



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

THIRD SECTION

**CASE OF POLYAKOVA AND OTHERS v. RUSSIA**

*(Applications nos. 35090/09 and 3 others – see appended list)*

JUDGMENT

STRASBOURG

7 March 2017

**FINAL**

**03/07/2017**

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Polyakova and Others v. Russia,**

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Helena Jäderblom, *President*,

Branko Lubarda,

Helen Keller,

Dmitry Dedov,

Pere Pastor Vilanova,

Alena Poláčková,

Georgios A. Serghides, *judges*,

and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 7 February 2017,

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

**PROCEDURE**

1. The case originated in four applications (nos. 35090/09, 35845/11, 45694/13 and 59747/14) 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 Russian nationals (“the applicants”). The applicants’ details and those of their representatives, as well as the dates on which they lodged their applications are set out in the “Facts” section below.

2. The Russian Government (“the Government”) were represented by Mr G. Matyushkin, Representative of the Russian Federation to the European Court of Human Rights.

3. The applicants alleged, in particular, violations of their respective right to respect for family life stemming from the Russian authorities’ decisions on allocation of post-conviction prisoners. Mr Palilov also complained under Article 6 of the Convention that he could not attend court hearings in the civil proceedings.

4. Between 13 October 2014 and 15 April 2015 questions under Articles 8 and 13 of the Convention, as well as under Article 6 of the Convention as regards Mr Palilov’s complaint, were put to the Government, and the remainder of application no. 35845/11 was declared inadmissible.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASES

5. The applicants in each case were affected by decisions of the Russian Federal Penal Authority («Федеральная служба исполнения наказаний», “the FSIN”) on prisoners’ allocation to post-conviction penal facilities. The applicants’ individual circumstances are detailed below.

#### A. Application no. 35090/09 by Ms Polyakova

6. The application was lodged on 13 June 2009 by Ms Elvira Vasilyevna Polyakova, who was born in 1976 and lives in Vladivostok, Primorskiy Region. She was represented before the Court by Ms L. Ovchinnikova, a lawyer practising in Vladivostok.

7. The applicant is the live-in partner of Mr R. The couple originally set up home in Vladivostok in the Primorskiy Region. They have a son born in 2003.

8. On 22 May 2008 Mr R. was convicted of drug-related crimes and sentenced to ten years’ imprisonment in a strict-regime penal facility. After the conviction became final he was allocated to IK-33 in the Primorskiy Region, close to his family home.

9. In September 2008 the head of the Primorskiy regional department of the FSIN decided to transfer Mr R. to the Krasnoyarsk Region, some 5,000 kilometres from Vladivostok. It appears that the basis for this decision was a telegram of 18 April 2008 from the deputy head of the FSIN of Russia that read as follows:

“The Primorskiy regional department of the FSIN are allowed, until special notice, to send up to thirty convicts per month from remand prisons to the care of the Krasnoyarskiy regional department of the FSIN pursuant to Article 73 § 2 of the CES.”

10. On 30 September 2008 the Primorskiy regional department of the FSIN informed Ms Polyakova that her request for Mr R. to be allowed to remain in the facility in the Primorskiy Region had been refused, and advised the applicant as follows:

“... pursuant to Article 73 § 2 of the CES and the instruction by the FSIN of Russia, on 14 September 2008 Mr R. was sent to serve the remainder of his sentence in the care of the Krasnoyarskiy regional department of the FSIN. You will be notified of his arrival at a penal facility.”

11. The applicant challenged the FSIN’s decision before a court, asking for her partner to be transferred back to the Primorskiy Region so that she and their son could afford to visit him.

12. On 28 October 2008 the Sovetskiy District Court of Vladivostok examined the applicant's complaint under Article 258 of the Russian Code of Civil Procedure ("CCP") and dismissed it. It found, referring to Article 73 § 2 of the Russian Code on the Execution of Sentences ("CES"), that strict-regime facilities in the Primorskiy Region were overcrowded and that transfers of a number of detainees to other facilities had been necessary for their own safety, as there could be conflicts among inmates fighting for a sleeping place. The District Court dismissed the applicant's argument related to her family life as unsubstantiated, stating that she could apply to the FSIN for permission to visit Mr R. in the Krasnoyarsk Region.

13. On 30 December 2008 the FSIN of Russia dismissed the applicant's request for Mr R. to be transferred from the penal facility in the Krasnoyarsk Region to one in the Primorskiy Region, stating that under Article 81 of the CES prisoners should, as a rule, serve the entirety of their sentence in the same penal facility, and that there were no reasons for Mr R.'s transfer.

14. On 13 January 2009 the Primorskiy Regional Court summarily dismissed the applicant's appeal.

15. The applicant and her son visited Mr R. in the penal facility in the Krasnoyarsk Region on three occasions.

#### **B. Application no. 35845/11 by Ms Natalya Kibalo and her daughters**

16. The application was lodged on 6 June 2011 by Ms Natalya Anatolyevna Kibalo, born in 1979, Miss Linda Aliyevna Kibalo, born in 2006, and Miss Iman Aliyevna Kibalo, born in 2009. The applicants live in the village of Dubovskaya in the Shelkovskiy District of the Chechen Republic. They were represented before the Court by lawyers of the Memorial Human Rights Centre.

17. Ms Natalya Kibalo is the wife of Mr Kh. The couple are the parents of Linda and Iman Kibalo.

18. On 29 May 2007 the Supreme Court of Dagestan found Mr Kh. guilty of kidnapping, illegal possession of arms, and attempted murder of a law-enforcement officer. Mr Kh. was sentenced to twenty years' imprisonment in a strict-regime penal facility. The judgment was upheld on appeal.

19. On an unspecified date the FSIN decided to send Mr Kh. to serve his sentence outside the North Caucasus area.

20. On 7 February 2008 Mr Kh. arrived at UV14/8, a strict-regime penal facility in the town of Blagoveshchensk in the Amur Region, some 8,000 kilometres from Dubovskaya village.

21. Ms Natalya Kibalo asked the FSIN to transfer Mr Kh. to a penal facility located closer to their home village, arguing that she had been *de*

*facto* deprived of the opportunity to visit her husband because it would take her about eight days to travel from her home village to Blagoveshchensk by train, and because the cost of the trip was prohibitive for her as an unemployed mother of two young children.

22. On 25 May 2009 the head of a department of the FSIN dismissed the first applicant's request, referring to the lack of grounds for transfer listed in Article 81 of the CES. Ms Natalya Kibalo challenged the refusal before a court.

23. On 21 August 2009 the Zamoskvoretskiy District Court of Moscow refused to examine Ms Natalya Kibalo's complaint on the merits, stating that she had no standing to bring a complaint on behalf of her husband. The Moscow City Court quashed that ruling on 14 January 2010 on appeal.

24. On 17 June 2010 the Zamoskvoretskiy District Court of Moscow held a hearing in the absence of both parties. It examined Ms Natalya Kibalo's complaint under Articles 254-6 and 258 of the CCP and dismissed it. The District Court observed that Mr Kh. had been allocated to the penal facility in Blagoveshchensk under Article 73 § 4 of the CES, and that under Article 81 of the CES, as a rule, convicts should serve their sentence in the same facility throughout. It reasoned that Mr Kh. had breached prison rules on multiple occasions both in the remand prison and in UV14/8, and that he had been "convicted of terrorist offences in the Dagestan Republic, shows no remorse, and does not undertake to commit no unlawful actions in the future". The judgment read, in particular, as follows:

"The claimant's argument that neither she nor her children could come to visit [Mr A. Kh.] because he is serving his sentence in the Amur Region cannot be taken into consideration, because the possibility of receiving visits is governed by the norms of the CES and is unrelated to the location of a penal facility."

25. On 7 December 2010 the Moscow City Court upheld the judgment of 17 June 2010 on appeal. It reasoned that the Zamoskvoretskiy District Court had not erred in finding that there were no grounds listed in Article 81 of the CES that would warrant Mr Kh.'s transfer to another penal facility, and that "the appeal statement contain[ed] no references to circumstances that would refute the [first-instance] court's findings and demonstrate that there were grounds for Mr Kh.'s transfer from one facility to another within the meaning of Article 81 of the CES".

26. Between 2008 and 2012 Ms Natalya Kibalo visited her husband in Blagoveshchensk on eight occasions. On six of those occasions, between 2008 and 2010, her travel expenses were sponsored. She visited her husband once in 2011 and once in 2012 but could not afford to travel at all in 2013 or 2014. Miss Linda Kibalo accompanied her mother on her trip to visit Mr Kh. once. Miss Iman Kibalo, born during Mr A. Kh.'s detention, has never seen her father.

### **C. Application no. 45694/13 by Mr Yeliashvili**

27. The application was lodged on 13 July 2013 by Mr Ivan Dzhimsherovich Yeliashvili, who was born in 1979 and lives in Noginsk, the Moscow Region. He is currently serving his sentence in IK-8 in Labytnangi, the Yamalo-Nenetskiy Region. The applicant, who had been granted legal aid, was represented before the Court by Mr V. Shukhardin, a lawyer practising in Moscow.

28. By a final judgment of 8 September 2009 the Moscow Regional Court convicted the applicant of robbery and sentenced him to eleven years' imprisonment in a strict-regime facility.

29. On 15 September 2009 the FSIN decided to send the applicant to serve his sentence in IK-8 in the settlement of Labytnangi in the Yamalo-Nenetskiy Region, located about 3,300 kilometres from Noginsk.

30. The applicant asked the FSIN to transfer him to a facility closer to Noginsk, arguing that his father, brother, sister and nephew all lived in that town and that they would have no realistic opportunity to visit him in Labytnangi. On 21 November 2011 the FSIN dismissed his request, noting that the applicant had been allocated to the penal facility in Labytnangi under Article 73 § 2 of the CES because of the lack of strict-regime penal facilities in the Moscow Region, and that under Article 81 of the CES prisoners should serve their entire sentence in the same penal facility.

31. The applicant challenged the FSIN's refusal before a court. On 11 April 2012 the FSIN submitted their objections to the Zamoskvoretskiy District Court of Moscow, which read, in particular, as follows:

“The claimant's arguments that he is unable to receive visits from his relatives cannot be taken into account, because the possibility of receiving visits from next of kin and relatives is governed by the norms of the Russian Code on the Execution of Sentences and is unrelated to the location of any penal facility.”

32. On 5 June 2012 the Zamoskvoretskiy District Court of Moscow examined the applicant's complaint under Articles 254-5 and 258 of the CCP, and dismissed it with reference to Articles 73 and 81 of the CES. The judgment read, in so far as relevant, as follows:

“The claimant's arguments that it is difficult to receive visits from relatives owing to the remoteness of the [place of] the sentence is being served cannot be taken into account by the court, because the possibility of receiving visits is governed by the norms of the Russian CES and is unrelated to the location of any penal facility.”

33. On 14 January 2013 the Moscow City Court upheld the first-instance judgment.

34. To date, the applicant's relatives have not been able to afford to visit him in Labytnangi.

**D. Application no. 59747/14 by Mr Palilov**

35. The application was lodged on 6 November 2014 by Mr Vladimir Aleksandrovich Palilov, who was born in 1968 and lives in the Yaroslavl Region. He is currently serving his sentence in IK-18 in the settlement of Kharp, the Yamalo-Nenetskiy Region. The applicant, who had been granted legal aid, was represented before the Court by Mr E. Markov, a lawyer practising in Strasbourg.

36. On 11 August 2006 the Yaroslavl Regional Court convicted the applicant of murder and sentenced him to life imprisonment. The conviction was upheld on appeal and became final.

37. On 19 February 2007 the applicant was sent to serve his sentence in a special-regime facility for those sentenced to life imprisonment in the village of Kharp in the Yamalo-Nenetskiy Region, 2,000 kilometres from the Yaroslavl Region.

38. On 9 January 2013 the applicant asked the FSIN to transfer him to any detention facility located closer to his elderly mother's and sister's place of residence.

39. On 14 February 2013 the FSIN dismissed the request, stating that the applicant had been sent to serve his sentence in a remote penal facility under Article 73 § 4 of the CES, and noting that under Article 81 of the CES a prisoner must serve their entire sentence in the same facility. The applicant challenged the decision before a court. In his statement of claims he requested to be present at court hearings.

40. On 19 July 2013 the Zamoskvoretzkiy District Court of Moscow held a hearing in the applicant's absence, which was referred to in the judgment as follows: "[t]he applicant was notified of the date of the hearing. He has failed to appear at the court hearing owing to the fact that he is serving a sentence". The representative of the FSIN was also absent. The District Court examined the complaint pursuant to Articles 254-5 and 258 of the CCP and dismissed it, noting that there were "no grounds listed in Article 81 § 2 of the CES that would preclude Mr Palilov from continuing to serve his sentence in the penal facility in the Yamalo-Nenetskiy Region". The applicant's argument related to the difficulties of maintaining his family ties was rejected as follows:

"The claimant's arguments that he cannot receive visits from his relatives does not give grounds for allowing the claims, because the possibility of receiving visits from family members and relatives, receiving correspondence, or using the telephone, are all governed by the norms of the Code on Execution of Sentences and are unrelated to the location of any penal facility."

41. The applicant appealed against the judgment and requested that an appeal hearing be held in his presence.

42. On 4 June 2014 the Moscow City Court held a hearing in the applicant's absence, which was explained as follows: "under Article 167 of



the Code of Civil Procedure the appellate collegium deems it possible to examine the case in the absence of the parties to the proceedings; they have been notified of the date and place of the court hearing”. The appellate court upheld the Zamoskvoretskiy District Court’s judgment. Referring to Article 73 § 4 of the CES, it stated that the rule on serving a sentence in a particular region close to a detainee’s permanent residence was inapplicable to the applicant given the nature of the crime of which he had been convicted. The City Court also found that the Zamoskvoretskiy District Court had correctly interpreted Article 81 § 2 of the CES, reasoning as follows:

“... there were no medical recommendations that would contain contraindications for Mr Palilov’s serving his sentence in the penal facility in the Yamalo-Nenetskiy Region. Other exceptional circumstances that the law connects with the FSIN’s obligation to grant a claimant’s request to be transferred to another penal facility were not referred to in the appeal statement and cannot be discerned from the circumstances of the case.

The argument that Mr Palilov is being deprived of the opportunity to maintain contact with his relatives because of the remoteness of the penal facility cannot serve, in the context of Article 73 § 4 of the CES, as grounds for declaring the actions of the penal authority’s officials unlawful.”

43. The applicant’s mother and sister could not afford to visit him in Kharp. The mother died in 2013.

## II. RELEVANT DOMESTIC LAW AND PRACTICE

### A. Constitution of the Russian Federation

44. 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.”

#### 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 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 the defence of the country and security of the State.”

## **B. Code of Execution of Criminal Sentences of 8 January 1997 (“the CES”)**

45. Article 73 § 1 of the CES reads as follows:

“Those sentenced to deprivation of liberty, save for [those] listed in paragraph 4 of this Article, serve punishment in correctional penal facilities within the territory of the constituent entity of the Russian Federation, in which they resided or in which they were convicted. In exceptional cases, where the health of prisoners so demands, or where there is a need to secure their safety, or upon their consent convicts may be sent to an appropriate penal facility situated within the territory of another constituent entity of the Russian Federation.

46. Article 73 § 2 of the CES, as amended by Federal Law no. 142-FZ of 19 July 2007, reads as follows:

“Should there be no appropriate facility within the constituent entity of the place of residence or the place of conviction or in case of impossibility to place a convicted person in existing penal facilities, convicts shall be sent, subject to consent by the appropriate higher bodies of management of the penal system to correctional penal facilities located within the territory of another constituent entity of the Russian Federation, in which there are conditions for their placement.”

47. Prior to the introduction of the amendments to Article 73 § 2 on 19 July 2007, the provision stipulated as follows:

“In the absence of an appropriate penal facility at the place of residence or the place of conviction or in the event of impossibility to place convicts in the existing penal facilities, convicts shall be sent to closest penal facilities located within the territory of that constituent entity of the Russian Federation or, subject to consent by the appropriate higher bodies governing the penal system, to penal facilities located within the territory of another closest constituent entity in which there are places for convicts’ placement available.”

48. Article 73 § 4 of the CES provides:

“Those convicted of the crimes punishable under Article 126 [kidnapping], Article 127.1 §§ 2 and 3 [aggravated human trafficking], Articles 205 – 206 [terror attacks and the taking of hostages], Articles 208 – 211 [the creation of or participation in an unlawful armed group, banditry, the creation of or participation in an organised crime group, aircraft hijacking], Article 275 [high treason], Articles 277 – 279 [attempted killing of a State official or a public figure, hostile anti-Constitutional seizure of power, armed mutiny], Article 281 [sabotage], Article 282.1 [the creation of an extremist network], Article 282.2 [management of an extremist organisation’s activities], Article 317 [attempted killing of a law-enforcement officer], Article 321 § 3 [organisation of disorders in prisons], Article 360 § 2 [an attack on diplomats and members of international organisations and their property with a view to provoking a war] of the Criminal Code of the Russian Federation, convicted particularly dangerous repeat offenders, convicts sentenced to life imprisonment, convicts sentenced to serve deprivation of liberty in prison, convicts in respect of whom capital punishment has been replaced with life imprisonment by pardon, shall be sent to serve their punishment to appropriate penal facilities located in places which are designated by the federal body of the penal system.”

49. Article 74 § 2 of the CES reads, in so far as relevant, as follows:

“Correctional penal facilities are designed for serving of [a sentence in the form of] deprivation of liberty by major convicts. They are subdivided to colony-settlements, common-regime facilities, strict-regime facilities, special-regime facilities. Correctional penal facilities may include isolated areas with different types of regime, as well as isolated areas functioning as a prison. ...”

50. Article 75 of the CES provides:

“1. Those convicted to deprivation of liberty shall be sent to serve the punishment no later than ten days following receipt by the administration of a remand prison of a notification that the conviction has entered into force. Within this period a convict has a right to a short-term visit from relatives or other persons. The order of sending convicts to correctional penal facilities shall be defined by the federal body of the executive which performs the functions of elaboration and implementation of the State policy and legal regulation in the area of execution of criminal punishments.

2. The administration of a remand prison is obliged to notify one of the relatives designated by a convict of the place to which he is being sent to serve the punishment.”

51. Article 81 §§ 1 and 2 of the CES reads, in so far as relevant, as follows:

“1. Those sentenced to deprivation of liberty ought to serve the whole term of their sentence, as a rule, in the same correctional penal facility or remand prison, including in case of their sentencing to a new punishment during the period of serving [the sentence in the form of] deprivation of liberty, if a court has not varied the type of a correctional facility.

2. Transfer of a convict to continue to serve his sentence from one correctional penal facility to another of the same type is allowed in case of illness of the convict; or in order to ensure his personal safety; in cases of reorganisation or liquidation of a penal facility; as well as in other exceptional circumstances that preclude the convict’s further stay in that penal facility. Transfer of those convicted of offences listed in Article 73 § 4 of this Code from one penal facility to another of the same type is also allowed on the basis of a decision by the federal body of the penal system. The order of transfer of convicts is to be determined by the federal body of the executive, which performs the functions of elaboration and implementation of the State policy and legal regulation in the area of execution of criminal punishments. ...”

52. Article 89 of the CES reads, in so far as relevant, as follows:

“1. Those convicted to deprivation of liberty shall be entitled to receive short-term visits lasting for four hours, and to long-term visits lasting for three days in the penal facility’s premises. In cases provided for by this Code convicts may be entitled to receive long-term visits with residence outside a penal facility lasting for five days. In that case, the governor of a facility shall determine the order and place of the visit.

2. Short-term visits are provided [for a meeting] with relatives or other persons in the presence of a representative of the administration of a penal facility. Long-term visits with a right of joint stay are provided [for a meeting] with a spouse, parents, children, adoptive parents and adopted children, siblings, grandparents, grandchildren and, with the authorisation of the governor of a penal facility, other persons. ...”

### **C. Case-law of the Constitutional Court of Russia**

#### *1. Ruling No. 162-O-O of 20 March 2008*

53. In a case brought by a convicted prisoner, A., the Constitutional Court of Russia ruled as follows:

“Mr A., who is serving a life sentence ... challenges the constitutionality of Articles 92, 113 and 125 of the CES, which set restrictions on convicted prisoners relating, in particular, to a right to receive telephone calls, visits, and parcels ...

Imposition on a person who committed a crime of such punishment as imprisonment, which is aimed at protection of the interests of the State, civil society and its members, implies changes in his habitual way of life and in his relations with others, as well as the exercise of a certain moral and psychological influence on him, which affects his rights and freedoms as a citizen and changes his status as an individual.

In any event, a person deliberately committing a crime must envision that as a result [of the criminal act] he or she may be deprived of liberty. In this way the person in question consciously condemns himself or herself and his or her relative to restrictions, including on the right to contact family members, privacy, and personal and family confidentiality.

The combination of restrictions imposed by the ... law on convicts, including, in particular, restrictions on the number of visits allowed, their duration and conditions, ... differs depending on, first and foremost, the gravity of the sanction imposed by the court, which corresponds to the nature and degree of public danger posed by the crime, the circumstances under which it was committed, and the individual characteristics of the person responsible, as well as depending on the convict’s behaviour while serving the sentence. All this ensures proportional and fair application of the coercive measures ...”

#### *2. Ruling No. 1218-O-O of 23 September 2010*

54. In a case brought by Ms G., the mother of a prisoner sentenced to life imprisonment, the Constitutional Court of Russia declared the application inadmissible on the following grounds:

“... Ms G. challenges the constitutionality of Article 73 § 4 of the CES ... According to the applicant, this provision is not compatible with ... the Constitution because it does not provide for transfer of those sentenced to life imprisonment to a penal facility located near their home and that of their close relatives.

...

Having examined the materials presented before it, the Constitutional Court finds no grounds to declare the application admissible.

The Constitution of the Russian Federation ... empowers the federal legislator to introduce restrictive measures in respect of those who committed crimes and were subjected to punishment.

The provisions of Article 73 § 4 of the CES, as well as a number of other provisions of this Code, are aimed at individualisation of punishment and differentiation of the conditions under which it is served, taking into account the nature of the crime, the danger it poses to the values protected by the Constitution of the Russian Federation

and the criminal law, its intensity, its causes, and other circumstances under which it was committed, and information concerning the person who committed it. In this way prerequisites are created to enable attainment of the aims of punishment, which are, according to Article 42 § 2 of the Criminal Code of the Russian Federation, restoration of social justice, correction of the convict, and prevention of new crimes (Ruling of the Constitutional Court of 29 January 2009 No. 59-O).

Moreover, the provisions of Article 73 of the CES, being an integral part of the law on execution of criminal sentences, which governs the rules and conditions of the execution and serving of sentences, chooses the means of correction of convicts, protection of their rights, freedoms and legitimate interests, [and measures taken with a view to] assisting social adaptation of convicts, are applicable to convicts, and therefore cannot be considered as breaching the applicant's rights ...”

### *3. Ruling No. 1700-O-O of 16 December 2010*

55. In a case brought by a convicted prisoner, T., the Constitutional Court of Russia dismissed the application as inadmissible on the following grounds:

“... Mr T. asserts that Article 73 § 2 of the CES does not allow him to be transferred to a penal facility within the territory of a constituent entity of the Russian Federation which is the closest to the place of his conviction ...

Article 73 § 2 of the CES taken in conjunction with the first paragraph of the same Article allows for convicts to be sent to serve their sentence outside the constituent entity of the Russian Federation in which they resided or were convicted only if there are no penal facilities of a particular type in that constituent entity of the Russian Federation or if it is impossible to place convicts in the penal facilities available. The said norms correspond to the provisions of international law on prisoners' rights, in particular the European Prison Rules (2006), which provide that prisoners shall be allocated, as far as possible, to prisons close to their homes or places of social rehabilitation. The said Rules are of a recommendatory nature and should be implemented if the requisite economic and social resources are available (Article 3 § 4 of the CES).

Moreover ... the applicant challenges the constitutionality of Article 73 § 2 of the CES not because it served as grounds to send him to serve the sentence in the penal facility in the Krasnoyarsk Region, but in connection with the refusal to transfer him to a penal facility in the Khabarovskiy or Primorskiy Regions, which are the closest to the place of conviction. However, this provision does not govern issues of this kind.

... the applicant *de facto* asks for the application of [Article 73 § 2 of the CES] to be reviewed in his case ... However, assessment of the lawfulness and well-foundedness of the application of the law falls outside the jurisdiction of the Constitutional Court ...”

### *4. Ruling No. 757-O of 26 April 2016*

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

“In his application Mr S., who is serving a sentence, challenges the constitutionality of Article 73 § 2 ... and Article 81 §§ 1 and 2 ... of the CES. According to the applicant, these provisions permit [the authorities] to send convicts to penal facilities

located more than 1,000 kilometers away from the home of a convict, and his or her family and relatives, and allow [the authorities] to abstain from taking a decision on transfer of such convicts to penal facilities located closer than 1,000 kilometers from their home.

According to the general rule established by the Code of Execution of Criminal Sentences, those receiving a custodial sentence shall serve the whole term in the same penal facility or remand prison within the territory of the constituent entity of the Russian Federation in which they resided or were convicted, including instances of imposition of a new sentence over the course of the term of imprisonment, provided that the type of correctional facility has not been changed by a court (Articles 73 § 1 and 81 § 1 of the CES). At the same time, Article 73 § 2 of the CES taken in conjunction with the first paragraph of the same Article allows for convicts to be sent to serve their sentences outside the constituent entity of the Russian Federation in which they resided or were convicted only if there are no penal facilities of a particular type in that constituent entity of the Russian Federation, or if it is impossible to place convicts in the existing penal facilities. The said norms correspond to the provisions of international law on prisoners' rights, in particular the European Prison Rules (2006), which provide that prisoners shall be allocated, as far as possible, to prisons close to their homes or places of social rehabilitation. The said Rules are of a recommendatory nature and should be implemented if the requisite economic and social resources are available (Article 3 § 4 of the CES) (Ruling of the Constitutional Court of the Russian Federation of 16 December 2000 No. 1700-O-O).

As regards the transfer of convicts to continue serving their sentences from one penal facility to another of the same type, this is permissible in exceptional circumstances – in the event of the convict's illness or in order to ensure his personal safety, in cases of reorganisation or liquidation of the penal facility, as well as in other exceptional circumstances that would hinder the convict's further stay in the correctional facility (Article 81 § 2 of the CES), the list of which is not exhaustive. The said provision is correlated with the principles of lawfulness, humanism, democracy, equality before the law, differentiation and individualisation of the serving of criminal sentences, rational application of coercive measures, and the means of convicts' rehabilitation (Article 8 of the CES), [and] is aimed at the protection of the lawful interests of convicts (Ruling of the Constitutional Court of the Russian Federation of 16 July 2015 No. 1611-O).

Therefore, the contested provisions do not breach the applicant's constitutional rights and, accordingly, the application is inadmissible ...”

#### **D. The Ministry of Justice's Instruction on Allocation of Prisoners**

57. By Order No. 235 of 1 December 2005 the Russian Ministry of Justice approved of the Instruction on Allocation of Convicted Prisoners to Serve Their Sentences, Transfer from One Facility to Another, and on Sending Prisoners for Treatment and Examination to Medical Preventive and Penal Facilities (“the Instruction on Allocation of Prisoners”). As regards allocation and transfer of prisoners, the Instruction reproduces Articles 73 and 81 of the CES (see paragraphs 45, 46 and 51 above). In addition, it contains a list of administrative formalities to be performed by a facility's administration in case of a prisoner's transfer to another facility.

### III. RELEVANT MATERIALS OF THE COUNCIL OF EUROPE

#### A. Committee of Ministers

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

##### Part I

###### *“Basic 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

###### *“Allocation and accommodation*

- 17.1 Prisoners shall be allocated, as far as possible, to prisons close to their homes or places of social rehabilitation.
- ...
- 17.3 As far as possible, prisoners shall be consulted about their initial allocation and any subsequent transfer from one prison to another.
- ...

###### *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.
- ...

24.4 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.

...

24.8 Prisoners shall be allowed to inform their families immediately of their imprisonment or transfer to another institution and of any serious illness or injury they may suffer.”

## **B. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the CPT”)**

59. The CPT Standards 2002 (revised in 2015) (Extract from the 2nd General Report [CPT/Inf (92) 3]) read, in so far as relevant, as follows:

“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.”

## **THE LAW**

### **I. JOINDER OF THE APPLICATIONS**

60. The Court observes that the four applications under consideration pertain to the situation of prisoners allocated to serve their sentences in remote penal facilities of two types: Mr R., Mr Kh. and Mr Yeliashvili were allocated to strict-regime facilities, while Mr Palilov was allocated to a special-regime facility. The Court considers that, in the context of the issues raised in the applications, the differences in the types of penal facilities are immaterial for the purposes of its assessment. In accordance with Rule 42 § 1 of the Rules of Court, the Court thus decides to join the applications, given their factual and legal similarities.



## II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

61. The applicants complained, alleging a violation of their respective rights to respect for family life on account of the lack of practical opportunities for prison visits stemming from decisions to allocate prisoners to remote penal facilities and their subsequent inability to obtain transfers to other facilities. They relied on Article 8 of the Convention, which reads, in so far as relevant, as follows:

“1. Everyone has the right to respect for his private and family life ...

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. *Compliance with the six-month rule*

##### (a) **Application no. 35090/09 by Ms Polyakova**

62. The Government submitted that Ms Polyakova’s application had been introduced on 3 August 2009, more than six months after the date of the Primorskiy Regional Court’s judgment of 13 January 2009. Ms Polyakova noted that, while her application form had indeed been dated 3 August 2009, her first letter summarising her grievances had been sent to the Court on 13 June 2009. Having regard to the regulations applicable at the time, namely Rule 47 § 5 of the Rules of Court and paragraph 4 of the Practice Direction on Institution of Proceedings, the Court finds that the date of lodging the application lies within six months of the final decision in the applicant’s case. The Government’s objection must therefore be dismissed.

##### (b) **Application no. 35845/11 by Ms Natalya Kibalo and her daughters**

63. The Government claimed that the application had been lodged out of time as, in their submission, the trigger date for the purposes of the six-month rule should be the date of the decision by the FSIN to transfer a prisoner to another constituent entity of the Russian Federation. The Government asserted that for the Court to rule otherwise would cause an influx of applications from prisoners transferred to remote penal facilities years ago and thus lead to “a so-called ‘speculative’ approach to lodging applications with the Court”.

64. The applicants insisted that the six-month rule had been complied with, as Mr Kh.’s detention in the penal facility in Blagoveshchensk constituted a “continuous situation”.

65. The Court observes that the crux of the applicants' complaint is not the FSIN's decision to transfer Mr Kh. to the remote penal facility as such, but the panoply of long-term repercussions on their family life stemming from it which they have experienced over the years. The Court reiterates in this connection that, if there is a situation of ongoing breach, the time-limit in effect starts to run afresh each day and it is only once the situation ceases that the final period of six months will run to its end (see *Varnava and Others v. Turkey* [GC], nos. 16064/90 and 8 others, § 159, ECHR 2009).

66. The Court has already established, as regards the complaints under Article 3 of the Convention about poor conditions of detention, that a period of an applicant's detention should be regarded as a "continuous situation" for the purposes of the six-month rule as long as the detention has been effected in the same type of detention facility in substantially similar conditions (see *Ananyev and Others v. Russia*, nos. 42525/07 and 60800/08, § 78, 10 January 2012). Furthermore, in the context of Article 8 of the Convention, the Court has found that a complaint about restrictions imposed on a prisoner's contacts with his relatives over the course of ten years fell entirely within its competence, as the period of detention under the strict regime, taken as a whole, represented a continuous situation (see *Khoroshenko v. Russia* [GC], no. 41418/04, § 91, ECHR 2015). The Court sees no reason to depart in the present case from the approach that a prisoner's detention under unvaried conditions and/or regime constitutes a "continuous situation" within the meaning of the Court's case-law in the present case. It follows that a complaint under Article 8 of the Convention concerning the effective impossibility of maintaining family and social ties during imprisonment in a remote penal facility must (unless an effective remedy was available) be submitted within six months of the end of the detention in that facility.

67. Considering that the applicants introduced their complaint under Article 8 of the Convention while Mr Kh. was serving his sentence in the remote penal facility, the Government's objection must be dismissed.

## 2. *The Court's conclusion on the admissibility*

68. The Court considers the complaint under Article 8 of the Convention in the four applications raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. Therefore, it is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. Given that no other ground has been established for declaring the complaint inadmissible in respect of each applicant, it must therefore be declared admissible.

## **B. Merits**

### *1. The parties' submissions*

#### **(a) The Government**

69. The Government submitted in respect of each of the four applications that there had been no violation of the applicants' right to respect for private and family life.

70. As regards Ms Polyakova's application, the Government submitted that Mr R., owing to "the lack of conditions for placement in penal facilities of the Primorskiy Region", had been sent, pursuant to Article 73 § 2 of the CES, to the penal facility of the Krasnoyarsk Region "where there were the correct conditions for convicts of that category". Evidence to confirm that there were no places available in strict-regime penal facilities in the Primorskiy Region was presented before the Sovetskiy District Court of Vladivostok in the course of the proceedings initiated by Ms Polyakova. Overcrowding and a lack of sleeping places in a penal facility could lead to conflicts among inmates and as such undermine their personal safety. In the Government's submissions, "the authorities could not allow a situation in which the protection of a convict's family values could cause a breach of that convict's fundamental and inalienable rights guaranteed by Article 3 of the Convention". They concluded that Mr R.'s transfer to the penal facility in the Krasnoyarsk Region had been lawful and well-founded, had been necessitated by objective circumstances, and had been aimed at protecting Mr R.'s fundamental rights, and therefore could not be considered a breach of Article 8 of the Convention.

71. As regards the application by Ms Natalya Kibalo and her daughters, the Government considered the interference with the applicants' right to respect for private and family life on account of Mr Kh.'s transfer to a remote facility compatible with the requirements of Article 8 § 2 of the Convention for the following reasons. Mr Kh. had been convicted of crimes listed in Article 73 § 4 of the CES. When deciding on his allocation to a penal facility, the FSIN had relied on a report by the authorities of the remand prison in which Mr Kh. had been detained pending trial, according to which Mr Kh. had proven himself a troublemaker and had repeatedly broken the rules, had supported the Wahhabi movement, and had ignored warnings by the remand prison authorities. The FSIN had decided to transfer Mr Kh. to a penal facility outside the North Caucasus area "to prevent possible disorder and crimes connected to the behaviour of the convict and ultimately to protect the rights and freedoms of others". The Government concluded that Mr Kh.'s transfer had been warranted by his "aggressive behaviour", had been in accordance with the law, had pursued legitimate aims, and had been proportionate, taking into account the existing terror threats in the North Caucasus area.

72. As regards Mr Yeliashvili's application, the Government submitted that the applicant had not had a "registered place of residence" prior to his conviction and had been sent to the Yamalo-Nenetskiy Region owing to the lack of a strict-regime penal facility in the Moscow Region where he had been convicted under Article 73 § 2 of the CES. The Government emphasised that it was important to avoid overcrowding in penal facilities, and to take into account the nature of the crime committed and any repeat offences, in order to safeguard inmates' rights protected by Article 3 of the Convention. The domestic authorities and courts had refused the applicant's request to be transferred to a penal facility in the Moscow Region under Article 81 § 2 of the CES owing to the applicant's failure to substantiate his claims that there had been grounds listed in Article 81 § 2 of the CES to transfer him to another facility. The Government further stated that inmates had the right to contact their family members, not only by way of visits but by means of telecommunication and correspondence. Mr Yeliashvili had actively used his right to correspondence and had received parcels, thus staying in touch with his family. While he had not exercised his right to receive visits from his relatives, he had failed to present evidence in the form of income certificates that his relatives lacked the means to visit him. The Government concluded that Mr Yeliashvili's right to respect for private and family life had not been breached.

73. As regards the application by Mr Palilov, the Government submitted that the provision of the Russian law stipulating that those sentenced to life imprisonment should be sent to specific penal facilities irrespective of their place of residence had for its cause a particular public danger that those thus sentenced represented and the need to ensure their strict social isolation. There existed five penal facilities for those sentenced to life imprisonment in Russia, each of them situated in a remote location in order to isolate dangerous criminals both from those who might be their supporters and from those who had suffered because of their actions. In the Government's view this was compatible with the principle of humanism, which had to be interpreted in the light of the principles of differentiation and individualisation of criminal punishment. The Government argued that Mr Palilov, when committing a particularly grave crime, should have understood all the negative consequences of his criminal actions. They added that in any event Mr Palilov had been proscribed by Russian law from receiving long-term visits during the first ten years of his life sentence. The Government concluded that, even if he had been serving the sentence in the same region where his family lived, Mr Palilov could not have received long-term visits from them, and that, consequently, "transferring him to a penal facility located nearer to the place where his relatives live would be absolutely devoid of any sense".

74. The Government made the following observations on the merits of Ms Polyakova's and Mr Yeliashvili's applications. Article 81 of the CES

provided for a convict to be transferred to another penal facility on health or safety grounds, for administrative reasons in the event of reorganisation or liquidation of the facility in which he or she had been detained, and “in other exceptional circumstances”. The CES did not provide for an exhaustive list of such exceptional circumstances, because it would be unfeasible to envision all possible life situations in which it could be necessary to transfer a convict to another facility. The Government concluded that an alleged interference with the right to respect for private and/or family life could serve as grounds for a convict’s transfer to another facility. They did not provide any examples from the practice of the domestic courts to illustrate their submissions.

75. The Government also submitted in respect of the applications by Ms Polyakova, Mr Yeliashvili and Mr Palilov that the Constitutional Court of Russia in its Ruling No. 162-O-O (see paragraph 53 above) had established what the Government called a “presumption of awareness of the consequences”, according to which “a person deliberately committing a crime must envision that as a result [of the criminal act] he or she may be deprived of liberty and his or her rights may be subject to restrictions, that is, the person in question has consciously condemned himself or herself and his or her family to restrictions, including the right to contact family members, privacy, and personal and family confidentiality”.

**(b) The applicants**

76. Ms Polyakova contested the Government’s claim that Mr R. had been transferred to a remote penal facility owing to the lack of places available near his place of residence, submitting that there were five strict-regime facilities in the Primorskiy Region. Ms Polyakova and her son had had an opportunity to visit Mr R. in the Krasnoyarsk Region on three occasions only, which had effectively deprived the child of the opportunity to maintain contact with his father.

77. Ms Natalya Kibalo and her daughters submitted that, in the absence of direct flights or trains, a long and exhausting trip from the Chechen Republic, where they lived, to Blagoveshchensk, where Mr Kh. was serving his sentence, took at least thirty-four hours by plane or 196 hours by train. Moreover, the tickets were costly well beyond the applicants’ means. Ms Natalya Kibalo could not make use of all the visit days to which Mr Kh. was entitled per year. Miss Iman Kibalo, born after Mr Kh.’s arrest, has never seen her father. In the applicants’ assessment, the interference with their family life was not “in accordance with the law”. Referring to the Court’s case-law, they argued that the domestic law which confers discretion to the executive must indicate with reasonable clarity the scope and the manner of exercise of the relevant discretion. The FSIN’s decision to send a convict to a penal facility under Article 73 § 4 of the CES was, in their view, “unpredictable for both convicts and their relatives” and the

FSIN had “unrestricted discretionary power to choose the region” in which a convict was to serve his or her sentence. The applicants further asserted that the interference had not pursued any “legitimate aim”. Nor had it been “necessary in a democratic society” as, contrary to the Government’s claim, Mr Kh. had not been convicted of a terror attack, and the allegation of his “bad behaviour” in the remand prison had not been supported by any evidence. In any event, the decision-making process leading to the interference had not been “fair and such as to afford due respect for the interests of the individual”.

78. Mr Yeliashvili submitted that no compelling reasons capable of justifying the interference with his family life had been advanced by the Government. He noted that, by virtue of the amendments introduced to Article 73 § 2 of the CES by Federal Law no. 142-FZ on 19 July 2007 (see paragraph 46 above), the FSIN officials had been vested with unrestricted discretionary powers in the field of distribution of prisoners among penal facilities. In the applicant’s assessment, given that Russian law did not provide for any guarantees against abuse by the FSIN, it failed to meet the “quality of law” requirement. The applicant’s relatives could not afford to travel to visit him. His contacts with them were limited to a few telephone conversations. A lengthy deprivation of direct contact with relatives ran contrary to the purpose of rehabilitation of prisoners. The domestic authorities had failed to take into account the applicant’s personal situation and to consider transferring him to a facility located closer to the Moscow Region when deciding to transfer him to the Yamalo-Nenetskiy Region. In the absence of an assessment of the proportionality of the interference, the latter was not “necessary in a democratic society”. Article 81 of the CES, as interpreted by the domestic courts, excluded the possibility of transferring a convict to another penal facility on the grounds of an alleged breach of the right to private and family life; as such, there could be no judicial review of the lawfulness of the FSIN’s decision, either before or after its implementation.

79. Mr Palilov submitted that a trip from Yaroslavl to IK-18 in the Yamalo-Nenetskiy Region would take at least forty-eight hours by car or more than two days by train, which would be not only very exhausting for his elderly mother and his sister, but also well beyond their modest means. Article 73 § 4 of the CES contained no guarantees against its arbitrary application by the FSIN, and as such failed to meet the “quality of law” requirement. The Government had failed to advance any legitimate aim to justify the interference with the applicant’s rights under Article 8 of the Convention. The interference in question could not be considered “proportionate” to the aim(s) sought, as the authorities had failed to explain why the applicant had not been placed in any other facility for life prisoners located much closer to his home than IK-18. In any event, the lack of strict-regime facilities for life prisoners in the central part of Russia could

not serve as an excuse for a violation of the applicant's rights under Article 8 of the Convention. Pointing to the Government's argument concerning the need to isolate particularly dangerous criminals from society, the applicant submitted that such a public policy approach was at odds with the principle of rehabilitation of prisoners. As for the Government's argument concerning the "presumption of awareness of the consequences", the applicant stated that criminal punishment should not go beyond the unavoidable level of suffering and should not debase and humiliate a prisoner. He further asserted that, in the absence of a clear and foreseeable method of allocation of prisoners to post-conviction penal facilities, the national system failed "to provide a measure of legal protection against arbitrary interference by public authorities". The applicant also claimed that even during the first ten years of his life sentence he had a right to receive two short-term visits per year, which he could not exercise owing to the distance between Yaroslavl and the Yamalo-Nenetskiy Region. The domestic courts when examining his complaint about the FSIN's decision had failed to assess his personal situation and to carry out a balancing exercise to assess the proportionality of his being transferred to the legitimate aim sought, if any.

## *2. The Court's assessment*

### **(a) Scope of the case**

80. The Court observes at the outset that each applicant complained of a violation of Article 8 of the Convention on account of the lack of an effective opportunity for a prisoner and his relations to maintain family and social ties during imprisonment in a remote penal facility.

81. The Court has already established that it is an essential part of a prisoner's right to respect for family life that the authorities enable him or her, or if need be assist him or her, to maintain contact with his or her close family (see, with further references, *Khoroshenko*, cited above, § 106), and that, on the issue of family visits, Article 8 of the Convention requires States to take into account the interests of the convict and his or her relatives and family members (*ibid.*, § 142). The Court has also found that placing a convict in a particular penal facility may raise an issue under Article 8 of the Convention if its effects on his or her private and family life go beyond the "normal" hardships and restrictions inherent in the very concept of imprisonment (see *Khodorkovskiy and Lebedev v. Russia*, nos. 11082/06 and 13772/05, § 837, 25 July 2013), and that, in that case, given the geographical situation of remote penal facilities and the realities of the Russian transport system, both prisoners sent to serve a sentence far from their home and members of their families suffered from the remoteness of the facilities (*ibid.*, § 838).

82. The Court sees no reason to depart from this approach in the present case. It observes that, in respect of each applicant, the distance - ranging from 2,000 to 8,000 kilometres - between the penal facilities and the place of residence of the prisoner's relations, was remote to the extent of inflicting hardship on the persons concerned. The examples of Mr Palilov, who did not see his mother prior to her death (see paragraph 43 above), and of Miss Iman Kibalo, who has never in her young life seen her father (see paragraph 26 above), are of particular severity. Given the nature of the violation alleged, the Court considers it appropriate to examine the present case under the family-life aspect of Article 8 of the Convention.

83. The Court further notes that the situations of the imprisoned applicants, namely Mr Yeliashvili and Mr Palilov, differ in certain respects from those of Ms Polyakova and Ms Natalya Kibalo and her daughters, the applicants who find themselves at liberty and whose family members are imprisoned. Nevertheless, all the applicants in the present case have experienced repercussions on their family life as a result of the FSIN's decisions, which are akin in essence. It is thus appropriate for the Court to examine on an equal footing the complaints alleging a violation of Article 8 of the Convention stemming from a prisoner's allocation to and subsequent detention in a remote penal facility, as brought both by prisoners and by members of their families.

**(b) Principles established by the Court's case-law**

*(i) Article 8 of the Convention*

84. The essential object of Article 8 of the Convention is to protect the individual against arbitrary interference by public authorities. This provision protects, in particular, a right to personal development, and the right to establish and develop relationships with other human beings and the outside world (see *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III). It is of crucial importance that the Convention is interpreted and applied in a manner which renders its rights practical and effective, not theoretical and illusory (see *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 74, ECHR 2002-VI).

85. Any interference with a right protected by the first paragraph of Article 8 of the Convention must be justified in terms of the second paragraph, namely as being "in accordance with the law" and "necessary in a democratic society" for one or more of the legitimate aims listed therein. The notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to one of the legitimate aims pursued by the authorities (see, with further references, *V.C. v. Slovakia*, no. 18968/07, § 139, ECHR 2011 (extracts)).

86. A margin of appreciation must, inevitably, be left to the national authorities, who by reason of their direct and continuous contact with the



vital forces of their countries are in principle better placed than an international court to evaluate local needs and conditions. This margin will vary according to the nature of the Convention right in issue, its importance for the individual, and the nature of the activities restricted, as well as the nature of the aim pursued by the restrictions (see, with further references, *Chapman v. the United Kingdom* [GC], no. 27238/95, § 92, ECHR 2001-I). The procedural safeguards available to the individual will be especially material in determining whether the respondent State has, when fixing the regulatory framework, remained within its margin of appreciation (see *Gablichvili v. Russia*, no. 39428/12, § 48, 26 June 2014).

(ii) *Principles governing the situation of prisoners*

87. The Court reiterates that the very essence of the Convention is respect for human dignity (see *Pretty*, cited above, § 65). 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. There is no question that a prisoner forfeits his Convention rights because of his status as a person detained following conviction (see *Hirst v. the United Kingdom (no. 2)* [GC], no. 74025/01, §§ 69-70, ECHR 2005-IX). Any restriction on the Convention rights of a prisoner must be justified in each individual case. This justification can flow, *inter alia*, from the necessary and inevitable consequences of imprisonment or from an adequate link between the restriction and the circumstances of the prisoner in question (see *Dickson v. the United Kingdom* [GC], no. 44362/04, § 68, ECHR 2007-V).

88. The Court further reiterates that rehabilitation, that is, the reintegration into society of a convicted person, is required in any community that established human dignity as its centrepiece (see *Vinter and Others v. the United Kingdom* [GC], nos. 66069/09 and 2 others, § 113, ECHR 2013 (extracts)). Article 8 of the Convention requires the State to assist prisoners as far as possible to create and sustain ties with people outside prison in order to promote prisoners' social rehabilitation. In this context the location of the place where a prisoner is detained is relevant (see *Khodorkovskiy and Lebedev*, cited above, § 837). While punishment remains one of the aims of imprisonment, the emphasis in European penal policy is now on the rehabilitative aim of imprisonment, particularly towards the end of a long prison sentence (see *Vinter and Others*, cited above, § 115). The principle of rehabilitation has not only been recognised, but has over time also gained increasing importance in the Court's case-law under various provisions of the Convention (see, with further references, *Murray v. the Netherlands* [GC], no. 10511/10, § 102, ECHR 2016). Notwithstanding the fact that the Convention does not guarantee, as such, a right to rehabilitation, the Court's case-law thus presupposes that convicted

persons, including life prisoners, should be allowed to rehabilitate themselves (*ibid.*, § 103).

89. Regarding visiting rights, 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, especially regarding post-conviction prisoners (see, with further references, *Khoroshenko*, cited above, § 126). According to the European Prison Rules (see paragraph 58 above), national authorities are under an obligation to prevent the breakdown of family ties and provide 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 (*ibid.*, § 134). 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 the sphere of regulation of visiting rights of prisoners has been narrowing (*ibid.*, § 136).

**(c) Application of the above principles in the present case**

90. It is common ground between the parties that there has been an interference with the applicants' right to respect for family life. It is therefore incumbent on the Court to establish whether the impugned interference was justified under Article 8 § 2 of the Convention as being "in accordance with the law", pursuing a legitimate aim or aims, and as being "necessary in a democratic society" in pursuit of that aim or aims.

*Whether the interference was "in accordance with the law"*

91. The Court reiterates that the wording "in accordance with the law" requires the impugned measure both to have some basis in domestic law and to be compatible with the rule of law, which is expressly mentioned in the Preamble to the Convention and is inherent in the object and purpose of Article 8 of the Convention. The law must thus be adequately accessible and foreseeable, that is it must be formulated with sufficient precision to enable the individual – if need be with appropriate advice – to regulate his conduct. For domestic law to meet these requirements it must afford adequate legal protection against arbitrariness and accordingly indicate with sufficient clarity the scope of the discretion conferred on the competent authorities and the manner of its exercise (see, with further references, *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and 30566/04, § 95, ECHR 2008). What is required by way of safeguards against arbitrariness will depend, to some extent at least, on the nature and extent of the interference in question. There must be safeguards to ensure that the discretion left to the executive is exercised in accordance with the law and without abuse of powers. The concepts of lawfulness and the rule of law in a democratic society require that measures affecting fundamental human rights must be subject to some form of adversarial proceedings before an independent body

competent to review the reasons for the decision and relevant evidence, if need be with appropriate procedural limitations (see *Al-Nashif v. Bulgaria*, no. 50963/99, §§ 121-23, 20 June 2002).

92. The Court observes that factors affecting the ability of a prisoner's relatives to visit him or her in a particular penal facility may vary to a great extent in each individual case. The financial situations of families and the realities of the transport system in various areas may differ extensively. Therefore, even where the geographical distance between a prisoner's home and a penal facility is identical in respect of two prisoners, the capacity of their relatives to visit them may be radically disparate. Nevertheless, the law must afford a degree of legal protection against arbitrary interference by the authorities (see *C.G. and Others v. Bulgaria*, no. 1365/07, § 39, 24 April 2008, and *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 170, ECHR 2013). What is required of the domestic law in the field of geographical distribution of prisoners is not that it defines a yardstick to measure the distance between a prisoner's home and a penal facility or exhaustively lists grounds for derogation from the applicable general rules, but rather that it provides for adequate arrangements for an assessment by the executive authority of that prisoner's and his or her relatives' individual situation, having due regard to various factors affecting the practical possibility of visiting a prisoner in a particular facility.

93. Turning to the circumstances at hand, the Court observes that the violation alleged in each application is essentially twofold: the applicants complained about the initial allocation of a prisoner to a remote penal facility, on the one hand, and about the inability to obtain transfer to another facility in order to be closer to the prisoner's social connections, on the other. It notes that the FSIN's decisions on allocation of prisoners that gave rise to the alleged violations in each application under consideration were based on Article 73 of the CES, and that the subsequent requests for transfer to another facility on the grounds of respect for family life were dismissed pursuant to Article 81 of the CES. The Court will examine whether these provisions satisfy the "quality of law" requirement.

*(a) Initial allocation to a remote penal facility*

94. Article 73 § 1 of the CES (see paragraph 45 above) establishes a general rule on geographical distribution of prisoners in the Russian Federation ("the general distribution rule"), according to which prisoners should be allocated to penal facilities located in the constituent entity of the Russian Federation of residence ("the home region") or of conviction ("the conviction region"). The same provision stipulates that derogations from the general distribution rule are permissible "in exceptional cases". Leaving aside the issue of what constitutes an exceptional case within the meaning of this provision as irrelevant for the purposes of the present case, the Court observes that it has previously noted that the spirit and the goal of the

general distribution rule of Article 73 of the CES was to preserve prisoners' social and family ties to the place where they used to live before the conviction (see *Khodorkovskiy and Lebedev*, cited above, § 850). As such, the general distribution rule is in line with Rule 17.1 of the European Prison Rules that recommends allocating prisoners, as far as possible, to prisons close to their homes or places of social rehabilitation (see paragraph 58 above), as well as with the rehabilitation principle (see paragraph 88 above).

95. The Court observes that the violations alleged by the applicants in the present case stemmed from a departure from the general distribution rule. As regards the applications of Ms Polyakova and Mr Yeliashvili, the legal basis for not allocating the prisoners to a facility within the home or conviction region was Article 73 § 2 of the CES. As regards the applications of Ms Natalya Kibalo and her daughters and Mr Palilov, the FSIN's impugned decisions were based on Article 73 § 4 of the CES.

96. The Court notes that application of the second paragraph of Article 73 of the CES in an individual case is conditional: it comes into play where either there is no penal facility of a particular type, or where there is an "impossibility" to allocate a prisoner to appropriate penal facilities within a prisoner's home region or conviction region (see paragraph 46 above). The domestic law does not specify either in the CES or in the Instruction on Allocation of Prisoners (see paragraph 57 above) what may constitute such "impossibility". Its determination thus remains to a great extent within the realm of the executive, namely the FSIN, which curtails a prisoner's and his or her relatives' ability to foresee that a derogation from the general distribution rule would be made on this ground.

97. The fourth paragraph of Article 73 of the CES, on the other hand, provides for an automatic exception to the general distribution rule in respect of a specific category of prisoners, as it empowers the FSIN to freely allocate an individual belonging to such category to a penal facility located anywhere in Russia irrespective of his or her place of residence or conviction (see paragraph 48 above). Nothing in the domestic law enables this person or his or her family to foresee the manner of application of Article 73 § 4 of the CES.

98. It can thus be concluded that, regardless of the difference between the two grounds for departure from the general distribution rule, paragraphs 2 and 4 of Article 73 of the CES vest extensive discretionary powers with the FSIN.

99. The Court considers that the scope of such discretion conferred is not defined with sufficient clarity to give the individual adequate protection against arbitrary interference (see *Malone v. the United Kingdom*, 2 August 1984, § 68, Series A no. 82). The Court cannot discern any safeguard mechanisms that could counterbalance the FSIN's extensive discretion in the field of allocation of prisoners or any mechanisms to weigh the competing individual and public interests and assess the proportionality of

the relevant restriction the rights of the persons concerned. Neither paragraphs 2 and 4 of Article 73 of the CES nor the Instruction on Allocation of Prisoners provide for any consultation procedure with the person concerned, no matter how basic and informal. The Government did not specify how the decisions to depart from the general distribution rule were made in respect of Mr R., Mr Kh., Mr Yeliashvili and Mr Palilov. Nothing in the material before the Court suggests that either of the prisoners or their relatives were ever consulted by the FSIN during the decision-making process as to their allocation. The Court notes in this regard that Rule 17.3 of the European Prison Rules indicates that, as far as possible, prisoners should be consulted about their initial allocation and any subsequent transfer from one prison to another (see paragraph 58 above).

100. The Court considers that, while the Convention does not grant prisoners the right to choose their place of detention, and the fact that prisoners may be separated from their families and housed at some distance from them is an inevitable consequence of their imprisonment (see *Rodzevillo v. Ukraine*, no. 38771/05, § 83, 14 January 2016), in order to ensure respect for the inherent dignity of the human person, the States should aim at maintaining and promoting prisoners' contacts with the outside world. To achieve this aim, the domestic law should provide a prisoner (or, where relevant, his or her relatives) with a realistic opportunity to advance before the domestic authorities reasons against his or her allocation to a particular penal facility, and to have them weighed against any other considerations in the light of the requirements of Article 8 of the Convention.

101. There are various ways to include considerations of Article 8 of the Convention in the decision-making process, consultation procedure being one of safeguards against arbitrariness. What is salient in this context is that the domestic authorities perform, before deciding on allocation to a penal facility, an individual assessment of a prisoner's situation. A formalistic reference to, for example, security considerations without an examination of the person's circumstances cannot substitute for such individual assessment. In the absence of the latter, the Court concludes that paragraphs 2 and 4 of Article 73 of the CES do not provide for the weighing of the competing individual and public interests and assessment of the proportionality of a restriction of the relevant Article 8 right in the context of allocation of prisoners as a matter of exception to the general distribution rule.

*(β) Transfer to another facility*

102. The Court will now examine whether the domestic law governing transfers of prisoners between penal facilities after their initial allocation complied with the "quality of law" requirements.

103. The applicants attempted to obtain a prisoner's transfer to another facility located closer to their respective families' homes. The FSIN

agencies dismissed their requests under Article 81 of the CES (see paragraphs 13, 22, 30 and 39 above).

104. Article 81 § 1 of the CES establishes another general rule in the area of distribution of prison population, according to which a prisoner should serve the sentence in its entirety in the same penal facility (“the continuous detention rule”). Exceptions to the continuous detention rule are listed in Article 81 § 2 of the CES (see paragraph 51 above). This rule is applicable regardless of whether the initial allocation of a prisoner was made pursuant to the general distribution rule or as an exception to it under either the second or the fourth paragraph of Article 73 of the CES.

105. The Court observes that considerations pertaining to a prisoner’s ability to maintain family and social ties during imprisonment are not expressly listed among those exceptions. Taking note of the Government’s assertion (see paragraph 74 above) that the domestic law could not contain an exhaustive list of all possible exceptions to the continuous detention rule, it would refer to its considerations in paragraph 92 above.

106. The Court further takes note of the Government’s submission that considerations of a prisoner’s interest in maintaining social and family ties during imprisonment could serve as grounds for a prisoner’s transfer to another penal facility as they could be treated as “other exceptional circumstances” within the meaning of Article 81 § 2 of the CES (see paragraph 74 above). However, it is clear that the FSIN chose to interpret Article 81 § 2 of the CES differently when dismissing the applicants’ respective requests for a transfer. The FSIN’s responses to Ms Natalya Kibalo, Mr Yeliashvili, and Mr Palilov indicate that the prisoners’ personal situations and their interest in maintaining family ties were not considered by the executive authority as grounds warranting their transfer within the meaning of the second paragraph of Article 81 of the CES (see, *mutatis mutandis*, *Vintman v. Ukraine*, no. 28403/05, § 103, 23 October 2014). The situation of Mr R., who was initially allocated to a facility within his “home” region in compliance with the general distribution rule (see paragraph 8 above) and only afterwards was transferred to a facility located 5,000 km away from his family’s home, is particularly telling. The Primorskiy regional department of the FSIN claimed to have made the decision on transfer “under Article 73 § 2 of the CES” while making no reference to the continuous detention rule and the grounds to depart from it listed in Article 81 § 2 of the CES (see paragraph 9 above). Several months later, however, the FSIN of Russia refused to transfer Mr R. from the Krasnoyarskiy Region, specifically relying on Article 81 of the CES (see paragraph 13 above). The Court cannot but remark the inconsistency of the FSIN agencies’ stance on interpretation of that provision and considers it illustrative of the unpredictability of the manner in which the law could be applied by the executive.

107. In view of the above, the Court considers that Article 81 of the CES did not provide the applicants with any safeguards against its arbitrary application by the FSIN irrespective of considerations pertaining to their right to respect for family life.

*(γ) Judicial review of the FSIN's decisions*

108. The Court reiterates that the concepts of lawfulness and the rule of law in a democratic society require that measures affecting fundamental human rights must be subject to some form of adversarial proceedings before an independent body competent to review the reasons for the decision and relevant evidence, if need be with appropriate procedural limitations (see, *mutatis mutandis*, *Liu v. Russia*, no. 42086/05, § 59, 6 December 2007).

109. The Court further observes that, in the light of the continuous detention rule, the FSIN's decisions on allocation of prisoners lead to long-term consequences. This holds particularly true in respect of the crimes listed in Article 73 § 4 of the CES, which are punished with lengthy imprisonment sentences. It follows that, unless another decision is taken at a later point, the impact on a convicted person's family life of the FSIN's decision to allocate a convicted person to a remote penal facility, as well as the impact on his or her family, may be very long-lasting, if not lifelong. The Court thus considers that, in order to be compatible with the requirements of Article 8 § 2 of the Convention, the impugned interference with the applicants' right to respect for family life would, by its very nature, call for particularly searching scrutiny by an independent judiciary authority.

110. The Court notes that the applicants in the present case complained about the FSIN's decisions on allocation to a remote facility or on refusal to transfer a prisoner to another facility to the domestic courts. It cannot but observe, however, that these attempts to challenge the FSIN's respective decisions proved unsuccessful. The Sovetskiy District Court of Vladivostok in the case of Ms Polyakova (see paragraph 12 above), as well as the Zamoskvoretskiy District Court of Moscow in the cases of Ms Natalya Kibalo (see paragraph 24 above), Mr Yeliashvili (see paragraph 32 above) and Mr Palilov (see paragraph 40 above) interpreted Article 81 § 2 of the CES in a manner that excluded the possibility of obtaining a transfer to another facility on the grounds of inability to receive visits in a remote penal facility. The Primorskiy Regional Court and the Moscow City Court, sitting in the appeals, endorsed this interpretation (see paragraphs 14, 25, 33 and 42 above).

111. The Court would emphasise that the applicants' arguments concerning the adverse impact of imprisonment in a remote penal facility on their family and social ties were dismissed by the domestic courts as altogether irrelevant. This, in the Court's view, weakens the Government's

argument that the domestic law provided for an opportunity to rely on an alleged violation of the right to respect for private and family life as grounds for transfer to another facility, and that such an alleged violation could be regarded as “other exceptional circumstances” within the meaning of Article 81 § 2 of the CES (see paragraph 74 above). In any event, nothing in the Government’s submissions suggests that in Russia the judges are required, either by the CCP or by the CES, to look into a complainant’s arguments pertaining to Article 8 of the Convention and to apply the “necessity” and “proportionality” test (see, *mutatis mutandis*, *Roman Zakharov v. Russia* [GC], no. 47143/06, § 262, ECHR 2015). The Court thus considers that the Sovetskiy District Court of Vladivostok and the Zamoskvoretskiy District Court of Moscow failed to carry out a balancing exercise in order to conduct a genuine review of the proportionality of the impugned interference in the light of the criteria established by the Court’s case-law under Article 8 of the Convention.

112. Furthermore, the Court notes that the Zamoskvoretskiy District Court of Moscow used nearly identical wording to dismiss over the course of three years three independently lodged complaints in rejecting the applicants’ arguments pertaining to their ability to maintain family ties “because the possibility of receiving visits is governed by the norms of the CES and is unrelated to the location of a penal facility”. In the light of the similarities between this stereotyped formula and the wording used by the FSIN in its comments on Mr Yeliashvili’s statement of claims (see paragraph 31 above), the Court considers that the Zamoskvoretskiy District Court limited itself to a very superficial examination of the case having ignored the test of proportionality.

113. The Court would reiterate in this connection 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 (see *Khoroshenko*, cited above, § 142). Moreover, it has already noted clear support in contemporary European and international law for the principle that all prisoners be offered the possibility of rehabilitation (see *Vinter and Others*, cited above, § 114). The State’s obligation to promote a prisoner’s contacts with the outside world with a view to eventual rehabilitation is reflected in Rule 24.5 of the European Prison Rules and in paragraph 51 of the CPT Standards (see paragraphs 58-59 above). Receiving visits from family and friends during imprisonment is an effective means of ensuring such rehabilitation (see paragraph 88 above). The Court is mindful that the State authorities charged with geographic distribution of prisoners would inevitably face various difficulties when performing such a complex task. Nevertheless, as the Court repeatedly stressed, it is incumbent on the Government to organise its penal system in such a way that it ensures respect for the dignity of detainees, regardless of



any financial or logistical difficulties (see *Ananyev and Others*, cited above, § 229).

114. The Court further observes that the Constitutional Court of Russia has repeatedly dismissed as inadmissible allegations of unconstitutionality of Articles 73 §§ 2 and 4 and 81 of the CES, on the grounds that the FSIN are vested with powers to allocate a prisoner as they see fit. In its relevant Rulings (see paragraphs 54-56 above), when listing considerations to be taken into account in the context of geographical distribution of prisoners, the Constitutional Court attached a preponderant value to the nature of the crime committed, as opposed to an individual's personal situation. This approach appears to be in line with the Constitutional Court's own doctrine of "presumption of awareness of the consequences" (see Ruling No. 162-O-O in paragraph 53 above) relied on by the Government (see paragraph 75 above). Considering the paramount role of the rulings of the Constitutional Court of Russia in the domestic legal system, the strong stance that the latter adopted in respect of Articles 73 and 81 of the CES is indicative of the fact that the prospects for successful challenge of the FSIN's decisions in the field of geographic distribution of prisoners before a court of general jurisdiction are poor.

115. The Court thus concludes that the interpretation of Article 73 §§ 2 and 4 of the CES read in conjunction with Article 81 of that Code by the domestic courts deprived the applicants of a realistic opportunity to subject their arguments pertaining to the rights guaranteed by Article 8 of the Convention against the FSIN's discretionary decisions to a genuine review of their proportionality to a legitimate aim.

( $\delta$ ) *Conclusion*

116. In view of the above, the Court concludes that the Russian law contains no requirement obliging the FSIN to consider, before departing from the general distribution rule, the possible implications that the penal facility's geographical location may have on the family life of prisoners and their relatives, that it does not provide for a realistic opportunity to transfer a prisoner to another penal facility on grounds pertaining to the right to respect for family life, and that it does not enable an individual to obtain a judicial review of the proportionality of the FSIN's decision to his or her vested interest in maintaining family and social ties.

117. In the light of the foregoing, the Court finds that the Russian domestic legal system did not afford adequate legal protection against possible abuses in the field of geographical distribution of prisoners. The applicants were deprived of the minimum degree of protection to which they were entitled under the rule of law in a democratic society (see, *mutatis mutandis*, *Heino v. Finland*, no. 56720/09, § 46, 15 February 2011).

118. The Court accordingly concludes that Articles 73 §§ 2 and 4 and 81 of the CES do not satisfy the "quality of law" requirement. It follows that

the interference with the applicants' right to respect for family life was not "in accordance with the law" within the meaning of Article 8 § 2 of the Convention. Consequently, there has been a violation of Article 8 of the Convention in respect of each applicant.

119. Having regard to the foregoing conclusion, the Court does not consider it necessary to examine whether the other requirements of paragraph 2 of Article 8 of the Convention were complied with in the present case.

### III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

120. The applicants did not allege a lack of effective domestic remedies in respect of their complaint under Article 8 of the Convention. The Court decided of its own motion to examine this question under Article 13 in the present case (see, for a similar approach, *Burdov v. Russia (no. 2)*, no. 33509/04, § 89, ECHR 2009), and requested the parties in applications nos. 35090/09, 35845/11, and 45694/13 to address the issue of availability of effective domestic remedies. Article 13 of the Convention provides as follows:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

121. The Government asserted that the Russian legal system provided for an effective remedy in respect of the applicants' grievances under Article 8 of the Convention. They referred to Chapter 25 of the CCP containing the mechanism for challenging State and municipal authorities' decisions before the courts. The Government stated that a final domestic decision in the context of such proceedings would be "an appellate (cassation appellate) judgment of the second-instance court, where citizens ha[d] a right to apply if they disagreed with the findings of the first-instance court".

122. In view of its findings above concerning Article 8 of the Convention, the Court considers that there was an "arguable complaint", and that Article 13 of the Convention thus applies, and the complaint under Article 13 is admissible. However, in the absence of the applicants' express complaint under Article 13 of the Convention, there is no need to give a separate ruling regarding Article 13 of the Convention.

#### IV. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION IN RESPECT OF MR PALILOV

123. Mr Palilov complained under Article 6 § 1 of the Convention that in the course of the proceedings that ended on 4 June 2014 the domestic courts at two levels of jurisdiction had examined his complaint about the actions of the FSIN in his absence. Article 6 § 1 of the Convention reads, in so far as relevant, as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair and public ... hearing ... by [a] ... tribunal ...”

124. The Government contested that argument. They asserted that Mr Palilov’s personal attendance of the court hearings had not been necessary considering the nature of the dispute as it had been a question of law, not of fact. In their submission “neither ‘personal experience’, nor ‘the applicant’s behaviour’ nor his ‘lifestyle’ had any decisive meaning for the examination of the present civil case”.

125. Mr Palilov claimed that, first, his personal experience had been salient to the examination of his claims and, second, that the domestic courts had failed to consider alternative means of securing his effective participation in the proceedings, such as, for example, videoconference. He maintained that the domestic courts had deprived him of the opportunity to present his civil case effectively.

##### **A. Admissibility**

126. The Court notes this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

##### **B. Merits**

127. The Court has recently had an opportunity to analyse in detail the specificities of the Russian legal system in connection with attendance at a court hearing by an incarcerated litigant (see *Yevdokimov and Others v. Russia*, nos. 27236/05 and 10 others, 16 February 2016). In that case it established a twofold test to assess whether an incarcerated applicant’s absence from civil court hearings was compatible with the requirements of Article 6 of the Convention: the Court must first examine the manner in which the domestic courts assessed the question whether the nature of the dispute required the applicant’s personal presence; secondly, it must determine whether the domestic courts put in place any procedural

arrangements aiming at guaranteeing his effective participation in the proceedings (*ibid.*, § 48).

128. Turning to the circumstances of Mr Palilov's case, the Court observes that the Zamoskvoretskiy District Court of Moscow, when dismissing Mr Palilov's request to appear before it, found it sufficient to note that the claimant was serving a custodial sentence (see paragraph 40 above). The Moscow City Court, in its turn, was even more succinct (see paragraph 42 above). In such circumstances, the Court considers that the domestic courts failed to provide specific reasons why the absence of the party from the hearing would not be prejudicial for the fairness of the proceedings as a whole and to examine all the arguments for and against holding hearings in the absence of one of the parties, thus building on the concrete reasons for and against the litigant's presence, interpreted in the light of the Convention requirements and all relevant factors, such as the nature of the dispute and the civil rights concerned (*ibid.*, § 36).

129. Furthermore, the Court does not accept the Government's assertion that Mr Palilov's claim pertaining to the lack of opportunity to maintain family and social ties during imprisonment was not based on his personal experience. Accordingly, the Court considers that only by testifying in person could Mr Palilov substantiate his claims and answer the judges' questions, if any (*ibid.*, 42). However, the domestic courts did not consider any procedural arrangements for securing his effective participation in the proceedings.

130. It follows that (i) by failing to properly assess the nature of the civil claims brought by the Mr Palilov with a view to deciding whether his presence was indispensable, and (ii) by failing to consider appropriate procedural arrangements enabling him to be heard, the domestic courts deprived Mr Palilov of the opportunity to present his case effectively and failed to meet their obligation to ensure respect for the principle of a fair trial enshrined in Article 6 of the Convention (*ibid.*, § 52).

131. There has therefore been a violation of Article 6 § 1 of the Convention in respect of Mr Palilov.

## V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

132. 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

133. Ms Polyakova claimed 46,357.80 Russian roubles (RUB) (approximately 652 euros (EUR)), the cost of the airplane and railway tickets for the applicant's and her minor son's trips to the place of Mr R.'s detention in 2009-10, in respect of pecuniary damage, as well as EUR 5,000 in respect of non-pecuniary damage. The Government submitted that the applicant had "incurred pecuniary expenses entirely in connection with the restrictions which resulted from her cohabitant's criminal activity" and as such these could not be claimed in the course of the proceedings before the Court. They invited the Court to assess the amount to be awarded, if appropriate, under the head of non-pecuniary damage. Noting that the applicant submitted relevant proof of the expenses incurred, and that there is a causal link between the nature of the violation of Article 8 of the Convention found and the expenses incurred by the applicant on her own behalf and that of her minor son, the Court considers it appropriate to award Ms Polyakova EUR 652 in respect of pecuniary damage. Observing that the applicant must have suffered non-pecuniary damage on account of the breach of her right to respect for family life which cannot be compensated for by a mere finding of a violation, it also awards her EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

134. Referring to the case of *Neshkov and Others v. Bulgaria*, nos. 36925/10 and 5 others, § 292, 27 January 2015), Ms Kibalo and her daughters invited the Court to order the transfer of Mr Kh. to a strict-regime penal facility in the Chechen Republic or in the closest constituent entity of the Russian Federation. They further asked the Court to award them just satisfaction in respect of non-pecuniary damage, leaving the issue of the amount to be awarded at the Court's discretion. The Government suggested that, were the Court to find a violation of the applicants' rights, the amount of the award should correspond to the nature of the violation in question. As regards the applicants' request to order Mr Kh.'s transfer to another facility, which in essence falls under Article 46 of the Convention, the Court reiterates that its judgments are essentially declaratory in nature and that, in general, it is primarily for the State concerned to choose the means to be used in its domestic legal order in order to discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Assanidze v. Georgia* [GC], no. 71503/01, § 202, ECHR 2004-II). Accordingly, the Court does not deem it necessary to indicate any individual measures for the execution of this judgment. Noting that the applicants must have suffered non-pecuniary damage on account of the breach of their right to respect for family life which cannot be compensated for by a mere finding of a violation, it awards Ms Kibalo and her daughters

EUR 6,000 jointly in respect of non-pecuniary damage, plus any tax that may be chargeable.

135. Mr Yeliashvili claimed EUR 20,000 in respect of non-pecuniary damage. The Government commented that Article 41 of the Convention should be applied in accordance with the Court's case-law. Noting that the applicant must have suffered non-pecuniary damage on account of the breach of his right to respect for family life which cannot be compensated for by a mere finding of a violation, the Court awards Mr Yeliashvili EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

136. Mr Palilov claimed EUR 30,000 in respect of non-pecuniary damage. The Government considered the amount claimed to be excessive. Having regard to the nature of the violations found in respect of the applicant, and noting that he must have suffered non-pecuniary damage which cannot be compensated for by mere findings of violations, the Court awards Mr Palilov EUR 7,800 in respect of non-pecuniary damage, plus any tax that may be chargeable.

## **B. Costs and expenses**

137. 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.

138. Ms Polyakova claimed RUB 5,000 (approximately EUR 70) for costs and expenses incurred before the Court. The Government admitted that the claims had been supported by relevant evidence and had not been excessive. Having regard to the documents submitted by the applicant in support of her claims and the above criteria, the Court awards Ms Polyakova EUR 70, plus any tax that may be chargeable to the applicant, for costs and expenses incurred before it.

139. Ms Natalya Kibalo and her daughters claimed EUR 2,150 and 2,542.47 Pounds Sterling in respect of costs and expenses incurred before the Court, requesting that the payment in pounds sterling be made to their representatives' account. In support of their claims, they presented itemised invoices. The Government submitted that there had been no proof that the applicants had actually incurred the expenses claimed; in any event, the amount claimed was excessive. Having regard to the documents submitted by the applicant in support of his claims and the above criteria, the Court awards Ms Natalya Kibalo and her daughters EUR 1,500, plus any tax that may be chargeable to the applicants, to be paid to the representatives' bank account.

140. Mr Yeliashvili claimed EUR 1,980 to be paid to his representative's bank account in respect of costs and expenses incurred

before the Court corresponding to twenty-four hours' work on the part of his representative plus administrative expenses. An itemised schedule of these costs was submitted. The Government did not comment. Having regard to the documents submitted by the applicant in support of his claims and the above criteria, and bearing in mind that the applicant was granted EUR 850 in legal aid for his representation before it, the Court considers it reasonable to award the sum of EUR 650, plus any tax that may be chargeable to the applicant, to cover costs and expenses for the proceedings before it to be paid to the representative's bank account.

141. Mr Palilov claimed EUR 50 in respect of fees that he had incurred on his own and EUR 3,050 in respect of his representative's fees corresponding to twenty-five hours' work on the part of his representative plus administrative expenses, to be paid directly to the representative's bank account. An itemised schedule of these costs was submitted. The Government noted that the representative had represented the applicant throughout only a part of the proceedings before the Court and suggested that the amount requested should be decreased. Noting that Mr Markov submitted observations on behalf of the applicant, having regard to the documents submitted by the applicant in support of his claims and the above criteria, and bearing in mind that the applicant was granted EUR 850 in legal aid for his representation before it, the Court considers it reasonable to award the sum of EUR 650, plus any tax that may be chargeable to the applicant, to cover costs and expenses for the proceedings before it to be paid to the representative's bank account.

### **C. Default interest**

142. 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. *Decides* to join the applications;
2. *Declares* the applications admissible;
3. *Holds* that there has been a violation of Article 8 of the Convention in respect of each applicant;

4. *Holds* that it is not necessary to examine separately the issue under Article 13 of the Convention taken in conjunction with Article 8 of the Convention;
5. *Holds* that there has been a violation of Article 6 § 1 of the Convention in respect of Mr Palilov;
6. *Holds*
  - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
    - (i) in respect of pecuniary damage:  
EUR 652 (six hundred and fifty-two euros), plus any tax that may be chargeable, to Ms Polyakova;
    - (ii) in respect of non-pecuniary damage:  
EUR 5,000 (five thousand euros), plus any tax that may be chargeable, to Ms Polyakova;  
EUR 6,000 (six thousand euros), plus any tax that may be chargeable, to Ms Kibalo and her daughters, and to Mr Yeliashvili, respectively;  
EUR 7,800 (seven thousand eight hundred euros), plus any tax that may be chargeable, to Mr Palilov;
    - (iii) in respect of costs and expenses:  
EUR 70 (seventy euros), plus any tax that may be chargeable to the applicant, to Ms Polyakova;  
EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicants, to Ms Kibalo and her daughters, to be paid to the bank account of their representatives;  
EUR 650 (six hundred and fifty euros), plus any tax that may be chargeable to the applicants, to Mr Yeliashvili and Mr Palilov, respectively, to be paid to the bank accounts of their respective representatives;
  - (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;
7. *Dismisses* the remainder of the applicants' claim for just satisfaction, including the request for individual measures brought by Ms Natalya Kibalo and her daughters.



Done in English, and notified in writing on 7 March 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips  
Registrar

Helena Jäderblom  
President

**APPENDIX**

No.	Application no.	Application name
1.	35090/09	Polyakova v. Russia
2.	35845/11	Kibalo v. Russia
3.	45694/13	Yeliashvili v. Russia
4.	59747/14	Palilov v. Russia