



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

SECOND SECTION

CASE OF DELTUVA v. LITHUANIA

(Application no. 38144/20)

JUDGMENT

Art 8 • Family life • Restriction on remand prisoner's family visits with wife and ten-year-old daughter, resulting in only one visit granted during first nine months of detention • Authorities' failure to substantiate possible risk of applicant interfering with the investigation by using his family • Applicant's proposals for alternative visiting arrangements in the presence of his lawyer or an investigating officer, as provided for in domestic law, not properly considered • Restriction not "necessary in a democratic society"

STRASBOURG

21 March 2023

FINAL

21/06/2023

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

In the case of Deltuva v. Lithuania,

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

Arnfinn Bårdsen, *President*,

Jovan Ilievski,

Egidijus Kūris,

Pauliine Koskelo,

Frédéric Krenç,

Diana Sârcu,

Davor Derenčinović, *judges*,

and Hasan Bakırcı, *Section Registrar*,

Having regard to:

the application (no. 38144/20) against the Republic of Lithuania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Lithuanian national, Mr Juozas Deltuva (“the applicant”), on 14 August 2020;

the decision to give notice to the Lithuanian Government (“the Government”) of the complaint concerning Article 8 of the Convention and to declare the remainder of the application inadmissible;

the observations submitted by the Government and the observations in reply submitted by the applicant;

the comments submitted jointly by the AIRE Centre and Children of Prisoners Europe (COPE), who were granted leave to intervene by the President of the Section;

Having deliberated in private on 28 February 2023,

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

INTRODUCTION

1. The case concerns the applicant’s complaint under Article 8 of the Convention that, while he was detained on remand, the authorities restricted his right to receive visits from his wife and ten-year-old daughter.

THE FACTS

2. The applicant was born in 1976 and lives in Kaunas. He was represented by Mr G. Černiauskas, a lawyer practising in Kaunas.

3. The Government were represented by their Agent, Ms K. Bubnytė-Širmenė.

I. CRIMINAL PROCEEDINGS AGAINST THE APPLICANT AND HIS DETENTION ON REMAND

4. On 17 November 2019 the applicant was arrested on suspicion of being a leading member of an organised group engaged in smuggling large amounts of drugs from the Netherlands to Lithuania and the Russian Federation. He was officially notified of the suspicions against him on the following day.

5. On 19 November 2019 the Vilnius District Court authorised the remand in detention of the applicant for three months, and on 16 December 2019 the Vilnius Regional Court upheld that decision. The courts held that there were grounds to believe that the applicant might abscond in view of the following: he was facing a long prison sentence; he had strong social links to other countries – he regularly spent time in the Netherlands and claimed that he worked in Germany; he had been previously convicted in Germany; he had not worked in Lithuania for nine years, was not habitually resident there and spent most of his time abroad. The fact that he had a place of residence in Lithuania, was married and had a child did not outweigh those circumstances. The courts further held that there was a risk that the applicant might interfere with the pre-trial investigation, since not all the potential suspects had yet been identified and many necessary investigative measures were yet to be carried out. They also noted that the suspected criminal group had used coded means of communication and unidentifiable phones; coded phones and surveillance equipment had been found in the applicant's home and in his car, which further strengthened the possibility that he might attempt to interfere with the investigation. Lastly, the circumstances of the case, particularly the fact that the applicant had not had a lawful source of income for nine years but owned considerable property, were also grounds to believe that he received income from criminal activity and that, if he remained at liberty, he might commit further crimes.

6. Between February and August 2020 the courts repeatedly extended the applicant's detention on remand, relying on essentially the same grounds as those indicated above. In addition, in a decision of 13 March 2020 and in several subsequent decisions, the Vilnius Regional Court found that less restrictive measures could not ensure that the applicant would not interfere with the investigation or would not commit new crimes, as confirmed by the fact that, even while detained on remand, he had on two occasions unlawfully obtained a mobile phone.

II. RESTRICTIONS ON FAMILY VISITS

7. On 20 November 2019 the prosecutor gave a decision prohibiting the applicant from receiving visits or making phone calls to anyone except his lawyer and the investigating officers (see paragraphs 19 and 25 below). In that decision the prosecutor stated that many investigative measures were yet

to be carried out – in particular, not all the applicant's suspected accomplices had yet been identified. Allowing the applicant to see or to contact other persons might therefore risk undermining the success of the investigation. Between February and May 2020 the prosecutor repeatedly extended that restriction, relying on essentially the same grounds.

8. On 3 December 2019 the applicant asked the prosecutor to be allowed a visit from his wife and ten-year-old daughter. On 11 December 2019 the prosecutor refused to grant that request. He stated that the applicant was suspected of having committed serious and very serious crimes while acting in an organised group. The pre-trial investigation was ongoing and many investigative measures were yet to be carried out. There were therefore grounds to believe that allowing the applicant to see other persons, even members of his family, might interfere with the success of the investigation. The applicant appealed against the prosecutor's decision to a senior prosecutor and then to the Vilnius District Court, but they dismissed his appeals.

9. On 7 February 2020 the applicant lodged a new request with the prosecutor to be granted a visit from his wife and daughter. He submitted that he had not seen his daughter since November 2019, which was causing her great anxiety. He enclosed a report of a psychologist, who had met his daughter on 3 February 2020 and had found that she was suffering from great stress, possibly from post-traumatic stress disorder. According to the report, the girl had told the psychologist that the applicant was very important to her, that she used to spend a lot of time with him, and that his arrest, which she had witnessed, had been one of the most difficult experiences of her life. She had said that she would feel better only if her father came back home, but that she would also accept seeing him at least briefly, in order to know what had happened to him and to make sure that he was still alive. The psychologist recommended that she see the applicant as soon as possible in order to improve her sense of security and reduce the effects of the stress and anxiety which she was suffering. Therefore, referring to the primary importance of the best interests of the child, the applicant asked to be granted a visit from his wife and daughter, or alternatively only from his daughter.

10. On 17 February 2020 the prosecutor granted the applicant one visit from his wife and daughter.

11. On 28 February, 26 March and 22 May 2020 the applicant lodged three further requests with the prosecutor to be granted a visit from his wife and daughter, or alternatively only from his daughter, in the presence of his lawyer. In each of those requests, he submitted that the restriction on family visits was causing great stress and mental suffering to his daughter and asked that a decision be taken having regard to the primary importance of the best interests of the child. He also submitted that his wife and daughter did not have any status in the pre-trial investigation and that there were no grounds to believe that a family visit might affect its success.

12. On each occasion, the prosecutor dismissed the applicant's requests for family visits, each time relying on essentially the same grounds. Firstly, the prosecutor noted that the applicant had been suspected of serious and very serious crimes, allegedly committed while acting in an organised group, and that the courts which had authorised his detention on remand had found that he might seek to interfere with the pre-trial investigation by coordinating his position with other suspects, by tampering with potential witnesses or by hiding or destroying evidence (see paragraph 5 above). Moreover, the pre-trial investigation was still pending, not all the suspects had yet been identified and not all the relevant circumstances had yet been established, which meant that there were grounds to believe that contact by the applicant with other persons, even members of his family, might interfere with the officers' ability to investigate the alleged crimes. The prosecutor also observed that, on two occasions, the applicant had unlawfully obtained a mobile phone while in detention (see paragraph 6 above), which demonstrated his disregard for the lawful requests of law-enforcement officers and gave grounds to suspect that he might threaten the success of the investigation. The prosecutor considered that the presence of the applicant's lawyer during a visit would not prevent the potential transfer of information or other interference with the investigation. The prosecutor further stated that the fact that one family visit had been granted did not mean that more visits must necessarily be authorised as well. He observed that, before being detained, the applicant used to spend most of his time abroad, which meant that he had not seen his daughter regularly. Accordingly, the prosecutor concluded that the restriction on family visits was not disproportionate because one visit had been granted and that the restriction was proportionate to the criminal offences which the applicant had allegedly committed.

13. The applicant appealed against the prosecutor's decisions to a senior prosecutor and then to the Vilnius District Court. In his appeals he submitted that there was no proof that he had ever taken any action to influence anyone or to undermine the success of the investigation, including during the one family visit which had been granted. Moreover, it had not been established that his wife and daughter might have any connection to any other suspects – the applicant submitted that they were not familiar with the criminal case or any persons related to that case. He further submitted that, even though he had previously spent a lot of time abroad, he had regularly gone back to Lithuania or his family had visited him, and they used to speak on the phone. The mere fact that he had worked abroad could therefore not negate his strong bond with his daughter or the distress she was suffering because of the restriction on contact with him. The applicant also submitted that his wish to speak to his daughter and to console her had been the reason why he had unlawfully obtained mobile phones while in detention. He submitted that the authorities could have verified who he had called from those phones, but that they had not done so, and therefore there was no evidence that he had

contacted any persons related to the investigation or had otherwise interfered with its success. Lastly, the applicant stated that the prosecutor could take measures to ensure that a visit from his daughter would not interfere with the investigation, for example by having an investigating officer or an employee of the detention facility present during the visit. He therefore argued that the refusal of family visits had not been based on any relevant reasons and that the absolute ban on such visits was disproportionate.

14. On each occasion, the senior prosecutor and the Vilnius District Court dismissed the appeals lodged by the applicant, finding that the prosecutor had properly assessed all the relevant circumstances and had adopted a reasoned decision. The last such decision was taken by the Vilnius District Court on 2 July 2020.

15. On 20 August 2020 the prosecutor adopted a new decision on the applicant's contact with other persons (see paragraph 7 above). The prosecutor noted that the investigation was still pending and not all the suspects had yet been identified. Moreover, the applicant was not cooperating with the investigation and had refused to identify his contacts. For those reasons, the prosecutor considered that it was necessary to restrict his right to contact other persons. At the same time, the prosecutor noted that there was no information suggesting that visits with the applicant's wife and daughter might affect the success of the investigation. The prosecutor therefore granted the applicant the right to receive two monthly contactless visits from his wife and daughter, in accordance with Article 22 §§ 2 and 4 of the Law on Execution of Pre-trial Detention (see paragraphs 20 and 21 below). The applicant was not allowed to receive visits from any other persons except for his lawyers and investigating officers, and he was not allowed to make any phone calls, except to his lawyers.

III. OTHER RELEVANT FACTS

16. On 16 October 2020, following a request lodged by the applicant, the prosecutor allowed him to make video calls to his wife and daughter.

17. On 16 November 2020 the Vilnius District Court released the applicant from detention on remand and placed him under close supervision: he was prohibited from leaving his home and was ordered to wear an electronic monitoring device.

18. On 4 April 2022 the applicant was notified that the pre-trial investigation had been completed and that he had the right to access the case file. At the time of the submission of the parties' latest observations to the Court (on 29 June 2022), the criminal proceedings were still pending.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW

19. Article 22 § 1 of the Law on Execution of Pre-trial Detention (*Suėmimo vykdymo įstatymas*) provides that the administration of the detention facility should allow a detainee to receive visits unless the prosecutor or the court has issued a written instruction to the contrary. Such an instruction may be given only with the aim of preventing the commission of criminal offences or other violations of the law or protecting the rights and freedoms of others, or when such a visit might negatively affect the success of the pre-trial investigation. If the prosecutor or the court instructs the administration of the detention facility not to allow a detainee to receive visits, the detainee and the administration must be informed about the duration of that restriction, the persons who are not allowed to visit the detainee, and other circumstances which make such a restriction necessary.

20. At the material time, Article 22 § 2 provided that the number of visits was unlimited and that the duration of a visit was no more than three hours.

21. At the material time, Article 22 § 4 provided that visits were to take place in the presence of a representative of the detention facility, in special premises where physical contact between the detainee and the visitors was not possible.

22. At the material time, Article 22 § 5 provided, among other things, that a visit between a detainee and his or her spouse or close relatives could take place without physical separation between them no more than once a month. Such visits were to take place in the presence of a representative of the detention facility, who should not listen to the conversation between the detainee and the visitors.

23. At the material time, Article 22 § 6 provided, among other things, that a visit between a detainee and his or her spouse or close relatives could take place without a representative of the detention facility being present. Such visits could be granted only to those detainees who were not subject to valid disciplinary penalties. The first such visit could be granted no earlier than two weeks after the start of the detention and subsequent visits could be granted no more than once a month. Visits of this type would take place in special closed premises, for no longer than twenty-four hours.

24. Article 22 § 7 provides that a visit during which the visiting rules are breached must be terminated immediately. If during the six months after such a breach a further breach is committed or if a penalty has been imposed on the detainee for breaching the visiting rules, any further visits with the detainee are to take place with physical separation between the detainee and the visitors. Contact visits may be allowed again after three months, provided that the detainee is not subject to valid penalties for breaching the visiting rules.

25. Article 23 § 1 provides that the administration of the detention facility must allow a detainee to make phone calls unless the prosecutor or the court has issued a written instruction to the contrary. Such an instruction may be given only with the aim of preventing the commission of criminal offences or other violations of the law or protecting the rights and freedoms of others, or when allowing the detainee to make phone calls may negatively affect the success of the pre-trial investigation. If the prosecutor or the court instructs the administration of the detention facility not to allow a detainee to make phone calls, the detainee and the administration must be informed about the duration of that restriction, the persons whom the detainee is not allowed to call, and other circumstances which make such a restriction necessary. A restriction on making phone calls does not apply to a detainee's right to call his or her lawyer.

II. RELEVANT INTERNATIONAL MATERIAL

26. Recommendation Rec(2006)2-rev of the Committee of Ministers to member States on the European Prison Rules, adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies and revised and amended by the Committee of Ministers on 1 July 2020 at the 1380th meeting of the Ministers' Deputies, provides in so far as relevant:

“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.

24.5 Prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so.

...”

27. Recommendation CM/Rec(2018)5 of the Committee of Ministers to member States concerning children with imprisoned parents, adopted by the Committee of Ministers on 4 April 2018 at the 1312th meeting of the Ministers' Deputies, provides in so far as relevant:

“Allocation, communication, contact and visits

...

17. Children should normally be allowed to visit an imprisoned parent within a week following the parent's detention and, on a regular and frequent basis, from then on. Child-friendly visits should be authorised in principle once a week, with shorter, more frequent visits allowed for very young children, as appropriate.

18. Visits shall be organised so as not to interfere with other elements of the child's life, such as school attendance. If weekly visits are not feasible, proportionately longer, less frequent visits allowing for greater child-parent interaction should be facilitated.

19. In cases where the current caregiver is not available to accompany a child's visit, alternative solutions should be sought, such as accompanying by a qualified professional or representative of an organisation working in this field or another person as appropriate.

...

25. In accordance with national law and practice, the use of information and communication technology (video-conferencing, mobile and other telephone systems, internet, including webcam and chat functions, etc.) shall be facilitated between face-to-face visits and should not involve excessive costs. Imprisoned parents shall be assisted with the costs of communicating with their children if their means do not allow it. These means of communication should never be seen as an alternative which replaces face-to-face contact between children and their imprisoned parents.

26. Rules for making and receiving telephone calls and other forms of communication with children shall be applied flexibly to maximise communication between imprisoned parents and their children. When feasible, children should be authorised to initiate telephone communications with their imprisoned parents.

...

30. Special measures shall be taken to encourage and enable imprisoned parents to maintain regular and meaningful contact and relations with their children, thus safeguarding their development. Restrictions imposed on contact between prisoners and their children shall be implemented only exceptionally, for the shortest period possible, in order to alleviate the negative impact the restriction might have on children and to protect their right to an emotional and continuing bond with their imprisoned parent.

31. A child's right to direct contact shall be respected, even in cases where disciplinary sanctions or measures are taken against the imprisoned parent. In cases where security requirements are so extreme as to necessitate non-contact visits, additional measures shall be taken to ensure that the child-parent bond is supported.

..."

28. The relevant parts of the 26th General Report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), published in 2017 (CPT/Inf(2017)5), read as follows (references omitted):

"...

59. As regards contact with the outside world, the CPT considers that remand prisoners should in principle be allowed to communicate with their family and other persons (correspondence, visits, telephone) in the same way as sentenced prisoners. All inmates should benefit from a visiting entitlement of at least one hour every week and have access to a telephone at the very least once a week (in addition to the contacts with their lawyer(s)). Moreover, the use of modern technology (such as free-of-charge Voice

over Internet Protocol (VoIP) services) may help prisoners to maintain contact with their families and other persons.

...

61. ... Any refusal in a given case to permit such contacts should be specifically substantiated by the needs of the investigation, require the approval of a judicial authority and be applied for a specific period of time. If it is considered that there is an ongoing risk of collusion, particular visits (or telephone calls) can be monitored.

...”

29. For more international law and practice regarding prisoners’ rights to receive family visits, see *Khoroshenko v. Russia* ([GC], no. 41418/04, §§ 58-80, ECHR 2015), in so far as the standards summarised therein are applicable to remand detainees.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

30. The applicant complained about the authorities’ refusal to grant him visits from his wife and daughter. He relied on Article 8 of the Convention, which reads as follows:

“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. Admissibility

31. The Court notes that the application 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

1. *The parties’ submissions*

(a) **The applicant**

32. The applicant submitted that there had not been any objective reasons for restricting his right to receive visits from his wife and daughter. His daughter did not have any procedural status in the criminal case or any links to any of the other suspects. Moreover, there was no evidence that he had in any way attempted to interfere with the pre-trial investigation through his

contact with his wife and daughter during the visit which had been granted. The applicant also submitted that the fact that he had unlawfully obtained mobile phones in detention (see paragraph 12 above) could not constitute a reason to deny him family visits because it had not been established that he had used those phones to contact any persons related to the investigation (see paragraph 13 above).

33. He further submitted that, at the relevant time, his daughter had been ten years old and the prohibition on seeing her father had caused her great distress and post-traumatic stress disorder. He stated that he had a strong bond with his daughter, despite having lived abroad for many years, because even during that time they used to visit each other and talk on the phone. He contended that the domestic authorities had failed to provide any constructive arguments about how a visit from a ten-year-old child might undermine the success of the investigation.

(b) The Government

34. The Government acknowledged that the restriction on family visits had constituted an interference with the applicant's right to respect for his family life under Article 8 of the Convention. However, they contended that that interference had been lawful (see paragraph 19 above) and that it had pursued the legitimate aim of securing the course of the criminal proceedings, thereby contributing to the prevention of disorder and crime.

35. They further submitted that the interference had been proportionate to the aim pursued. On each occasion, the domestic authorities had provided reasoned decisions for refusing the applicant's requests, and the existence of continued need for restricting visits had been regularly reviewed by a senior prosecutor and the Vilnius District Court. The authorities had based their decisions to refuse family visits on the specific facts of the case and the applicant's personality (see paragraph 12 above), all of which had reasonably led them to believe that the applicant might seek to interfere with the investigation by using his family to contact his accomplices who had remained at large, to tamper with witnesses, or to hide or destroy evidence.

36. The Government further contended that the applicant's right to receive family visits had been restricted only while it had been necessary and that the restrictions had been lifted after the main investigative measures had been carried out and the risk of the success of the investigation being undermined had decreased (see paragraph 15 above). Moreover, even during the period when those restrictions had been necessary, the applicant had been allowed one visit with his wife and daughter, based on the psychologist's report regarding his daughter's psychological state. Accordingly, the authorities had struck a fair balance between the aim sought by the restrictions and the applicant's interests.

2. *Submissions of third-party interveners*

37. In their joint intervention, the AIRE Centre and COPE emphasised that in all decisions concerning children, their best interests should be a primary consideration, in accordance with the United Nations Convention on the Rights of the Child and numerous other international documents. The interveners submitted that in cases of restrictions imposed on the contact of children with incarcerated parents, the rights of the children were involved as much as, if not more than, those of the parents. According to published research, children of incarcerated parents were at a greater risk of family breakdown, stigmatisation and mental health problems. Moreover, the trauma of a parent's sudden disappearance and a subsequent lack of contact could result in young children rejecting the parent at a later stage in their lives. However, studies had shown that those risks could be mitigated by frequent meaningful contact between the children and their imprisoned parents.

3. *The Court's assessment*

38. There was no dispute between the parties that the restriction on the applicant receiving family visits during the first nine months of his detention on remand, from 17 November 2019 to 20 August 2020, constituted an interference with his right to respect for his family life under Article 8 of the Convention. Nor was there any dispute that that interference was in accordance with the law (see paragraph 19 above) and that it pursued the legitimate aim of prevention of disorder or crime (see *Hagyó v. Hungary*, no. 52624/10, § 77, 23 April 2013). Accordingly, it remains for the Court to ascertain whether the interference was necessary in a democratic society.

39. The relevant general principles have been summarised in *Khoroshenko v. Russia* ([GC], cited above, §§ 116-26, and the cases cited therein).

40. In particular, the Court reiterates that detention, like any other measure depriving a person of his or her liberty, entails inherent limitations on private and family life. It has held that some measure of control of prisoners' contact with the outside world is called for and is not of itself incompatible with the Convention. Nevertheless, the Court also recognises that it is an essential part of detainees' right to respect for family life that the authorities enable them or, if need be, assist them in maintaining contact with their close family (see *Kyriacou Tsiakkourmas and Others v. Turkey*, no. 13320/02, § 303, 2 June 2015, and the cases cited therein).

41. Moreover, the Court reiterates that a distinction is to be drawn between the application of a special prison regime or special visiting arrangements during the investigations, where the measures could reasonably be considered necessary in order to achieve the legitimate aim pursued, and the extended application of such regime (see *Khoroshenko*, cited above, § 124, and the cases cited therein).

42. In the present case, the Court accepts that certain restrictions on the applicant's contact with the outside world were reasonably necessary in view of the organised nature of the crimes of which he had been suspected (see *Bogusław Krawczak v. Poland*, no. 24205/06, § 117, 31 May 2011), coupled with the fact that, during the time when he had been detained on remand, not all the suspects had yet been identified and various investigative measures were still being carried out (see paragraphs 7, 8, 12 and 15 above). However, it reiterates that Article 8 of the Convention 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 relation to the specific situation (see *Andrey Smirnov v. Russia*, no. 43149/10, § 48, 13 February 2018; see also the position of the CPT, cited in paragraph 28 above, regarding the need to specifically substantiate any refusal of family visits).

43. The Court notes that on 17 February 2020 the applicant was granted one visit from his wife and daughter, in view of the psychological difficulties experienced by the latter, and that from 20 August 2020 he was allowed two family visits per month (see paragraphs 9, 10 and 15 above). It is satisfied that those decisions were taken after an individualised assessment of the applicant's situation. However, during the remainder of his detention on remand, the authorities' refusals to grant the applicant visits from his wife and daughter were based essentially on the argument that he might seek to interfere with the investigation – to coordinate his position with other suspects, tamper with witnesses or hide or destroy evidence – by using his family (see paragraphs 8 and 12 above).

44. The Court has accepted that, in certain circumstances, family visits might serve as a means of conveying orders and instructions to the outside, thereby justifying restrictions on such visits (see *Enea v. Italy* [GC], no. 4912/01, § 126, ECHR 2009, and the cases cited therein). The Court is mindful of the fact that it is primarily for the domestic authorities to assess the need for such restrictions, but it emphasises that decisions in this regard should also duly take into account the need to protect the family life of those involved, notably minors. However, in the present case, the domestic authorities failed to substantiate why they considered such a risk to be present in the particular circumstances of the applicant and his family. The Court observes that the applicant's wife or daughter were not suspects or witnesses in the criminal proceedings, and the authorities never challenged the applicant's assertion that they did not have any connection to the other suspects and were not familiar with the criminal case (see paragraph 13 above and *Varnas v. Lithuania*, no. 42615/06, § 120, 9 July 2013). Moreover, it was never alleged that during the one family visit which had been granted, the applicant or his wife or daughter had in any way attempted to interfere with the investigation.

45. When refusing to grant the applicant family visits, the authorities accorded significant weight to the fact that, on two occasions, he had

unlawfully obtained a mobile phone while in detention (see paragraph 12 above). However, the Court observes that it was never established that the applicant had used the unlawfully obtained phones in ways which could have undermined the success of the investigation (see the applicant's submissions in paragraph 32 above and, *mutatis mutandis*, *Kučera v. Slovakia*, no. 48666/99, § 132, 17 July 2007).

46. The Court further observes that the applicant proposed to the authorities that family visits, including those only from his daughter, could take place in the presence of his lawyer or an investigating officer, or an employee of the detention facility (see paragraphs 11 and 13 above). However, there is no indication that the authorities properly considered those proposals: they merely stated that the presence of the applicant's lawyer would not be sufficient to eliminate the risk of interference with the proceedings, without substantiating that decision (see paragraph 12 above), and they did not address the other proposed arrangements in any way. In this connection, the Court observes that, at the material time, the domestic law provided for contactless visits in the presence of a representative of the detention facility, and visits could be terminated for breaches of visiting rules (see paragraphs 21 and 24 above). Accordingly, the Court finds that the domestic authorities failed to demonstrate that allowing the applicant to meet with his wife and daughter under special visiting arrangements, such as supervision by a relevant officer, would have jeopardised the investigation (see *Kučera*, cited above, § 130; *Ferla v. Poland*, no. 55470/00, § 47, 20 May 2008; *Piechowicz v. Poland*, no. 20071/07, § 220, 17 April 2012; and *Hagyó*, cited above, §§ 87-88).

47. Furthermore, the Court cannot disregard the fact that, at the material time, the applicant's daughter was ten years old. It takes note of the relevant international material regarding the importance for children of maintaining a bond with their incarcerated parents (see paragraphs 27 and 37 above). Indeed, the distress suffered by the applicant's daughter because of the inability to see her father was established by a psychologist and acknowledged by the domestic authorities on one occasion, when a family visit was granted (see paragraph 9 above). Although in their later decisions the authorities appeared to question the closeness of the applicant's relationship with his daughter, given that he had spent a lot of time abroad (see paragraph 12 above), the Court finds it difficult to accept that the authorities' subjective assessment of the strength of a detainee's family bonds could be decisive for refusing family visits. Lastly, it notes that the domestic authorities did not provide any explanation of how a visit from a ten-year-old child could have affected the success of the criminal proceedings.

48. The foregoing considerations are sufficient to enable the Court to conclude that the restrictions on the applicant receiving visits from his wife and daughter during his detention on remand, which resulted in him being

granted only one such visit in nine months, have not been shown to have been necessary in a democratic society.

49. There has accordingly been a violation of Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

50. 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

51. The applicant claimed 12,000 euros (EUR) in respect of non-pecuniary damage for the distress caused by the prolonged restriction on seeing his wife and daughter.

52. The Government submitted that that claim was excessive and unsubstantiated.

53. The Court has no reason to doubt that the restriction on family visits during the first nine months of his detention on remand caused the applicant distress and emotional suffering. However, it finds his claim in respect of non-pecuniary damage to be excessive. Making its award on an equitable basis, the Court considers it reasonable to award the applicant EUR 5,000, plus any tax that may be chargeable, under this head.

B. Costs and expenses

54. The applicant also claimed EUR 5,750 for the costs and expenses incurred before the domestic courts and before the Court. He submitted the list of legal services which had been provided to him and a copy of an invoice indicating that his wife had made the payment to his lawyer.

55. The Government did not dispute that those expenses had been necessarily incurred and that they were reasonable.

56. 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 (see, among many other authorities, *H.F. and Others v. France* [GC], nos. 24384/19 and 44234/20, § 291, 14 September 2022). In the present case, regard being had to the documents in its possession and the above criteria, the Court grants the applicant’s claim in full and awards him EUR 5,750, plus any tax that may be chargeable to him, under this head.

C. Default interest

57. 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;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *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:
 - (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 5,750 (five thousand seven 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;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 March 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı
Registrar

Arnfinn Bårdsen
President