



## Practice in Russia of incarcerating prisoners thousands of kilometres from their family persists, despite 2017 ECHR ruling

In today's Chamber judgment<sup>1</sup> in the case of [Voynov v. Russia](#) (application no. 39747/10) the European Court of Human Rights held, unanimously, that there had been:

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

**a violation of Article 13 (right to an effective remedy)** of the European Convention.

The case concerned a complaint brought by a prisoner that he had been sent to serve his sentence in a prison 4,200 kilometres from his home town. He has not seen his partner since 2014 and has never seen his four-year-old daughter.

The Court found that there was nothing in the Government's submissions in the case to convince it to depart from its findings in a judgment of 2017 on the same issue. In that judgment the Court held that the Russian legal system did not provide sufficient safeguards against abuse as concerned decisions on the location of incarceration, in breach of prisoners' right to respect for their family life.

Moreover, it was not satisfied that a procedure suggested by the Government would have provided an avenue for the applicant in the present case to adequately complain about the breach of his right to respect for family life. Nor was there any other remedy available to him at national level to complain about being sent so far away from his family to serve his sentence.

### Principal facts

The applicant, Timur Voynov, is a Russian national who was born in 1985. He was convicted in 2009 of drug-related crimes and sentenced to 12 years' imprisonment. He has been serving his sentence since April 2010 in the village of Areyskoye, Krasnoyarsk Region, which is 4,200 km from Oryol where his mother and partner live.

His transfer was ordered by the Oryol penal authorities because of overcrowding in the post-conviction detention facilities in the region.

Mr Voynov's repeated requests to the authorities to be transferred to a prison closer to Oryol to maintain family ties while serving his sentence have all been rejected.

He also brought civil proceedings claiming compensation for the decision to transfer him, but his claim was dismissed in 2012. The courts, not addressing his argument concerning the difficulties in maintaining family ties at such a distance, held that the penal authorities' decision had been lawful because there had been overcrowding in the Oryol prisons.

His partner visited him six times between 2011 and 2013, but she has no longer been able to visit him since the birth of their daughter in 2014. He has never seen his daughter.

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).

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life), Mr Voynov alleged that the decision to send him to a remote penal facility and the refusal of his requests for a transfer had made it difficult for his family to visit him. He also relied on Article 13 (right to an effective remedy), alleging that there were no effective remedies at national level for him to complain about the breach of his Article 8 rights.

The application was lodged with the European Court of Human Rights on 11 June 2010.

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

Helena Jäderblom (Sweden), *President*,

Helen Keller (Switzerland),

Dmitry Dedov (Russia),

Alena Poláčková (Slovakia),

Georgios A. Serghides (Cyprus),

Jolien Schukking (the Netherlands),

María Elósegui (Spain),

and also Stephen Phillips, *Section Registrar*.

## Decision of the Court

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

The case is a follow-up to the lead judgment in [Polyakova and Others v. Russia](#) of 2017, in which the Court found a breach of Article 8 because the Russian legal system did not provide sufficient safeguards against abuse as concerned decisions on the location of prisoners' incarceration.

There was nothing in the Government's submissions in the present case to convince the Court to depart from the findings in that judgment.

Moreover, a recent ruling by the Constitutional Court of Russia showed that the national authorities' approach to the interpretation of domestic law on the matter had not evolved. In that ruling an application lodged by a convicted prisoner alleging that certain legal provisions (Articles 73 § 4 and 81 § 2) of the Code of Execution of Criminal sentences violated the rights of prisoners and their families was dismissed. The Constitutional Court found that those provisions were not arbitrary and corresponded to international legal norms under which prisoners should, where possible, serve their sentence near their home, but that those norms were only a recommendation and were subject to economic and social realities.

There had therefore been a violation of Article 8 of the Convention.

### Article 13 (right to an effective remedy)

The Government suggested that Chapter 25 of the Code of Criminal Procedure, which set out a procedure for challenging State agencies' acts and omissions, was an effective remedy for Mr Voynov's complaint. It therefore argued that the application should be declared inadmissible for non-exhaustion of domestic remedies.

However, for a remedy to be effective, it must be clearly set out and confirmed by practice or case-law and the Government had not provided any details or concrete examples of judicial practice for their suggested remedy.

Moreover, in other cases, including *Polyakova and Others*, brought before the Court, it had each time refused to accept a complaint under Chapter 25 of the CCP as an effective domestic remedy.

The Court was not therefore satisfied that such proceedings, had they been instituted by Mr Voynov, would have provided an avenue for him to adequately vindicate his right to respect for family life.

Furthermore, the proceedings claiming compensation had not provided an effective remedy for Mr Voynov either. In those proceedings the domestic courts had not addressed his argument regarding the difficulties in maintaining contact with his family while imprisoned so far away from them.

Therefore, dismissing the Government's argument as to non-exhaustion of domestic remedies, the Court found that Mr Voynov had not had at his disposal an effective remedy for his complaints under Article 8, in breach of Article 13.

#### Article 41 (just satisfaction)

The Court held that Russia was to pay Mr Voynov 6,000 euros (EUR) in respect of non-pecuniary damage and EUR 850 in respect of costs and expenses.

#### Separate opinion

Judge Elósegui expressed a concurring opinion which is annexed to the judgment.

*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.