



Incarcerating prisoners thousands of miles away from their relatives violated their right to family life

In today's **Chamber judgment**¹ in the case of **Polyakova and Others v. Russia** (application nos. 35090/09, 35845/11, 45694/13 and 59747/14) the applicants are either prisoners, or the family members of prisoners, who were adversely affected by decisions of the Russian Federal Penal Authority ("the FSIN") to imprison individuals thousands of miles away from their families. The applicants complained that the decisions to allocate prisoners to remote penal facilities - and their subsequent inability to obtain transfers - had violated their right to respect for family life. 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 in respect of each applicant.

The Court held that the distance between the penal facilities and homes of the prisoners' families - ranging from 2,000 to 8,000 kilometres - was so great that it had inflicted hardship on the persons concerned. In particular, one applicant (who is a prisoner) had been unable to see his mother prior to her death; whilst another applicant (a young child born after her father's incarceration) had never been able to see her father. The location of the imprisonments had interfered with the applicants' right to family life.

Furthermore, this interference had not been in accordance with the law. Quality of law standards require that domestic law affords protection against arbitrariness in the exercise of discretion left to the executive authorities. However, Russian law had not required the FSIN to consider the impact that a penal facility's location might have on the family life of the applicants. Moreover, the law had not provided the applicants with a realistic opportunity to obtain a transfer to another penal facility on grounds relating to the right to respect for family life - either through an application to the FSIN itself, or through a judicial review of its decisions.

The Court also found a violation of **Article 6 (right to a fair trial)** in respect of one of the applicants.

Principal facts

The applicant Elvira Polyakova is the partner of Mr R.. The couple set up home in Vladivostok, and had a child together. However, since September 2008 Mr R. has been imprisoned in the Krasnoyarsk Region, 5,000 kilometres from Vladivostok. Ms Polyakova and her son have been able to visit him on three occasions.

The applicants Natalya Kibalo, Linda Kibalo and Iman Kibalo are the wife and two daughters (respectively) of Mr Kh. They live in the village of Dubovskaya in the Chechen Republic. Since February 2008 Mr Kh. has been imprisoned in the town of Blagoveshchensk in the Amur Region, 8,000 kilometres away from the family's home. Natalya visited her husband on eight occasions between 2008 and 2012, but could not afford to travel in 2013 or 2014. Linda has made one visit, whilst Iman (who was born during Kh.'s detention) has never seen her father.

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.

Since September 2009 the applicant Ivan Yeliashvili has been imprisoned in the Yamalo-Nenetskiy Region, about 3,300 kilometres from the home of his father, brother, sister and nephew in Noginsk, the Moscow Region. His relatives have never been able to afford to visit him.

The applicant Vladimir Palilov is from the Yaroslavl Region. Since February 2007 he has been imprisoned 2,000 kilometres away in the Yamalo-Nenetskiy Region. His elderly mother and sister could not afford to visit him there. The mother died in 2013.

All of the applicants (except Linda and Iman Kibalo) submitted requests to the FSIN, asking for the relevant locations of imprisonment to be changed in order to allow family contact. All of the requests were refused. The applicants challenged the refusals in court. All of the claims were rejected, both at first instance and on appeal. In the courts' reasoning the applicants' complaints about the distance between a prisoner's penal facility and their family members were held to be irrelevant to the applicable provisions of the Russian Code on the Execution of Sentences.

Complaints, procedure and composition of the Court

Relying on Article 8, the applicants complained that the decisions to allocate prisoners to remote penal facilities - and their subsequent inability to obtain transfers – had violated their rights to respect for family life. Mr Palilov also complained under Article 6 § 1 (right to a fair trial) that the Russian courts had examined his case in his absence, both at first instance and on appeal.

The applications were lodged with the European Court of Human Rights on 13 June 2009, 6 June 2011, 13 July 2013 and 6 November 2014.

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

Helena **Jäderblom** (Sweden), *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 \(right to respect for private and family life\)](#)

An essential part of a prisoner's right to respect for family life is that the authorities assist him/her in maintaining contact with his/her close family. In respect of each applicant, the distance – ranging from 2,000 to 8,000 kilometres – between the penal facilities and the place of residence of the prisoner's relations, was remote to the extent of inflicting hardship on the persons concerned. The parties agreed that there had been an interference with the applicants' right to respect for family life. The question for the Court was therefore whether the interference had been justified under Article 8 § 2 as being "in accordance with the law", pursuing a legitimate aim, and as being "necessary in a democratic society" in pursuit of that aim.

In order for domestic arrangements to be "in accordance with the law", the domestic law must contain safeguards to ensure that the discretion left to the executive is exercised lawfully and without the abuse of power. The extent to which a prisoner's location adversely affects his/her family in each individual case will depend on a number of various factors, including the distance and family's financial resources. In order to provide adequate safeguards, what is therefore required of

domestic law is that it provides for an assessment by the executive authority of the individual situation, having regard to the various factors affecting the practicalities of visiting the prisoner concerned, and the relevant Article 8 considerations. Furthermore, the executive's decision must be subject to some form of adversarial proceedings before an independent body competent to review the reasons for it and the relevant evidence.

The Russian domestic legal system did not provide these safeguards in three respects.

First, the initial allocation of the prisoners to a penal facility. This was governed by paragraphs 2 and 4 of Article 73 of the 1997 Code of Execution of Criminal Sentences (CES), as the allocations were exceptions to the general rule for distributing prisoners (whereby prisoners will normally be incarcerated in region where they reside or were convicted). However, Russian law contains no requirement obliging the FSIN to consider, before departing from its general rule, the possible implications that the penal facility's location may have on the family life of prisoners and their relatives or to weigh the competing individual and public interests in the light of any observations that the prisoner might have in this regard.

Second, the requests for the transfer of the prisoners to another penal facility. The law applicable to such requests was Article 81 of the CES. This provides that a prisoner should serve their sentence in its entirety in the same penal facility, with some exceptions. However, those exceptions do not expressly include considerations about whether a prisoner can maintain family and social ties during imprisonment. Therefore, the law does not provide for a realistic opportunity to transfer a prisoner to another penal facility on grounds pertaining to the right to respect for family life.

Third, the judicial reviews of the FSIN's decisions. In their application of Article 81 of the CES, the domestic courts held that the article excluded the possibility of a prisoner obtaining a transfer to another penal facility on grounds of them being unable to receive visitors. Furthermore, Russian law does not require that domestic courts consider arguments under Article 8 of the Convention made by those complaining about the FSIN's decisions and balance the competing public and individual interests. Therefore, Russian law does not enable an individual to obtain a judicial review of the proportionality of the FSIN's decision to his or her interest in maintaining family and social ties.

In light of the above, Articles 73 §§ 2 and 4 and 81 of the CES do not satisfy the "quality of law" requirement. It follows that the interference with the applicants' right to respect for family life was not "in accordance with the law". Consequently, there has been a violation of Article 8 of the Convention in respect of each applicant.

Article 6 (right to a fair trial)

The domestic courts failed to properly assess the nature of the civil claims brought by the Mr Palilov with a view to deciding whether his presence was indispensable; and failed to consider appropriate procedural arrangements enabling him to be heard. They therefore deprived him of the opportunity to present his case effectively and failed to meet their obligation to ensure respect for the principle of a fair trial enshrined in Article 6.

Just satisfaction (Article 41)

The Court held that Russia was to pay 652 euros (EUR) to Ms Polyakova in respect of pecuniary damage; EUR 24,800 to the applicants in total in respect of non-pecuniary damage; and EUR 2,220 to the applicants in total in respect of costs and expenses.

The judgment is available only in English.

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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.