

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

THIRD SECTION

CASE OF PAKHTUSOV v. RUSSIA

(Application no. 11800/10)

JUDGMENT

STRASBOURG

16 May 2017

FINAL

16/08/2017

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



In the case of Pakhtusov v. Russia,

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

Helena Jäderblom, *President,*
Branko Lubarda,
Luis López Guerra,
Helen Keller,
Dmitry Dedov,
Georgios A. Serghides,
Jolien Schukking, *judges,*

and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 25 April 2017,

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

PROCEDURE

1. The case originated in an application (no. 11800/10) 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. Andrey Aleksandrovich Pakhtusov ("the applicant"), on 17 January 2010.

2. The applicant was represented by Mr E. Mezak, a human rights activist practising in Syktyvkar. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. The applicant complained about the ban on family visits established by Russian law in respect of administrative detainees.

4. On 17 June 2010 the application was communicated to the Government. The parties submitted written observations on the admissibility and merits.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant is a taxi driver.

6. On the night of 25 July 2009 traffic police stopped the applicant's car. Following the applicant's failure to produce his driving licence and suspecting that it had been withdrawn, police officers took him to the duty unit of the Ezhvinskiy District police station, where he was kept in a cell for

administrative detainees until the following morning. A record of the applicant's administrative arrest was drawn up.

7. On 26 July 2009 the Justice of the Peace of the Vezhdinskiy Court Circuit of the Ezhvinskiy District found the applicant guilty of driving a vehicle after the withdrawal of his driving licence (an administrative offence under Article 12.7 § 2 of the Russian Code of Administrative Offences) and sentenced him to fifteen days of administrative detention.

8. On 31 July 2009 the applicant made a written request to the head of the detention unit seeking a family visit. The next day the request was returned to the applicant bearing a handwritten note by the acting head of the detention unit, Mr S., which stated that family visits were not "provided for [by law]".

9. On 14 August 2009 the applicant's representative lodged a complaint with the Syktyvkar Town Court, alleging that the applicant's right to family life guaranteed by Article 8 of the Convention had been unlawfully restricted.

10. The police officials filed a written objection, arguing that the Internal Rules governing Detention Facilities for Administrative Detainees did not provide administrative detainees with the right to have a family visit.

11. On 15 September 2009 the Syktyvkar City Court dismissed the applicant's complaint, having accepted the police authorities' argument that administrative detainees were not entitled to a family visit under the domestic law in force and that the applicant had been subjected to those limitations of his rights as a negative consequence of the administrative detention.

12. The applicant's representative appealed. Relying on the Court's judgments in the cases of *Messina v. Italy (no. 2)* (no. 25498/94, § 61, ECHR 2000-X) and *Vlasov v. Russia* (no. 78146/01, § 123, 12 June 2008), he argued that the authorities' assistance in maintaining contact with close family was an essential part of a detainee's right to respect for family life. Limitations imposed on the number of family visits constituted an interference with the applicant's rights under Article 8 of the Convention. Restrictions of that kind could only be applied "in accordance with the law", should pursue one or more legitimate aims and, in addition, should be justified as being "necessary in a democratic society". The representative submitted that there was no norm in Russian law imposing restrictions on family visits for administrative detainees.

13. On 22 October 2009 the Supreme Court of the Komi Republic upheld the City Court's decision, having reasoned as follows:

> "There is no prohibition on family visits for administrative detainees.
>
> ...
>
> [At the same time] a refusal to authorise a family visit has a basis in Russian law; however, it should be warranted by circumstances and conditions providing the competent authorities with the right to apply the disputed restriction. Providing

law-enforcement bodies with unlimited powers in issues pertaining to fundamental rights could run contrary to the superior role of the law and could result in arbitrary interference with human rights.

In the case under examination, there are no grounds for concluding that the actions of the acting head [of the detention unit of the police station where the applicant had been detained] were unlawful because, having applied for a family visit, [the applicant] had not indicated whom he had wanted to see and what the relationship was between him and that person. If those important details are not provided, the authorisation of a family visit cannot be considered lawful."

II. RELEVANT DOMESTIC LAW

14. The relevant provisions of the Russian Code of Administrative Offences (no. 195-FZ of 30 December 2001, in force at the time) read as follows:

Article 3.9

"Administrative detention (*административный арест*), a type of administrative sentence, is imposed by a judge in exceptional cases for a limited number of administrative offences and for a period not exceeding fifteen days."

Article 12.7 § 2

"Continuing to drive a vehicle after a driving licence has been withdrawn is punishable by administrative detention of up to fifteen days."

15. At the time of the events, administrative detention was governed by the Regulations on Procedure for Serving an Administrative Detention (adopted by the Governmental Decree no. 726 of 2 October 2002) and by the Internal Rules for Detention Facilities for Administrative Detainees (adopted by Order no. 605dsp issued by the Ministry of Internal Affairs of Russia on 6 June 2000). Both documents were silent on the possibility of family visits for administrative detainees.

16. On 26 July 2013 the Administrative Detention Act (no. 67-FZ of 26 April 2013) came into force. Article 10 of the Act provided administrative detainees with the right to have an hour-long family visit during the detention period.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

17. The applicant complained under Article 8 of the Convention about the denial of a family visit while he was under administrative detention. Article 8 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

18. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

19. The Government submitted that Russian law did not prohibit administrative detainees from having family visits. However, the applicant's request had not been sufficiently precise as he had failed to provide the personal details of the relatives wishing to visit him. Thus, the applicant could not claim that his right under Article 8 had been violated.

20. The applicant argued that police officers were reluctant to grant family visits to administrative detainees throughout Russia due to the absence of clear and precise rules governing that aspect of administrative detention.

21. The applicant disputed that he had been denied a family visit because he had failed to provide the personal details of his relatives. He firstly argued that the handwritten note by the acting head of the detention unit (see § 8) had clearly demonstrated that the police interpreted the relevant provisions of the domestic law as imposing a total ban on family visits for administrative detainees. Secondly, the applicant noted that the respondent Government had failed to refer to any legal norm requiring administrative detainees to provide the personal details of their relatives when applying for a family visit.

2. The Court's assessment

(a) General principles

22. The Court observes that detention, even for a short period, by its very nature imposes a limitation on private and family life. However, it is an essential part of a detainee'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 (see *Estrikh v. Latvia*, no. 73819/01, § 166, 18 January 2007, and *Messina v. Italy (no. 2)*, no. 25498/94, § 61, ECHR 2000-X). Private life, as protected under Article 8, includes a right to maintain relationships with the outside world (see *Khoroshenko v. Russia* [GC], no. 41418/04, §§ 106-109, ECHR 2015; *Nada v. Switzerland* [GC], no. 10593/08, § 151, ECHR 2012; and *Laduna v. Slovakia*, no. 31827/02, § 53, ECHR 2011).

23. A prohibition of family visits constitutes an interference with the detainee's rights under Article 8 but it is not, in itself, a breach of that provision (see *Piechowicz v. Poland*, no. 20071/07, § 212, 17 April 2012).

24. A restriction under Article 8 of the Convention must be applied "in accordance with the law", must pursue one or more of the legitimate aims listed in paragraph 2 and, in addition, must be justified as being "necessary in a democratic society" (see *Piechowicz*, cited above, § 212).

25. The Court notes that the wording "in accordance with the law" not only requires the impugned measure to have some basis in domestic law, but also relates to the quality of that law. The law must meet quality requirements: it must be accessible to the person concerned and foreseeable as to its effects (see, among many other authorities, *Roman Zakharov v. Russia* [GC], no. 47143/06, § 228, ECHR 2015; *Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 95, ECHR 2008; and *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000-V).

26. As regards the requirement of foreseeability, the Court reiterates that a rule is "foreseeable" if it is formulated with sufficient precision to enable any individual – if need be with appropriate advice – to regulate his conduct (see *Rotaru*, cited above, § 55).

(b) Application of the principles to the present case

(i) Interference

27. The Court observes that the Government may be understood as disputing the existence of any "interference" owing to the fact that the applicant did not provide the personal details of the relatives wishing to visit him and thus made an essentially fictitious request.

28. However, the Court finds no reason to consider that the applicant's wish to be visited by a family member was not genuine. The applicant sought legal advice promptly after release and maintained his complaint concerning the restriction on family visits before the domestic courts. Besides, the refusal issued by the acting head of the detention unit had been unconditional and the applicant had not been asked to provide any specific information about his relatives.

29. Accordingly, there has been an interference with the applicant's rights under Article 8.

(ii) Whether the interference was prescribed by law

30. The Court notes that the Russian law in force at the time of the events of the present case imposed no express restriction on family visits for administrative detainees (see paragraph 15 above).

31. At the same time, Russian law did not contain any legal provision laying down the conditions subject to which a request for a family visit could be granted and setting out the procedural requirements for such a request. Nor was the Court presented with any evidence suggesting that there was any established practice in Russia regulating conditions for organising family meetings and requiring detainees to provide any specific information, such as the personal details of their relatives.

32. Consequently, it is not possible to establish that the interference with the applicant's right in the present case was based on a law that was formulated with sufficient precision.

33. The Court accordingly concludes that the interference with the applicant's right was not in accordance with the law within the meaning of Article 8 § 2 of the Convention. Consequently, there has been a violation of Article 8.

34. In the light of this conclusion, the Court does not consider it necessary to review compliance with the remaining requirements of Article 8 § 2 in this case (see *Petrova v. Latvia*, no. 4605/05, § 98, 24 June 2014).

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

35. The applicant complained under Article 6 § 1 of the Convention that the court proceedings had been unfair in that the domestic courts had incorrectly assessed the facts and had misinterpreted the domestic law.

36. Article 6 § 1, insofar as relevant, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

37. The Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). Nor is it for the Court to question the authorities' interpretation of their own laws unless there has been a flagrant violation of domestic law (see *DMD GROUP, a.s., v. Slovakia*, no. 19334/03, § 61, 5 October 2010).

38. In the present case the domestic proceedings were not tainted with flagrant unfairness. Accordingly, this complaint is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

39. 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

40. The applicant claimed 1,000 euros (EUR) in respect of non-pecuniary damage.

41. The Government found the applicants' claim excessive.

42. The Court considers that the applicant suffered non-pecuniary damage which will not be sufficiently compensated by the finding of a violation of the Convention. Making an assessment on an equitable basis, the Court awards the applicant EUR 1,000 under this head, plus any tax that may be chargeable on that amount.

B. Costs and expenses

43. The applicant also claimed EUR 1,500 for costs and expenses comprising official fees, postal services and a refund of 60,000 Russian roubles paid to Mr Mezak for his services. He submitted two agency contracts, bank statements indicating several payments to Mr Mezak, and a copy of a receipt for postal services.

44. The Government considered the claim to be excessive and groundless.

45. The Court notes that Mr Mezak did not seek leave to represent the applicant after communication of the case to the Government, as he should have done in accordance with Rule 36 §§ 2 and 4 (a) of the Rules of Court. With regard to the circumstances of the case and the parties' submissions, the Court awards the applicant EUR 3, plus any tax that may be chargeable to the applicant on that amount, for proven postal expenses and dismisses the remainder of the claims under this head.

C. Default interest

46. 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 complaint under Article 8 of the Convention concerning the denial of a family visit during the administrative detention admissible and the remainder of the application inadmissible;

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, to be converted into the Russian roubles at the rate applicable at the date of settlement:
      (i) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 3 (three 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 16 May 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Helena Jäderblom President