



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

FIRST SECTION

DECISION

Application no. 25537/08
Valentina Yuryevna KOMISSAROVA
against Russia

The European Court of Human Rights (First Section), sitting on 3 July 2012 as a Chamber composed of:

Nina Vajić, *President*,

Anatoly Kovler,

Khanlar Hajiyev,

Mirjana Lazarova Trajkovska,

Julia Laffranque,

Linos-Alexandre Sicilianos,

Erik Møse, *judges*,

and Søren Nielsen, *Section Registrar*,

Having regard to the above application lodged on 8 May 2008,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Valentina Yuryevna Komissarova, is a Russian national who was born in 1982 and lives in Magadan. The Russian Government (“the Government”) are represented by Mr G. Matyushkin, the Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

2. The facts of the case, as submitted by the parties, may be summarised as follows.

3. On 2 December 2005 the applicant married Mr M.V. Grishin, who at the time was standing trial on charges of several acts of aggravated hooliganism involving violent attacks on citizens under a minor pretext, with the use of arms, threats of killing, use of obscene language, infliction of physical pain and bodily harm on his victims, and characterised by a total disregard for society and flagrant violation of public order, with one of the episodes having taken place at a public hospital in the presence of patients and medical staff. He was also accused of creating and leading an armed gang with the aim of misappropriating others' property by way of attacks on citizens and organisations, which had allegedly carried out robberies and extortion in 2001-02 with use of arms and violence dangerous to life and health, illegal storage and transportation of misappropriated industrial gold, and arms-related offences. The charges had been brought against Mr Grishin in 2002 and 2003. In a judgment of 29 June 2004 he had been found guilty of battery, indemnified from punishment as the prosecution had by then become time-barred, and acquitted of the other charges. The proceedings against him were pending before a trial court after that judgment had been set aside on appeal on the ground of serious violations of procedural rules on the selection of jurors and during the trial.

4. On 6 December 2005 Mr Grishin, who had been at liberty for more than a year and a half after being remanded in custody during the preliminary investigation and the first hearing, was remanded in custody again in the interests of the proceedings in the case, in view of several victims' and witnesses' refusal or reluctance to testify in court out of fear of reprisals from Mr Grishin and his co-accused. He was placed in the Magadan SIZO-1.

5. On 12 December 2005 the applicant visited Mr Grishin in SIZO-1.

6. On 27 December 2005 a Magadan Regional Court judge presiding over Mr Grishin's trial refused the applicant's next request to visit Mr Grishin. The applicant's complaint about that refusal, which she made on 27 January 2006 to the President of the High Qualification Board of Judges of the Russian Federation, and that of 27 February 2008, which she made to the President of the Magadan Regional Court, were answered on 4 May 2006 and 1 April 2008 respectively, by statements that those officials had no competence to deal with the matter.

7. From 23 December 2005 to 6 May 2006 the applicant was present at thirteen hearings in Mr Grishin's case. According to the Government, she could communicate with him before and after the hearings and during the breaks. According to the applicant, no contact with her husband had been

possible in the courtroom. No new requests for leave to visit her husband in his detention facility were made by the applicant during this time.

8. On 12 May 2006 the applicant gave birth to a son.

9. In June 2006 she asked for leave to visit her husband in SIZO-1. Her request was granted, as well as her all subsequent requests. According to a document from SIZO-1, no. 49/1/12 of 22 April 2008, such visits took place on 21 June, 20 September and 27 December 2006, 28 March, 16 and 30 May 2007, 6 June, 11 July and 18 July, 26 September, 10 October, 28 November and 29 December 2007, and 13 and 20 February, 5 March and 2 April 2008. According to the applicant, the visits were two hours long. On four occasions she brought her son with her.

10. There were five cubicles in SIZO-1 for short visits, designed in accordance with directives approved by the Russian Federation Ministry of Justice on 3 October 2004. Visitors and detainees were separated by a partition made of wood to a height of 80 centimetres, and then glass to the ceiling. There were metal bars and steel wire on the glass partition. The cubicles were equipped with communicating phones and seats. A place for an officer on duty was equipped with a device for wiretapping, warning and interruption of communication.

11. According to the applicant's submissions in her original application form, the cubicles were dirty and littered, with rats running on the floor, and they had no normal chairs. According to the Government, the cubicles were cleaned daily by prisoners under the supervision of an officer on duty. Their sanitary condition was routinely checked by authorised officials. They were regularly disinfected and disinfested in compliance with the relevant sanitary regulations by a specialised company under the supervision of the SIZO-1 medical unit, which was confirmed by the relevant documentation. In her comments on the Government's observations the applicant clarified that she had seen rats in a different room, which was used for passing parcels to detainees.

12. According to the applicant, her husband's remand in custody had put her in a difficult position. She lacked means of subsistence for herself during her pregnancy, which was complicated by the threat of miscarriage, and later also for her child. In order to hand over parcels to her husband she had to wait for hours, especially before holidays, because of the large number of people there. According to a SIZO-1 document dated 15 December 2008, Mr Grishin received 119 parcels.

B. Relevant domestic law

13. Under section 18 of the Federal Law on the Remand in Custody of Suspects and Persons Accused of Offences no. 103-FZ of 15 July 1995, subject to written consent from the official or authority in charge of the

criminal case a suspect or accused may have up to two meetings per month with relatives and others, each visit to last for up to three hours.

COMPLAINTS

14. The applicant complained under Article 3 of the Convention that on 27 December 2005 she had been refused leave to visit her husband, and about the conditions in which visits and the delivery of parcels took place in SIZO-1.

15. She further complained that her rights under Articles 8, 17 and 18 of the Convention had been violated by the refusal on 27 December 2005 of her request for leave to visit her husband; by the conditions of her subsequent visits to her husband, sometimes with her child, with no privacy and no physical contact; by the limitation on her contact with her husband; and, overall, by her husband's unlawful and unjustified lengthy detention during judicial proceedings.

16. She complained that there was no remedy for her complaint about her husband's detention, and also about the prohibition of contact with him in breach of Article 13 of the Convention, and that she had been discriminated against as the wife of an accused person in breach of Article 14 of the Convention.

THE LAW

A. Complaint under Article 8 of the Convention concerning restrictions on family visits

17. The applicant complained that the limitation of contact with her husband during his detention, from 6 December 2005 to 8 May 2008, to two short visits a month, without any privacy or physical contact, had breached her right to respect for her family life as provided in Article 8 of the Convention, which 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.”

18. The Government contested that argument, referring to the case of *Messina v. Italy* (no. 2), no. 25498/94, ECHR 2000-X. They submitted, in particular, that the number of visits had been determined exclusively by the applicant's wishes. All her requests for leave to visit her husband had been granted. The visits had been supervised by the staff of the detention facility, who had the duty to terminate the visit if there was an attempt to transfer prohibited items or information which could hinder the establishment of truth in the criminal case or be conducive to a crime. The prohibition on private or physical contact during the visits had been done with the aim of exercising control over the exchange of information between the applicant and her husband, in the interests of the investigation.

19. The applicant maintained her complaint.

20. The Court reiterates that any detention which is lawful for the purposes of Article 5 of the Convention entails by its nature a limitation on private and family life. However, it is an essential part of a prisoner's right to respect for family life that the prison authorities assist him in maintaining contact with his close family (see *Messina* (no. 2), cited above, § 61). Restrictions such as limitations put on the number of family visits, supervision over those visits and, if so justified by the nature of the offence, subjection of a detainee to a special prison regime or special visit arrangements, constitute an interference with his rights under Article 8 but are not of themselves incompatible with that provision. It must be recognised that in general it is justifiable to apply to prisoners a uniform regime avoiding any appearance of arbitrariness or discrimination (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 75, Series A no. 131). Nevertheless, any restriction of that kind 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 "necessary in a democratic society". As to the latter criterion, the Court would further reiterate that the notion of "necessity" for the purposes of Article 8 means that the interference must correspond to a pressing social need, whose existence must be demonstrated by the respondent State, and, in particular, must remain proportionate to the legitimate aim pursued. When assessing whether an interference was "necessary" the Court will take into account the margin of appreciation left to the State authorities, in particular, in view of the ordinary and reasonable requirements of imprisonment (see *Klamecki v. Poland* (no. 2), no. 31583/96, § 144, 3 April 2003; *Bogusław Krawczak v. Poland*, no. 24205/06, §§ 108-110, 31 May 2011; and *Boyle and Rice*, cited above, § 74).

21. The Court has found that bans on family visits were not "in accordance with the law" where domestic law did not meet the "quality of law" requirements (see *Ostrovar v. Moldova*, no. 35207/03, § 107, 13 September 2005; *Estrikh v. Latvia*, no. 73819/01, §§ 171-173, 18 January 2007; *Vlasov v. Russia*, no. 78146/01, §§ 125-126, 12 June

2008; and *Shalimov v. Ukraine*, no. 20808/02, §§ 88-89, 4 March 2010). In assessing whether the authorities have struck a fair balance between the right of detainees to respect for family life and the legitimate aims provided for in Article 8 § 2, such as protection of public safety and prevention of disorder or crime, the Court has analysed the particular circumstances of individual applicants, including the duration and the nature of the restrictions on contact with their spouses or other family members, the reasons given for such restrictions, the grounds for detention, the existence of the risk of collusion or other factors hampering the investigation or trial, other measures taken, such as the censorship of correspondence, or the authorities' consideration of alternative means, for example subjection of contact to supervision by a prison officer (see *Kalashnikov v. Russia* (dec.), no. 47095/99, ECHR 2001-XI (extracts); *Aliiev v. Ukraine*, no. 41220/98, §§ 185-190, 29 April 2003; *Rutecki v. Poland* (dec.), no. 18880/07, 3 November 2009; and *Glinowiecki v. Poland* (dec.), no. 32540/07, 2 February 2010, in which the relevant complaint was rejected as manifestly ill-founded or no violation of Article 8 was found; see further *Klamecki*, cited above, §§ 148-152; *Kučera v. Slovakia*, no. 48666/99, §§ 130-133, 17 July 2007; *Ferla v. Poland*, no. 55470/00, §§ 47-48, 20 May 2008; and *Moiseyev v. Russia*, no. 62936/00, § 255, 9 October 2008, in which a violation of Article 8 was found).

22. Turning to the case at hand the Court observes that with rare exceptions the applicant had visited her husband once a month. She had not visited him at all in July, August, October and November 2006, January, February, April and August 2007 and January 2008. It was submitted by the Government, and not denied by the applicant, that all her requests for visiting her husband had been granted. She had thus not availed herself of her due entitlement of two visits a month, for reasons purely attributable to her, and for which she offered no explanation.

23. In these circumstances the applicant's complaint as regards the limitation on the nature, frequency and duration of family visits is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

B. Complaints under Articles 3 and 8 of the Convention concerning conditions for family visits

24. The applicant complained that the conditions in which her visits to her husband, sometimes with her small child, took place in the Magadan SIZO-1, breached her rights under Article 8 of the Convention, cited above, and Article 3 of the Convention which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

25. The Government contested that allegation. They also noted that the applicant should have raised her complaint with the prosecutor's office, which could have remedied the situation.

26. The Court considers that the complaint falls to be examined under Article 8. It notes that the applicant's description of the conditions in the Magadan SIZO-1 for short visits is not supported by any reliable evidence and is inconsistent, as the applicant, while alleging originally that there were rats in the cubicles for visits, had subsequently made this allegation only in respect of premises other than those intended for family visits. The Government's submissions, on the contrary, are supported, for example, by evidence which suggests that the SIZO-1 administration had undertaken measures to have its premises regularly disinfected and disinfested in compliance with the relevant sanitary regulations by a specialised organisation under the supervision of the SIZO-1 medical unit.

27. The Court therefore concludes that the applicant has not made out an arguable claim in that connection. It dismisses this complaint as manifestly ill-founded, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

C. Other complaints

28. Lastly, the applicant complained that the refusal on 27 December 2005 of her request for leave to visit her husband and the conditions in which parcels had to be handed over in SIZO-1 breached her rights under Article 3 of the Convention; that the same issues, as well as her husband's unlawful and unjustified lengthy detention, had breached her rights under Articles 8, 17 and 18 of the Convention; that she had no remedy for her complaint about her husband's detention and the prohibition on contact with him in breach of Article 13 of the Convention; and that she had been discriminated against as the wife of an accused person in breach of Article 14 of the Convention.

29. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

30. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Søren Nielsen
Registrar

Nina Vajić
President