



Prison regime allowing only short-term family visits twice a year over ten-year period violated prisoner's right to family life

In today's **Grand Chamber** judgment¹ in the case of **Khoroshenko v. Russia** (application no. 41418/04) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private and family life) of the European Convention on Human Rights.

The case concerned the complaint by a life prisoner about various restrictions on family visits during ten years of his detention in a special regime correctional colony.

The Court found in particular that the strict regime had been disproportionate to the aims pursued and that such a regime seriously complicated a prisoner's social reintegration and rehabilitation. Given that a majority of Council of Europe member States did not make a distinction between life prisoners and other prisoners as regards the prison regime and that in those States the minimum frequency of family visits allowed for life prisoners was not lower than once every two months, Russia had only a narrow room for manoeuvre ("margin of appreciation") in this field.

Principal facts

The applicant, Andrey Khoroshenko, is a Russian national who was born in 1968 and is currently serving a life sentence. He was convicted of murder and sentenced to death in 1995; his sentence was changed to life imprisonment in 1999.

In October 1999 Mr Khoroshenko was transferred to a correctional colony for life prisoners in the Perm Region. During the first ten years of his detention there, he was held under a strict regime of imprisonment. This notably implied that he was allowed to receive no more than one visit of relatives, lasting no longer than four hours, every six months. He was able to communicate with his visitors only through a glass partition or through metal bars, without physical contact, while a prison guard listened to his conversations with the visitors. Such a special regime was normally applicable until convicts had served at least ten years of their sentence, calculated from the date of their arrest. However, in Mr Khoroshenko's case, this period was calculated from October 1999 when he was placed in the correctional colony, in application of a special rule for prisoners who had misbehaved during their detention on remand.

Mr Khoroshenko maintains that due to those severe restrictions on visits he lost contact with some of his family members, including his son, who now refuses to see him. His son had been three years old at the time of Mr Khoroshenko's arrest and has lived with his former wife, who divorced him in 1996.

Since 11 October 2009 Mr Khoroshenko has been held in detention under an ordinary regime, being entitled to longer visits by family members.

While detained under the special regime, in August 2004, Mr Khoroshenko lodged a complaint with the Russian Constitutional Court, challenging the constitutionality of the ten-year ban on long-term family visits for convicts sentenced to life imprisonment under the Code of Execution of Criminal

1. Grand Chamber judgments are final (Article 44 of the Convention).

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Sentences. He alleged that the relevant provision of the Code was discriminatory and breached his right to respect for private life. The Constitutional Court rejected his complaint. A second complaint lodged by Mr Khoroshenko – alleging that the distinction between two categories of detainees serving their life sentences under a special regime, on the basis of whether or not they had previously breached prison rules while in detention on remand, was discriminatory – was also dismissed by the Constitutional Court, in December 2006.

Complaints, procedure and composition of the Court

Mr Khoroshenko complained, in particular, that the restrictions on contacts with his family members under the strict regime in the correctional colony between October 1999 and October 2009 had been in breach of his rights under Article 8 (right to respect for private and family life) of the European Convention on Human Rights. He also maintained that those restrictions had been in breach of Article 14 (prohibition of discrimination) of the Convention.

The application was lodged with the European Court of Human Rights on 6 October 2004. On 11 February 2014 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber. A group of legal experts from the University of Surrey (United Kingdom) was granted leave to submit written comments as a third party. A Grand Chamber hearing took place on 3 September 2014.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,
Josep **Casadevall** (Andorra),
Guido **Raimondi** (Italy),
Mark **Villiger** (Liechtenstein),
Isabelle **Berro** (Monaco),
Ineta **Ziemele** (Latvia),
Elisabeth **Steiner** (Austria),
Khanlar **Hajiyev** (Azerbaijan),
Mirjana **Lazarova Trajkovska** ("The former Yugoslav Republic of Macedonia"),
Julia **Laffranque** (Estonia),
Paulo **Pinto de Albuquerque** (Portugal),
Linos-Alexandre **Sicilianos** (Greece),
Erik **Møse** (Norway),
Paul **Mahoney** (the United Kingdom),
Ksenija **Turković** (Croatia),
Dmitry **Dedov** (Russia),
Egidijus **Kūris** (Lithuania),

and also Michael **O'Boyle**, *Deputy Registrar*.

Decision of the Court

Article 8

The Court observed that among Council of Europe member States there was a considerable variety of practices as regards the regulation of prison visits. However, the minimum frequency of such visits allowed for life prisoners was not lower than once every two months. Moreover, a majority of those States did not make a distinction in their policy in this field between prisoners sentenced to life and other prisoners. Russia was the only Council of Europe member State to regulate prison visits of all life prisoners as a group by combining an extremely low frequency of visits with a long duration of

such a regime. That situation narrowed the Russian State's room for manoeuvre ("margin of appreciation" under the Court's case-law) as regards the interference with the right to respect for private and family life under Article 8.

The Court noted that the Russian Constitutional Court had argued, in another case concerning the restrictions on visits for life prisoners, that those restrictions did not go beyond those resulting from the very essence of imprisonment. The Court was not persuaded by that argument, since the regime did impose restrictions which made Mr Khoroshenko's situation considerably worse than that of an average prisoner in Russia serving a long-term sentence.

During the strict regime of imprisonment Mr Khoroshenko had been allowed to have no more than one cell mate and had served his sentence separately from other detainees. In other cases, the Court had already held that all forms of solitary confinement without appropriate mental and physical stimulation were likely to have damaging effects in the long run, resulting in a deterioration of mental faculties and social abilities. The Court was struck by both the severity and the long duration, of ten years, of Mr Khoroshenko's prison regime.

The Court underlined that in its case-law it had consistently taken the position that prisoners in general continued to enjoy all the fundamental rights and freedoms guaranteed by the Convention except for the right to liberty. The principle of proportionality required that, where severe measures limiting Convention rights were applied, there had to be a discernible and sufficient link between the application of those measures and the conduct and circumstances of the individual concerned. The Court found that the Russian legislation as applied in Mr Khoroshenko's case had not taken his interest and the interest of his family members into account, as was required by Article 8.

While the Russian Government, in their written observations, had stated that the restrictions aimed at the "restoration of justice, reform and the prevention of new crimes", during the hearing before the Court, the Government had explicitly acknowledged that Mr Khoroshenko's prison regime did not pursue the aim of reintegration but was aimed at isolating him. The Court found that the strict nature of the regime prevented life prisoners from maintaining contact with their families and thus seriously complicated their social reintegration and rehabilitation. In that context, the Court pointed to the recommendations of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to the effect that long-term prison regimes "should seek to compensate [for the desocialising effects of imprisonment] in a positive and proactive way." This aim was moreover consonant with the relevant instrument of international law.

In conclusion, the interference with Mr Khoroshenko's right to respect for his private and family life had been disproportionate to the aims invoked by the Russian Government. The Court added that the strict regime, with its complete ban on physical contact with visitors and with conversations being overheard by a prison guard at all times, had contributed to Mr Khoroshenko's inability to establish close bonds with his son during a crucial period of the latter's early life. Russia had thus overstepped its margin of appreciation in this field. Accordingly, there had been a violation of Article 8.

In view of that finding, the Court did not see a reason for separately examining the complaints under Article 14.

Just satisfaction (Article 41)

The Court held that Russia was to pay Mr Khoroshenko 6,000 euros (EUR) in respect of non-pecuniary damage and EUR 11,675 in respect of costs and expenses.

Separate opinion

Judges Pinto de Albuquerque and Turković expressed a joint concurring opinion, which is annexed to the judgment.

The judgment is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.