



Several violations of the Convention in respect of a life prisoner, including video surveillance of his cell

The case concerned criminal proceedings which led to the applicant being sentenced to life imprisonment. His complaints concerned the security cameras which operated in his cell 24 hours a day, restrictions on family visits, the length of his pre-trial detention, his conditions of detention and the fact that the proceedings were held behind closed doors.

In today's **Chamber** judgment¹ in the case of [Izmestyev v. Russia](#) (application no. 74141/10) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights, with regard to Mr Izmestyev's conditions of detention from 30 November 2007 to 6 November 2011 and the conditions in which he was transported to and from the courthouse during the criminal proceedings against him;

a violation of Article 5 § 3 (right to liberty and security)

The Court found that the decisions prolonging Mr Izmestyev's pre-trial detention had been worded in stereotyped terms and had not been based on any specific factual evidence. The authorities had thus kept Mr Izmestyev in pre-trial detention for more than three years on grounds which could not be regarded as "sufficient" to justify its duration;

a violation of Article 6 § 1 (right to a fair trial).

The Court found that the public's exclusion from Mr Izmestyev's trial at first instance could not be regarded as justified, since the first-instance court had decided to hold the entire criminal trial *in camera* solely on account of the fact that classified documents had been included in the case file, without however giving reasons for its decision and demonstrating that those documents were related to the subject matter of the proceedings and that their inclusion was essential. In addition, the court had not examined those documents in judicial session and had not relied on them in its judgment; and

a violation of Article 8 (right to respect for private and family life).

The Court held, firstly, that restrictions had been placed on family visits to Mr Izmestyev during his detention in special-regime correctional colony no. IK-1.

Secondly, the Court held that the Russian law lacked clarity with regard to the video surveillance of detainees serving a prison sentence and that Mr Izmestyev had not enjoyed the minimum degree of protection required by the rule of law in a democratic society.

Principal facts

The applicant, Igor Vladimirovich Izmestyev, is a Russian national who was born in 1966. He is imprisoned in Solikamsk (Perm Region, Russia).

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.

In 2007 Mr Izmestyev was suspected of involvement, as a member of an organised criminal group, in a murder committed in 2001. He was arrested and placed in pre-trial detention. Subsequently further charges were brought against him. He was charged with several offences committed between 1994 and 2006, including the setting up and running of a criminal gang, seven murders and acts of terrorism and attempted bribery. The domestic courts extended his pre-trial detention on several occasions during the proceedings, justifying their decisions, in particular, by the seriousness of the charges against him and the risk that as a former senator he might pervert the course of justice by exerting pressure on witnesses or other participants in the criminal proceedings.

In 2009, after the preliminary hearing, the court decided to hold the trial *in camera* on the grounds that public proceedings might disclose a State secret or other classified information protected under federal law (Article 241 § 2 of the Code of Criminal Procedure).

In 2010 the court found Mr Izmestyev guilty of the charges and sentenced him to life imprisonment. In 2011 the Russian Supreme Court amended that judgment, but retained the life sentence. It dismissed the applicant's complaint about the lack of a public hearing.

Complaints, procedure and composition of the Court

Mr Izmestyev relied on Article 3 (prohibition of torture and inhuman or degrading treatment) regarding his conditions of detention in remand prison SIZO-2; Article 5 § 3 (right to liberty and security) with regard to the length of his pre-trial detention; Article 6 § 1 (right to a fair trial) on account of the court's decision to consider the criminal case in private session; and Article 8 (right to respect for private and family life) in connection with restrictions on his family visits (a limited number of visits, a prohibition on telephone calls to friends and relatives, a lack of privacy and physical contact) and the 24-hour operation of a video camera in the cell in which he had been detained in special-regime correctional colony no. IK-1.

The application was lodged with the European Court of Human Rights on 10 December 2010.

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

Vincent A. De Gaetano (Malta), *President*,
Georgios A. Serghides (Cyprus),
Paulo Pinto de Albuquerque (Portugal),
Helen Keller (Switzerland),
Dmitry Dedov (Russia),
Branko Lubarda (Serbia),
Alena Poláčková (Slovakia),

and also Stephen Phillips, *Section Registrar*.

Decision of the Court

[Article 3 \(prohibition of inhuman or degrading treatment\)](#)

The Court held that Mr Izmestyev's conditions of detention in pre-trial detention centre SIZO- 2 between 30 November 2007 and 6 November 2011 and the conditions in which he was transported to and from the courthouse during the criminal proceedings against him had amounted to inhuman and degrading treatment, as the Government had failed to discharge the burden of proof incumbent on them and had not rebutted Mr Izmestyev's allegations that he had been detained and transported in conditions that were contrary to Article 3. There had therefore been a violation.

Article 5 § 3 (right to liberty and security)

Mr Izmestyev's pre-trial detention had lasted three years, eleven months and twelve days. Having regard to the considerable length of this period, the Court considered that the domestic courts ought to have provided convincing reasons for extending Mr Izmestyev's detention. It noted, however, that the decisions extending the pre-trial detention were worded in formulaic terms and had not been based on any specific factual evidence. The domestic courts had maintained the applicant in pre-trial detention by referring primarily to the seriousness of the accusations against him and the complexity of the criminal case. However, the seriousness of the charge could not, in itself, be a ground for an individual's detention being extended at a late stage of the proceedings. As to the complexity of the criminal case, this factor could indeed be relevant, especially in cases involving organised crime. In the present case, however, once the evidence had been secured and the criminal case referred for trial, it was no longer sufficient to maintain Mr Izmestyev in detention if there were no other tangible indications of a risk that the course of justice would be perverted as a result of the ties to organised crime. After completion of the preliminary examination, the domestic courts had thus kept Mr Izmestyev in pre-trial detention for at least two years and seven months, always giving the same reasons and without citing tangible factual grounds. In addition, their decisions had been "collective" ones, in the sense that they had been adopted simultaneously in respect of the applicant and several of his co-defendants.

In consequence, the Court considered that, in relying primarily and systematically on the seriousness of the charges against the applicant, the authorities had maintained him in pre-trial detention for more than three years on grounds that could not be regarded as "sufficient" to justify this duration. It followed that there had been a violation.

Article 6 § 1 (right to a fair trial)

The Court noted that Mr Izmestyev had alleged that only four documents out of the hundreds included in the criminal case file were stamped "top secret", and that the Government did not dispute this. However, the first-instance court had decided to hold the entire criminal trial *in camera* solely on account of the fact that classified documents had been included in the case file. The court had not given reasons for its decision so as to demonstrate that those documents were related to the subject matter of the proceedings and that their inclusion was essential. Equally, it had not examined those documents in judicial session and had not relied on them in the judgment convicting the applicant. Nor had it envisaged taking measures to limit the impact of the absence of a public hearing, for example by restricting access solely to the relevant documents and by holding only certain hearings *in camera*, although this option was provided for in the Code of Criminal Procedure. In consequence, the public's exclusion from Mr Izmestyev's trial before the first-instance court could not be considered justified.

The Court reiterated that a higher court could, in certain cases, rectify a procedural shortcoming before the first-instance court, for example by carrying out a complete re-examination of the case, so that all the evidence was produced in the presence of the accused at a public hearing with a view to adversarial argument. However, the Supreme Court of the Russian Federation had conducted no such re-examination in this case and had thus not made reparation for the lack of a public hearing during the criminal trial at first instance. There had therefore been a violation.

Article 8 (right to respect for private and family life)

Visiting rights and contact with the outside world

The Court noted that in special-regime correctional colony no. IK-1 (Mordovia Region), Mr Izmestyev, as a prisoner serving a life sentence, had been subject to a strict regime. From 6 November 2011 to 25 November 2013 he had been able to maintain contact with the outside world by corresponding in writing. All other types of contacts had been limited. In addition, his

relatives had been able to visit him in person only once every six months. The visits lasted for no longer than four hours, with the number of adult visitors being limited to two. He had been separated from his visitors by a glass partition and a prison guard had been present and within hearing distance at all times. The Court therefore held that there had been a violation of Mr Izmestyev's right to respect for his private and family life on account of the restrictions on his ability to receive family visits at the correctional colony from 6 November 2011 to 25 November 2013.

Video surveillance of the cell

The Court noted that the national legislation relied on as the legal basis for the interference with Mr Izmestyev's right to respect for his private life (specifically, Article 83 of the CECS²) lacked clarity. In particular, it did not make it possible to determine whether the domestic authorities' room for manoeuvre ("margin of appreciation") with regard to the procedures for initiating and verifying the use of video surveillance was limited to what was "necessary in a democratic society". The Court also took account of the way in which the highest Russian courts had interpreted the national law. It noted that the Constitutional Court had held that placing a convicted person under video surveillance was a consequence of sentencing an individual to a prison term and that this measure was one of the restrictions that a person could expect if he or she knowingly committed a criminal offence. The Supreme Court had stated that placing a prisoner under video surveillance did not require that any specific decision be adopted in advance and that it was only necessary to inform the prisoner of the intended measure.

The Court considered that Mr Izmestyev's case illustrated this point. The Government had not shown that the domestic-law provisions required that Mr Izmestyev's placement under video surveillance be carried out on the basis of a decision accompanied by explicit reasons, that is, analysing the factual reasons that would justify such a decision in the light of the aim being pursued, that the measure was limited in time or that the prison authorities were obliged to reconsider its merits on a regular basis. The Russian law was thus not sufficiently accessible and foreseeable, since it did not indicate with sufficient clarity the scope and manner of exercise of the relevant discretion conferred on the domestic authorities with regard to the video surveillance of convicted individuals who were serving a prison sentence. Mr Izmestyev had thus not enjoyed the minimum degree of protection required by the rule of law in a democratic society. There had been a violation of Article 8 of the Convention.

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 2,000 in respect of costs and expenses.

The judgment is available only in French.

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² The Code of Execution of Criminal Sentences of 8 January 1997 (CECS).

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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.