

European Court of Human Rights jurisprudence relevant to children of prisoners/children whose parents are in conflict with the law

SUMMARY

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The European Court of Human Rights has considered issues related to children whose parents are, or are alleged to be, in conflict with the criminal law under Articles 3 and 8 of the European Convention on Human Rights (ECHR).

Article 3:

No-one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others

Specifically the Court has found that:

- when an arrest is taking place where children are known to be or are likely to be present, there is a positive duty on the authorities to plan accordingly;¹
- when both parents are arrested/detained, there is a duty to take steps to see that any children present have someone to care for them;²
- conditions and healthcare in detention/prison must be appropriate for any baby who is living in prison with the mother;³
- prohibition of or restrictions on contact between children and their imprisoned parent is an interference with the child's right to family life, but may be justified in accordance with the provisions of Article 8. In this context the Court has referred to **Recommendation CM/Rec(2018)5 of the Committee of Ministers of the Council of Europe to member States concerning children with imprisoned parents**, adopted on 4 April 2018⁴

1 *Case of A v. Russia* (no. [37735/09](#)) 12 November 2019; *Gutsanovi v. Bulgaria*, (no. [34529/10](#)) 15 October 2013; *Stoyanov and Others v. Bulgaria* (no. 55388/10) 31 March 2016

2 *Affaire Ioan Pop et autres c. Roumanie* (no. 52924/09) 6 décembre 2016; *Hadzhieva v. Bulgaria* (no. 45285/12), 1 February 2018

3 *Korneykova and Korneykov v. Ukraine* (no. 56660/12) 24 March 2016

4 *Danilevich v Russia* (no. 31469/08) 19 October 2021, § 30

The Court's jurisprudence covers visits⁵ (including imprisonment so far from the family that visits are impractical),⁶ ban on telephone calls⁷, unjustified restrictions on direct contacts⁸ and restrictions on the use of the family's own language in person,⁹ over the telephone¹⁰ or in letters (these language cases did not include children but could be particularly relevant in relation to contacts between children and their imprisoned parent).

- conditions for visits in prison must not be inhuman or degrading¹¹
- failure to consider return of child to the custody of an acquitted parent in a timely fashion¹²

5 *Piechowicz v Poland* (no. 20071/07) 17 April 2012; *Kungarov v Russia* (no. 70468/17) 18 February 2020

6 *Khoroshenko v. Russia* (no. 41418/04) 30 June 2015; *Khodorkovskiy and Lebedev v. Russia* (nos. 11082/06 and 13772/05) 25 July 2013

7 *Danilevich v Russia* (no. 31469/08) 19 October 2021

8 *Kurkowski v. Poland* (no. 36228/06) 9 April 2013

9 *Mozer v. The Republic of Moldova and Russia* (no. [11138/10](#)) 23 February 2016

10 *Nusret Kaya and Others v. Turkey* (nos. 43750/06, 43752/06, 32054/08, 37753/08 and 60915/08) 22 April 2014

11 *Horych v. Poland* (no. 13621/08) 17 April 2012

12 *Haddad v Spain* (no. [16572/17](#)) 18 June 2019