case against the applicant's husband had been submitted for trial before the Supreme Court of Tatarstan, the trial judge N. became “the official in charge of the criminal case” within the meaning of section 18 of the Defendants' Detention Act. In rejecting the applicant's requests to visit her husband by reference to that provision, he appeared to interpret it as giving him absolute discretion in the matter of allowing or refusing family visits during the trial (see the wording of his letter of 18 April 2011 in paragraph 8 above). On the issue of family visits, Article 8 requires the States to take into account the interests of the prisoner and his or her family members and to evaluate them not in terms of broad generalities but in application to the specific situation (see *Andrey Smirnov*, cited above, § 48). In the present case, however, Judge N. and his colleagues in the Supreme Court of Tatarstan made no attempt to justify the

refusal of family visits beyond a generic reference to the “particular circumstances of the case”, the nature of the charges against the applicant’s husband or unspecified security considerations. The President of the Supreme Court of Tatarstan upheld a blanket ban on family visits in respect of all defendants for the entire duration of a trial (see paragraph 14 above). As a consequence, the applicant was unable to see her imprisoned husband for three and a half years.

27. In so far as section 18 of the Defendants’ Detention Act offers no protection against arbitrary refusals, such as those in the present case, the Court reiterates that it does not meet the “quality of law” criterion. Accordingly, the interference was not “in accordance with the law”.

28. There has therefore been a violation of Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 8

29. The applicant complained that she had been unable to obtain a review of decisions rejecting her applications for prison visits. She relied on Article 13 of the Convention in conjunction with Article 8 which reads:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

A. Admissibility

30. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

31. In accordance with the Court’s established case-law, the effective remedy required by Article 13 of the Convention is one which allows the domestic authority examining the case to consider the substance of the Convention complaint. In cases involving Article 8 of the Convention, this means that the authority has to carry out a balancing exercise and examine whether the interference with the applicant’s rights answered a pressing social need and was proportionate to the legitimate aims pursued, that is, whether it amounted to a justifiable limitation of his rights (see *C.G. and Others v. Bulgaria*, no. 1365/07, § 62, 24 April 2008, and *Voynov v. Russia*, no. 39747/10, § 42, 3 July 2018).

32. As regards the theoretical possibility of obtaining a Convention-compliant review of the impugned decisions, the Court notes the position of the Russian Constitutional Court. It expressed the view that a reasoned

decision refusing an application for a prison visit should be amenable to a judicial review. A court carrying out such a review should decide whether or not the refusal was justified in the light of factual elements of the case. Even though the Constitutional Court formulated that position as early as 1998 and affirmed it in subsequent decisions (see paragraph 17 above, and also *Vlasov*, cited above, §§ 75 and 152), the requirement to issue a reasoned decision and to provide for its judicial review has not been incorporated in the Code of Criminal Procedure or the Defendants' Detention Act. In the absence of a specific requirement, the courts of general jurisdiction did not consider themselves bound by the case-law of the Constitutional Court and rejected applications for prison visits by means of non-procedural letters without giving relevant and sufficient reasons (compare *Chaldayev*, cited above, §§ 11 and 15). The manner of proceeding adopted in the Supreme Court of Tatarstan was similar. The applicant's requests were rejected in generic terms by means of non-procedural letters which contained little motivation, if any at all. Her complaints to the Presidents of the Supreme Court of Tatarstan and of the Supreme Court of Russia were forwarded to the same trial judge whose conduct she impugned. In his reply, he expressly excluded the possibility of having his decision reviewed on appeal (see paragraph 13 above). In these circumstances, the Court finds that the applicant did not have an effective remedy for her complaints about restrictions on family visits.

33. There has therefore been a violation of Article 13 of the Convention, taken in conjunction with Article 8.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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."

35. In the light of the documents submitted and its well-established case-law in this type of cases, the Court, ruling on an equitable basis, as required by Article 41 of the Convention, awards the applicant 5,000 euros (EUR) in respect of non-pecuniary damage and EUR 250 in respect of costs and expenses, plus any tax that may be chargeable on her.

36. 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. *Rejects* the Government's unilateral declaration;

2. *Declares* the application admissible;
3. *Holds* that there has been a violation of Article 8 of the Convention;
4. *Holds* that there has been a violation of Article 13 of the Convention, taken in conjunction with Article 8;
5. *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 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 250 (two hundred and fifty 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.

Done in English, and notified in writing on 18 February 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Registrar

Paul Lemmens
President