

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

THIRD SECTION

DECISION

Application no. 68808/16
Fedor Nikolayevich GONCHAROV against Russia
and 9 other applications
(see appended table)

The European Court of Human Rights (Third Section), sitting on 30 June 2022 as a Committee composed of:

Darian Pavli, *President,*
Andreas Zünd,
Mikhail Lobov, *judges,*
and Viktoriya Maradudina, *Acting Deputy Section Registrar,*

Having regard to the above applications lodged on the various dates indicated in the appended table,

Having deliberated, decides as follows:

PROCEDURE

1. The case originated in applications against Russia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on the various dates indicated in the appended table

2. The Russian Government ("the Government") were given notice of the applications.

FACTS

3. The list of applicants is set out in the appended table.

4. The applicants complained of their or their relative's (a detainee) allocation or transfer to a remote penal facility irrespective of family life considerations. In some of the applications, complaints based on the same facts were also communicated under other provisions of the Convention.

THE LAW

I. JOINDER OF THE APPLICATIONS

5. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single decision.

II. ALLEGED VIOLATION OF ARTICLES 8 AND 13 OF THE CONVENTION

6. The applicants complained of their or their relative's allocation or transfer to a remote penal facility irrespective of family life considerations. They relied on Articles 8 and 13 of the Convention, which read, in so far as relevant, as follows:

Article 8

"1. Everyone has the right to respect for his private ... 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."

Article 13

"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."

7. The Court reiterates that in its recent decisions of *Dadusenko and Others v. Russia* ((dec.), no. 36027/19 and 3 others, 7 September 2021) and *Tamamshev and Others v. Russia* ((dec.) [Committee], nos. 57368/19 and 59831/19, §§ 22-23, 7 September 2021), it has accepted that that the Russian Code of Execution of Criminal Sentences (the "CES") as amended on 1 April 2020 (effective as of 29 September 2020) provided for an effective remedy for the complaints about the breaches of Article 8 of the Convention, as regards allocation or transfer of prisoners to a remote penal facility irrespective of family life considerations, and, having dismissed those complaints for the applicants' failure to exhaust a new remedy, it has declared that it will apply that approach to all similar applications pending before the Court (see *Dadusenko and Others*, cited above, §§ 25-34).

8. In the present applications, having examined all the material before it, the Court has not found any fact or argument capable of persuading it to reach a different conclusion on the admissibility of these complaints. It therefore considers that, in so far as the applicants have lodged prima facie well-founded complaints, the amended CES affords them an opportunity to

obtain adequate redress by lodging a transfer request with the Federal Service of Execution of Sentences and/or challenging the proportionality of the refusal of transfer in court. Accordingly, the applicants should exhaust this remedy before their complaints can be examined by the Court. It follows that these complaints under Article 8 of the Convention should be declared inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention.

9. The Court has found above that the applicants have an effective remedy at their disposal which they have been required to use for the purpose of Article 35 § 1 of the Convention. Accordingly, their complaints under Article 13 of the Convention must be rejected as being manifestly ill-founded within the meaning of Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 21 July 2022.

Viktoriya Maradudina	Darian Pavli
Acting Deputy Registrar	President

APPENDIX

List of applications raising complaints under Article 8 § 1 of the Convention
(allocation or transfer to a remote penal facility irrespective of family life considerations)

No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Detention facility	Family member	Place of residence of the family member	Approximate distance between the facility and the place of residence of the family members (in km)	Other complaints under well-established case-law
1.	68808/16 09/11/2016	**Fedor Nikolayevich GONCHAROV** 1982	Gavrilitsa Irina Aleksandrovna Krasnoyarsk	OIK-30 IK-15 Krasnoyarsk Region, IK-17 Krasnoyarsk Region	The applicant is a detainee, his relatives are: wife, child, parents	Nerchinsk, Zabaykalskiy Region	2,400	Art. 13 - lack of any effective remedy in domestic law in respect of allocation to a remote detention facility
2.	9245/20 31/01/2020	Household **Rustam Shamsayevich TAIPOV** 1982 **Zulay Magamedovna TAIPOVA** 1946	Radnayeva Nadezhda Valeryevna Balashikha	IK-49 Komi Republic	The first applicant is a detainee, the second applicant is his mother	Grozny, Chechen Republic	3,300	Art. 13 - lack of any effective remedy in domestic law in respect of allocation to a remote detention facility
3.	13510/20 28/02/2020 (6 applicants)	Household **Soyelma Rinchindorzhiyevna SHAGZHIYEVA** 1971 **Daba Sergeyevich SHAGZHIYEV** 2010 **Asel Asilbekovna SHAGZHIYEVA** 2015 **Nomik Sergeyevna SHAGZHIYEVA** 2004 **Yevgeniya Sergeyevna SHAGZHIYEVA** 1997 **Yuliya Sergeyevna SHAGZHIYEVA** 1995	Miller Irina Vladimirovna Kansk	IK-17 Krasnoyarsk Region	The applicants are all relatives of a detainee (wife, children, granddaughter)	Gegetuy, Republic of Buryatiya	>2,000	Art. 13 - lack of any effective remedy in domestic law in respect of allocation to a remote detention facility

No.	Application no. Date of introduction	Applicant's name Year of birth	Representative's name and location	Detention facility	Family member	Place of residence of the family member	Approximate distance between the facility and the place of residence of the family members (in km)	Other complaints under well-established case-law
4.	26584/20 03/06/2020	**Dmitriy Petrovich SEMENOV** 1979		IK-17 Krasnoyarsk Region	The applicant is a detainee, his relatives are: father, mother, child, sister, wife	Novocheboksarsk	3,400	Art. 13 - lack of any effective remedy in domestic law in respect of allocation to a remote detention facility -
5.	36773/20 04/08/2020	**Roman Pavlovich BURDUKOVSKIY** 1984	Burdukovskaya Yevgeniya Pavlovna Gelendzhik	IK-22 Primorye Region	The applicant is a detainee, his relatives is his mother	Ulan-Ude, Republic of Buryatia	3,700	Art. 13 - lack of any effective remedy in domestic law in respect of allocation to a remote detention facility -
6.	38866/20 10/08/2020 and 39471/20 19/08/2020	Household **Lidiya Alekseyevna MOSKALEVA** 1955 **Viktor Aleksandrovich MOSKALEV** 1977		IK-8 Komi Republic	The first applicant is the mother of the second applicant, who is a detainee	Balashikha, Moscow region	1,500	Art. 13 - lack of any effective remedy in domestic law in respect of allocation to a remote detention facility -
7.	49099/20 22/10/2020	**Dmitriy Nikolayevich GUSHCHIN** 1979		IK-15 Nizhniy Novgorod Region	The applicant is a detainee, his relatives are: mother, sister	Uliyanovsk, Uliyanovsk Region	465	Art. 13 - lack of any effective remedy in domestic law in respect of allocation to a remote detention facility -
8.	5291/21 28/12/2020	**Marina Vladimirovna FEDOTOVA** 1979		IK-8 Komi Republic	The applicant is a sister of a detainee	Nizhniy Novgorod	1,000	Art. 13 - lack of any effective remedy in domestic law in respect of allocation to a remote detention facility -
9.	11095/21 02/02/2021	**Natalya Yuryevna LAMEKO** 1973		IK-1 Komi Republic	The applicant is a detainee, her relatives is her husband	Moscow	1,300	Art. 13 - lack of any effective remedy in domestic law in respect of allocation to a remote detention facility -