

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

THIRD SECTION

# CASE OF KUZNETSOV v. RUSSIA

*(Application no. 3079/18)*

JUDGMENT

STRASBOURG

27 October 2022

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

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

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

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

Darian Pavli*, President,*
Andreas Zünd*,*
Frédéric Krenc*, judges,*
and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having deliberated in private on 6 October 2022,

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

# PROCEDURE

1. The case originated in an application against Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 5 December 2017.

2. The applicant was represented by Ms O. Preobrazhenskaya, a lawyer admitted to practice in Moscow, Russia.

3. The Russian Government ("the Government") were given notice of the application.

# THE FACTS

4. The applicant's details and information relevant to the application are set out in the appended table.

5. The applicant complained of the restrictions on family visits in pre-trial detention facilities. He also raised other complaints under the provisions of the Convention.

# THE LAW

## I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

6. The applicant complained principally of the restrictions on family visits in pre-trial detention facilities. He relied, expressly or in substance, on Article 8 of the Convention, which 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."

7. The Court has already established in earlier cases against Russia that, in the absence of any factual elements pointing to the danger posed by the prisoner or to the existence of a security risk, the automatic application of

restrictions on family visits, including, but not limited to, refusal of long-term visits to convicted prisoners detained in pre-trial detention facilities, separation of a detainee from his visitors preventing any physical contact between them or presence of a prison guard during visits, cannot be justified as being "necessary in a democratic society" and amounted to a violation of Article 8 of the Convention (see *Andrey Smirnov v. Russia,* no. 43149/10, 13 February 2018, *Resin v. Russia,* no. 9348/14, 18 December 2018, *Chaldayev v. Russia*, no. 33172/16, 28 May 2019, and *Pshibiyev and Berov v. Russia,* no. 63748/13, 9 June 2020).

8. Having examined all the material submitted to it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility and merits of these complaints. It discerns no factual elements justifying the authorities' refusal of long-term visits to the applicant, his physical separation from the visitors or presence of a prison guard during short-term family visits. Accordingly, the Russian authorities overstepped their margin of appreciation and failed to justify the interference with the applicant's rights under Article 8 as having been "necessary in a democratic society".

9. These complaints are therefore admissible and disclose a breach of Article 8 of the Convention.

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

10. The applicant submitted other complaints which also raised issues under the Convention, given the relevant well-established case-law of the Court (see the appended table). These complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention, nor are they inadmissible on any other ground. Accordingly, they must be declared admissible. Having examined all the material before it, the Court concludes that they also disclose a violation of the Convention in the light of its well-established case-law (see *Idalov v. Russia* [GC], no. 5826/03, §§ 103-08, 22 May 2012, concerning conditions of transport of detainees, and *Pavlova v. Russia*, no. 8578/12, §§ 29-33, 18 February 2020, concerning the lack of an effective remedy in respect of the complaint about restrictions on family visits).

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

11. 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."

12. Regard being had to the documents in its possession and to its case-law (see, in particular, *Mukhametov and Others v. Russia,* nos. 53404/18 and 3 others, 14 December 2021), the Court considers it reasonable to award the sums indicated in the appended table and dismisses the remainder of the applicant's claims for just satisfaction.

13. The Court further considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that this application discloses a breach of Article 8 of the Convention concerning the restrictions on family visits in pre-trial detention facilities;

3. *Holds* that there has been a violation of the Convention as regards the other complaints raised under well-established case-law of the Court (see the appended table);

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the amount indicated in the appended table, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

5. *Dismisses* the remainder of the applicant's claims for just satisfaction.

Done in English, and notified in writing on 27 October 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Viktoriya Maradudina | Darian Pavli |
| Acting Deputy Registrar | President |

# APPENDIX

## Application raising complaints under Article 8 § 1 of the Convention (restrictions on family visits in pre-trial detention facilities)

| Application no.<br>Date of introduction | Applicant's name<br>Year of birth | Representative's name and location | Detention facility | Type of restriction | Other relevant information | Other complaints under well-established case-law | Amount awarded for non-pecuniary damage and costs and expenses per applicant (in euros)[1] |
|---|---|---|---|---|---|---|---|
| 3079/18<br>05/12/2017 | **Anton Gennadyevich KUZNETSOV**<br>1980 | Preobrazhenskaya Oksana Vladimirovna<br>Strasbourg | SIZO-3 Vologda Region,<br>SIZO-2 Vologda Region | refusal of long-term family visits, physical separation and supervision during short-term family visits | On 17/10/2016 the applicant was convicted of a criminal offence. On the same day he was placed in custody. From 17/10/2016 to 14/06/2017 the applicant was detained in SIZO-3, Vologda Region. From 14/06/2017 to 28/03/2018 he was detained in SIZO-2 Vologda Region. | Art. 3 - inadequate conditions of detention during transport - van, 14/06/2017, 4 hours' journey, 0.35 sq. m, lack of fresh air, no or restricted access to toilet, no or restricted access to potable water,<br><br>Art. 13 - lack of any effective remedy in domestic law in respect of refusals of long-term family visits in detention. | 4,500 |

[1] Plus any tax that may be chargeable to the applicant.