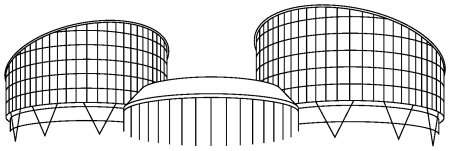

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF KHOROSHENKO v. RUSSIA

(Application no. 41418/04)

JUDGMENT

STRASBOURG

30 June 2015

This judgment is final but may be subject to editorial revision.

In the case of Khoroshenko v. Russia,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Dean Spielmann, *President,*
Josep Casadevall,
Guido Raimondi,
Mark Villiger,
Isabelle Berro,
Ineta Ziemele,
Elisabeth Steiner,
Khanlar Hajiyev,
Mirjana Lazarova Trajkovska,
Julia Laffranque,
Paulo Pinto de Albuquerque,
Linos-Alexandre Sicilianos,
Erik Møse,
Paul Mahoney,
Ksenija Turković,
Dmitry Dedov,
Egidijus Kūris, *judges,*

and Lawrence Early, *Jurisconsult,*

Having deliberated in private on 3 September 2014 and 22 April 2015,

Delivers the following judgment, which was adopted on the latter date:

PROCEDURE

1. The case originated in an application (no. 41418/04) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Russian national, Mr Andrey Anatolyevich Khoroshenko ("the applicant"), on 6 October 2004.

2. The applicant, who had been granted legal aid, was represented by Ms O.V. Preobrazhenskaya and Ms M. Makarova, lawyers practising in Strasbourg. The Russian Government ("the Government") were represented by Mr G. Matyushkin, Representative of the Russian Federation at the European Court of Human Rights.

3. The applicant alleged, in particular, that various restrictions on family visits during his post-conviction detention had been contrary to Article 8 of the Convention.

4. On 13 January 2011 the application was communicated to the Government.

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). On 11 February 2014 the Chamber of the First Section to which the case had been allocated, composed of Isabelle Berro, Elisabeth Steiner, Khanlar Hajiyev, Mirjana Lazarova Trajkovska, Julia Laffranque, Ksenija Turković, Dmitry Dedov, judges, and also of Søren Nielsen, Section Registrar, relinquished jurisdiction in favour of the Grand Chamber, neither of the parties having objected to relinquishment (Article 30 of the Convention and Rule 72 of the Rules of Court).

6. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 1, 4 and 5 of the Convention and Rule 24 of the Rules of Court.

7. The applicant and the Government each filed written observations on the admissibility and merits of the application (Rule 59 § 1). In addition, third-party comments were received from a group of academics of the University of Surrey ("the interveners"), who had been granted leave by the President of the Court to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3).

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 3 September 2014 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mr G. MATYUSHKIN, *Representative of the Russian Federation at the European Court of Human Rights,* *Agent*,
Mr N. MIKHAYLOV,
Ms Y. TSIMBALOVA,
Mr S. KOVPAK, *Advisers*;

(b) *for the applicant*
Ms O. PREOBRAZHENSKAYA,
Ms M. MAKAROVA, *Counsel.*

The Court heard addresses by Mr G. Matyushkin, Ms O. Preobrazhenskaya and Ms M. Makarova and also replies by Mr G. Matyushkin and Ms M. Makarova to questions put by judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The facts of the case may be summarised as follows.

A. General information on the applicant's situation

10. The applicant was born in 1968 and is currently serving a life sentence in the town of Solikamsk, Perm Region.

11. On 21 November 1994 the applicant was arrested on suspicion of banditry, robbery and aggravated murder.

12. Between 21 November 1994, the date of his arrest, and the summer period of 1995 the applicant was held in various remand prisons in Ekaterinburg, Perm, Izhevsk and the Perm Region.

13. On 13 October 1995 the Perm Regional Court found the applicant guilty as charged and sentenced him to death. The judgment became final on 6 June 1996.

14. From the summer of 1995 to the autumn of 1999 the applicant was held in remand prison no. 1 in Perm. Following his conviction he was held in a special cell for prisoners awaiting the implementation of their death sentence.

15. On 19 May 1999 the President of Russia commuted the applicant's death sentence to life imprisonment.

16. On 8 October 1999 the applicant was transferred to a special-regime correctional colony for life prisoners in the Perm Region, and on 11 October 1999 he began serving the first ten years of his sentence of imprisonment within the meaning of Article 127 § 3 of the Code of Execution of Criminal Sentences. The applicant fell within the exception from the general rule of that legal provision, in that the first ten years of his sentence were calculated from the date of his placement in the special-regime correctional colony, rather than from the date of his initial arrest in 1994. The exception applied only to those prisoners whose conduct during their detention on remand had been in breach of the rules (see paragraph 52 below). The applicant later unsuccessfully challenged this rule before the Constitutional Court (see paragraph 30 below).

17. For the next ten years the applicant was held under a strict regime of imprisonment, governed by Article 125 § 3 of the Code of Execution of Criminal Sentences (see paragraph 29 below).

18. On 11 October 2009, on expiry of the first ten years of his sentence, the applicant's prison regime was changed from a strict regime to an ordinary regime, governed by Article 125 § 1 of the Code of Execution of Criminal Sentences (see paragraph 50 below).

B. Family visits during detention on remand and subsequent imprisonment

19. At the time of his arrest on 21 November 1994 the applicant was married to S. and had a three-year-old son. His remaining family consisted of his parents, O. and A., his brother Se. and his grandmother M. According

to the applicant, his extended family numbered seventeen people in total, and after his arrest he wished to maintain contact with all of them.

1. The applicant's detention prior to his placement in the special-regime correctional colony

20. From 21 November 1994 to 8 October 1999 the applicant was not allowed to see his family at all, with the exception of one visit by his wife in the week following the first-instance judgment in the criminal case against him in October 1995.

21. In 1996, following the first-instance judgment in his criminal case, the applicant's wife divorced him, on her initiative.

22. The applicant submitted that he had been allowed to start corresponding with the outside world following the entry into force of the Code of Execution of Criminal Sentences in January 1997. He then re-established contact with all of his family members and his former wife.

2. The applicant's detention in the special-regime correctional colony between 8 October 1999 and 11 October 2009

23. During this period the applicant was allowed to have one short-term visit from his relatives every six months. The visits lasted no longer than four hours. During the meetings the applicant communicated with his visitors via a glass partition or through metal bars, under conditions which allowed no physical contact. A warden listened in to the conversations with his visitors.

24. The applicant used his right to short-term visits as frequently as possible, and received visits from his mother, his father and his brother. His friends also tried to visit the applicant, but this was not authorised by the prison administration. Long-term family visits during the first ten years of his sentence were not allowed.

25. According to the applicant, due to the severity of the restrictions on his contacts with the outside world he lost contact with some of his family members and with his own son, whom he had not seen for the past fifteen years. The applicant's son refuses to see the applicant, but has agreed to help him financially.

3. The applicant's detention in the special-regime correctional colony as of 11 October 2009

26. After the applicant's change of regime on 11 October 2009, he became entitled to long-term family visits in addition to short-term visits. The applicant availed himself of each subsequent opportunity to have a long-term visit, and saw his family members once every six months: once in 2009, twice in 2010, 2011, 2012 and 2013. On each of these occasions the visit was for the authorised maximum duration of three days, except for one

visit in the spring of 2013. This visit was interrupted at the initiative of the applicant and his mother, who had to catch her train and leave earlier. The applicant's brother also attended these visits. The visits lasted no more than seventy-two hours and his privacy was respected throughout. The applicant's father participated in the short-term visits until 2007, but could not come for the long-term visits which started in 2009 on account of his health.

27. The Government submitted that, in total, the applicant had fourteen short-term visits and nine long-term visits during his detention in the special-regime correction colony. None of the applicant's respective requests for a visit was refused.

C. Proceedings before the Constitutional Court

1. Ruling no. 257-O dated 24 May 2005

28. On 24 August 2004 the applicant lodged a complaint with the Constitutional Court of Russia, challenging the constitutionality of the ten-year ban on long-term family visits for convicts sentenced to life imprisonment as contained in Article 125 § 4 of the Code of Execution of Criminal Sentences. He alleged, in particular, that the provision in question had been discriminatory and breached his right to respect for private and family life.

29. The Constitutional Court declared the applicant's complaint concerning Articles 125 § 3 and 127 § 3 inadmissible, having ruled as follows:

> "... Nor do the provisions of Article 125 § 3 and Article 127 § 3 of the Code on the Execution of Criminal Sentences breach [the applicant's] constitutional rights.
>
> Article 55 § 3 of the Constitution ... allows for the possibility of restricting human and civil rights by federal law, as a means of protecting the basis of the constitutional regime, morality, health, the rights and lawful interests of others, [and] securing the defence of the country and State security. Such restrictions may be linked, in particular, with the application of criminal sanctions against offenders, in the form of imprisonment and other measures related to punishment.
>
> ... Article 71 (o) of the Constitution empowers the federal legislature to provide for restrictive measures of this type in relation to convicted persons on whom a sentence has been imposed, which, as follows from Article 43 § 1 of the Criminal Code... consist, by their very nature, in deprivation or restriction of the convict's rights and freedoms, as provided by law. At the same time, both the legislature, in establishing liability for a crime, and the law-enforcement agencies, in deciding on its application to an offender, are required to take into account the nature of the crime, the danger posed by it to the values defended by the Constitution and the criminal law, its seriousness, its causes and other circumstances in which the crime was committed, and also information about the offender, provided that regulation by those institutions, and their application, correspond to the constitutional principles of legal liability and guarantees to the individual in his or her public relations with the State.

As the Constitutional Court noted in [its previous case-law ...], the legislative regulation of criminal liability and punishment without taking into account the offender's personality and other objective and reasonable circumstances which facilitate an appropriate assessment of the social danger posed by the criminal act itself and by the offender, and the application of identical sanctions for crimes that pose varying degrees of social danger, without taking into account the offender's degree of participation in the crime, his or her conduct subsequent to the crime and in serving a sentence where that has already been imposed, and other [relevant] factors, would both be contrary to the constitutional prohibition on discrimination and the principles of fairness and humanism expressed in the Constitution.

In setting out criminal sanctions with a range of restrictions, corresponding to the gravity of the crime committed by the convict and the sentence imposed, and also in determining the manner in which that sentence is to be served, the legislature must proceed on the basis that convicts enjoy, as a whole, the same rights and freedoms as other citizens, with the exceptions determined by their individual personalities and the offences committed by them. The conditions for serving sentences, as laid down both in Articles 125 and 127 of the Code of Execution of Criminal Sentences and in a range of other provisions of that Code, are intended to tailor sentences to individual offenders and differentiate sanctions and their application, and to create the preconditions for achieving the aims of punishment, which, as stated in Article 43 § 2 of the Criminal Code, are the restoration of justice, reform of the offender and the prevention of new crimes ..."

2. Ruling no. 591-O dated 21 December 2006

30. On an unspecified date the applicant lodged a complaint with the Constitutional Court, this time challenging Article 127 § 3 of the Code of Execution of Criminal Sentences, in so far as this provision distinguished between two categories of detainees serving their sentence in special-regime colonies on the basis of whether or not they had previously breached prison rules while in their detention on remand and had been punished by solitary confinement. For those who had not previously breached prison rules and had not been punished by solitary confinement, the initial ten-year period of the strict-regime conditions started running from the date of their initial arrest and detention. For those who had previously breached prison rules and been punished by solitary confinement, the ten-year period under strict-regime conditions began from the date of their arrival in a special-regime correctional colony. The applicant argued that this provision was unconstitutional and discriminatory. On 21 December 2006 the Constitutional Court declared the applicant's second complaint against the above-mentioned provision inadmissible, ruling as follows:

"... the [above-mentioned] provision does not violate the rights of [the applicant].

Article 55 § 3 of the Constitution allows for the possibility of restricting human and civil rights by federal law as a means of protecting the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of others, [and] ensuring the defence of the country and State security. Such restrictions may be linked to the application of criminal sanctions against offenders in the form of coercion by the State, the distinctive feature of which is that, throughout its execution, certain of

the offender's his rights and freedoms are withdrawn and specific obligations are imposed.

At the same time, the restrictions imposed on a convicted person's rights and freedoms shall correspond to the crime committed and to his or her personality. This requirement is also compulsory in respect of cases where [the authorities have punished] persons who breached the legally established regime in the course of the criminal proceedings or [already] while serving their sentence.

The provision of Article 127 § 3 of the Code of Execution of Criminal Sentences [in so far as it includes the contested rules] is intended to tailor sentences to individual offenders and to differentiate the conditions for serving sentences, and to create the preconditions for achieving the aims of punishment, which, as stated in Article 43 § 2 of the Criminal Code, are the restoration of justice, reform of the offender and the prevention of new crimes.

If, in the applicant's opinion, his rights were violated by the relevant actions or decisions of the law-enforcement bodies when imposing a sanction in the form of a placement in a solitary confinement, during his transfer from a remand prison to a correctional colony or in calculating the term of his detention under the strict regime, he is entitled to appeal against them in court ..."

D. Other facts

31. The applicant made attempts to bring civil claims against the prosecutor's office and the lawyer who defended him in the course of the criminal proceedings. The applicant challenged in court the prosecutor's refusal to institute criminal proceedings and the Ombudsman's failure to act on his complaints. He also lodged a number of complaints with the Constitutional Court. All of these proceedings proved unsuccessful.

II. RELEVANT DOMESTIC LAW

A. Constitution of Russia

32. The relevant constitutional provisions are the following:

Article 23

"1. Everyone has the right to inviolability of private life, personal and family confidentiality, the protection of his/her honour and good name.

2. Everyone has the right to the secrecy of correspondence, telephone, mail, telegraph and other types of communication. Any limitation on this right is permitted only upon a court decision."

Article 55

"1. The enumeration in the Constitution of the basic rights and freedoms should not be interpreted as the denial or belittling of other widely recognised human and civil rights and freedoms.

2. No laws denying or belittling human and civil rights and freedoms may be enacted in the Russian Federation.

3. Human and civil rights and freedoms may be limited by a federal law only to the extent necessary for the protection of the fundamental principles of the constitutional system, morality, health, the rights and lawful interests of other people, or for ensuring defence of the country and security of the State."

Article 71 (o)

"The jurisdiction of the Russian Federation includes:

...

(o) the constitution of the judiciary, the prosecutor's office, criminal law, criminal procedure, matters concerning the execution of criminal sentences, amnesty and pardon, civil law, civil procedure, the procedure of commercial courts, legal regulation of intellectual property; ..."

B. Criminal Code of 13 June 1996

33. The relevant provisions of the Criminal Code are as follows:

1. General provisions

Article 43 (Definition and goals of punishment)

"1. Punishment is a measure of State coercion attributed by a court sentence. Punishment is used in respect of a person who has been found guilty of having committed a crime and includes the deprivation or limitations of that person's rights as set forth by the present Code.

2. Punishment is used with the aim of restoring social justice, as well as with the aims of reforming the convicted person and preventing the commission of new crimes."

Article 57 (Life imprisonment)

"1. Life imprisonment is set out as a sanction for the commission of particularly grave crimes against human life, and for the commission of particularly grave crimes against the population's health and morals of society, the safety of society, and against the sexual inviolability of minors aged under fourteen.

2. Life imprisonment shall not be used in respect of women, persons who committed crimes while aged under eighteen and men who, by the time of the adoption of a court verdict, have reached the age of sixty-five."

Article 58 (Choice of penitentiary establishments for persons sentenced to imprisonment)

"1. [The persons sentenced to imprisonment shall serve their respective sentences, depending on the gravity of the crimes that they have committed, in:

- settlement colonies (*колония-поселение*), if the crime was committed negligently or the crime was of minor or medium gravity and was committed by a person who has never previously served a sentence of imprisonment;

- common-regime correctional colonies (*исправительная колония общего режима*), in the case of a grave crime committed by a man who has never previously

served a sentence of imprisonment, or in the case of a crime committed by a woman who has been sentenced to imprisonment for committing a grave or particularly grave crime, including any form of recidivism;

- strict-regime correctional colonies (*исправительная колония строго режима*), in the case of a crime committed by a man who has been sentenced to imprisonment for the commission of a particularly grave crime, who has never previously served a sentence of imprisonment, and in the case of recidivism or dangerous recidivism, if the convicted person had previously served a sentence of imprisonment;

- special-regime correctional colonies (*исправительная колония особого режима*), if a man was sentenced to a sentence of life imprisonment or if a man is an especially dangerous recidivist,

- prisons (*тюрьмы*): where a man has been sentenced to a term of over five years' imprisonment for the commission of particularly grave crime, or if a man is an especially dangerous recidivist, a competent court has the power to decide that part of their sentence should be served in prison.

Special-regime correctional colonies are used for detention of the following categories of convicts: ...]

... (d) Men convicted to life imprisonment, and especially dangerous recidivists ..."

Article 79 (Release on parole)

"... 5. A person serving a life sentence may be released conditionally and prior to expiry of the sentence if a court finds that he no longer needs to endure the punishment and if he has in fact served no less than twenty-five years of imprisonment. [This measure] is used only if the convicted person has not committed repetitive breaches of prison order in the preceding three years. A person who has committed another grave or particularly grave crime while serving his or her sentence cannot be released conditionally and prior to expiry of the sentence ..."

2. The sanction of life imprisonment in Russian criminal law

34. The sanction of life imprisonment was introduced in the previous Criminal Code (of 1960) as a replacement for the death penalty, by way of clemency. In the Criminal Code of 1996 it was introduced in the system of punishments and has been used for particularly grave crimes against human life (Article 159 § 2, aggravated murder); against the sexual inviolability of minors aged under fourteen (Articles 131 § 5, 132 § 5, 134 § 6, various sexual crimes directed against minors); the security of society (Articles 205 § 3; 205.3 §§ 3 and 4; 211 § 4; 205.1 § 4; 205 § 3; 205.4 § 1; 205.5 § 1; 206 § 4, various terrorism-related crimes; Article 210 § 4, setting up and running of criminal syndicates; Article 211 § 4, aggravated hijacking of planes, ships or trains; Articles 228.1 § 5 and 229.1 § 4, various serious drug related crimes; Article 281 § 3, aggravated sabotage; Article 295, attempt on a life of a person carrying out administration of justice or preliminary investigation of crimes; Article 57, genocide).

35. The death penalty may be imposed as an exceptional punishment for particularly serious criminal offences against human life (Article 59 § 1).

36. It can be replaced by a life sentence by way of clemency (Article 59 § 3). A man sentenced to life imprisonment must serve his sentence in a special-regime correctional colony separately from other prisoners (Article 58 § 1). A life prisoner may be released on probation if a court finds that he no longer needs to serve this punishment and if he has served no less than 25 years of his sentence (Article 79 § 5).

C. Code of Execution of Criminal Sentences of 8 January 1997

1. General rules on contacts with the outside world

37. Under Article 89 § 1 of the Code, convicted prisoners are entitled to short-term visits lasting for up to four hours and to long-term visits of up to three days, in the prison premises. A long-term visit takes place in a room in which privacy can be respected. During short-term visits convicted prisoners meet with relatives or other persons. A short-term visit lasts for four hours and takes place in the presence of a warden (Article 89 §§ 1 and 2), the prisoners and the visitor(s) being separated by a glass partition or metal bars. In certain limited circumstances convicted prisoners may be authorised to have a long-term visit of up to five days outside the prison premises. Long-term visits are provided for meeting a spouse, parents, children, parents- and children-in-law, siblings, grandparents, grandchildren and, with the authorisation of the governor, other persons.

38. In its judgment of 29 January 2014 in case no. AKPI13-1283, the Supreme Court of Russia stated that the governor of a correctional colony may refuse a request for a visit in a limited number of cases, for instance if the request for a long-term visit is made by a person who is not a relative of a convicted person (Article 89 § 2) or if the possibility of a visit is not provided for by the Code (for example, a long-term visit during the first ten years of serving the sentence, or if the permitted number of visits has been exceeded). Also, in accordance with Article 118 of the Code, convicts who have been placed in solitary confinement as a punishment for a breach of prison rules are not allowed to have visits.

39. Under Article 89 § 3, upon request, a long-term visit may be replaced by a short-term one and both short- and long-term visits may be replaced by a telephone call.

40. All convicted prisoners are entitled to receive and send an unlimited number of letters, postcards and telegrams (Article 91 § 1). Prisoners' correspondence with their relatives and their parcels are subject to automatic monitoring by the colony staff (Articles 90 § 4 and 91 § 1).

2. Types of facilities and regimes in Russian penitentiary establishments

41. Under Article 58 of the Criminal Code (see paragraph 33 above), there are five main types of penitentiary establishments in which prisoners serve their sentences, depending on the gravity of the crimes they have committed. In the various types of colonies, convicted prisoners are subject to three levels of prison regime, namely ordinary, facilitated and strict regimes, depending on various factors, including the gravity of the crimes they have committed and their behaviour in prison. In prisons there are two types of regime, a strict regime and a common regime.

42. Under Article 129 of the Code of Execution of Criminal Sentences, convicted prisoners in settlement colonies may reside with family members in the colony premises, where permission for that arrangement has been granted by the prison governor.

43. In accordance with Article 121, in common-regime correctional colonies convicted prisoners' contacts with the outside world are limited to:

(a) under the ordinary regime, six short-term and four long-term visits per year and the receipt of six large and six small parcels (newly arrived detainees or those transferred from the strict or facilitated regimes on account of an improvement or deterioration in their behaviour, see Article 120);

(b) under the facilitated regime, six short-term and six long-term visits per year and the receipt of four large and four small parcels (on expiry of the initial six months of imprisonment and on condition of good behaviour and a good attitude towards work, newly arrived detainees may be transferred to this regime, see Article 120);

(c) under the strict regime, two short-term and two long-term visit per year and the receipt of twelve large and twelve small parcels (prisoners are transferred to this regime in the event of repeated violations of internal order, a transfer back to the ordinary regime being possible only on expiry of a six-month period, see Article 120).

44. Under Article 123 of the Code, the contacts of convicted prisoners in strict-regime correctional colonies with the outside world are limited to:

(a) under the ordinary regime, three short-term and three long-term visits per year and the receipt of three large and three small parcels (all newly arrived detainees, except for those convicted of intentional crimes committed while serving their prison sentence, or those transferred from a strict or facilitated regime on account of an improvement or deterioration in their behaviour, see Article 122);

(b) under the facilitated regime, four short-term and four long-term visits per year and the receipt of four large and four small parcels (on expiry of the initial nine months of imprisonment and on condition of good behaviour and a good attitude towards work, detainees may be transferred from the ordinary regime to this one, see Article 122);

(c) under the strict regime, two short-term and one long-term visit per year and the receipt of two large and two small parcels (prisoners are transferred to this regime in the event of repeated violations of internal order, a transfer back to the ordinary regime being possible only on expiry of the nine-month period; prisoners convicted of intentional crimes committed while serving their sentences are transferred to this regime directly, see Article 122).

45. Under Article 130 of the Code, there are two regimes in prisons, a common regime and a strict regime. Under the common regime, convicted prisoners' contacts with the outside world are limited to two short-term and two long-term visits per year, whilst under the strict regime detainees are entitled to two short-term visits per year.

46. All newly arrived detainees or those transferred from the ordinary regime on account of repeated violations of the internal rules serve their sentences under the strict regime, a transfer to the ordinary regime being possible on expiry of a twelve-month period (Article 130).

3. Detention in special-regime correctional colonies

47. Within special-regime correctional colonies convicted prisoners serve their sentences under one of the following internal regimes:

(a) Ordinary regime

48. Under this regime prisoners live in dormitories and have the right to two short-term and two long-term family visits per year (Article 125 § 1). They also have the right to receive three large parcels and three small parcels per year. All newly arrived detainees, except for those convicted of intentional crimes committed while serving their prison sentence and those sentenced to life imprisonment (see paragraph 52 below), or those transferred from a strict or facilitated regime on account of an improvement or deterioration in their behaviour (Article 124) are placed under this regime.

(b) Facilitated regime

49. Under this regime prisoners live in dormitories and have the right to three short-term and three long-term family visits per year (Article 125 § 2). They are also entitled to receive four large parcels and four small parcels per year. On expiry of the initial twelve months of imprisonment and on condition of good behaviour and a good attitude towards work, detainees may be transferred from the ordinary regime to this one (Article 124).

(c) Strict regime

50. Under the strict regime, convicts live in cells and have the right to two short-term visits per year (Article 125 § 3). The Code does not allow

convicts serving their sentence under the strict regime to receive long-term visits by relatives. Prisoners placed under the strict regime may receive one large parcel and one small parcel a year (Article 125 § 3). Prisoners are transferred to this regime in the event of repeated violations of internal order, a transfer back to the ordinary regime being possible only after expiry of a twelve-month period. Prisoners convicted of intentional crimes committed while serving their sentences are transferred to this regime directly (Article 124).

51. Telephone calls for prisoners under the strict regime may take place only in exceptional personal circumstances (Article 92 § 3). The telephone conversations of detainees may be monitored by the colony staff (Article 92 § 5).

(d) Rules applicable to convicts sentenced to life imprisonment

52. All convicts sentenced to life imprisonment are placed in a strict regime upon arrival in the special-regime correctional colony; they serve their sentences separately from other convicts in cells holding no more than two persons (Articles 126 and 127 § 3). Prisoners may be transferred to the ordinary regime after serving at least ten years of their sentence, the ten-year term starting, as a general rule, from the date of the arrest (Article 127 § 3). Where a prisoner misbehaved seriously during his detention on remand and was punished with solitary confinement, the ten-year term starts running as of his placement in the special-regime correctional colony instead of the date of his arrest. Life prisoners may be placed under the facilitated regime after serving at least ten years of their sentence under the ordinary regime (Article 127 § 3).

53. A convict under the facilitated regime of imprisonment who is found to be wilfully disobedient is to be transferred to the ordinary regime, and a wilfully disobedient offender under the ordinary regime is transferred to the strict regime. Subsequent transfer back to the ordinary or facilitated regime may take place only after serving ten years (Article 127 § 5).

D. Rules of internal order of penitentiary establishments, approved by the Ministry of Justice on 3 November 2005 (no. 205)

54. The relevant provisions of the rules state as follows:

1. Chapter XIV. Procedure for granting visits to convicted prisoners

"... 68. Permission for a visit is granted by the governor of a penitentiary establishment or by a person replacing him/her, upon the request of a convicted person or the person who arrives for a visit ... [the grounds for refusal shall be indicated].

72. ... Joining visits together or splitting visits into one or more parts is not permitted ...

74. A convicted person is allowed to have a ... visit from no more than two adults who may be accompanied by the convicted person's minor siblings, children or grandchildren.

75. Long-term visits with persons other than [family members] may only be allowed if, in the view of the administration, such visits would not adversely affect the convicted person ...

82. A decision to change in the type of visit or a change a visit into a telephone call may be made on a written request from the convicted prisoner.

2. Chapter XV. Procedure for granting convicted prisoners an opportunity to make a telephone call

"... 85. An opportunity to make a telephone call is given upon a written request by a convicted prisoner, in which the address, the number of the addressee of the call and the duration of the call (which is not to exceed fifteen minutes) are to be specified.

86. Telephone calls are paid for by convicted prisoners at their own expense or at the expense of their relatives or other [interested] persons. Telephone calls may be monitored by the prison administration ...

89. Convicted prisoners who are detained under a strict regime ... are allowed to make a telephone call only in exceptional personal circumstances (death or serious life-threatening disease of a close relative; a natural disaster which inflicted serious pecuniary damage to the convicted prisoner or his family) ..."

E. Case-law of the Constitutional Court

55. On a number of occasions the Constitutional Court has addressed the issue of the constitutionality of the provisions governing the conditions of detention under the strict regime in special-regime correctional colonies.

1. Ruling no. 466-O of 21 December 2004

56. In a case brought by a convicted prisoner G., the Constitutional Court ruled as follows:

"... In his application Mr G. asked to find unconstitutional Article 127 § 3 of the Code of Execution of Criminal Sentences, which does not provide for the possibility of including the period of a convict's detention in a remand prison in the term of detention under strict conditions in a special-regime correctional colony, and thus prevents the transfer of a convict to less restrictive conditions [earlier that would otherwise have been possible] ...

2.1. The issue of the constitutionality of the provisions of the Code of Execution of Criminal Sentences which set out the rules for calculating the term of serving a sentence of imprisonment and which has an impact on the possibility of transferring a convicted prison to less restrictive conditions or other improvements of the conditions for serving sentences, has already been examined by the Constitutional Court.

In its judgment of 27 February 2003 in a case reviewing the constitutionality of the provisions of Article 130 § 1 of the Code of Execution of Criminal Sentences, the Constitutional Court of Russia concluded that the term of the detention on remand is

to be included in the overall length of the sentence, and in the terms of serving a sentence used for calculations when deciding whether to grant release on parole. Such an approach, as the Constitutional Court has noted, corresponds to international standards ...

On the strength of the above-stated legal position, Article 127 § 3 of the Code of Execution of Criminal Sentences may not be interpreted as prohibiting the inclusion of the period of detention [or] the time during which a measure of restraint in the form of arrest was used in the term of imprisonment, including the part which, in accordance with the procedure established by law, is to be served in strict conditions ..."

2. Ruling no. 248-O of 9 June 2005

57. In the case brought by a convicted prisoner Mr Z. and his wife the Constitutional Court ruled as follows:

"... Mr Z., ... [who was] sentenced to life imprisonment, and his wife ... have repeatedly requested the administration of the penitentiary facilities to provide them with a long-term visit since they wish to have a child ... the visits have been refused with reference to Article 125 § 3 and Article 127 § 3 of the Code of Execution of Criminal Sentences, in accordance with which persons serving their sentence in a special-regime correctional colony in the strict conditions are entitled to two short-term visits annually, and the first long-term visit may be granted not earlier than after the first ten years of imprisonment have been served.

In their complaint Z. and [his wife] challenge the constitutionality of these provisions, alleging that they deprive them of the possibility to have children and thus violate their right to respect for private and family life, guaranteed by Article 23 § 1 of the Constitution, and that they restrict their rights to an extent greater than foreseen in Article 55 § 3 of the Constitution.

...

Article 55 § 3 of the Constitution allows for the possibility of restricting human and civil rights by federal law as a means of protecting the basis of the constitutional regime, morality, health, the rights and lawful interests of others, securing the defence of the country and State security. Such restrictions may be linked, in particular, with the application of criminal sanctions against offenders in the form of coercion by the State, the distinctive feature of which is that, throughout its execution, the offender's rights and freedom are withdrawn or restricted and certain duties are imposed.

... Article 71 (o) of the Constitution empowers the federal legislature to introduce restrictive measures of this sort.

In providing for imprisonment as one of the forms of punishment, the State is acting both in its own interests, and in the interests of society and its members. At the same time, enforcement [of this punishment] changes the rhythm of a person's life and relationships with other people, and has specific moral and psychological consequences, limiting not only that person's rights and freedoms as a citizen, but also his or her rights as an individual. This restriction results from his or her unlawful conduct and is determined by the need to limit his or her natural right to freedom in order to protect morality and the rights and lawful interests of others.

The criminal and prison legislation defines both the criminal sanctions - entailing a range of restrictions corresponding to the gravity of the offence - and the manner in which such sanctions are to be served. In defining those sanctions, the legislature

proceeds on the basis that convicts enjoy, as a whole, the same rights and freedoms as other citizens, with the exceptions determined by their individual personalities, the offences committed by them and the specific regime in correctional facilities.

The restrictions laid down both in Articles 125 and 127 of the Code on the Execution of Criminal Sentences and in other provisions of that Code, including those which concern the procedure for receiving visits from relatives and others, are intended to tailor sentences to individual offenders and to differentiate the conditions for serving sentences, and to create the preconditions for achieving the aims of punishment, which, as stated by Article 43 § 2 of the Criminal Code, are the restoration of justice, reform of the offender and the prevention of new crimes.

The need for statutory regulation of family visits arises both from the provisions of the Body of Principles for the Protection of All Persons under any Form of Detention of Imprisonment, approved by the UN General Assembly on 9 December 1998, and in particular from its Principle 19...

The European Court of Human Rights has pointed out in its decisions that, in order to clarify the obligations imposed on Contracting States by Article 8 of the Convention ... in relation to prison visits, regard must be had to the ordinary and reasonable requirements of imprisonment and to the resultant degree of discretion which the national authorities must be allowed in regulating a prisoner's contact with his family, bearing in mind that "any detention entails by its nature a limitation on private and family life"...

Limitations on the frequency, duration and conditions of prison visits are inevitable consequences of this measure of punishment, consisting in the convict's isolation in a given location under guard. From this perspective, the provisions being challenged by the applicant do not in themselves represent additional restrictions over and above those which, within the meaning of Article 55 § 3 of the Constitution, result from the very essence of a punishment such as imprisonment.

Equally, the range of restrictions is diverse and varies depending on, firstly, the gravity of the sentence imposed by the court, corresponding to the nature and degree of public danger posed by the crime, the circumstances in which it was committed and the perpetrator's personality. The greatest number of such restrictions is envisaged for persons who have been sentenced to life imprisonment as an alternative to the death penalty, for the most serious offences against life (Article 57 § 1 of the Criminal Code) and for those serving their sentences in special-regime colonies (Article 58 § 1 (2) of the Criminal Code).

The right to privacy (Article 23 § 1 of the Constitution) means the State-guaranteed opportunity provided to a person to control personal information and to prevent the disclosure of information of a personal and intimate nature. The concept of "private life" includes that area of human activity that pertains to an individual alone, concerns only him or her and is not subject to supervision by society and the State, provided that it is not unlawful. However, as the European Court of Human Rights has pointed out, "the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities". In imposing a sentence of imprisonment, the State is not arbitrarily interfering in a citizen's private life, but is merely performing its task of protecting the interests of society ...

A person who intends to commit such crimes must assume that, in consequence, he or she may be deprived of freedom and that his or her rights and freedoms may be restricted, including the right to privacy, personal and family secrecy and, as a result,

the possibility of having a child. In committing a crime, a person consciously condemns himself or herself, and members of his or her family, to such limitations.

Thus, the provisions being challenged by the applicant, which provide that convicts sentenced to life imprisonment for especially grave crimes against life are not entitled to a long-term visit until they have served at least ten years' imprisonment, have been enacted by the legislature within the scope of its powers, and do not violate the fair balance between the interest of society as a whole and the interests of an individual ..."

III. RELEVANT INTERNATIONAL LAW AND PRACTICE

A. Council of Europe

1. Committee of Ministers

58. Recommendation Rec(2006)2 of the Committee of Ministers to member States on the European Prison Rules, adopted on 11 January 2006, reads as follows:

"Part I

...

Fundamental principles

1. All persons deprived of their liberty shall be treated with respect for their human rights.

2. Persons deprived of their liberty retain all rights that are not lawfully taken away by the decision sentencing them or remanding them in custody.

3. Restrictions placed on persons deprived of their liberty shall be the minimum necessary and proportionate to the legitimate objective for which they are imposed.

4. Prison conditions that infringe prisoners' human rights are not justified by lack of resources.

5. Life in prison shall approximate as closely as possible the positive aspects of life in the community."

6. All detention shall be managed so as to facilitate the reintegration into free society of persons who have been deprived of their liberty.

...

Part II

...

Contact with the outside world

24.1 Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons.

24.2 Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of

victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact.

...

24.3 National law shall specify national and international bodies and officials with whom communication by prisoners shall not be restricted.

24.4 The arrangements for visits shall be such as to allow prisoners to maintain and develop family relationships in as normal a manner as possible.

24.5. Prison authorities shall assist prisoners in maintaining adequate contact with the outside world and provide them with the appropriate welfare support to do so.

...

Part VIII

...

Sentenced prisoners

Objective of the regime for sentenced prisoners

102.1 In addition to the rules that apply to all prisoners, the regime for sentenced prisoners shall be designed to enable them to lead a responsible and crime-free life.

102.2 Imprisonment is by the deprivation of liberty a punishment in itself and therefore the regime for sentenced prisoners shall not aggravate the suffering inherent in imprisonment. "

59. The Commentary Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules by the European Committee on Crime Problems ("the CDPC") specifies that Rule 2 emphasises that the loss of the right to liberty should not lead to the assumption that prisoners automatically lose their political, civil, social, economic and cultural rights as well. Whereas it is inevitable that such rights are restricted by their loss of liberty, further limitations should be as few as possible and should be specified in law and instituted only when essential for good order, safety and security in prison. Finally, restrictions of their rights that may be imposed should not derogate from the Rules.

60. According to the Commentary, Rule 5 means that active steps should be taken to make conditions in prison as close to normal life as possible.

61. The Commentary to the European Prison Rules by the CDPC specifies in respect of contact with the outside world:

"loss of liberty should not entail loss of contact with the outside world. On the contrary, all prisoners are entitled to some such contact and prison authorities should strive to create the circumstances to allow them to maintain it as best as possible".

62. With further specific reference to family visits it states:

"The reference to families should be interpreted liberally to include contact with a person with whom the prisoner has established a relationship comparable to that of a family member even if the relationship has not been formalised.

Article 8 of the ECHR recognises that everyone has the right to respect for their private and family life and correspondence and Rule 24 can be read as setting out the duties that the prison authorities have to ensure that these rights are respected in the inherently restrictive conditions of the prison. This includes visits too, as they are a particularly important form of communication.

..."

63. The Committee of Ministers has adopted a series of resolutions and recommendations on long-term and life prisoners. The first is Resolution 76(2) of 17 February 1976 "On the treatment of long-term prisoners", which recommended to member States, among other things, to:

"1. pursue a criminal policy under which long-term sentences are imposed only if they are necessary for the protection of society;

2. take the necessary legislative and administrative measures in order to promote appropriate treatment during the enforcement of such sentences;

...

6. encourage a sense of responsibility in the prisoner by the progressive introduction of systems of participation in all appropriate areas;

...

9. ensure that the cases of all prisoners will be examined as early as possible to determine whether or not a conditional release can be granted;

10. grant the prisoner conditional release, subject to the statutory requirements relating to time served, as soon as a favourable prognosis can be formulated; considerations of general prevention alone should not justify refusal of conditional release;

11. adapt to life sentences the same principles as apply to long-term sentences;

12. ensure that a review, as referred to in 9, of the life sentence should take place, if not done before, after eight to fourteen years of detention and be repeated at regular intervals; ..."

64. The relevant part of Recommendation Rec(2003)23 of the Committee of Ministers to member States on the management by prison administrations of life sentence and other long-term prisoners, adopted on 9 October 2003, states as follows:

"2. The aims of the management of life sentence and other long-term prisoners should be:

– to ensure that prisons are safe and secure places for these prisoners and for all those who work with or visit them;

– to counteract the damaging effects of life and long-term imprisonment;

– to increase and improve the possibilities for these prisoners to be successfully resettled in society and to lead a law-abiding life following their release. ...

22. Special efforts should be made to prevent the breakdown of family ties. To this end:

– prisoners should be allocated, to the greatest extent possible, to prisons situated in proximity to their families or close relatives;

– letters, telephone calls and visits should be allowed with the maximum possible frequency and privacy. If such provision endangers safety or security, or if justified by risk assessment, these contacts may be accompanied by reasonable security measures, such as monitoring of correspondence and searches before and after visits. ...

33. In order to enable life sentence and other long-term prisoners to overcome the particular problem of moving from lengthy incarceration to a law-abiding life in the community, their release should be prepared well in advance and take particular account of the following:

– the need for specific pre-release and post-release plans which address relevant risks and needs;

– due consideration of the possibility of achieving release and the continuation post-release of any programmes, interventions or treatment undertaken by prisoners during detention;

– the need to achieve close collaboration between the prison administration and post-release supervising authorities, social and medical services.

34. The granting and implementation of conditional release for life sentence and other long-term prisoners should be guided by the principles set out in Recommendation Rec(2003)22 on conditional release."

2. European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

65. The relevant part of the Memorandum of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT") of 27 June 2007 [CPT (2007) 55] entitled "Actual/real life sentences" reads as follows:

"Contact with the outside world

Life sentences and long terms of imprisonment tend to break up marital and family relationships. If their impairment can be prevented an important step has been taken to maintain the prisoner's mental health and, often, motivation to use time in prison positively. Marital and family relationships derive their strength from emotional ties. It is important, therefore, to try to ensure that the circumstances of life sentences and long-term imprisonment do not result in these ties withering away.

The maintenance of family relationships is facilitated if family visits can be easily undertaken.

Liberal opportunities to receive and send letters are essential. Frequent visits and visits of long duration under conditions that allow for privacy and physical contact are equally essential. Telephoning offers further opportunities to maintain contact with families. Opportunities to make telephone calls should be made widely available to long-term and life sentenced prisoners. If it is feared that telephone conversations are being used to organise crime, plan escape or in some other way disturb security and order, they can be monitored, but prisoners should be informed that monitoring can be ordered if necessary. Similarly, if letters or visits endanger safety and security, consideration should be given to allowing them to continue using preventive procedures, for example reading correspondence and searching before and after visits.

The negative effects of institutionalisation upon prisoners serving long sentences will be less pronounced, and they will be better equipped for release, if they are able effectively to maintain contact with the outside world. Further, as regards the conditions under which the visits take place, the individual risk/needs assessment of this category of prisoners should also allow decisions concerning the granting of open visits to such prisoners to be made on an individual basis.

In particular, efforts should be made to avoid impairing marital and family relationships, as this in turn will have detrimental consequences on the prisoner's mental health and, often, motivation to use time in prison positively.

To systematically deny to life-sentenced prisoners – for years on end – the possibility of having open visits, is indefensible. The granting or withholding of open visits should be based on individual risk assessments."

66. The CPT Standards 2002 (revised in 2011) contain the following provisions (Extract from the 2nd General Report [CPT/Inf (92) 3]):

"51. It is also very important for prisoners to maintain reasonably good contact with the outside world. Above all, a prisoner must be given the means of safeguarding his relationships with his family and close friends. The guiding principle should be the promotion of contact with the outside world; any limitations upon such contact should be based exclusively on security concerns of an appreciable nature or resource considerations.

The CPT wishes to emphasize in this context the need for some flexibility as regards the application of rules on visits and telephone contacts vis-à-vis prisoners whose families live far away (thereby rendering regular visits impracticable). For example, such prisoners could be allowed to accumulate visiting time and/or be offered improved possibilities for telephone contacts with their families."

67. In relation to life-sentence and other long-term prisoners, it is stated (Extract from the 11th General Report [CPT/Inf (2001) 16]) that:

"33. ... During some of its visits, the CPT has found that the situation of such prisoners left much to be desired in terms of material conditions, activities and possibilities for human contact. Further, many such prisoners were subject to special restrictions likely to exacerbate the deleterious effects inherent in long-term imprisonment; examples of such restrictions are ... limited visit entitlements. The CPT can see no justification for indiscriminately applying restrictions to all prisoners subject to a specific type of sentence, without giving due consideration to the individual risk they may (or may not) present.

Long-term imprisonment can have a number of desocialising effects upon inmates. In addition to becoming institutionalised, long-term prisoners may experience a range of psychological problems (including loss of self-esteem and impairment of social skills) and have a tendency to become increasingly detached from society; to which almost all of them will eventually return. In the view of the CPT, the regimes which are offered to prisoners serving long sentences should seek to compensate for these effects in a positive and proactive way."

68. As to the specific situation of life-sentence prisoners in the Russian Federation, the CPT stated in its country report, further to its visit of 21 May to 4 June 2012 (CPT/Inf (2013) 41):

"113. Finally, with reference to the situation at "Vladimirskiy Tsentral", the CPT would like to stress once again that it can see no justification for systematically segregating life-sentenced prisoners from other inmates serving sentences. Such an approach is not in line with the Council of Europe's Committee of Ministers' Recommendation (2003) 23 of 9 October 2003 on the management by prison administrations of life-sentenced and other long-term prisoners. The report accompanying that recommendation recalls that the assumption is often wrongly made that the fact of a life sentence implies that an inmate is dangerous in prison. The placement of persons sentenced to life imprisonment should therefore be the result of a comprehensive and ongoing risk and needs assessment, based on an individualised sentence plan, and not merely a result of their sentence. The CPT recommends that the Russian authorities review the legislation and practice as regards the segregation of life-sentenced prisoners in FSIN establishments, in the light of these remarks."

B. United Nations

1. The 1966 International Covenant on Civil and Political Rights and the UN Human Rights Committee

69. The International Covenant on Civil and Political Rights ("the ICCPR") came into force in respect of Russia on 16 October 1973. Article 10(3) provides that:

"The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation ... ".

70. Article 17 provides that:

"1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks".

71. The General Comment on Article 10 of the Human Rights Committee no. 9 (1982), paragraph 3 states:

"allowing visits, in particular by family members, is normally also such a measure which is required for reasons of humanity".

72. The General Comment on Article 10 of the Human Rights Committee no. 21 (1992), paragraphs 3-4 further states that persons deprived of liberty:

"... may not be subjected to any hardship or constraint other than that resulting from the deprivation of liberty; respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. Persons deprived of their liberty enjoy all the rights set forth in the Covenant, subject to the restrictions that are unavoidable in a closed environment.

Treating all persons deprived of their liberty with humanity and with respect for their dignity is a fundamental and universally applicable rule. Consequently, the application of this rule, as a minimum, cannot be dependent on the material resources available in the State party. This rule must be applied without distinction of any kind,

such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Moreover, in paragraph 10, it is stated that:

"[n]o penitentiary system should be only retributory; it should essentially seek the reformation and social rehabilitation of the prisoner".

2. UN Standard Minimum Rules for the Treatment of Prisoners

73. The UN Standard Minimum Rules for the Treatment of Prisoners, 30 August 1955, contain specific provisions on sentenced prisoners, including the following guiding principles:

"Contact with the outside world

37. Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.

38. (1) Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.

(2) Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

39. Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the administration.

...

RULES APPLICABLE TO SPECIAL CATEGORIES

A. Prisoners under sentence

...

57. Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.

58. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.

59. To this end, the institution should utilise all the remedial, educational, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners."

3. UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment

74. The relevant part of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment approved by the UN General Assembly on 9 December 1988 (A/RES/43/173) reads as follows:

> "Principle 3
>
> There shall be no restriction upon or derogation from any of the human rights of persons under any form of detention or imprisonment recognized or existing in any State pursuant to law, conventions, regulations or custom on the pretext that this Body of Principles does not recognize such rights or that it recognizes them to a lesser extent.
>
> ...
>
> Principle 19
>
> A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.
>
> Principle 20
>
> If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence."

4. UN Basic Principles for the Treatment of Prisoners

75. The UN Basic Principles for the Treatment of Prisoners (adopted by res. 45/111 of 14 December 1990) contain the following provisions:

> "1. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.
>
> ...
>
> 5. Except for those limitations that are demonstrably necessitated by the fact of incarceration, all prisoners shall retain the human rights and fundamental freedoms set out in the Universal Declaration of Human Rights, and, where the State concerned is a party, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and the Optional Protocol thereto, as well as such other rights as are set out in other United Nations covenants."

5. UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

76. In the concluding observations on the fifth periodic report of the Russian Federation adopted at its forty-ninth session (29 October-23 November 2012), the UN Committee against Torture noted as follows:

> "9. ... [The Committee] is further concerned that the State party's legislation does not provide that all persons deprived of their liberty have the right to contact family members promptly upon deprivation of liberty, instead permitting officials of the State

party to contact relatives on detainees' behalf, and failing to ensure that in all cases relatives should be informed of detainees' whereabouts. ..."

C. International Criminal Tribunal for the former Yugoslavia's Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal (21 July 2005)

77. Rule 61 (A) provides as follows:

"Detainees shall be entitled to receive visits from family, friends and others, subject only to the provisions of Rules 64 and 64bis and to such restrictions and supervision as the Commanding Officer, in consultation with the Registrar, may impose. Such restrictions and supervision must be necessary in the interests of the administration of justice or the security and good order of the host prison and the Detention Unit."

D. Inter-American Court of Human Rights and Inter-American Commission of Human Rights

78. The Inter-American Commission ("IACHR") has constantly held that the State is obliged to facilitate and regulate contact between inmates and their families. In this respect, the IACHR reiterated that family visit to prisoners is a fundamental element of the right to the protection of the family of all parties in this relationship that are affected.

79. In the case *X and Y v. Argentina* (IACHR, Report no. 38/96, Case 10.506, Merits, 15 October 1996) the IACHR held that, although personal contact visits are not a right, when such visits are allowed the authorities are obliged to regulate them in a manner which respects the human rights and dignity of the persons involved. In particular:

"97. The right to family life can suffer certain limitations that are inherent to it. Special circumstances such as incarceration or military service, even though they do not suspend this right, inevitably affect its exercise and complete enjoyment. Though imprisonment necessarily restricts the full enjoyment of the family by forcibly separating a member from it, the state is still obliged to facilitate and regulate contact between detainees and their families and to respect the fundamental rights of all persons against arbitrary and abusive interferences by the state and its public functionaries.

98. The Commission has consistently held that the [S]tate is obligated to facilitate contact between the prisoner and his or her family, notwithstanding the restrictions of personal liberty implicit in the condition of the prisoner. In this respect the Commission has repeatedly indicated that visiting rights are a fundamental requirement for ensuring respect of the personal integrity and freedom of the inmate and, as a corollary, the right to protection of the family for all the affected parties. Indeed, and particularly because of the exceptional circumstances of imprisonment, the state must establish positive provisions to effectively guarantee the right to maintain and develop family relations. Thus, the necessity of any measures restricting this right must adjust themselves to the ordinary and reasonable requirements of imprisonment."

80. In the case *Oscar Elías Biscet and others v. Cuba* (IACHR, Report no. 67/06, Case 12.476, Merits, 1 October 2006) the Commission condemned, under Article VI of the American Declaration of the Rights and Duties of Men, the restriction of family visits for no apparent reason.

In particular:

> "237. The Commission notes that although imprisonment necessarily separates family members, the State is obligated to facilitate and regulate contact between the prisoner and his or her family. Because of the exceptional circumstances that imprisonment creates, the State is obligated to take steps to effectively ensure the right to maintain and cultivate family relationships. The need for any measures that restrict this right must fit the usual and reasonable requirements of incarceration. When the State regulates the manner in which inmates and their families exercise the right to establish and protect a family, no conditions can be imposed or procedures enforced that violate the rights recognized in the American Declaration.
>
> ...
>
> 239. In the present case, the Commission observes that most of the victims are being kept in prisons located far from family. The petitioners even allege that the authorities deliberately incarcerated the victims in remote prisons to make communications with the families, attorneys and the media difficult. Furthermore, it has been reported that in most cases the prison authorities have restricted family and conjugal visits for no apparent reason.
>
> 240. The Commission finds that the State has not complied with its obligation to facilitate contacts between inmates and their families. Given these facts, the Commission concludes that the State has violated Article VI of the American Declaration, to the detriment of all the victims."

IV. COMPARATIVE LAW

81. Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, the former Yugoslav Republic of Macedonia, Malta, Moldova, Montenegro, the Netherlands, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom (England and Wales) and Ukraine all allow, as a matter of principle, life-sentence and/or other long-term prisoners, like other categories of prisoners, to communicate with their family at regular intervals by receiving visits in accordance with the procedure and conditions laid down by the domestic law and the practical realities of the institution in which they are held. As is specifically mentioned in the relevant provisions of some member States, such as Germany, Italy, Poland and the United Kingdom, the main aim of such visits is to maintain family ties.

82. In most of the above-mentioned States the regulation of visits in prison is the same for all categories of prisoners, including life-sentence prisoners and/or other long-term prisoners. In some member States, such as Azerbaijan, Bulgaria, Lithuania, Poland, Serbia and Turkey, certain

categories of prisoners, in particular life-sentence prisoners and/or other long-term prisoners may be subject to further restrictions, especially as regards the frequency and duration of such visits and the premises in which the visits take place. Among those States which allow for intimate visits, one member State, namely Moldova, excludes life-sentence prisoners and certain other categories of prisoners from such visits. Ukraine was in a similar situation until 7 May 2014, when the amendment to Article 151 of the Code of Execution of Sentences entered into force allowing for such visits for life-sentence prisoners.

83. Various supervisory restrictions on direct physical contact, the number of visitors and privacy during prison visits are common in the majority of the States mentioned. It appears that in only a few member States, such as Croatia, Germany, Sweden and Switzerland, regular family visits take place – as a general rule – without supervision, unless there are security and/or other specific concerns. In general, regular family visits for life-sentence and/or other long-term prisoners can take place around a table in a room designated for that purpose, in some cases alongside other prisoners and visitors (see, for example, Belgium, Luxembourg, the Netherlands, Poland, Switzerland and the United Kingdom) or behind a glass partition (see, in particular, Azerbaijan, Bulgaria, the former Yugoslav Republic of Macedonia, Greece, Romania and Slovakia). In some member States both possibilities exist, depending on the institution and other conditions (see, for example, Austria, Finland, Spain, Turkey and Ukraine). In Estonia, Germany, Portugal, Sweden and the United Kingdom, visits can take place in a room with a glass partition (or other arrangement that inhibits physical contact) for security concerns. In member States where visits take place in a room without any physical barriers, such as Belgium, France, Germany, Ireland, Italy, Liechtenstein, Montenegro, Poland, Portugal, Serbia, Sweden, Switzerland, Turkey (in open visits) and Slovenia, a certain amount of physical contact is permitted between an adult visitor and an adult prisoner. On the other hand, in Finland physical contact is mostly forbidden, and in the Netherlands and in Slovakia it is strictly regulated.

84. There is a considerable variation in the frequency of prison short-term visits, with one short-term visit a month being the generally accepted minimum for the majority of prisoners in all of the countries researched. In some member States such as Austria, Belgium, Finland, Greece, Ireland, Malta, Montenegro, the Netherlands, Portugal, Slovenia, Spain and Switzerland, family visits are in general allowed weekly. In others, for example Bulgaria, Croatia, the former Yugoslav Republic of Macedonia, Poland, Romania and the United Kingdom, such visits are allowed twice per month. In the case of Italy the number of visits allowed is six times per month and in Turkey four times. In a number of States, such as the Czech Republic, Estonia, Georgia, Germany, Moldova, Serbia, Slovakia

and Ukraine, family visits are allowed once per month. In Lithuania life-sentence prisoners who are assigned to the medium-security category are allowed regular visits once every two months. Similarly, in Azerbaijan, where the number of visits depends on the regime which the prisoner is being held under in accordance with the Penal Code, life-sentence prisoners are allowed six regular visits per year.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

85. The applicant complained that during the first ten years of his post-conviction detention in the special-regime correctional colony his ability to receive visits from his wife and other family members had been severely curtailed. The applicant was dissatisfied, in particular, with the lack of conjugal visits during his detention in the special-regime correctional colony. In his submissions of 12 May 2014 the applicant also complained that during his pre-trial detention between November 1994 and October 1995 his wife and family members had not been allowed to visit him in remand prison. He relied on 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."

A. Admissibility

1. The parties' submissions

86. The Government submitted that the applicant's wife had divorced him in 1996 and that in so far as the case concerned the applicant's complaint about the inability to have conjugal visits from his wife during his post-conviction detention in the special regime correctional colony starting from 8 October 1999 the case should be declared inadmissible.

87. The applicant confirmed that he had been divorced from his wife as of 1996, but considered that the examination of the case should continue because the restrictive regime of prison visits affected other members of his family and relatives as well.

2. The Court's assessment

(a) The complaint about the applicant's pre-trial detention between November 1994 and October 1995

88. The Court notes at the outset that the Convention entered into force in respect of Russia on 5 May 1998. It follows that in so far as the applicant complained about the events which took place during his pre-trial detention between November 1994 and October 1995 the complaint is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

(b) The complaint about the lack of conjugal visits during the applicant's detention in the special-regime correctional colony

89. The Court notes that it is clear from the applicant's observations of 12 May 2014 that his wife divorced him in 1996. In the absence of any evidence to the contrary, the applicant cannot be said to have had any family life within the meaning of Article 8 of the Convention with his former wife after the divorce in 1996 and after his transfer to the special-regime correctional colony on 8 October 1999. It follows that in so far as the applicant complained about the lack of conjugal visits by his wife, the applicant cannot claim to be a victim of the alleged violation of Article 8 of the Convention.

90. Having regard to the above, the Court finds this part of the application is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) of the Convention. It must therefore be rejected pursuant to Article 35 § 4.

(c) The complaint about the first ten years of the applicant's post-conviction detention in the special-regime correctional colony

91. Turning to the applicant's remaining complaint about various restrictions on contacts with his relatives and family members under the strict regime while in the special-regime correctional colony between 8 October 1999 and 11 October 2009, the Court considers that this complaint falls within its competence entirely, as the relevant complaint was made to the Court in October 2006 and the period mentioned, taken as a whole, represented a continuous situation within the meaning of the Court's case-law (see, *mutatis mutandis*, *Benediktov v. Russia*, no. 106/02, § 12, 10 May 2007; *Igor Ivanov v. Russia*, no. 34000/02, § 30, 7 June 2007; *Guliyev v. Russia*, no. 24650/02, § 31, 19 June 2008; *Maltabar and Maltabar v. Russia*, no. 6954/02, §§ 82-84, 29 January 2009; *Aleksandr Matveyev v. Russia*, no. 14797/02, §§ 67-68, 8 July 2010; and *Valeriy Lopata v. Russia*, no. 19936/04, §§ 104-106, 30 October 2012), during which the conditions of the applicant's detention remained essentially unchanged.

92. The Court is satisfied that this complaint raises arguable issues under Article 8 of the Convention, so that it cannot be rejected as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. The Court further considers that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

93. The applicant complained that the restrictions on the number of long-term and short term visits during the first ten years of his imprisonment in the special-regime correctional colony had been unjustified and excessively harsh. In the applicant's view, the fact that the regulation of the types, frequency and duration of visits was inflexible and set out directly in the legislation made it impossible to use an individualised approach suited to the unique circumstances of each prisoner's case.

94. The applicant referred to the aims of criminal punishment mentioned in Article 43 § 2 of the Criminal Code, namely, "the aim of restoration of social justice", "reforming the convicted person" and "preventing the commission of new crimes" and agreed that these aims were legitimate (see paragraph 33 above). He disagreed that the contested legislation sufficiently attained these aims. The applicant took the view that maintaining relationships with his family was the only link between him and society, this being the most effective tool in correcting the convicted person.

95. In respect of the Government's argument concerning the temporary character of the restrictions resulting from the ten-year ban on long-term family visits, the applicant submitted that the real duration of these restrictions was considerably longer in practice because of the period spent in detention on remand and restrictive rules on calculation of the ten-year term. In his case those restrictions had lasted for an overall period of fifteen years.

96. As regards the conditions in which short-term visits took place, the applicant deplored their low frequency (twice a year), their short duration (four hours maximum) and the arrangements excluding any privacy, such as the presence of a prison guard and the physical separation with a glass wall. He also considered that the limit of only two adults per visit was excessively harsh.

97. Lastly, the applicant was also dissatisfied with the disproportionate effect that a ten-year ban on long-term visits and the harsh conditions of short-term visits, excluding any privacy and physical contact, had on his family members, more specifically his elderly and sick father and his son,

the latter having become completely alienated from him as a result of the lack of any contact.

(b) The Government

98. The Government did not dispute that the prison regime during the first ten years of the applicant's post-conviction detention in the special regime correctional colony had constituted an interference with the applicant's private and family life. However, referring to the case-law of the Constitutional Court (see paragraphs 29 and 55-57 above), they submitted that this interference had been lawful and proportionate to the legitimate aims pursued.

99. The Government referred to the case-law of the Constitutional Court and argued that the measure in question pursued the aim of rectification of an injustice, reform of a convicted person and prevention of new crimes. They also stated that, according to the Code of Execution of Criminal Sentences, the main purpose of the penitentiary legislation was reforming a convicted person and preventing the commission of further crimes, both by the convicted person and by others. In their oral submissions at the hearing before the Court, the Government submitted that the aim of social reintegration was not expected to be achieved in respect of life-sentence prisoners, including the applicant, and argued that isolating persons such as the applicant was the only aim of the relevant prison regime.

100. The Government considered that the interference had been proportionate to the legitimate aims pursued, given, in particular, that the applicant had been sentenced to life imprisonment for very serious offences and the various restrictions on family visits had been of a temporary nature. They further argued that all necessary individualisation measures and assessment of proportionality were integrated into the law and took place when in the process of preparing the judgment in the case. The strictness of the regime depended, in particular, on the severity of the sentence imposed by a court, the nature and degree of public danger of the crime, the specific circumstances in which it was committed, the personality of the offender and the convicted person's conduct during the period of his detention.

101. The Government also considered that a criminal could be said to have been fully aware of the consequences of his criminal behaviour and of the fact that by committing a crime he condemned himself and his family to these restrictions on his right to communicate with his family, the inviolability of his private life, and personal and family secrecy.

102. The Government also argued that the limitations in question flowed from the essence of such a measure of restraint as the deprivation of liberty. They also underlined that the restrictions did not cut all links with the family during the first ten years and were also limited in time.

(c) The interveners

103. The interveners criticised the ten-year duration of the strict regime in the special-regime correctional colonies as arbitrary, excessively inflexible and not in relation to any sociological, demographic data or international legal standards. They also deplored the ban on long-term visits and various restrictive modalities of short-term visits, such as the lack of any physical contact and the limitation on the number of visitors allowed.

104. According to the interveners, the only purpose of the rule was an additional punishment of life-sentence prisoners during the time when family contacts remained crucial for any subsequent rehabilitation and reintegration into free society. They viewed the measure as effectively depriving life-sentence prisoners of the right to hope and as having an extremely deleterious effect on their family life.

105. Furthermore, the interveners insisted that the contested legislation contradicted a now well-established European trend towards putting more emphasis on rehabilitation of prisoners and softening various restrictions on long-term prisoners, citing recent legislative changes in countries such as Ukraine, Azerbaijan, Armenia, Latvia and Lithuania by way of example.

2. The Court's assessment

(a) Whether there was an interference with the applicant's rights under Article 8

106. Detention, like any other measure depriving a person of his liberty, entails inherent limitations on his private and family life. However, it is an essential part of a prisoner's right to respect for family life that the authorities enable him or, if need be, assist him in maintaining contact with his close family (see, among many other authorities, *Messina v. Italy (no. 2)*, no. 25498/94, §§ 61-62, ECHR 2000-X; *Lavents v. Latvia*, no. 58442/00, § 139, 28 November 2002; *Estrikh v. Latvia*, no. 73819/01, § 166, 18 January 2007; *Nazarenko v. Latvia*, no. 76843/01, § 25, 1 February 2007; *Trosin v. Ukraine*, no. 39758/05, § 39, 23 February 2012; and *Epners-Gefners v. Latvia*, no. 37862/02, §§ 60-66, 29 May 2012).

107. Turning to the circumstances of the present case, the Court notes that during the first ten years of his post-conviction detention in the special-regime correctional colony the applicant was subject to the strict regime, a special prison regime which involved, among other things, restrictions on the frequency and duration of prison visits and the number of visitors, as well as various measures for the supervision of such visits. The applicant could correspond in writing with the outside world, but there was a complete ban on telephone calls except in situations of emergency. It also notes that during this time the applicant tried to maintain contact with his relatives, namely his parents, his brother, and his son, whose ability to pay visits to the applicant in prison was undoubtedly restricted.

108. The Government did not dispute that the application of the above-mentioned prison regime in the applicant's case constituted an interference with his rights to private and family life protected by Article 8 of the Convention.

109. Regard being had to its case-law and the above-mentioned circumstances of the case, the Court finds that the measures in question constituted an interference with the applicant's "private life" and "family life" within the meaning of Article 8 of the Convention. It remains to be seen whether this interference was justified under the second paragraph of that provision.

(b) Whether the interference was justified

i. "In accordance with the law"

110. Under the Court's case-law, the expression "in accordance with the law" in Article 8 § 2 requires, among other things, that the measure or measures in question should have some basis in domestic law (see, for example, *Aleksandra Dmitriyeva v. Russia*, no. 9390/05, §§ 104-07, 3 November 2011), but also refers to the quality of the law in question, requiring that it should be accessible to the person concerned and foreseeable as to its effects (see *Rotaru v. Romania* [GC], no. 28341/95, § 52, ECHR 2000-V). In order for the law to meet the criterion of foreseeability, it must set forth with sufficient precision the conditions in which a measure may be applied, to enable the persons concerned – if need be, with appropriate advice – to regulate their conduct.

111. The Court notes that the contested restrictions were imposed on the applicant in accordance with Articles 125 § 3, 126 and 127 § 3 of the Code of Execution of Criminal Sentences (see paragraphs 50 and 52 above), which provided that all convicts sentenced to life imprisonment were to be placed in the strict regime upon their arrival at the special-regime correctional colony and introduced various limitations on life-sentence prisoners' ability to receive visits from their relatives in prison and otherwise regulated their contacts with the outside world during the subsequent ten years.

112. The Court finds, and it is undisputed by the parties, that the applicant's detention in the special regime correctional colony in the conditions of the strict regime had a legal basis in Russian law and that the law itself was clear, accessible and sufficiently precise.

ii. Legitimate aim

113. The Government justified the limitations on the applicant's ability to receive prison visits from his relatives with reference to the case-law of the Constitutional Court, which stated in its Ruling no. 257-O dated 24 May 2005 (see paragraph 29 above) that the law pursued the aims of "the

restoration of justice, reform of the offender and the prevention of new crimes". In their oral submissions before the Grand Chamber, the Government specified that the relevant law did not pursue the aim of social reintegration of the applicant and other life-sentence prisoners at all, but, rather, was aimed at isolating such people from society (see paragraph 99 above).

114. Regard being had to the parties' submissions and, in particular, the Government's explanations at the hearing, it may be arguable whether the limitations of the applicant's right to receive visits in prison pursued a legitimate aim within the meaning of Article 8 § 2 of the Convention.

115. The Court considers, however, that it is not necessary to decide this point in view of its findings below (see paragraphs 127-149 below).

(c) Necessary in a democratic society

i. General principles

116. As is well established in the Court's case-law, during their imprisonment prisoners continue to enjoy all fundamental rights and freedoms, save for the right to liberty (see, for instance, *Dickson v. the United Kingdom* [GC], no. 44362/04, § 67, ECHR 2007-V, quoting *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, § 69, ECHR 2005-IX; and *Boulois v. Luxembourg* [GC], no. 37575/04, § 82, ECHR 2012).

117. Accordingly, on imprisonment a person does not forfeit his or her Convention rights, including the right to respect for family life (*Płoski v. Poland*, no. 26761/95, §§ 32 and 35, 12 November 2002), so that any restriction on those rights must be justified in each individual case (see *Dickson* [GC], cited above, § 68).

118. With regard to the requirement of being "necessary in a democratic society", the Court has specified that the notion of "necessity" implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aims pursued. In determining whether an interference was "necessary in a democratic society", the Court will take into account that a margin of appreciation is left to the Contracting States, but it remains incumbent on the respondent State to demonstrate the existence of the pressing social need behind the interference (see *Kučera v. Slovakia*, no. 48666/99, § 127, 17 July 2007, and *Klamecki v. Poland (no. 2)*, no. 31583/96, § 144, 3 April 2003). Furthermore, the Court cannot confine itself to considering the impugned facts in isolation, but must apply an objective standard and look at them in the light of the case as a whole (see *Nowicka v. Poland*, no. 30218/96, §§ 69-70, 3 December 2002).

119. Since the national authorities make the initial assessment as to where the fair balance lies in a case before a final evaluation by this Court,

a certain margin of appreciation is, in principle, accorded by this Court to those authorities as regards that assessment. The breadth of this margin varies and depends on a number of factors, including the nature of the activities restricted and the aims pursued by the restrictions (see *Dickson* [GC], cited above, § 77).

120. Accordingly, where a particularly important facet of an individual's existence or identity is at stake, the margin of appreciation accorded to a State will in general be restricted. Where, however, there is no consensus within the member States of the Council of Europe either as to the relative importance of the interest at stake or as to how best to protect it, the margin is likely to be wider. This is particularly so where the case raises complex issues and choices of social strategy: the authorities' direct knowledge of their society and its needs means that they are in principle better placed than the international judge to appreciate what is in the public interest. In such a case, the Court would generally respect the legislature's policy choice unless it is "manifestly without reasonable foundation". There will also usually be a wide margin accorded if the State is required to strike a balance between competing private and public interests or Convention rights (see *Dickson* [GC], (cited above), § 78).

121. Furthermore, the approach to assessment of proportionality of State measures taken with reference to "punitive aims" has evolved over recent years, with a heavier emphasis now having to be placed on the need to strike a proper balance between the punishment and rehabilitation of prisoners (see *Mastromatteo v. Italy* [GC], no. 37703/97, § 72, ECHR 2002-VIII; *Schemkamper v. France*, no. 75833/01, § 31, 18 October 2005; and *Maiorano and Others v. Italy*, no. 28634/06, § 108, 15 December 2009), In this connection, the Court recalls its observations, firstly, in the *Dickson* [GC] judgment (cited above, § 75), where it noted the general evolution in European penal policy towards the increasing relative importance of the rehabilitative aim of imprisonment, particularly towards the end of a long prison sentence, and, secondly, in *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09, 130/10 and 3896/10, § 111-116, ECHR 2013 (extracts) and *Harakchiev and Tolumov v. Bulgaria* (nos. 15018/11 and 61199/12, §§ 243-246, ECHR 2014 (extracts)), where it insisted that the emphasis on rehabilitation and reintegration has become a mandatory factor that the member States need to take into account in designing their penal policies.

122. The regime and conditions of a life prisoner's incarceration cannot be regarded as a matter of indifference in that context. They need to be such as to make it possible for the life prisoner to endeavour to reform himself, with a view to being able one day to seek an adjustment of his or her sentence (see *Harakchiev and Tolumov*, cited above, § 265).

ii. Approach adopted by the Court in previous similar cases with respect to visiting rights

123. Regarding visiting rights, it is an essential part of a prisoner's right to respect for family life that the prison authorities enable him, or, if need be, assist him, to maintain contact with his close family (see *Messina*, cited above, § 61; and *Öcalan v. Turkey (no. 2)*, nos. 24069/03, 197/04, 6201/06 and 10464/07, §§ 108-149 and §§ 154-164, 18 March 2014). At the same time, it has to be recognised that some measure of control of prisoners' contacts with the outside world is called for and is not of itself incompatible with the Convention (see *Aliev v. Ukraine*, no. 41220/98, § 187, 29 April 2003, and *Kalashnikov v. Russia* (dec.), no. 47095/99, § 7, ECHR 2001-XI (extracts)). Such measures could include the limitations imposed on the number of family visits, supervision over those visits and, if so justified by the nature of the offence and the specific individual characteristics of a detainee, subjection of the detainee to a special prison regime or special visits arrangements (see *Hagyó v. Hungary*, no. 52624/10, § 84, 23 April 2013).

124. In this context, however, a distinction is to be drawn between the application of a special prison regime or special visiting arrangements during the investigations, where the measures could reasonably be considered necessary in order to achieve the legitimate aim pursued, and the extended application of such regime (see *Messina*, cited above, § 67). To that end, the necessity of extending the application of the special regime needs to be assessed with the greatest care by the relevant authorities (see *Bastone v. Italy* (dec.), no. 59638/00, § 2, ECHR 2005-II (extracts); *Indelicato v. Italy* (dec.), no. 31143/96, § 2, 6 July 2000; *Ospina Vargas v. Italy*, no. 40750/98, § 3, 14 October 2004; and *Enea v. Italy* [GC], no. 74912/01, §§ 125-131, ECHR 2009).

125. Likewise, in the context of high security prisons, the application of such measures as physical separation may be justified by the prison's security needs or the danger that a detainee would communicate with criminal organisations through family channels (see *Lorsé and Others v. the Netherlands*, no. 52750/99, §§ 83-86, 4 February 2003, and *Van der Ven v. the Netherlands*, no. 50901/99, §§ 69-72, ECHR 2003-II). However, the extended prohibition of direct contact can be justified only where a genuine and continuing danger of that kind exists (see *Horych v. Poland*, no. 13621/08, §§ 117-132, 17 April 2012, and *Piechowicz v. Poland*, no. 20071/07, §§ 205-222, 17 April 2012).

126. In other words, the State does not have a free hand in introducing restrictions in a general manner without affording any degree of flexibility for determining whether limitations in specific cases are appropriate or indeed necessary (see, *mutatis mutandis*, *Moiseyev v. Russia*, no. 62936/00, §§ 254-255, 9 October 2008), especially regarding post-conviction prisoners (see *Harakchiev and Tolumov*, cited above, § 204). The Court would recall

in this respect its judgment in the case of *Trosin*, cited above, §§ 42-44), in which the domestic law introduced automatic restrictions on the frequency, duration and various modalities of family visits for all life-sentence prisoners for a fixed period of ten years:

> "42. The Court notes that no issue arose under the Convention where a detainee was restricted to not more than two family visits per month by the provisional application of a special regime. However, in that case the domestic authorities and the Court paid regard to particular and specific considerations underpinning such restrictions (see *Messina v. Italy (no. 2)*, no. 25498/94, §§ 62-74, ECHR 2000-X). ... in the present case the relevant provisions of domestic law introduced automatic restrictions on frequency and length of visits for all life prisoners and did not offer any degree of flexibility for determining whether such severe limitations were appropriate or indeed necessary in each individual case even though they were applied to prisoners sentenced to the highest penalty under the criminal law. The Court considers that regulation of such issues may not amount to inflexible restrictions and the States are expected to develop their proportionality assessment technique enabling the authorities to balance the competing individual and public interests and to take into account peculiarities of each individual case (see, *mutatis mutandis*, *Dickson v. the United Kingdom* [GC], no. 44362/04, §§ 82-85, ECHR 2007-V).
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> 43. Making its own assessment of the individual situation at hand, the Court does not discern any particular and specific circumstances which would point to a necessity to limit the applicant's meetings with his family to once every six months for a period of more than four years. In the context of quantitative assessment, the Court also notes that those rare visits were further limited by their short duration.
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> 44. The Court further notes that the amendment to the legislation of 21 January 2010 ... has improved the situation with the frequency of family visits to life prisoners. However, the new frequency of the family visits is still automatically applied to all life prisoners without involving the assessment of the necessity of such restriction in the light of particular circumstances of each prisoner ..."

iii. The application of the above principles

127. Pursuant to Article 126 of the Code of Execution of Penalties the applicant, as a life-sentence prisoner, served the first ten years of his post-conviction detention starting from 8 October 1999 in the special-regime correctional colony under the conditions of the strict regime (see paragraph 16 above). The applicant was transferred to the ordinary regime on 11 October 2009, in accordance with Article 127 § 3 of the Code (see paragraph 18 above).

128. Between 8 October 1999 and 11 October 2009 the applicant could maintain contact with the outside world by corresponding in writing, but all other types of contacts were limited (see paragraphs 23-25 above). He could not make any telephone calls except in an emergency and his relatives could 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. During visits the applicant was separated from visitors by a glass partition and a prison guard was present and within hearing distance at all times.

129. The impugned restrictions were imposed directly by law and concerned the applicant solely on account of his life sentence and irrespective of any other factors (see paragraph 50 and 52 above). The regime was imposed for a fixed period of ten years, which could be extended in the event of poor conduct while serving the sentence, but could not be shortened (see paragraph 52 above).

130. It is significant that the above-mentioned restrictions were all combined within one regime for a fixed duration of time and could not be altered. In view of what was at stake for the applicant, for whom, apart from written correspondence, prison visits were the only means to maintain effective contact with relatives and family members, and with the outside world in general, over a period of ten years (see paragraphs 23-25 above), the Court considers that the regime calls for careful scrutiny.

131. The Court is aware that a sentence of life imprisonment in Russia can only be handed down for a limited group of extremely reprehensible and dangerous actions (see paragraphs 34 and 35 above) and that in the case at hand the authorities had had, among other things, to strike a delicate balance between a number of private and public interests involved.

132. The Contracting States enjoy a wide margin of appreciation in questions of penal policy (see *Laduna v. Slovakia*, no. 31827/02, § 59, ECHR 2011). It cannot therefore be excluded, in principle, that the gravity of a sentence may be tied, at least to some extent, to a type of a prison regime (see *Horych*, cited above, § 129).

133. However, while it recognises the importance of the fight against crime, the Court must determine whether the restrictions introduced by law in the applicant's case were justified in order to achieve the aims invoked by the Government under Article 8 § 2 of the Convention. The Court will consider this issue with due regard to the relevant instruments of the Council of Europe (see paragraphs 58-68 above) and to the law and practice of the other Contracting States (see paragraphs 81-84 above).

134. The starting point in the regulation of visiting rights of prisoners, including life-sentence prisoners, at the European level is that national authorities are under an obligation to prevent the breakdown of family ties and provide life-sentence prisoners with a reasonably good level of contact with their families, with visits organised as often as possible and in as normal manner as possible (see Articles 24.1, 24.2, 24.4 and 24.5 of the European Prison Rules in paragraph 58 and Recommendation Rec(2006)2 of the Committee of Ministers to member States on the European Prison Rules in paragraphs 59-62 above). These principles appear to have been consistently applied by the Contracting States in accordance with the Recommendations of the Committee of Ministers (see paragraphs 63 and 64 above) and the Committee on the Prevention of Torture (see paragraphs 65-67 above).

135. There is a considerable variation in practices regarding the regulation of prison visits (see paragraphs 81-84 above). However, among the Contracting States the minimum frequency of prison visits as regards life-sentence prisoners appears to be no lower than once every two months (see paragraph 84 above). It is noteworthy that the majority of the Contracting States do not draw any distinction in this sphere between life-sentence and other types of prisoners (see paragraph 82 above) and that in such countries a generally accepted minimum regarding the frequency of visits is not less than once a month (see paragraph 84 above). Against this background, Russia appears to be the only jurisdiction within the Council of Europe to regulate the prison visits of all life-sentence prisoners as a group by combining an extremely low frequency of prison visits and the lengthy duration of such a regime.

136. In the Court's view, the above situation is indicative of a narrowing of the margin of appreciation left to the respondent State in the assessment of the permissible limits of the interference with private and family life in this sphere. Having regard to these considerations, the Court will now examine whether the applicant's regime was based on relevant and sufficient reasons.

137. In its Ruling no. 248-O of 9 June 2005 the Russian Constitutional Court mentioned a number of reasons. It referred to "the restoration of justice, reform of the offender and the prevention of new crimes" and also decided that "the provisions being challenged by the applicant [did] not in themselves represent additional restrictions over and above those which, within the meaning of Article 55 § 3 of the Constitution, result[ed] from the very essence of a punishment such as imprisonment".

138. The Court is not persuaded by the latter argument, since the regime introduced a combination of restrictions which considerably worsened the applicant's situation compared with the position of an average Russian prisoner serving a long-term sentence. Nor could they be seen as inevitable or inherent to the very concept of a prison sentence (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 34, Series A no. 131).

139. The Government argued that the restrictions were aimed at the "restoration of justice, reform and the prevention of new crimes". Even assuming that the restrictions serve a legitimate aim within the meaning of Article 8 § 2, it remains to be examined whether the regime is proportionate and strikes a fair balance between the competing private and public interests.

140. In this respect, the Court has previously held that all forms of solitary confinement without appropriate mental and physical stimulation are likely, in the long term, to have damaging effects, resulting in a deterioration of mental faculties and social abilities (see *Iorgov v. Bulgaria*, no. 40653/98, §§ 83-84, 11 March 2004; and *Harakchiev and Tolumov*, cited above, § 204). In the present case the applicant could have

no more than one cell mate throughout the relevant period and belonged to a group of life-sentence prisoners who served their sentences separately from other detainees (see paragraph 52 above). The Court is struck by the severity and duration of the restrictions in the applicant's case and, more specifically, the twice-a-year frequency of authorised short-term visits and the ten-year duration of the regime.

141. As recalled above (paragraph 116), the Court's case-law has consistently taken the position that prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention save for the right to liberty, where lawfully imposed detention expressly falls within the scope of Article 5 of the Convention, and that a prisoner does not forfeit his Convention rights merely because of his status as a person detained following conviction (see *Hirst*, cited above, §§ 69-70). It follows, in general terms, that severe measures limiting Convention rights must not be resorted to lightly; more particularly, the principle of proportionality requires a discernible and sufficient link between the application of such measures and the conduct and circumstances of the individual concerned (see *Trosin*, cited above, §§ 41-44).

142. In respect of the Government's argument that the assessment of proportionality of the interference in the applicant's case was incorporated into the applicable law and the decision-making procedure during the deliberations of the judge pronouncing the sentence, the Court notes that on the issue of family visits Article 8 of the Convention requires the States to take into account the interests of the convict and his or her relatives and family members. In the Court's view, the relevant legislation did not take such interests adequately into account.

143. The Court would refer here to the position of international-law instruments and the practice of international courts and tribunals (see paragraphs 69-80 above), which invariably recognise as a minimum standard for all prisoners, without drawing any distinction between life-sentence and other types of prisoners, the right to an "acceptable" or "reasonably good" level of contact with their families (see Rules 37 and 57 of the UN Standard Minimum Rules for the Treatment of Prisoners in paragraph 73, Principle 19 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment in paragraph 74, Rule 61 (A) of the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Tribunal or Otherwise Detained on the Authority of the Tribunal of the International Criminal Tribunal for the former Yugoslavia (see paragraph 77 above) and the case-law of the Inter-American Court of Human Rights and Inter-American Commission of Human Rights in paragraphs 78-80 above).

144. In their written observations the Government, referring to the rulings of the Constitutional Court, contended that the restrictions served to reform the offender. At the hearing before the Grand Chamber they

explicitly acknowledged that the applicant's prison regime did not pursue the aim of reintegration, but was rather aimed at isolating him (see paragraph 99 above). The Court would add that Article 79 of the Code of Execution of Criminal Sentences mentions the possibility for a life-sentence prisoner to request release on parole after serving a period of twenty-five years. It finds that the very strict nature of the applicant's regime prevents life-sentence prisoners from maintaining contacts with their families and thus seriously complicates their social reintegration and rehabilitation instead of fostering and facilitating it (see *Vinter and Others*, cited above, §§ 111-116). In this connection, the Court also attaches considerable importance to the recommendations of the CPT, which noted that long-term prison regimes "should seek to compensate for [the desocialising effects of imprisonment] in a positive and proactive way" (see paragraph 67 above).

145. This goal is consonant with Article 10 § 3 of the International Covenant on Civil and Political Rights, in force with respect to Russia since 1973, which provides that the essential aim of the treatment of prisoners is their reformation and social rehabilitation (see paragraph 69 above). It is also present in several other international instruments which emphasise that efforts need to be made by the prison authorities for the reintegration and rehabilitation of all prisoners, including those serving life sentences (Rules 6, 102.1 and 102.2 of the 2006 European Prison Rules, points 6 and 11 of Resolution 76 (2) of the Committee of Ministers, and paragraphs 2 *in fine*, 5, 22 and 33 of Recommendation 2003 (23) on the management by prison administrations of life-sentence and other long-term prisoners, see paragraphs 58-64 above).

146. The Court concludes that the interference with the applicant's private and family life resulting from such a low frequency of authorised visits, solely on account of the gravity of a prisoner's sentence was, as such, disproportionate to the aims invoked by the Government. It further notes that the effect of this measure was intensified because it was applied over such a long period of time, as well as by various rules on the modalities of prison visits, such as the ban on direct physical contact, separation by a glass wall or metal bars, the continuous presence of prison guards during visits, and the limit on a maximum number of adult visitors (see *Trosin*, cited above, §§ 43-46).

147. In the applicant's case the above-mentioned additional restrictions made it especially difficult for him to maintain contacts with his child and elderly parents during a time when maintaining contact with his family was particularly crucial for all the parties involved (see paragraphs 23-25 and 97 above). A complete ban on direct physical contact with the applicant and the presence of a guard within hearing distance during this period contributed to the applicant's inability to establish close bonds with his son during the key period of the latter's early life, and also had an adverse impact on contacts with his aging father during the period when the father could still visit the

applicant in person. Moreover, it is evident that, given the limit on the number of adult visitors and the low frequency of authorised visits, certain of his relatives and members of the extended family may simply have been unable to visit him in prison throughout this period.

148. Having regard to the combination of various long-lasting and severe restrictions on the applicant's ability to receive prison visits and the failure of the impugned regime on prison visits to give due consideration to the principle of proportionality and to the need for rehabilitation and reintegration of life-sentence prisoners, the Court concludes that the measure in question did not strike a fair balance between the applicant's right to the protection of private and family life, on the one hand, and the aims referred to by the respondent Government on the other, and that the respondent State has overstepped its margin of appreciation in this regard.

149. It follows that there has been a violation of the applicant's right to respect for his private and family life, as guaranteed by Article 8 of the Convention, as a result of the application of the strict regime in the special-regime correctional colony in his case.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

150. The applicant also complained in addition to his submissions under Article 8 of the Convention that various restrictions on his ability to receive prison visits from his family members during his post-conviction detention had been contrary to Article 14 of the Convention.

151. Regard being had to the particular circumstances of the present case and to the reasoning which has led it to find a violation of Article 8, the Court sees no cause for a separate examination of the same facts from the standpoint of Article 14 (see *Dickson*, cited above, § 86).

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

152. The Court has examined the other complaints submitted by the applicant. However, having regard to all the material in its possession, and in so far as these complaints fall within the Court's competence, it finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. This part of the application must therefore be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

153. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

154. The applicant claimed 40,000 euros (EUR) in respect of non-pecuniary damage. He argued that he had suffered severe distress as a result of the restrictions on his ability to see his family for ten years.

155. The Government stated that the finding of a violation would be adequate just satisfaction in the applicant's case.

156. The Court considers that the applicant must have sustained stress and frustration as a result of the violations found. Making an assessment on an equitable basis, the Court awards the applicant EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

157. The applicant also claimed EUR 12,525 for costs and expenses incurred before the Court. He submitted a detailed invoice of costs and expenses, which included research and drafting documents representing one hundred and twenty hours of work by Ms O. Preobrazhenskaya at an hourly rate of EUR 100 and EUR 525 for translation services.

158. The Government considered that, in addition to being excessive, the lawyers' fees were not shown to have actually been paid or incurred.

159. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 11,675, which represents the requested sum less EUR 850, already paid to the applicant's lawyer in legal aid.

C. Default interest

160. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaint concerning various restrictions on the applicant's prison visits between 8 October 1999 and 11 October 2009 admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that in view of its previous conclusions under Article 8 of the Convention the complaint requires no separate examination under Article 14 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 11,675 (eleven thousand six hundred and seventy-five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English and French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 30 June 2015.

Lawrence Early	Dean Spielmann
Jurisconsult	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint concurring opinion of Judge Pinto de Albuquerque and Judge Turković is annexed to this judgment.

D.S.
T.L.E.

JOINT CONCURRING OPINION OF JUDGES PINTO DE ALBUQUERQUE AND TURKOVIĆ

1. We subscribe to the unanimous finding of the Grand Chamber that there has been a violation of Article 8 of the European Convention on Human Rights (the Convention), but we should like to add to its reasoning. Unfortunately, after having presented the standards of European prison law in a fairly clear way, the Grand Chamber did not set out all of the warranted legal consequences for this case with the same clarity.

Resocialisation as the primary purpose of imprisonment

2. The first reason for our discontent with the Grand Chamber's reasoning lies in the fact that the Grand Chamber decided not to assess the legitimacy of the rules of the Russian Code of Execution of Criminal Sentences of 8 January 1997, applicable to convicts who have been sentenced to life imprisonment and placed in ordinary and strict regimes in a special-regime correctional colony, namely its Article 125 §§ 1, 3 and 4, and Article 127 § 3. The Grand Chamber preferred to avoid this point, leaving it open in paragraphs 114 and 115 of the judgment. In our opinion, this issue should have not been left unresolved.

3. Criminal punishment of culpable offenders may have one or more of the following six purposes: (1) positive special prevention (resocialisation of the offender), i.e. preparing the offender to reintegrate into society and lead a law-abiding life in the community after release; (2) negative special prevention (incapacitation of the offender), i.e. avoiding future breaches of the law by the sentenced person, by removing him or her from the community; (3) positive general prevention (reinforcement of the breached legal norm), i.e. upholding the breached norm, strengthening its social acceptance and compliance with it; (4) negative general prevention (deterrence of would-be offenders), i.e. discouraging the public at large from engaging in similar conduct; (5) retribution, i.e. atonement for the offender's guilty act; and (6) restoration (restorative justice), i.e. returning those affected by the commission of the offence to their previous condition, insofar as possible.

4. In *Vinter and Others*, the Grand Chamber acknowledged that the emphasis in modern penal policy is on the rehabilitative aim of imprisonment, and rightly held that a "whole life order" (i.e. an irreducible life sentence) irretrievably breaches Article 3 of the Convention, in that it runs counter to the purpose of resocialisation.[1] The European Court of

[1] *Vinter and Others v. the United Kingdom (*[GC], nos. 66069/09, 130/10 and 3896/10, ECHR 2013 (extracts)), §§ 111-116. Under this light, an irreducible life sentence is akin to

Human Rights (the Court) made a clear choice with regard to the predominant aim of imprisonment: it is positive special prevention (resocialisation of the offender).

5. The Russian Government submitted in the present case that the aim of social reintegration was not expected to be achieved in respect of life-sentence prisoners, including the applicant, and argued that isolating persons such as the applicant was the only aim of the relevant prison regime[2]. In fact, according to the Russian Government, the purposes of life imprisonment are retribution and life-long incapacitation (negative special prevention). On the assumption that the offence is so heinous that it can never be atoned for, the only way to punish the offender is to deprive him or her of liberty for the rest of his or her natural life. Under this logic, the heinousness of the crime calls for life-long retribution[3]. Thus, the Russian State declines any interest in human life other than the prisoner's strict bodily survival, since the prisoner is subliminally compared to a being unfit for or beyond rehabilitation. To put it figuratively, the life prisoner suffers "civil death" and life imprisonment is justified in the "delayed death penalty" logic, thus reducing the prisoner to a mere object of the executive's power.

6. Adding to this outdated retributive logic, the Russian Government refer to life-long incapacitation of the offender (negative special prevention), the presumption being that the offender's specific dangerousness requires that he or she be kept away from the community for as long as possible, namely for the rest of his or her life. However, this presumption is unacceptable for two reasons. First, it is based on faith in highly problematic prediction scales, as the experience of many "false positives" has shown. Second, the net-widening effect of the concept of "the dangerousness of the offender", which has gone so far as to include "personality disorder", "mental abnormality" or "unstable character", blurs the borderline between responsible and mentally fit offenders on the one

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inhuman treatment in view of the desocialising and therefore dehumanising effects of long-term imprisonment. In fact, this also holds true for any sort of open-ended, indeterminate sentence, a fixed-term sentence that exceeds a normal life span or an extremely long determinate sentence.

[2] See paragraphs 99 and 144 of the judgment. The applicant specifically contested this position (see paragraph 94 of the judgment).

[3] See the argumentation of the Russian Constitutional Court in its Ruling no. 248-O of 9 June 2005. The reasoning of that Court in its Rulings no. 257-O of 24 May 2005 and no. 91-O of 21 December 2006, which were delivered on an appeal by the applicant, is tautological, and does not add any substantive argument, since the Rulings merely state that Articles 125 and 127 of the Code of Execution of Criminal Sentences "are intended to tailor sentences to individual offenders and differentiate sanctions". As will be demonstrated below, these provisions are not intended to individualise the prison regime applicable to convicts sentenced to life imprisonment, in view of their rigid, automatic and hence non-individualised treatment of all prisoners sentenced to life imprisonment.

hand and irresponsible and mentally unfit offenders on the other, with the attendant serious risk of mislabelling offenders.

7. In such a context family visits have no intrinsic value or purpose, such as decreasing recidivism or improving penological outcomes, except that the automatic and extreme restrictions on them adds to the punitive nature of the incarceration regime. However, we do not consider regular family visits as a privilege that can be withdrawn, but as an Article 8 right of an inmate and of his or her family, in order to maintain their family relationships. The lives of prisoners and their families are deeply affected by visitation policies, as is clearly seen in the present case, where the father-son relationship was completely lost over the years, due, at least in part, to the loss of any meaningful contact. Restrictions on visitation rights should have a rational basis. Deprivation of these rights should be related to legitimate penological interests and the protection of safety and security.[4] The Russian Government did not provide the Court with any evidence that in the applicant's particular case the automatic and severe limitation of visitation rights served any other purpose but to reinforce the punitive nature of the prison regime.

8. Hence, we consider the purposes of life imprisonment and the aims of the restrictions on visitation rights, as described by the Russian Government, to be illegitimate, in view of the principle of resocialisation of prisoners, including life and long-term prisoners, set out in *Vinter and Others v. the United Kingdom*.

The State obligation to provide an individualised sentence plan

9. Our second point of discomfort with the Grand Chamber's reasoning is the open-ended statement that States enjoy a wide margin of appreciation in delineating and implementing their penal policies[5]. We note that this statement is at odds with the strong statements, also made by the Grand Chamber, to the effect that resocialisation is a "mandatory" factor that States need to take into account in designing their penal policies, and that the current European situation is indicative of a "narrowing of the margin of appreciation left to the respondent State in the assessment of the permissible limits of the interference with private and family life in this sphere"[6].

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[4] For the legitimate purposes of restrictions of visitation rights, see Rule 24.2 of the 2006 European Prison Rules (see paragraph 58 of the judgment), and the respective commentary; point 22 of the 2003 Recommendation Rec(2003)23 (paragraph 64 of the judgment); Rule 43.1 of the 1987 European Prison Rules and the respective commentary; Rules 37 and 80 of the 1973 Council of Europe Standard Minimum Rules for the Treatment of Prisoners; Principle 19 of the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (paragraph 74 of the judgment).

[5] See paragraph 132 of the judgment.

[6] See paragraphs 121 and 136 of the judgment.

10. The cornerstone of a penal policy aimed at resocialising prisoners is the individualised sentence plan, under which the prisoner's risk and needs in terms of health care, activities, work, exercise, education and contacts with the family and outside world should be assessed. This basic principle of penological science has been acknowledged and affirmed by statements made at the level of the highest political authorities both in Europe and worldwide[7]. To use the words of the Committee of Ministers of the Council of Europe, "Particular attention shall be paid to providing appropriate sentence plans and regimes for life sentenced and other long-term prisoners"[8].

In the case of the respondent State, the CPT was even more specific, and required that a "comprehensive and ongoing risk and needs assessment, based on an individualised sentence plan", should be put in place[9].

11. Thus, an individual sentence plan, with a comprehensive and updated risk and needs assessment, at least for inmates sentenced to life or long-term imprisonment, is an international positive obligation of States Parties, based on Article 3 of the Convention[10]. The primary purpose of this plan is to assist each individual prisoner to come to terms with his or her period of incarceration and to prepare him or her to lead a law-abiding life in open society[11]. As the Court put it, consistent periodical assessment of a

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[7] See Rule 69 of the 1955 United Nations Standard Minimum Rules for the Treatment of Prisoners; Rule 27 of the 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty; Rules 40 and 41 (b) and (c) of 2010 Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules); and in Europe, Rules 7.a, 60.2, 67.4 and 70 of Resolution (73) 5 on Standard Minimum Rules for the Treatment of Prisoners; Rules 10.1, 66.c, 68, 70.2 and 78 of the 1987 European Prison Rules; paragraphs 3, 8-11 of Recommendation Rec (2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners; the Committee for the Prevention of Torture (CPT) Standards, pages 28, 34, 51, 87 (CPT/Inf/E (2002) 1 - Rev. 2011); and Rules 103 and 104.2 of the 2006 European Prison Rules.

[8] Rule 103.8 of the 2006 European Prison Rules. See also the commentary to Rule 103 in the relevant Explanatory Report: "[The Rule] emphasises the need to take action without delay in order to involve prisoners in the planning of their careers in prison, in a way that makes the best use of the programmes and facilities that are on offer. Sentence planning is vital part of this but it is recognized that such plans need not be drawn up for prisoners serving a very short term."

[9] See paragraph 68 of the judgment. It is most regrettable that the Grand Chamber cited the 2013 CPT report on Russia in paragraph 144 (in "The Court's assessment" part of the judgment), but omitted to refer to the most important passage of that report, namely the section referring to the State obligation to provide for an individualised sentence plan, which is cited in paragraph 68 under "Relevant International Materials".

[10] According to the Council of Europe's standard, a long-term prison sentence is a prison sentence or sentences totalling five years or more (Recommendation Rec(2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners).

[11] It is important to highlight that a sentence plan aimed at a particular prisoner's resocialisation is a proposal made to him or her. The rehabilitative terminology should not

prisoner's progress towards rehabilitation and promotion of positive changes in life prisoners on the basis of a "proactive approach on the part of the prison authorities" are needed to comply with the positive obligations under Article 3 and 8, including the obligation to maintain the prisoner's family life[12]. States should take seriously their international obligation to enable prisoners to serve their prison sentence in a constructive and rehabilitative manner.

The prisoner's right to family visits according to international law

12. The third point of our discord with the judgment's reasoning consists in the conclusion reached by the Grand Chamber according to which the low frequency of family visits in the present case (one visit every six months), solely on account of the gravity of a prisoner's sentence, was, as such, disproportionate to the aims invoked by the Government[13]. In setting out that conclusion, the Grand Chamber leaves a vague and worrying impression that such a low frequency of family visits could perhaps be accepted if attached to undesignated factors that were taken together with the gravity of the prisoner's sentence. Nowhere in the judgment are those factors which would justify a restriction on the right to family visits specified.

13. Furthermore, the Grand Chamber added that the effect of this prison regime was intensified by the occurrence of five additional factors: its duration for ten years; the ban on direct physical contact; the separation by a glass wall or metal bar; the continuous presence of prison guards during visits; and the maximum number of adult visitors. In the Grand Chamber's view, it is not only the restrictions on family visits that are censurable, but

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have any connotation of forced treatment. In fact, in the Council of Europe's terminology, "penal treatment" has been used to indicate in the broadest sense all those measures (work, social training, education, vocational training, physical education and preparation for release, etc.) employed to maintain or recover the physical and psychiatric health of prisoners, their social reintegration and the general conditions of their imprisonment (see the Council of Europe's Report on the custody and treatment of dangerous prisoners, 1983, for a fuller definition). It should be added that today resocialisation is not understood, as in the classical medical analogy, as a "treatment" or "cure" of the prisoner which aims at the reformation of the prisoner's character, but as a less ambitious yet more realistic task: his or her preparation for a law-abiding life after prison. There are three reasons for this: firstly, it is questionable that a State has legitimacy to "reform" the character of an adult; secondly, it is doubtful that such reform is feasible, and thirdly, it is even more uncertain that such reform can be ascertained by objective means.

[12] See *Harakchiev and Tolumov v. Bulgaria*, nos. 15018/11 and 61199/12, § 266, 8 July 2014. Similarly, *James, Wells and Lee v. the United Kingdom*, nos. 25119/09, 57715/09, 57877/09, §§ 211, 213-214, 18 September 2012; *Dillon v. the United Kingdom*, no. 32621/11, §§ 50-54, 4 November 2014; and *David Thomas v. the United Kingdom*, no. 55863/11, §§ 51-54, 4 November 2014.

[13] See paragraph 146 of the judgment.

the entire strict regime in the special-regime correctional colony as it was applied in this case[14]. Although we agree that these factors compounded the violation of the applicant's Article 8 right to family life, we consider that the interference with the applicant's Convention right, in addition to being without any legitimate aim, was disproportionate on the sole basis of the low frequency of family visits. This must be stated unequivocally: a rule that permits family visits to prisoners only once every six months is *per se* inhuman[15].

14. Hence, we cannot agree with the Russian Constitutional Court when it states in its Ruling 248-O of 9 June 2005 that the provisions of Articles 125 and 127 of the Code on the Execution of Criminal Sentences "do not in themselves represent additional restrictions over and above those which, within the meaning of Article 55 § 3 of the Constitution, result from the very essence of a punishment such as imprisonment". It is patent that the restrictions of the ordinary regime (two short-term visits and two long-term family visits per year), the facilitated regime (three short-term visits and three long-term visits per year) and the strict regime (two short-term visits per year) of the special-regime correctional colonies go well beyond the "very essence of a punishment such as imprisonment". These provisions exacerbate the deleterious effects inherent in long-term imprisonment. Moreover, they impose restrictions on all prisoners subject to a specific type of sentence, without giving due consideration to the individual risk prisoners may (or may not) present. In view of the rigid and automatic manner in which they are applied, these provisions are not intended to individualise. In fact, they contribute to the segregation of life sentence and other long-term prisoners on the sole ground of their sentence.[16] In this

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[14] See paragraph 149 of the judgment. The Court frequently takes into account the cumulative effects of the conditions of detention complained of by an applicant (see *Dougoz v. Greece*, no. 40907/98, § 46, ECHR 2001-II, and, more recently, *Idalov v. Russia* [GC], no. 5826/03, § 94, 22 May 2012).

[15] In fact, the situation of the applicant in the present case is even more dramatic, since he was submitted to the strict regime of family visits during the five-year period that followed his arrest on 21 November 1994, until his transfer to a special-regime correctional colony on 8 October 1999. Under Article 127 of the Code of Execution of Criminal Sentences, the ten-year term of the strict regime started to run as of his placement in the special-colony correctional colony, rather than from his arrest. This meant that, in practice, the restrictions to his family visits, described above, lasted for fifteen years (see paragraph 95 of the judgment). This fact was not specifically contested by the Government. Although the Convention entered into force in respect of Russia on 5 May 1998, the Court cannot ignore the period of continuous deprivation of a Convention right that preceded that date and continued after it.

[16] Contrary to Rule 7 of Recommendation Rec(2003)23 of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners and paragraph 33 of the CPT Standards. The reasoning of the Russian Constitutional Court in its Rulings no. 257-O of 24 May 2005 and no. 91-O of 21 December 2006 does not add any substantive argument in this respect. See supra, note 3.

connection, we are not willing to subscribe, without further amplification, to the vague formulation of the second sentence of paragraph 132 of the judgment, according to which "It cannot therefore be excluded, in principle, that the gravity of a sentence may be tied, at least to some extent, to a type of a prison regime."[17]

15. We note that the Grand Chamber accepts that the Article 8 right to family life requires the State to take into consideration the interests of "the" convict, meaning each individual convict, and his or her respective family members, and that long-term prison regimes should seek to compensate for the desocialising effects of imprisonment in a positive and proactive way[18]. Unfortunately, the Grand Chamber did not take the additional logical step of setting out a clear requirement that the prison authorities should examine all requests for family visits on a case-by-case basis and within the framework of an individual evaluation of the personal risk and needs in each prisoner's sentence plan. Any automatic restrictions on the type, frequency and length of visits to all life or long-term prisoners are inadmissible[19]. Such inflexibility in a prison regime is the antithesis of the assessment technique required by present-day European penological standards.

16. Taking into account that the prison regime under evaluation in this case extended from 1999 to 2009, we consider it important to refer to both the 2006 and the 1987 European Prison Rules, as well as to the preceding European and United Nations standards, namely the 1973 Council of Europe Standard Minimum Rules for the Treatment of Prisoners and the 1955 United Nations Standard Minimum Rules for the Treatment of Prisoners, and to various other leading international documents that were disregarded by the Grand Chamber[20]. In all these authoritative texts, the standards are very clear on the issue of family visits.

The 2006 European Prison Rules state that "Prisoners shall be allowed to communicate as often as possible by letter, telephone or other forms of communication with their families, other persons and representatives of outside organisations and to receive visits from these persons. Communication and visits may be subject to restrictions and monitoring necessary for the requirements of continuing criminal investigations,

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[17] Moreover, the authority invoked, namely § 129 of the *Horych* judgment (*Horych v. Poland*, no. 13621/08, 17 April 2012), does not support that contention.

[18] See paragraph 142 and 144 of the judgment. Like the Grand Chamber, we refuse the Government's argument that "all necessary individualisation measures and assessment of proportionality were integrated into the law" (see paragraph 100).

[19] Correctly, *Trosin v. Ukraine*, no. 39758/05, § 42, 23 February 2012.

[20] The Court has repeatedly stated that it attaches considerable importance to the European Prison Rules and Recommendation 2003(23) on the management by prison administrations of life sentence and other long-term prisoners, despite their non-binding character (see *Harakchiev and Tolumov v. Bulgaria*, cited above, § 204; and, *mutatis mutandis*, *Rivière v. France*, no. 33834/03, § 72, 11 July 2006, and *Dybeku v. Albania*, no. 41153/06, § 48, 18 December 2007)

maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime, but such restrictions, including specific restrictions ordered by a judicial authority, shall nevertheless allow an acceptable minimum level of contact." It is important to note that the respective commentary explains that "The reference to families should be interpreted literally to include contact with a person with whom the prisoner has established a relationship comparable to that of a family member even if that relationship has not been formalised... To come within the limits set by Article 8.2 of the ECHR on interference with the exercise of this right by a public authority, restrictions on communication should be kept to the minimum... The restriction must be the least intrusive justified by the threat... Visits, for example, should not be forbidden if they pose a threat to security but a proportionate increase in their supervision should be applied... [E]ven prisoners who are subjected to restrictions are still allowed some contact with the outside world. It may be good policy for national law to lay down a minimum number of visits... The particular significance of visits not only for prisoners but also for their families is emphasised in Rule 24.4. It is important that where possible intimate family visits should extend over a long period, 72 hours for example as in the case in many Eastern European countries."[21]

The same message is conveyed by the 2003 Recommendation of the Committee of Ministers to member states on the management by prison administrations of life sentence and other long-term prisoners, which provides that "Special efforts should be made to prevent the breakdown of

[21] The 1987 European Prison Rules had already stated that "Prisoners shall be allowed to communicate with their families and, subject to the needs of treatment, security and good order, persons or representatives of outside organisations and to receive visits from these persons as often as possible." The respective commentary clarified that "Family visits to prisoners or the arrangements for and availability of prison leave should command high priority for resources and in daily routines. Prison leave is especially important in strengthening family ties and facilitating the social reintegration of prisoners. It also contributes to the general atmosphere and humanity of prisons and should be made as widely available as possible in both closed and open prisons. A valuable aspect of policy for prison leave is that it should be carried out in close co-operation with staff and outside agencies so as to encourage the better understanding of its purposes and enhance its effectiveness as an integral part of the treatment regime. As far as possible visits in prison should be without supervision, at least subject to visual supervision only. In cases where it is considered necessary to listen to conversation, approval should be sought from the competent authority." Previously, the 1973 Council of Europe Standard Minimum Rules for the Treatment of Prisoners had already established that "Prisoners shall be allowed to communicate with their family and all persons or representatives of organisations and to receive visits from these persons at regular intervals subject only to such restrictions and supervision as are necessary in the interests of their treatment, and the security and good order of the institution… From the beginning of a prisoner's sentence consideration shall be given to his future after release and he shall be encouraged and assisted to maintain or establish such relations with relatives, other persons or agencies outside the institution as may promote the best interests of his family and his own social rehabilitation."

family ties. To this end: – prisoners should be allocated, to the greatest extent possible, to prisons situated in proximity to their families or close relatives; – letters, telephone calls and visits should be allowed with the maximum possible frequency and privacy. If such provision endangers safety or security, or if justified by risk assessment, these contacts may be accompanied by reasonable security measures, such as monitoring of correspondence and searches before and after visits."

In the United Nations framework, the 2010 Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) state that "Prison authorities shall encourage and, where possible, also facilitate visits to women prisoners as an important prerequisite to ensuring their mental well-being and social reintegration" (Rule 43). The 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty had already established that "Every juvenile should have the right to receive regular and frequent visits, in principle once a week and not less than once a month, in circumstances that respect the need of the juvenile for privacy, contact and unrestricted communication with the family and the defence counsel" (Rule 60). The 1988 United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment also set out, in its Principle 19, that "A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations." Finally, the 1955 United Nations Standard Minimum Rules for the Treatment of Prisoners foresaw that "Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits."

17. We affirm that, as a matter of principle, in the light of the State's obligation to provide the means for the social reintegration of prisoners, including life and long-term prisoners, and the crucial importance of family visits for achieving this purpose[22], each prisoner has the right to receive family visits "as often as possible". Under Article 8, regular family visits are a right, not a privilege, of prisoners and their family members. The law should provide for a minimum, but not a maximum, number of family visits. No distinction should be made between life or long-term sentenced prisoners and other sentenced prisoners with regard to their respective family visiting rights[23]. Moreover, any restrictions on a prisoner's right to a

[22] There is a strong correlation between extended visit rights, decreased recidivism and improved penological outcomes, according to recent studies (see the interesting study of Boudin, Stutz & Littman, Prison Visitation Policies: A Fifty State Survey, 2012, available at http://ssrn.com/abstract=2171412).

[23] We subscribe entirely to paragraph 134 of the judgment, but we note that the European Prison Rules do admit a difference in dealing with requests for family visits with regard to

family visit should be based exclusively on treatment and security considerations pertaining to each prisoner. Even where justified restrictions on visits are imposed, these should be limited to a number that creates the minimum interference with the right to family life, and should in any event permit the alternatives of oral and written contact with the family. As the CPT also stresses, an individual risk and needs assessment should be the basis for the evaluation of these requests[24].

18. The principle referred to in the previous paragraph is reflected in the long-standing case-law of the Commission and the Court, according to which it is an essential part of a prisoner's right to respect for family life that the prison authorities assist him or her in maintaining contact with his or her close family, restrictions being admitted only when they are founded in paragraph 2 of Article 8 of the Convention[25]. Regulations and rules of various international courts and tribunals confirm this principle.[26] For example, in the ICC Regulations the possibility of daily family visits is forseen,[27] while according to the Rules of the Special Court for Sierra Leone detainees are allowed to receive visits from their families and others "at regular intervals" under such restrictions and supervision as the Chief of Detention, in consultation with the Registrar, may deem necessary in the

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untried prisoners, who, according to Rule 99, should be submitted to a more generous regime of "additional visits". Particularly carefully limited restrictions, if any, depend on a concrete prohibition for a specified period by a judicial authority in an individual case.

[24] See the very specific references mentioned in paragraphs 65-67 of the judgment.

[25] See *Oçalan v. Turkey (no. 2)*, nos. 24069/03, 197/04, 6201/06 and 10464/07, §§ 154-164, 18 March 2014; *Trosin v. Ukraine*, cited above, §§ 43-47; *Messina v. Italy (no. 2)*, no. 25498/94, § 61, ECHR 2000-X; *Ouinas v. France*, no. 13756/88, Commission decision of 12 March 1990, Decisions and Reports (DR) 65, p. 265; and *X v. the United Kingdom*, no. 8065/77, Commission decision of 3 May 1978, Decisions and Reports 14, p. 246. The smallest majority accepted, in *Oçalan (no. 2)*, that section 25 of Law no. 5275 of 13 December 2004 on the enforcement of sentences and provisional measures (cited in paragraph 67 of that judgment), according to which the applicant could receive family visits once a fortnight, each visit lasting a maximum of one hour – although in practical terms only fourteen visits in 2005, thirteen in 2006, seven in 2007 and two between January and October 2011 had been authorised – was not incompatible with the applicant's Article 8 rights.

[26] Such as, for example, Regulations 100 and 101 of Regulations of the International Criminal Court (ICC), ICC-BD/01-01-04; Rules 61-64 and 64 *bis* of the Rules governing the detention of persons awaiting trial or appeal before the tribunal or otherwise detained on the authority of the International Criminal Tribunal for the Former Yugoslavia (ICTY), U.N. Doc. IT/38/Rev.4 (1995), later amended several times; Regulations 33-51 of the United Nations Detention Unit Regulations of the ICTY to govern the supervision of visits to and communications with detainees.

[27] See Regulations 177, 179 and 180 of the Regulations of the ICC Registry, ICC-BD/03-01-06 ,

interests of the administration of justice or the security and good order of the Detention Facility.[28]

19. Finally, we are unable to agree with the Grand Chamber's timid reading of the comparative-law materials in paragraphs 135 and 136 of the judgment, for three reasons: first, we do not believe that the Convention standard should be equated to the rather exceptional minimum standard of a family visit every two months for life-sentenced prisoners, as in Azerbaijan and Lithuania; second, we attach great importance to the fact that only a tiny minority of the countries surveyed, six out of a total of thirty-five, make a distinction between the family visiting rights of life and long-term prisoners and those of other sentenced prisoners; third, we consider that the facts that a large majority of countries allow for more than one family visit per month to sentenced prisoners and eleven countries allow for weekly visits are of the utmost relevance.

20. We conclude that there is a growing European consensus that no distinction should be made between the family visiting rights of life and long-term prisoners and other sentenced prisoners, and that sentenced prisoners are generally accorded the right to family visits between one and four times every month. This European consensus is evidently influenced by the formidable work of the CPT in implementing its own Standards and the European Prison Rules, the remarkable impact of which could and should have been acknowledged and promoted more enthusiastically by the Grand Chamber in the present case, particularly with regard to the right to family visits, by insisting that restrictions on visitation rights should be narrowly designated so as to accomplish the legitimate purposes defined by the European Prison Rules.

Conclusion

21. The strictly retributive and isolating purposes of the impugned Russian legislation on prisoner's right to family visits are illegitimate. Quite apart from this aspect, the contested legislation is also disproportionate in view of the extremely low frequency of visits allowed. All of the other additional features of the visit regime merely intensified the violation of the applicant's Article 8 right. In order to remedy this violation, the respondent State must not only compensate the applicant, but also provide him with an individualised sentence plan, in the framework of which his personal risk and needs, specifically in terms of contacts with his family and the outside world, are to be assessed. In view of the systemic effect of this judgment in the Russian domestic system, it is also important for the respondent State to

[28] Rule 41 of the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Special Court for Sierra Leone or otherwise Detained under the Authority of the Special Court for Sierra Leone.

bring its legislation on prisoners' visiting rights into line with international standards.