



## Various restrictions on visits to an applicant held in pre-trial detention breached the Convention

In today's Chamber judgment<sup>1</sup> in the case of [Chaldayev v. Russia](#) (application no. 33172/16) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 8 (right to private and family life) of the European Convention on Human Rights, and**

**a violation of Article 14 (prohibition of discrimination) read in conjunction with Article 8**

The case concerned various restrictions on family visits to the applicant during his pre-trial detention.

The Court observed that where visiting rights were concerned, the State did not have unfettered discretion to lay down general restrictions without allowing for flexibility in determining whether the restrictions imposed are appropriate or really necessary. The restrictions on Mr Chaldayev's visits had in fact been imposed automatically.

The Court also noted that the restrictions on remand prisoners' rights in terms of family visits were generally applicable, regardless of the reasons for their placement in pre-trial detention, the stage reached in the criminal proceedings and any security considerations.

The Court saw no objective and reasonable justification for subjecting persons held in pre-trial detention to the same type of restrictions as life prisoners. Accused persons who had not been convicted should benefit from the presumption of innocence.

The Court concluded that all restrictions on detainees' visiting rights had to be justified, in each individual case, on grounds of prevention of disorder and maintenance of security and safety, or the need to protect the legitimate interests of an investigation.

### Principal facts

The applicant, Artur Rinatovich Chaldayev, is a Russian national who was born in 1986. He is currently detained in Ruzayevka.

On 24 January 2013 Mr Chaldayev, who was suspected of involvement in armed robbery, was charged with the corresponding offence. On 18 May 2015 he was sentenced to thirteen years' imprisonment. Mr Chaldayev appealed.

On 1 June 2015 Mr Chaldayev's parents requested authorisation to visit their son. The judge dismissed their request on the grounds that the parents had already been granted a visit shortly beforehand. They complained about that decision to the President of the court, but their complaint was dismissed.

On 10 August 2015 Mr Chaldayev requested authorisation to receive a visit from his parents. His request was dismissed, no reasons being given for that decision. On 5 October 2015 the parents

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

lodged two requests for authorisation to visit their son with the Supreme Court of the Republic of Mordovia. The Supreme Court dismissed their requests.

In the meantime, on 11 October 2015 Mr Chaldayev had lodged a complaint with the Prosecutor of the Republic of Mordovia complaining about the small number and short duration of the visits which he had received in prison. The visits had taken place in a room with a partition wall preventing any physical contact between the prisoner and his visitors, and he had only been able to talk to his parents by using a phone, which was tapped by the prison officers.

On 29 October 2015 Mr Chaldayev's conviction became final, and on 27 November 2015 he was transferred to a correctional colony to serve his prison sentence.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to private and family life), the applicant complained of a violation of his right to respect for his private and family life on account of the limited number of visits by his parents to remand prison no. IZ-13/1 and the rules on such visits. He also complained that he had been unable to have any physical contact with his relatives and that the telephone he had used to talk to them was being tapped.

The application was lodged with the European Court of Human Rights on 3 February 2016.

Judgment was given by a Chamber of seven judges, composed as follows:

Vincent A. **De Gaetano** (Malta), *President*,  
Branko **Lubarda** (Serbia),  
Helen **Keller** (Switzerland),  
Dmitry **Dedov** (Russia),  
Pere **Pastor Vilanova** (Andorra),  
Alena **Poláčková** (Slovakia),  
Georgios A. **Serghides** (Cyprus),

and also Stephen **Phillips**, *Section Registrar*.

## Decision of the Court

### Article 8

The Court observed that in many previous cases it had found a violation of Article 8 on account of a refusal to authorise family visits to persons held in pre-trial detention, as well as the presence of a partition wall between the detainee and his or her visitors. It had, in particular, considered that section 18 of Law no. 103-FZ did not fulfil the quality and foreseeability criteria, because it conferred unlimited discretionary powers on the domestic authorities in the sphere of prison visits and did not define the circumstances under which such visits could be refused.

On 29 July, 12 August and 6 October 2015 the courts had dismissed requests for visits submitted by Mr Chaldayev and his parents. Those decisions had not been accompanied by reasons.

The Court noted that the restrictions on visits to Mr Chaldayev had been based on paragraph 143 of the Remand Prison Rules and been applied automatically in respect of all detainees. In that connection, the Court pointed out that as regards visiting rights, the State could not have unfettered discretion to lay down general restrictions without allowing for flexibility in determining whether the restrictions were appropriate or really necessary.

Those facts were sufficient for the Court to find that there had been a violation of Article 8.

### Article 14 read in conjunction with Article 8

The Court observed that, as persons deprived of their liberty, both detainees who had not been convicted in a final judgment and prisoners whose convictions had become *res judicata* continued to benefit from the right to respect for their private and family lives. The Court considered that Mr Chaldayev had been held under conditions comparable to those of a convicted prisoner.

The Court noted that under section 18 of Law No. 103-FZ, visiting time granted to detainees in remand prisons, including those who had not been convicted by a final judgment, was one hour shorter (at three hours) than the duration set out in Article 89 of the Code of Execution of Criminal Sentences (CECS) relating to convicted prisoners (four hours). Similarly, Law no. 103-FZ lacked any provision for persons detained in remand prisons to receive long visits, whereas the CECS allowed convicted prisoners to have at least two long visits per year. The restrictions on remand prisoners' visiting rights were applicable generally to detainees, regardless of the reasons for their placement in pre-trial detention, the stage reached in the criminal proceedings and any security considerations.

The Court saw no objective justification for such a difference in treatment as regards either the length of short visits or the entitlement to long visits.

As regards it not being possible for Mr Chaldayev to obtain authorisation for a long visit by his parents, the Court considered that his detention regime in a remand prison was equivalent to that of a life prisoner, that is to say a person convicted of extremely reprehensible and dangerous acts, whose detention involved solitary confinement. The Court could see no objective and reasonable justification for subjecting the applicant to the same type of restrictions as life prisoners. Accused persons who had not been convicted by a final judgment should benefit from the presumption of innocence.

Nor could the Court discern any justification for the three-hour limit on short visits. That limit had apparently derived from regulations on solitary confinement which the Committee on the Prevention of Torture (CPT) had questioned in a report of 17 December 2013, inviting the authorities to conduct an "in-depth review" of them. Indeed, assigning a person the status of suspect or accused person and detaining him or her in a remand prison automatically limited his or her short visits to three hours. Moreover, detainees in remand prisons automatically forfeited the right to long visits, and their status as suspects or accused persons automatically reduced their short visits from four to three hours.

The Court observed that all restrictions on detainees' visiting rights had to be justified, in each individual case, on grounds of prevention of disorder and maintenance of security and safety, or the need to protect the legitimate interests of an investigation.

The Court found that there had been a violation of Article 14 read in conjunction with Article 8.

### Just satisfaction (Article 41)

The Court held that Russia was to pay the applicant 10,000 euros (EUR) in respect of non-pecuniary damage and EUR 210 in respect of costs and expenses.

*The judgment is available only in 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.