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La Corte EDU sulle restrizioni del diritto di visita ai detenuti
(CEDU, sez. III, sent. 29 marzo 2022, ric. nn. 7613/18 e 12222/18)

La Corte EDU ha deciso il ricorso presentato da due cittadini estoni, i quali hanno lamentato la violazione degli articoli 8 e 14 della Convenzione, poiché durante il periodo della detenzione in custodia cautelare è stato limitato loro il diritto alle visite familiari a lungo termine in misura maggiore rispetto ai diritti delle persone condannate con pena detentiva.
Per il governo la differenza di trattamento tra detenuti in custodia cautelare e condannati, sotto il profilo della loro capacità di ricevere visite, si collegava alle diverse situazioni e alle peculiari esigenze procedimentali. La Corte EDU, invece, ha sin da subito osservato come i ricorrenti si trovassero in una situazione analoga a quella dei condannati e che, per conseguenza, l'art. 14 CEDU dovesse applicarsi al caso di specie, in combinato disposto con l'art. 8. Tanto premesso, il giudice di Strasburgo ha valutato poi se la restrizione fosse giustificata da particolari circostanze. A tal riguardo, ha ribadito che una disparità di trattamento è discriminatoria quando non sia fondata su oggettive e ragionevoli giustificazioni, non persegua uno scopo legittimo e se non esista un ragionevole rapporto di proporzionalità tra i mezzi impiegati e le finalità da perseguire. Movendo da questa considerazione, la Corte ha analizzato se le motivazioni addotte dai giudici nazionali fossero ragionevoli e tali da giustificare l'applicazione di siffatte restrizioni. E se, per un verso, essa ha riconosciuto che limitazioni ai diritti di contatto, compresi gli incontri con i familiari, durante la custodia cautelare possano, in quanto tali, servire al legittimo scopo di garantire un'indagine penale senza ostacoli; per altro verso, la Corte ha indagato sulla effettiva esistenza di un ragionevole rapporto di proporzionalità. Sotto tale aspetto ha ritenuto che, sebbene il divieto applicato fosse plausibile – date le circostanze del caso –, l'estensione dello stesso dopo la progressiva rimozione delle altre restrizioni alle comunicazioni, compresa quella con le persone detenute nel contesto dello stesso procedimento penale non fosse ragionevolmente giustificata. E per conseguenza che c'è stata una violazione dell'articolo 14 in combinato disposto con l'articolo 8 della Convenzione. La medesima conclusione ha riguardato anche la posizione del secondo ricorrente, rispetto alla quale è stata analogamente e altresì evidenziata la carenza del quadro normativo nazionale.

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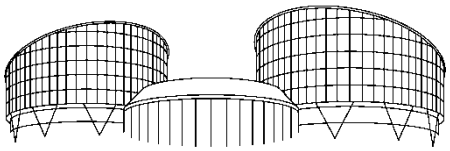

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF XXX v. ESTONIA
(Applications nos. 7613/18 and 12222/18)

JUDGMENT
STRASBOURG
29 March 2022

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXX v. Estonia,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:
Georges Ravarani, *President,*
Georgios A. Serghides,
Darian Pavli,
Andreas Zünd,
Frédéric Krenc,
Mikhail Lobov, *judges,*
Meeli Kaur, ad hoc *judge,*
Olga Chernishova, *Deputy Section Registrar*,
Having regard to:
the applications (nos. 7613/18 and 12222/18) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two XXX nationals, Mr XXX and Mr XXX ("the applicants"), on 31 January 2018 and on 5 March 2018 respectively;
the decision of the President of the Section to appoint Ms Meeli Kaur to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 (a) of the Rules of Court), Mr Peeter Roosma, the judge elected in respect of Estonia, having withdrawn from sitting in the case (Rule 28 § 3);
the decision to give notice of the complaints under Article 14 in conjunction with Article 8 of the Convention to the Estonian Government ("the Government");
the parties' observations;
Having deliberated in private on 8 March 2022,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns a statutory ban on remand prisoners receiving long-term family visits, despite such visits being generally authorised for convicted prisoners.

THE FACTS

2. The applicants Mr XXX (hereinafter "the first applicant") and Mr XXX (hereinafter "the second applicant") were born in XXX and XXX respectively and live in XXX and XXX respectively. The applicants were represented by Mr M. Põbo, a lawyer practising in Pärnu, and Mr A. Tubin, a lawyer practising in Tartu, respectively.
3. The Government were represented by their Agent, Ms M. Kuurberg, of the Ministry of Foreign Affairs.
4. The facts of the case, as submitted by the parties, may be summarised as follows.
I. THE FACTS CONCERNING THE FIRST APPLICANT
A. Remand in custody and the reasons for applying the measure
5. The first applicant was suspected of extortion and of being a member of a criminal organisation. He was remanded in custody on 16 April 2014. The Harju County Court found that there was a reasonable suspicion that he had committed the above-mentioned offences and that, if released, he might continue committing criminal offences. The court also noted that the applicant's detention was in the interests of elucidating all the relevant circumstances of the criminal case and ensuring its proper conduct. The Tallinn Court of Appeal, referring, *inter alia*, to the applicant's previous criminal record, upheld that decision. The Tallinn Court of Appeal added that although the applicant had a cohabiting partner, this had hitherto not prevented him from engaging in criminal activities and that the court was not convinced that it would do so in the future if the applicant was released. The Supreme Court refused to examine the appeal on points of law.
6. On 22 August 2014 the Harju County Court dismissed an application by the first applicant to substitute the holding in custody with electronic monitoring, finding that electronic monitoring would not enable the monitoring of the first applicant's activities, so it would not prevent the risk of him committing new criminal offences. On 27 October 2014 the same court, relying on essentially the same reasoning, also dismissed the applicant's subsequent request for replacing the detention with electronic monitoring.
7. On 30 September 2014 the Harju County Court extended the term of holding the first applicant in custody, finding that sufficient grounds existed to believe that, being a member of a criminal organisation, he had continued his membership of that organisation even after becoming subject to criminal proceedings. The court noted that committing offences against the administration of justice (influencing witnesses to give false statements) could also not be ruled out considering the first applicant's previous criminal record of violent crimes, his attitude and his position in the criminal hierarchy.
8. On 30 October 2014, 28 November 2014, 19 December 2014 and 19 January 2015 the Harju County Court, in the context of regular assessments of the continued justification for detaining the applicant, held that holding the applicant in custody was still justified on the same grounds as before.

9. On 19 March 2015 the Harju County Court committed the first applicant to trial. It dismissed his application to substitute the detention with electronic monitoring, on the grounds of preventing the applicant from committing further criminal offences. The Tallinn Court of Appeal upheld the ruling. The Supreme Court refused to examine an appeal on points of law.
10. The Harju County Court, relying on the same grounds as above, confirmed the continued justification for the first applicant's detention in decisions of 18 September 2015 and 14 March 2016. The latter decision was upheld by the Tallinn Court of Appeal and by the Supreme Court.
11. On 15 August 2016 the Harju County Court again committed the first applicant to trial (now in the context of plea bargain proceedings) and maintained his remand in custody.
12. On 7 September 2016 the Harju County Court convicted him of being a member of a criminal organisation and of repeated extortion in a group and sentenced him to imprisonment. The judgment took effect on 1 November 2016 and the first applicant became entitled to long-term visits with his cohabiting partner under the Imprisonment Act (*vangistusseadus*).
13. The domestic courts admitted in several of the above-mentioned decisions that the applicant's detention interfered with his human rights, mostly referring to his right to liberty. On none of the occasions of assessing the grounds for the first applicant's continued detention did the domestic courts assess specifically the impact that the pre-trial detention would have on the applicant's private and family life owing to his not being able to have long-term visits.
B. Visits and communication while in detention on remand
14. Article 1431 of the Code of Criminal Procedure (*kriminaalmenetluse seadustik*), titled "Additional restrictions applied to persons whose personal liberty has been restricted" (*vabaduspiiranguga isikule kohaldatavad lisapiirangud*) authorises the prosecutor's office to restrict or totally revoke, *inter alia*, the suspect's or the accused's right to short or long-term visits and the right to correspondence or use of the telephone in the interests of the conduct of the criminal proceedings (see paragraph 53 below, hereinafter referred to as "additional restrictions").
15. On 16 April 2014 the Office of the Prosecutor General, relying on Article 1431 of the Code of Criminal Procedure, ordered the complete isolation of the first applicant from other remand prisoners and persons serving a sentence, and the restriction of his right to visits and prison leave and the right to correspondence and the use of the telephone. The prosecutor's office found that without imposing complete control over the first applicant's contacts it would have been impossible to effectively prevent his communication with persons who were either members of the same criminal organisation or had access to important evidence relevant to the investigation of the case. The prosecutor's office also found that even when communicating with his family, the first applicant could pass on information and threats that could influence persons to conceal the truth about the criminal offences.
16. On 9 September 2014 the Office of the Prosecutor General partly lifted the additional restrictions, granting an application by the first applicant, to enable short-term visits, correspondence and telephone calls with his cohabiting partner, mother and brother. The prosecutor's office noted that there were grounds to believe that the first applicant's communication with the above-mentioned persons would not undermine the criminal investigation. The prosecutor's office rejected an application for the authorisation of long-term

visits, noting that there was a restriction which emanated directly from the Imprisonment Act, and hence the prosecutor's office could not decide on that matter.

17. On 24 September 2014 the Office of the Prosecutor General lifted the ban on the applicant's communication with other remand prisoners and convicted prisoners, save for persons detained in the context of the same criminal proceedings.

18. On 5 November 2014 the Office of the Prosecutor General lifted the additional restrictions on contact and communication completely, noting that there were grounds to believe that the first applicant's communication with other persons would not hinder the criminal proceedings.

19. From 9 September 2014 to 1 November 2016 the first applicant was allowed fifty-one short-term visits, thirty-two of which were with his cohabiting partner, and eight with his brother. Short-term visits in Tallinn Prison were for a duration of seventy minutes.

20. In addition, he was able to make telephone calls, including to his cohabitant, mother and brother. He made 351 telephone calls.

21. He also had the opportunity for correspondence. He communicated by letter with his cohabiting partner, mother and brother. He received nineteen parcels, nine of which were from his cohabiting partner and two from his brother.

C. Judicial review of the ban on long-term visits

22. After 23 February 2015 the first applicant applied to Tallinn Prison on several occasions to be enabled long-term visits with his cohabiting partner. The prison refused, relying on section 94(5) of the Imprisonment Act. He lodged a complaint against the refusal with the Tallinn Administrative Court.

23. On 18 March 2016 the Tallinn Administrative Court dismissed his complaint. The court referred to section 94(5) of the Imprisonment Act and found that – in the particular circumstances of the first applicant's case (given his personality, the charges against him and the state of the proceedings) – it could not be considered unconstitutional. The court referred to the Supreme Court's judgment of 4 April 2011 in case no. 3-4-1-9-10, in which the court had held that the statutory restriction in question had been established with a view to preventing absconding from criminal proceedings and committing further offences, including destroying, altering and falsifying evidence and influencing witnesses. The first applicant appealed against that judgment.

24. On 30 June 2016 the Tallinn Court of Appeal overturned the Tallinn Administrative Court's judgment; refused to apply section 94(5) of the Imprisonment Act as unconstitutional, submitting the issue of constitutionality to the Supreme Court for review; and granted the first applicant's complaint in part. The court referred, *inter alia*, to the fact that the Office of the Prosecutor General had already some time ago lifted the restrictions on contact and communication that had previously been imposed on the first applicant.

25. On 16 November 2016 in case no. 3-4-1-2-16 (which concerned one other person besides the first applicant), the Supreme Court refused to declare section 94(5) of the Imprisonment Act unconstitutional. The Supreme Court stressed that in the context of the given proceedings it could only assess the constitutionality of the provision in question in respect of the specific detainees and in the light of their specific circumstances. The Supreme Court came to the conclusion that the prohibition on having long-term visits had been proportionate with respect to the first applicant. It noted that, as they were unsupervised, long-term visits between remand prisoners and their family

members could entail the risk that the latter would be convinced to contribute to the manipulation of witnesses and victims and to the destruction of evidence. With respect to the first applicant, the court – considering in particular that the criminal organisation in question had organised support for the next of kin of its members – found that the risk of obstructing the administration of justice could not be ruled out by the mere fact that his cohabiting partner was neither a witness nor a co-accused in the criminal proceedings and did not have any other connection to the criminal activities as far as the court was aware. The court, moreover, emphasised that threats and violence could be considered a characteristic *modus operandi* of the members of the criminal organisation, whose activities also included extortion, and that there was a probable risk of it being used to unduly influence criminal proceedings. The court also referred to the fact that it would not be legally possible to compel the first applicant's next of kin to testify to the obstruction of the proceedings.

26. Although the danger of negatively influencing the criminal proceedings lessened as the proceedings progressed, the risk could not be ruled out, as new witnesses could also be heard (or old witnesses be reheard) at the appellate stage of the proceedings or the case could be remitted to a lower-instance court.

27. The Supreme Court did not agree with the statement that the domestic law provided no margin to weigh competing interests of guaranteeing the effectiveness of the criminal proceedings, on the one hand, and the protection of the detainee's family life, on the other hand. That weighing up had taken place at the stage when it had been decided to remand the first applicant in custody and later when the continued justification for detention had been reviewed. Given the purpose of the detention and that of the prohibition of long-term visits, that weighing up had to take place in the context of the criminal proceedings. The prisons did not have the competence to assess the risk that each remand prisoner could pose to the ongoing criminal proceedings.

28. As regards the remand prisoners being treated differently from the convicted prisoners, the Supreme Court found this difference in treatment to be justified given that latter could no longer undermine the ongoing criminal proceedings in their respect.

29. On 1 August 2017 the Supreme Court overturned the Tallinn Court of Appeal's judgment of 30 June 2016 and upheld the Tallinn Administrative Court's judgment of 18 March 2016.

II. THE FACTS CONCERNING THE SECOND APPLICANT

A. Remand in custody and the reasons for applying the measure

30. The second applicant was suspected of handling a large quantity of narcotic drugs. He was remanded in custody on 14 December 2011. The Tartu County Court found that, given his numerous earlier criminal convictions in Estonia and in other countries, the risk of committing new criminal offences was high and that stopping his criminal conduct was possible only by remanding him in custody.

31. On 11 June 2012 the Tartu County Court extended the term of holding him in custody, finding that there was a risk that he would continue to commit criminal offences, namely drug-related offences, and a risk of his absconding. The Tartu Court of Appeal upheld the ruling, adding that the need to bring the second applicant to trial and to prevent the commission of further offences outweighed the interference with his right to private and family life. The Tartu Court of Appeal

noted that the second applicant's family life had suffered because of his own previous criminal record and drug use.

32. On 17 July 2012 the Tartu County Court committed the second applicant for trial and dismissed his application to replace detention with electronic monitoring. The court refused to lift the additional restrictions on contact and communication (see paragraph 36 below) with his family members, reasoning that until some additional witnesses had been cross-examined there existed a risk of the second applicant attempting to influence them. The second applicant appealed against the decision to maintain the additional restrictions in force (see paragraph 37 below).

33. On 4 December 2012 the Tartu County Court considered that his continued detention was justified for the same reasons as before and dismissed an application to replace the detention with electronic monitoring. The court noted that the second applicant's criminal record indicated that having a family had not encouraged him to lead a law-abiding life. The court admitted that being detained interfered with his family life and right to liberty but considered it justified in the given circumstances.

34. On 10 May 2013 the Tartu County Court convicted him of unlawful handling of large quantities of narcotic drugs and sentenced him to imprisonment. The court did not lift the pre-trial detention.

35. On 16 December 2013 the Tartu Court of Appeal upheld the first-instance judgment, but lifted all the restrictions on communication (see paragraph 38 below). On 6 June 2014 the Supreme Court dismissed an appeal by the second applicant on points of law and his conviction entered into force, following which he became entitled to apply for long-term visits under the Imprisonment Act.

B. Visits and communication while in detention on remand

36. On 14 December 2011, relying on §1431 of the Code of Criminal Procedure (see paragraphs 14 above and 53 below) the prosecutor's office prohibited the second applicant's short-term and long-term visits, as well as the right to correspondence and the use of the telephone between him and his next of kin. The prosecutor's office found that the additional restrictions were necessary to prevent him from spreading information about the course of the criminal proceedings and influencing potential witnesses. On 17 July 2012 the Tartu County Court upheld the finding of the prosecutor's office.

37. On 22 August 2012, when deciding on the appeal against the decision of the Tartu County Court of 17 July 2012 (see paragraph 32 above), the Tartu Court of Appeal allowed the second applicant to correspond with his cohabiting partner, mother and children, to use the telephone, and to have short-term visits, reasoning that by this time the need for additional restrictions had significantly diminished.

38. By a judgment of 16 December 2013, the Tartu Court of Appeal lifted all the restrictions on communication, allowing him all visits, correspondence and the right to use the telephone. The court found that by that stage the objectives pursued by the initial restrictions had been achieved – the circle of persons either linked to the offences or having information about them had been identified and the direct examination of personal evidence in the proceedings had ended.

39. From 4 September 2012 to 6 June 2014 the second applicant was allowed short-term visits with his family on forty-six occasions. He was allowed short-term visits with his cohabiting partner on thirty-five occasions and with his daughter on eight occasions. He was able to communicate with his family by writing letters and making telephone calls, and he also received parcels from them.

40. The second applicant had a long-term meeting with his cohabiting partner on 23 September 2014.

C. Judicial review of the ban on long-term visits

41. On 15 April 2014 the second applicant applied to Tartu Prison to be authorised to have a long-term visit with his cohabiting partner. The prison refused, relying on section 94(5) of the Imprisonment Act. Referring to the right to family life and the prohibition of discrimination, the second applicant lodged a claim for the revocation of the refusal, the claim to order the prison to grant a right to long-term visits, and a claim for compensation.

42. On 18 May 2015 the Tartu Administrative Court, noting that in the meantime the applicant's conviction had entered into force and he had become entitled to long-term visits, granted his claim in part and ordered the prison to pay compensation in the amount of 500 euros. Both the prison and the second applicant appealed.

43. On 28 February 2017 the Tartu Court of Appeal dismissed the second applicant's appeal and allowed the prison's appeal. The court, referring, *inter alia*, to the Supreme Court's judgment in case no. 3-4-1-2-16 (see paragraph 25 above) found that in view of the circumstances of the case, section 94(5) of the Imprisonment Act, as applied to the specific circumstances of the second applicant and taking into account the severity of the charges against him, was in accordance with the Constitution. The applicant lodged an appeal on points of law.

44. On 31 October 2017 the Supreme Court in case no. 3-14-51567 upheld the judgment, finding that the ban had constituted a proportionate interference with the second applicant's right to family life in the specific circumstances of his case. The Supreme Court did not reach a separate conclusion with regard to the discrimination claim. The court noted that besides the need to avoid the suspect exerting undue influence on the criminal proceedings, the general need to prevent the further committing of criminal offences could also justify the restrictions on long-term visiting rights. In the case at hand, the prosecutor's office (when applying additional restrictions) and the courts (when assessing the need for the second applicant's continued detention) had referred to both of these aims. These elements had been assessed when remanding the applicant in custody as well as later during the proceedings. The Supreme Court found that although the interference with his family life had been intense in view of the long period of his detention in custody, this had been due to the nature of the criminal charges, their severity and his background of repeated convictions. The court added that in view of the nature of the charges, there had also been a plausible risk of undue influence on the criminal proceedings. Although the lifting of the additional restrictions imposed by the prosecutor's office had indicated that the risk of compromising the criminal proceedings had lessened, it had not ceased to exist (as the case could be remitted to lower-instance courts where it might again be necessary to directly assess evidence). The Supreme Court pointed out that the second applicant's status as a remand prisoner had ended less than a month after his application for a long-term visit had been dismissed. In its judgment the Supreme Court also noted, referring back to its judgment in case no. 3-4-1-2-16 (see paragraphs 25-27 above), that the proportionality of the interference with a person's family life was to be assessed already at the stage when deciding to remand the person in pre-trial detention.

45. One judge of the Supreme Court gave a dissenting opinion. He considered it relevant that on 16 December 2013 the Tartu Court of Appeal had lifted all the additional restrictions and the court

had thus considered that only the second applicant's detention as such had been justified. On the basis of that decision, the prohibition of long-term meetings had thus been disproportionate. The judge also noted that the majority had proceeded from a mistaken presumption that the courts had assessed the impact of the prohibition of long-term visits on remand prisoners' family life when deciding on the pre-trial detention and its continued justification.

III. LATER DEVELOPMENTS

46. On 11 June 2019 the Supreme Court *en banc* in a constitutional review case no. 5-18-8 (not related to the applicants in the present case) found that – in the particular circumstances of that case – the prohibition on having long-term visits with his next of kin constituted a disproportionate and thus unconstitutional interference with the given applicant's right to family life. In that case the Supreme Court, *inter alia*, stated that banning the remand prisoner to have contact with his four-and-half-year-old child (who was neither a victim nor a witness in the proceedings) was not proportionate to the aim of preventing the obstruction of criminal proceedings. In any event there were no reasonable grounds to find that the accused in that case would have attempted to obstruct the ongoing criminal proceedings. The Supreme Court stressed that the factual circumstances of the 2019 case were different from the circumstances that it had had to address in the judgment of 2016 in the case of the first applicant.

47. The Supreme Court declared section 94(5) of the Imprisonment Act unconstitutional and quashed it *ex nunc.* The Supreme Court nonetheless accorded retroactive effect to the judgment with respect to "the applicant in the case at hand as well as to persons who, at the time that this judgment takes effect have – following a procedure set out in law – challenged the refusal to grant them long-term visits or who have lodged a claim for damages caused by the refusal to grant them such visits".

48. The Supreme Court noted that it was already the fourth time that it had had to address the same question. It was therefore in the interests of preventing further similar applications and guaranteeing effective protection of fundamental rights, that it did not limit itself to the circumstances of the given case when analysing the constitutionality of the provision in question.

49. Departing from the approach taken by the Supreme Court in case no. 3-4-1-2-16 (see paragraph 27 above), the Supreme Court *en banc* found that the practical operation of section 94(5) of the Imprisonment Act in the context of deciding on someone's pre-trial detention – in so far as it did not permit the assessment of the prohibition of long-term visits separately from the assessment of (continued) justification for pre-trial detention – interfered disproportionately with the right to family life of some of the remand prisoners and was thus unconstitutional. According to the Supreme Court *en banc* there were grounds to believe that in the context of such assessments, the public interest in detaining the person in question would in practice always outweigh the restrictions on that person's right to family life.

50. On the basis of that decision the first and the second applicant submitted applications to reopen their cases. On 28 January 2020 the Supreme Court refused to accept the first applicant's application to reopen his case. In its summary refusal decision the Supreme Court relied, *inter alia*, on the provision of domestic law according to which the grounds invoked in support of reopening the case could not have affected the resolution of the case either against or in favour of the first applicant. On 9 June 2020 the Supreme Court refused to reopen the second applicant's case,

finding that the retroactive effect of judgment no. 5-18-8 did not apply to persons, such as the second applicant, who no longer had a case pending before a court at the time that the judgment at issue took effect (see also paragraph 47 above). The Supreme Court pointed out that it had previously found, referring to the second applicant's circumstances as an example, that in certain cases the application of section 94(5) of the Imprisonment Act might lead to a Constitution-compliant result.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW

A. Imprisonment Act

51. Section 25 of the Imprisonment Act, as in force at the relevant time, provided that convicted prisoners were allowed long-term visits (unsupervised visits of 24-72 hours at least every six months) and section 94 provided that long-term visits were not applied to remand prisoners:

Section 25: Long-term visits to prisoners

"(1) A prisoner shall be allowed to receive long-term visits from his or her spouse, father, mother, grandfather, grandmother, child, grandchild, adoptive parent, adoptive child, stepparent or foster parent, stepchild or foster child, brother or sister. Long-term visits from a cohabiting partner are allowed on the condition that they have common children or at least two years of cohabitation prior to the commencement of serving the sentence.

(11) Authorisation for long-term visits will be refused if:

1) the visits are not in compliance with the objectives of the execution of the imprisonment;

2) the visits may endanger security or order in the prison;

3) there is reason to doubt the reputation of the visitor; or

4) the visit may endanger the health and well-being of the visitor or the prisoner.

(2) A long-term visit means that a prisoner and a visitor are allowed to be together without constant supervision in prison premises designated for such purpose during a twenty-four hour period ... a prison service officer may prolong, in justified cases, the long-term visit to a period of up to three days ..."

Section 94: Visits received by remand prisoners

"(1) A remand prisoner is permitted to receive short-term visits of personal, legal or commercial interest in matters which the remand prisoner cannot conduct through third persons.

...

(3) A remand prisoner shall receive visits in the presence of a prison service officer who has the right to interrupt or immediately terminate the visit if that visit could damage the conduct of criminal proceedings.

...

(5) The long-term visits provided for in section 25 of this Act shall not be applied to remand prisoners."

B. Code of Criminal Procedure

52. Article 127 provides that when deciding to apply a preventive measure (for example detention, bail, or electronic monitoring), the following aspects have to be taken into account: the probability of absconding from criminal proceedings or from the execution of a court judgment; the risk of the continued commission of criminal offences, or the destruction, alteration or falsification of

evidence; the degree of the punishment; the personality of the suspect, accused or convicted offender; his or her state of health and marital status; and other circumstances relevant to the application of preventive measures.

53. Article 1431 concerns additional restrictions that could be imposed on persons whose personal liberty has been restricted. Article 1431 § 1 provides that if there is a sufficient reason to believe that a suspect or accused who is held in custody or is imprisoned or is serving detention may adversely affect the conduct of criminal proceedings by his or her actions, the prosecutor's office or court may restrict or totally revoke, *inter alia*, the suspect's or the accused's right to short or long-term visits and the right to correspondence or use of the telephone.

II. RELEVANT INTERNATIONAL MATERIALS

54. The relevant United Nations standards concerning the rights of detainees in pre-trial detention are described in *Varnas v. Lithuania* (no. 42615/06, §§ 71-72, 9 July 2013).

55. On 11 January 2006 the Committee of Ministers of the Council of Europe adopted Recommendation Rec(2006)2 to member States on the European Prison Rules. It was revised and amended by the Committee of Ministers on 1 July 2020. The relevant parts of the European Prison Rules read as follows:

"Part II Conditions of imprisonment

...

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.

...

Part VII Untried prisoners

Contact with the outside world

99. Unless there is a specific prohibition for a specified period by a judicial authority in an individual case, untried prisoners:

a. shall receive visits and be allowed to communicate with family and other persons in the same way as convicted prisoners;

b. may receive additional visits and have additional access to other forms of communication ..."

THE LAW

I. JOINDER OF THE APPLICATIONS

56. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. ALLEGED VIOLATION OF ARTICLE 14 IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

57. The applicants complained that during the period of their detention on remand their rights to long-term visits had been restricted to a greater extent than the rights of convicted persons serving their prison terms. They alleged a breach of Articles 8 and 14 of the Convention, the relevant parts of which provide:

Article 8

"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."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. The scope of the case

58. The Court notes that in his observations to the Court, after the respondent Government had been given notice of the application concerning the impossibility to have long-term visits during pre-trial detention, the first applicant complained that he had not been allowed to have long-term visits from his cohabiting partner even after he had been convicted.

59. The Government argued that this complaint was not raised in the first applicant's original application and that he had not exhausted domestic remedies with regard to it, as he had not lodged a relevant appeal on time in the domestic proceedings.

60. The Court reiterates that, as a general rule, it does not examine any new matters raised after the Government have been given notice of the application, unless the new matters are an elaboration on the applicant's original complaints to the Court (see *Khadija Ismayilova v. Azerbaijan* (no. 2), no. 30778/15, § 53, 27 February 2020). Because the applicant may subsequently elucidate or elaborate upon his or her initial submissions, the Court must take into account not only the application form but the entirety of his or her submissions in the course of the proceedings before it which may eliminate any initial omissions or obscurities (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 122 and 129, 20 March 2018).

61. In the present case the Court notes that the first applicant's new complaints are not an elaboration of his original complaints, on which the parties have commented, but constitute new matters which were not covered in the original application sent to the Government. The Court does not therefore find it appropriate to examine these complaints in the present context (see *Khadija Ismayilova,* cited above, § 54; and *Seleznev v. Russia*, no. 15591/03, § 56, 26 June 2008). The first applicant had the opportunity to lodge new applications in respect of any other complaints relating to the subsequent events in his case in accordance with the requirements set out in Rule 47 of the Rules of Court.

B. Admissibility

1. The parties' submissions

62. The Government, referring to the reasons addressed under the "merits" section, argued that the complaints of both applicants were manifestly ill-founded.

63. In addition, the Government submitted that the second applicant's complaint was either manifestly ill-founded or, alternatively, he had not suffered a significant disadvantage, given the fact that he had applied for a long-term visit two years and four months after he had been remanded in custody and only a couple of months before the end of his status as a prisoner on remand. The Government argued that the second applicant's conduct attested to the fact that he had not actually wished to have a long-term visit. Lastly, the Government contended that the second applicant's case was similar to *Nazarenko v. Latvia* (no. 76843/01, §§ 75-76, 1 February 2007).

64. The applicants disagreed with the Government's submissions.

65. In response to the Government's suggestion that he had not wished to have long-term visits, the second applicant alleged that he had initially asked for long-term visits orally, but had accepted the prison's explanation that long-term visits were not available to remand prisoners. It was only after he learned about the Court's judgment in *Varnas v. Lithuania* (no. 42615/06, 9 July 2013) that he lodged the first written application.

2. The Court's assessment

66. The Court finds that the first applicant's application 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.

67. Referring to the Government's argument concerning the second applicant, the Court notes that in *Nazarenko* (cited above), it found a complaint about a remand prisoner not being allowed long-term visits, lodged under Article 8, inadmissible as being manifestly ill-founded. In that case, that conclusion was reached on the basis that the applicant had lodged his request at a late stage of his pre-trial detention (that is to say, relatively shortly before he became entitled to such meetings as a convicted prisoner), and that he had in the meantime been granted short-term visits. In comparison, in *Varnas* (cited above), where the impossibility of a remand prisoner receiving conjugal visits was addressed under Article 8 in conjunction with Article 14 of the Convention, the Court found the complaint admissible despite the fact that the applicant had been granted such visits in between his two periods of pre-trial detention, and regardless of the fact that he had been entitled to such visits within approximately five months from the date of lodging the relevant requests (see *Varnas*, cited above, §§ 96 and 105).

68. Turning to the facts of the instant case, the Court finds that although the second applicant's pre-trial detention ended some two months after he had lodged the request for a long-term visit and he could, in practice, have such a visit within approximately five months after requesting it, the fact remains that until that moment he was treated differently from the convicted prisoners. In dismissing his request, the prison administration referred to section 94(5) of the Imprisonment Act. The Court further notes that as the application of Article 14 of the Convention does not presuppose a breach of any of the substantive provisions of the Convention or its Protocols (see *Varnas*, cited above, § 106), the matter of whether or not the second applicant's Article 8 right, in itself, was violated, is not relevant for the assessment of the admissibility of his current complaint of

discriminatory treatment. The Court finds that the substantive question of whether, in the particular circumstances of the second applicant's case and given the domestic courts' reasoning, there existed an objective and reasonable justification for treating him differently from convicted prisoners, should rather be addressed under the merits of the case.

69. Following the above reasoning, the Court concludes that the second applicant's complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor is there any other ground for declaring it inadmissible. It is therefore declared admissible.

C. Merits

1. The parties' submissions

(a) The applicants

70. The applicants maintained that there had been a violation of Article 8 in conjunction with Article 14 of the Convention in their respect.

71. They both essentially argued that after the additional restrictions imposed on them by the prosecutor's office had been lifted, the prohibition on having long-term visits had no longer been justified. Their respective cohabiting partners had not been suspects in the criminal cases against them. Both applicants contended that short-term visits had not served as a sufficient alternative.

(b) The Government

72. The Government argued that the detention of remand prisoners and convicted prisoners served different purposes. The different restrictions imposed on the remand prisoners, including the prohibition on having long-term visits, were justified by the overall aim of pre-trial detention, that is to say, the need to secure the conduct of criminal proceedings. Long-term visits, which were unsupervised, inherently posed a higher risk of compromising ongoing criminal proceedings (see paragraph 25 above).

73. The Government pointed out that, in contrast to the case of convicted prisoners, the legislator had been justified in enacting a regulation under which the decision concerning possible restrictions to be imposed at the pre-trial stage had to be taken in the context of criminal proceedings in respect of all remand prisoners, and not by the prison administration.

74. The Government further submitted that despite the wording of Article 1431 of the Code of Criminal Procedure – which referred to the possibility of the prosecutor's office applying restrictions to long-term visits – this provision did not presume that remand prisoners had a right to long-term visits, nor did it grant them such rights.

75. The interference with the applicants' family life, resulting from the prohibition of long-term visits, had already been assessed by the courts at the stage of imposing pre-trial detention and later, when reviewing its continued justification.

76. In addition, the domestic courts – in additional proceedings concerning the constitutionality of the statutory ban on long-term visits – had analysed the proportionality of the prohibition of long-term visits in the applicants' specific circumstances (see paragraphs 25-28 and 44 above). In that respect, the instant case was different from the ones in which the Court had previously found a violation.

77. In respect of the first applicant, the complete ban on communicating with his family members had lasted no more than four months and twenty-four days, following which the additional restrictions imposed by the prosecutor's office had been gradually lifted (see paragraphs 16-18

above). In respect of the second applicant, the additional restrictions had been first partly and then completely lifted (see paragraphs 37-38 above). Given the applicants' specific circumstances, the Supreme Court had found the prohibition of long-term visits to have been proportionate.

78. The Government argued that should the second applicant's complaint be considered admissible, the Court's assessment on the merits could only concern the period from 15 April 2014 (when he first applied for a long-term visit) until 26 June 2014 (when his conviction became final), that is two months and eleven days.

79. In respect of both applicants, the interference caused by the lack of long-term visits had been balanced by the other types of authorised communication, such as short-term visits, telephone calls, and the right to correspondence and to receive parcels.

80. The Government stressed that convicted prisoners could also be refused a long-term visit (see paragraph 51 above).

81. Lastly, the Government asserted that the Supreme Court's judgment in case no. 5-18-8 (see paragraph 46 above) confirmed that the prohibition of long-term visits had been proportionate in the applicants' circumstances.

2. The Court's assessment

(a) General principles and observations

82. The applicants complain of a violation of their Convention rights under Article 8 in conjunction with Article 14, in so far as the domestic regulation in force prevented them from having long-term visits with their cohabiting partners, as opposed to convicted prisoners to whom such visits were allowed.

83. The Court reiterates that Article 14 of the Convention protects individuals in similar situations from being treated differently without justification in the enjoyment of their Convention rights and freedoms. This provision has no independent existence, since it has effect solely in relation to the rights and freedoms safeguarded by the other substantive provisions of the Convention and its Protocols. However, the application of Article 14 does not presuppose a breach of one or more of such provisions, and to this extent it is autonomous. For Article 14 to become applicable, it suffices that the facts of a case fall within the ambit of another substantive provision of the Convention or its Protocols (see, for example, *Costel Gaciu v. Romania*, no. 39633/10, § 47, 23 June 2015).

84. The Court further notes that the general principles concerning the applicability of Article 8 in conjunction with Article 14 of the Convention, and the matter of remand prisoners having "other status" in the sense of Article 14 and being in an analogous position to that of convicted prisoners with regard to having family visits, have been extensively laid out in *Chaldayev v. Russia* (no. 33172/16, §§ 70-72, 28 May 2019); *Costel Gaciu* (cited above, §§ 49-50 and 52-55) and *Varnas* (cited above, §§ 108-114).

85. The Court has also had occasion to establish that more than half the Contracting States allow conjugal visits for prisoners (subject to a variety of different restrictions). However, whereas the Court has expressed its approval for the progress in several European countries towards conjugal visits, it has not so far interpreted the Convention as requiring Contracting States to make provision for such visits. Accordingly, this is an area in which the Contracting States enjoy a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention, with due regard to the needs and resources of the community and of individuals

(see *Costel Gaciu*, cited above, § 50, and *Dickson v. the United Kingdom* [GC], no. 44362/04, § 81, ECHR 2007-V).

86. Turning to the facts of the case at hand, the Court observes that there is no dispute between the parties about the applicability, as such, of Article 14 in conjunction with Article 8 of the Convention. The Court notes that the Government have argued that the detention of remand prisoners and convicted prisoners served different purposes and that thus they should be seen as different groups of persons. However, the Court observes that this argument seems to have been put forward mostly with a view to justifying the difference in treatment of remand prisoners and convicted persons as to their ability to receive conjugal visits. The Government have not asserted that the applicants as remand prisoners were not in a relevantly similar situation to convicted prisoners in terms of their right to family life and having access to long-term visits.

87. The Court therefore concludes that Article 14 of the Convention, in conjunction with Article 8, is applicable in the present case and that the applicants can claim to have been in a relevantly similar situation to convicted prisoners (see, among other authorities, *Chaldayev*, cited above, § 75).

88. It remains to be assessed whether the difference in treatment concerning long-term visits can be considered to have been justified in the particular circumstances of the case at hand.

89. The Court reiterates that a difference in treatment is discriminatory if it has no objective and reasonable justification, in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Contracting States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify different treatment. The scope of this margin will vary according to the circumstances, the subject matter and the background. The Court has accepted that, in principle, a wide margin of appreciation applies in questions of prisoners and penal policy (see *Costel Gaciu*, cited above, § 56, and *Varnas*, cited above, § 115).

90. The Court also emphasises that, in cases arising from individual petitions, the Court's task is not to review the relevant legislation in the abstract. Instead, it must confine itself, as far as possible, to examining the issues raised by the case before it (see *Ēcis v. Latvia*, no. 12879/09, § 43, 10 January 2019).

91. The Court will therefore examine the manner in which the domestic legislation was applied to the applicants in their particular circumstances.

92. In that connection the Court observes that the case at hand differs from the previous cases where it has had to address a similar subject matter (see *Costel Gaciu*, cited above; *Varnas*, cited above; and *Chaldayev*, cited above). Although in each of those cases the difference in treatment between the remand prisoners and convicted prisoners arose from the relevant domestic law provisions, in the case at hand, in contrast to the above-mentioned cases, the Estonian courts assessed the constitutionality of the relevant provision – that is, section 94(5) of the Imprisonment Act – in the particular circumstances pertaining to each of the applicants. In both instances the domestic courts, after assessment of facts, concluded that the measures had constituted proportionate interference with the right to family life (in respect of both applicants) and that the difference in treatment had been justified (in respect of the first applicant) (see paragraphs 25-28 and 44 above; compare *Costel Gaciu*, cited above, §§ 58 and 60; *Varnas*, cited above, §§ 118-20; and *Chaldayev*, cited above, § 77).

93. The Court will now analyse whether the reasons provided by the domestic courts in respect of each of the applicants could be considered as a reasonable justification in the context of the relevant Convention rights.

94. In that respect the Court is willing to accept that the limitations to contact rights, including meetings with family members, during pre-trial detention could, as such, serve a legitimate aim of guaranteeing an unobstructed criminal investigation. It is clear that this aim is not relevant with respect to persons who have already been convicted by a final judgment for the offences they have committed. However, it must be ascertained whether such limitations – and, by extension, a difference in treatment between remand prisoners and convicted prisoners – were also justified in the particular circumstances of the case, namely whether there was a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

95. Although it will address the specific circumstances pertaining to each of the applicants separately below, the Court would first address the argument relied on by the Supreme Court (and repeated by the Government, see paragraph 75 above) that, despite the categorical wording of section 94(5) of the Imprisonment Act, the manner of the operation of domestic law, in fact, allowed the domestic courts to weigh the competing interests of the applicant's family life and the need to ensure the effectiveness of criminal proceedings. According to this argument, such assessment was to take place at the stage of remanding a person in pre-trial detention and subsequently when reviewing the continued justification for such detention (see paragraphs 27 and 44 above).

96. Indeed, under domestic law, a person's family situation is one of the aspects to be taken into account when placing that person in pre-trial detention, as well as when deciding on the continued justification for detention (see paragraph 52 above). However, the Court cannot but note that in the case of the first applicant, the domestic courts did not in reality analyse the impact that the pre-trial detention (in its continuation) had on his family life. It was simply noted that having a cohabiting partner had not prevented the first applicant from engaging in criminal activities (see paragraph 5 above). With regard to the second applicant, the domestic courts did take note of the interference with his family life but limited themselves to noting that the family life interests had been outweighed by the needs of the criminal proceedings. They further indicated that the second applicant's family life had suffered because of his own previous criminal record and that having a family had not prevented him from resorting to a criminal lifestyle (see paragraphs 31-33 above).

97. It appears that even if the courts took into account the impact that the pre-trial detention had on the applicants' family life, they did so only in general terms and did not address the specific question of the impossibility of receiving long-term visits.

98. The Court further observes that the Supreme Court itself, in its later judgment in case no. 5-18-8, admitted that evaluating the proportionality of the prohibition of long-term visits in the context of assessing the (continued) justification for keeping a person in pre-trial detention was likely to always lead to the public interest in detaining the person in question outweighing the restrictions on that person's right to family life (see paragraph 46 above).

99. In the light of the above reasoning the Court is not convinced by the Government's argument that the impact of the prohibition on having long-term visits, arising from section 94(5) of the

Imprisonment Act, was to a satisfactory extent taken into account at the stage of imposing pre-trial detention on the applicants or later, when reviewing its continued justification.

100. The Government next argued that the proportionality of the prohibition of long-term visits had been thoroughly analysed by the Supreme Court in the context of the constitutionality review proceedings (see paragraph 76 above). The Court will therefore now analyse whether – given the specific circumstances of each of the applicants – there was a reasonable relationship of proportionality between the need to guarantee an unobstructed criminal investigation and the prohibition on receiving long-terms visits, and hence also between the aim invoked to justify the difference in treatment between remand prisoners and convicted prisoners and the means employed to that effect. In doing so, the Court will have regard to the reasoning relied on by the Supreme Court in the context of the constitutional review proceedings with respect to both applicants.

(b) Application of the principles to the present case

(i) As regards the first applicant

101. The first applicant had been charged with extortion and with being a member of a criminal organisation. The primary grounds for his pre-trial detention were the need to prevent him from committing further offences, including offences against the administration of justice. The risk of the applicant compromising the conduct of the criminal proceedings was, according to the domestic courts, plausible, given the nature of the offences that he was accused of and the fact that the particular criminal organisation had been proven to provide support for its members' next of kin.

102. The Court is prepared to accept that, in these particular circumstances, the risk of the first applicant's cohabiting partner being used in the pursuit of obstructing the evidence-collecting process, cannot be ruled out, even if the latter was herself not a witness or a co-accused in the proceedings (compare and contrast *Costel Gaciu*, cited above, § 60, and *Varnas*, cited above, § 120).

103. The Court is mindful of the reasoning of the Supreme Court that – given the aim of the prohibition of long-term meetings – the prison was not a competent institution to decide whether a specific remand prisoner should be allowed such meetings. It thus accepts that that decision ought to be rather made in the context of criminal proceedings. The Court is also prepared to accept that, given their nature, long-term visits might entail to some extent an elevated risk – as compared to short-term meetings and other means of communication – of family members being induced to assist the accused in undermining the criminal proceedings.

104. However, although the Supreme Court has provided relevant reasons, the Court is of the view that they cannot be considered sufficient in the specific circumstances of the case at hand. In that connection the Court notes that the prohibition of long-term meetings continued after the prosecutor's office – apparently considering that there were no longer grounds to believe that communication with family members would undermine the criminal investigation – had gradually lifted all the additional restrictions on contact and communication, including that with the persons detained in the context of the same criminal proceedings (see paragraphs 17-18 above). In particular the Supreme Court has not explained why the supposedly elevated risk inherent in the unsupervised long-terms visits was of such magnitude to warrant their prohibition for some two years after all the other restrictions on contact and communication had been set aside. The Court

notes that the importance of providing pertinent reasons for such restrictions increases with the passing of time that the person spends in pre-trial detention.

105. Furthermore, the Court cannot ignore the fact that the Supreme Court in its constitutional review judgment in 2019 in case no. 5-18-8 found the relevant section 94(5) of the Imprisonment Act to be unconstitutional and quashed it noting, *inter alia*, that the application of the domestic law in practice often tied the assessment of the possibility of restrictions on long-term visits to the assessment of (continued) justification for pre-trial detention (see paragraph 49 above). The Court takes note of the aforementioned Supreme Court's judgment and of the change in domestic legislation that ensued from it.

106. Relying on the reasoning above, the Court finds that the prohibition on receiving long-term visits was not reasonably justified in the case of the first applicant. The possibility of his receiving short-term visits and having contact with his family by means of letters, parcels and telephone calls does not alter that conclusion.

107. Given the reasoning above, the Court finds that there has been a violation of Article 14 in conjunction with Article 8 of the Convention.

(ii) As regards the second applicant

108. The second applicant had been charged with the unlawful handling of large quantities of narcotic drugs. He had several previous convictions. The domestic courts considered the detention necessary in order to prevent him from committing further drug-related offences and from absconding. The risk of the second applicant compromising the criminal proceedings by influencing witnesses was discussed only in the context of the additional restrictions on contact and communication imposed by the prosecutor's office and lifted by the court decisions of 22 August 2012 and 16 December 2013 (see paragraphs 36-38 above).

109. The Court notes that the applicant's cohabiting partner does not appear to have been either a witness or a co-accused in the same criminal case or to have been suspected in being involved in any other criminal activities. It rather appears from the reasoning of the Supreme Court that the prohibition of the long-term visits was seen to have served the aim of preventing the applicant from committing further criminal offences in general, and that the risk of exerting undue influence on the conduct of criminal proceedings was linked (at least after the additional restrictions had been lifted) to the nature of the charges as such (see paragraph 44 above). No other reasons were relied on to provide grounds for the conclusion that the second applicant's cohabiting partner would have been likely to have helped him to undermine the criminal proceedings.

110. The Court – even admitting that unsupervised long-term visits might entail to some extent higher risk of family members being convinced to assist the accused in undermining the criminal proceedings as compared to short-term visits and other means of communication – is not convinced that in the instant case the Supreme Court provided sufficient reasons to justify the second applicant's complete deprivation of such meeting during the entirety of his pre-trial detention. It notes that the prohibition of the long-term visits continued after the courts had gradually lifted the other restrictions on contact and communication, that is for approximately one year and ten months after the second applicant had been authorised to have short-term meetings, telephone calls and correspondence with his family members (see paragraphs 35 and 37 above). Moreover, the Supreme Court did not explain how the aim of preventing the applicant from

committing further drug-related offences justified the impossibility of him having conjugal visits with his partner. It was not indicated in the domestic proceedings that the applicant's partner had any previous involvement in drug-related offences or that she would have been likely to engage in it during his partner's pre-trial detention.

111. As in the case of the first applicant, the Court notes that the Supreme Court in 2019 – when declaring section 94(5) of the Imprisonment Act unconstitutional – itself admitted the deficiencies in the way the said provision operated in the context of domestic courts deciding on the (continued) justification for pre-trial detention (see paragraphs 49 and 105 above).

112. Relying on the reasoning above, the Court finds that the prohibition on receiving long-term visits was not justified in the case of the second applicant. The timing of his application for a long-term visit at the later stage of his pre-trial detention, by which stage he was allowed to receive short-term visits and have contact with his family by means of letters, parcels and telephone calls, does not alter that conclusion.

113. There has therefore been a violation of Article 14 in conjunction with Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

114. 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

115. The first applicant claimed 20,000 euros (EUR) and the second applicant claimed EUR 6,000 in respect of non-pecuniary damage.

116. The Government argued that finding a violation would constitute in itself sufficient satisfaction for any non-pecuniary damage sustained by the applicants. The Government contended, with respect to the first applicant, that he had had alternative means of communicating with his family. With respect to the second applicant, the Government noted that he had applied for a long-term meeting only a short time before the prohibition in question had ended. Alternatively, the Government left it for the Court to decide on the just sum.

117. The Court, having regard to the nature of the violation of Article 14 in conjunction with Article 8 of the Convention, as well as the specific circumstances of the case and the length of the prohibition in question, finds it appropriate to award the first applicant EUR 5,000 and the second applicant EUR 3,000 in respect of non-pecuniary damage plus any tax that may be chargeable to the applicants.

B. Costs and expenses

118. Noting that he had represented himself in the domestic proceedings, the first applicant claimed EUR 4,125 with respect to the costs and expenses incurred in relation to the proceedings before the Court.

119. The second applicant claimed EUR 6,004.20 for the costs and expenses incurred before the domestic courts and the Court.

120. The Government considered the amounts to be excessive.

121. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicants the sums claimed in full.

C. Default interest

122. 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 14 in conjunction with Article 8 of the Convention in respect of both applicants;
4. *Holds*

(a) that the respondent State is to pay, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 5,000 (five thousand euros) to the first applicant and EUR 3,000 (three thousand euros) to the second applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 4,125 (four thousand one hundred and twenty-five euros) to the first applicant and EUR 6,004.20 (six thousand and four euros and twenty cents) to the second applicant, plus any tax that may be chargeable to the applicants, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicants' claims for just satisfaction.

Done in English, and notified in writing on 29 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar
Georges Ravarani President