



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

1959 · 50 · 2009

FIFTH SECTION

CASE OF GLINOV v. UKRAINE

(Application no. 13693/05)

JUDGMENT

STRASBOURG

19 November 2009

FINAL

19/02/2010

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 Glinov v. Ukraine,

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

Peer Lorenzen, *President*,

Renate Jaeger,

Karel Jungwiert,

Mark Villiger,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva, *judges*,

Mykhaylo Buromenskiy, *ad hoc judge*,

and Stephen Phillips, *Deputy Section Registrar*,

Having deliberated in private on 20 October 2009,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 13693/05) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Kazakh national, Mr Nikolay Andreyevich Glinov (“the applicant”), on 4 April 2005.

2. The applicant, who had been granted legal aid, was represented by Mr V.V. Shepetukha, a lawyer practising in Kharkiv. The Ukrainian Government (“the Government”) were represented by their Agent, Mr Yuriy Zaytsev.

3. The applicant alleged, in particular, that he had been detained unlawfully and ill-treated in police custody, and that the conditions of his detention were poor.

4. On 16 May 2006 the Court decided, pursuant to Article 37 § 1 of the Convention, to strike the application out of the list of cases, given the applicant's failure to comply with its numerous requests for documentary substantiation of his complaints.

5. On 26 May 2006 the Court received a letter from the applicant dated 15 May 2006, in which he requested withdrawal of his application, alleging a failure on the part of the administration of the detention centre (SIZO) to forward to the Court one of his letters and general pressure on him.

6. On 25 September 2006 the Court decided to restore the application to its list of cases in accordance with Article 37 § 2 of the Convention, to give notice of the complaints about the alleged interference of the authorities with the applicant's correspondence to the Government and to adjourn the examination of his complaints under Articles 3 and 5 of the Convention, having requested the Government to submit copies of all documents concerning the applicant's pre-trial detention (reasons and length) and his treatment while in detention, in particular with regard to his allegation of ill-treatment and inadequate detention conditions. Under the provisions of

Article 29 § 3 of the Convention, it was also decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1978 and is currently serving a sentence in Rivne Regional Penitentiary no. 76.

A. The applicant's pre-trial detention

1. From 19 to 21 October 2003

8. According to the applicant, he was detained and ill-treated in police custody from 19 to 21 October 2003. There are no further details or documents.

2. From 31 October 2003 to 23 March 2006

9. In the evening of 31 October 2003 the applicant, together with another person, was arrested by the Fontanka police unit of the Kominternovo District Police Department in *flagrante delicto* on the scene of a robbery and car hijacking. As it would later be confirmed by at least two eye-witnesses (see paragraph 23 below), the applicant attempted escaping from and showed resistance to the police.

10. According to the applicant, he pleaded guilty to several counts of robbery under torture. He alleged in particular that he had been heavily beaten with rubber truncheons, hanged with his arms twisted behind him and administered electric shocks.

11. On 1 November 2003 the applicant signed the arrest report in confirmation that his procedural rights had been explained to him.

12. On the same day the applicant was taken to the Kominternovo Temporary Detention Facility, where a doctor examined him and made a note that he had a bruise under his left eye.

13. On 4 November 2003 the investigator submitted to the Kominternovo Town Court (*Комінтернівський районний суд* – “the Kominternovo Court”) a motion on the applicant's detention as a preventive measure pending trial. The investigator noted that the applicant was suspected of having committed serious crimes (three counts of robbery with violence on 22, 26 and 31 October 2003), had no permanent place of residence and had a criminal record, and thus could hinder the investigation or abscond if at liberty. According to the investigator, the applicant had fully admitted his guilt.

14. On the same date the Kominternovo Court remanded the applicant in custody, having upheld the investigator's reasoning.

15. On 26 December 2003 the Kominternovo Court extended the term of the applicant's detention to four months, having referred to the necessity to complete the investigation.

16. On 15 June 2004 the applicant was committed for trial.

17. No further documents concerning the applicant's detention are available in the case file.

B. Conditions of the applicant's detention

18. While having raised a general complaint about the conditions of his detention, the applicant did not describe them until in response to the information submitted by the Government.

19. According to the information provided by the Government, from 7 November 2003 to 3 November 2006 the applicant had been held in fifteen different cells, the smallest of which had measured 7.17 square meters (the applicant had spent three and a half months there, sharing with another inmate), while the largest one had measured about 34.1 square meters (where he had stayed for fifteen days, sharing with eleven other inmates). Each of the cells had a toilet separated from the living area, sufficient natural and artificial light, operational heating, ventilation, water supply and sewage system.

20. As it transpires from a note by the Odesa SIZO administration issued on an unspecified date, disinfection, disinsection and rat extermination were regularly carried out on the SIZO premises.

21. The Government provided seven colour photos of the cells the applicant had been detained in. The photos showed that the cells were clean and looked as if they had been repaired not long before the photos had been taken. They had sufficient natural light; the lavatories were separated from the living area and appeared to be clean.

22. The applicant contested the accuracy of the information submitted by the Government in so far as the number of inmates per cell was concerned and alleged that there had been more detainees in the cells than indicated by the Government. He also alleged that he had not been detained in the cells shown in the photos.

C. The applicant's conviction

23. On 23 March 2006 the Malynovskyy District Court of Odesa (*Малинівський районний суд* – “the Malynovskyy Court”), to which the case had been transferred from the Kominternovo Court on an unspecified date, found the applicant guilty of three counts of robbery with violence, committed on 22, 27 and 31 October 2003 by a group of persons acting in concert, and sentenced him to fourteen years' imprisonment with confiscation of all his personal property. The court based its findings, *inter alia*, on the testimonies of the victims of all three instances of robbery, medical reports concerning the injuries they sustained during those robberies, as well as material evidence (certain items seized from the applicant and recognised by the victims as the stolen ones; two knives, a

hammer and a sack discovered in the car, which the co-defendants had left immediately before their arrest). The court also heard two eye-witnesses of the applicant's arrest on 31 October 2003, according to whom he had shown resistance to the police and had tried to escape from the scene. Furthermore, it was noted in the verdict that both co-defendants had fully confessed to the crimes they had been charged with on 4 November 2003 and had consistently pled guilty throughout the pre-trial investigation. The court examined their allegations of ill-treatment in police custody, voiced for the first time at the trial, and found them unsubstantiated. Namely, it noted that they had failed to raise any such complaints in the course of the pre-trial investigation and that the circumstances of the case indicated (as confirmed by the eye-witnesses of the arrest and by the police officers who had carried out the arrest and who were questioned by the court) that the bruise on the applicant's face noted on 1 November 2003 might have been sustained in the course of his fight with the police prior to his arrest.

24. On 22 May 2007 the Odesa Regional Court of Appeal (*Апеляційний суд Одеської області*) upheld that verdict.

25. The applicant appealed in cassation, alleging that his conviction was not based on solid evidence. The cassation appeal did not contain any allegation of ill-treatment in police custody.

26. No information about the final outcome of the proceedings has been provided by the parties. However, it appears from the case file that the Supreme Court found against the applicant.

D. The applicant's correspondence with the Court

27. The applicant's letters to the Court dated 30 March, 10 May, 9 June, 12 July, 28 November, 8 and 15 December 2005, as well as 20 March, 16 May and 3 November 2006, were accompanied by cover letters, signed by the Governor of the Odesa SIZO, which contained a brief summary of their contents (for example: "Please find attached a complaint by the accused, Glinov, concerning his rights and the conduct of the investigation in his case", "... concerning his case and actions of the police officers", "...concerning the judge's actions", "... concerning the defence of his rights", "... concerning the withdrawal of his case", etc.).

28. The first page of each of the eighteen letters from the applicant to the Court bore the SIZO stamp with the dispatching date noted in handwriting (eight of those had been sent before 21 December 2005, the other ten on various dates after 21 December 2005 – see paragraph 38 below).

29. From May 2005 to March 2006 the Registry of the Court requested the applicant eight times to submit documents in substantiation of his complaints under Articles 3 and 5 of the Convention.

30. Each of the requests was followed by a letter from the applicant, in which he noted that: there were no copying facilities in the SIZO and that he would copy the documents by hand; the facts of his case were self-explanatory; the prospects of Ukraine's accession to the European Union were poor given the alleged violations in his case; and the witnesses

allegedly required protection for unspecified reasons. The applicant made no explicit reference to the Court's requests.

31. The applicant's letters reached the Court on average two weeks to two months following their dispatch.

32. The case file contains copies of sixteen stamped certificates issued by Odesa-59 Post Office to the SIZO administration in confirmation that it had accepted correspondence from detainees (including the applicant) to be sent to the Strasbourg Court. It also contains copies of extracts from the SIZO logbooks of incoming and outgoing correspondence and "correspondence delivery acts" signed by the SIZO officials.

33. Between the end of December 2005 and April 2006 (with the exact date not documented due to a technical mistake), the Court received a ten-page letter from the applicant dated 13 December 2005, in which he outlined his vision for the reform of penitentiaries in Ukraine with a view of improving the conditions of detention. It was accompanied by a cover letter from the SIZO administration dated 15 December 2005, according to which its registered number was 5-3-G-1087. The case file contains a copy of a post office receipt of 16 December 2005 for the dispatch, *inter alia*, of letter 5-3-G-1087 from Mr Glinov.

34. By a letter of 15 May 2006, which reached the Court on 26 May 2006, the applicant sought the withdrawal of his application referring to "... the failure [of the SIZO administration] to forward [his] letter to the Court of 13 December 2005 in fifty-three pages; a partial change of the charges against [him] on 23 December 2005; a ruling of the court and ... the intense pressurising by the authorities ..."

35. On 23 May 2006 the Court sent a letter to the applicant informing him that his application had been struck out of the list by decision of Committee on 16 May 2006.

36. On 2 October 2006 the Court informed the applicant about the restoration of the application to the list of cases and its communication to the respondent Government on 25 September 2006.

37. Following the communication of the application to the Government, the applicant's correspondence with the Court continued, with some of his letters bearing the SIZO stamp (see paragraph 28 above).

II. RELEVANT DOMESTIC LAW

38. Section 13 of the Pre-Trial Detention Act, before it was amended on 1 December 2005 (with the amendments having entered into force on 21 December 2005), had provided for monitoring by the administration of detention centres of applications, complaints and letters of detainees, with an exception of correspondence with the Ombudsman and with the prosecutor, which could not be monitored.

39. By the amendments of 1 December 2005 to the above Act, the list of exceptions was extended to include correspondence with the Court.

40. The Instruction on Review of Correspondence of Persons Held in Penitentiaries and Pre-trial Detention Facilities, approved by Order no. 13 of

the State Department for Enforcement of Sentences of 25 January 2006, elaborates the above provision as follows:

“1.5. ... Correspondence of prisoners and detainees with the Ombudsman of the Verkhovna Rada of Ukraine, the European Court of Human Rights, as well as with other relevant international organisations of which Ukraine is a member or participant, authorised persons of those international organisations or prosecution authorities, shall not be subject to censorship and shall be dispatched or handed to the prisoner or detainee within twenty-four hours. ...

2.4. Prisoners or detainees shall personally and in the presence of the inspector seal the envelopes with correspondence addressed to the Ombudsman of the Verkhovna Rada of Ukraine, the European Court of Human Rights, as well as to other relevant international organisations of which Ukraine is a member or participant, to authorised persons of those international organisations or prosecution authorities. Prisoners or detainees shall personally and in the presence of the inspector open letters received from the Ombudsman of the Verkhovna Rada of Ukraine, the European Court of Human Rights, as well as from other relevant international organisations of which Ukraine is a member or participant, from authorised persons of those international organisations or from prosecution authorities. ...”

III. RELEVANT INTERNATIONAL LAW

41. Article 3 of the European Agreement Relating to Persons Participating in Proceedings of the European Court of Human Rights, ratified by Ukraine on 4 November 2004 and in force for it since 1 January 2005, reads as follows:

“1. The Contracting Parties shall respect the right of the persons referred to in paragraph 1 of Article 1 of this Agreement to correspond freely with the Commission and the Court.

2. As regards persons under detention, the exercise of this right shall in particular imply that:

a) if their correspondence is examined by the competent authorities, its despatch and delivery shall nevertheless take place without undue delay and without alteration;

b) such persons shall not be subject to disciplinary measures in any form on account of any communication sent through the proper channels to the Commission or the Court;

c) such persons shall have the right to correspond, and consult out of hearing of other persons, with a lawyer qualified to appear before the courts of the country where they are detained in regard to an application to the Commission, or any proceedings resulting therefrom.

3. In application of the preceding paragraphs, there shall be no interference by a public authority except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, for the detection or prosecution of a criminal offence or for the protection of health.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

42. Having regard to the fact that many letters from the applicant to the Court bore the SIZO stamp and were accompanied by brief summaries of their contents produced by the SIZO administration, the Court considered it appropriate to raise, of its own motion, the issue of Ukraine's compliance with Article 8 of the Convention on account of the monitoring of the applicant's correspondence with the Court. This Article, insofar as relevant, reads as follows:

“1. Everyone has the right to respect for his ... correspondence.

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

A. Admissibility

43. The Government submitted that the applicant had not exhausted all available domestic remedies, having failed to raise the complaint about the alleged monitoring of his correspondence before the prosecutor or the domestic courts. In particular, they referred in this respect to Article 55 of the Constitution of Ukraine, according to which any decision, act or omission of the state authorities could be challenged before the domestic judiciary. They further referred to Article 13 of the Pre-Trial Detention Act, which provided for a three-day time-limit for dispatching detainees' complaints addressed to prosecution authorities, as well as Article 22 of this Act and Articles 44 and 45 of the Prosecutorial Service Act, which concerned the prosecutorial supervision over adherence to the legislation in the detention facilities. Lastly, the Government referred to Article 9 of the Constitution, pursuant to which ratified international treaties were a part of the national legislation, and submitted that the applicant could have complained to the domestic authorities about a breach of his right under the Convention.

44. The applicant disagreed. He contended that until 1 December 2005 the legislation had provided for the obligatory monitoring of detainees' correspondence other than that with the Ombudsman or prosecutor, while even after the amendments entered into force prohibiting any censorship of detainees' correspondence with the Court, monitoring of correspondence remained in place and was broadly perceived as lawful. Furthermore, the applicant alleged that he had not been aware of the fact that the SIZO administration had been monitoring his letters to the Court and thus was not in a position to complain about that.

45. The Court notes that before 21 December 2005 (the date of entry into force of the amendments to the Pre-Trial Detention Act of

1 December 2005) the applicant's letters had been monitored by officials at the detention centre pursuant to section 13 of that Act, which provided for the monitoring of all detainees' letters except for those addressed to the prosecutor and the Ombudsman. It follows that the applicant's complaint to the prosecutor or to the court in this connection would have had no prospect of success in so far as neither of those authorities was empowered to overrule the legal provision underpinning such a practice.

46. In so far as the Government's plea of non-exhaustion concerns the period after 21 December 2005, the Court notes that the applicant alleged that he was completely ignorant of the monitoring of his correspondence, and the Government did not submit any information that would undermine that allegation. Accordingly, the Court considers that the applicant cannot be reproached for his failure to complain about what is not proven to have been within his knowledge. In any event, the Government have not shown how the remedies referred to by them could have redressed the applicant's situation.

47. It follows that the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

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

B. Merits

1. The parties' submissions

49. The applicant argued that the circumstances of his case disclosed a breach of Article 8 of the Convention.

50. The Government refrained from expressing their opinion on the merits of the complaint.

2. The Court's assessment

(a) Existence of an interference

51. The Court notes that a considerable number of the applicant's letters bore the SIZO stamp and were accompanied by summaries of their contents produced by the SIZO officials (see paragraphs 27 and 28 above).

52. In these circumstances the Court considers that those letters have been opened and their contents read (see, for comparison, *Kisielewski v. Poland*, no. 26744/02, § 26, 7 July 2009).

53. It follows that the applicant's letters to the Court were monitored by the SIZO officials, which amounted to an "interference" with his right to respect for his correspondence under Article 8 of the Convention.

(b) Whether the interference was justified under Article 8 § 2 of the Convention

54. The Court reiterates that any “interference by a public authority” with the right to respect for correspondence will contravene Article 8 of the Convention unless it is “in accordance with the law”, pursues one or more of the legitimate aims referred to in paragraph 2 of that Article and is “necessary in a democratic society” in order to achieve them (see, among many other authorities, *Silver and Others v. the United Kingdom*, 25 March 1983, Series A no. 61, p. 32, § 84; *Campbell v. the United Kingdom*, 25 March 1992, Series A no. 233, p. 16, § 34; and *Niedbala v. Poland*, no. 27915/95, § 78, 4 July 2000).

55. The Court notes that the applicant initiated his correspondence with it on 4 April 2005 and maintained it during the subsequent examination of his case. The Court observes that the legal framework regulating control of detainees' correspondence with the outside world, in particular, with the Court, changed on 1 December 2005 (effectively on 21 December 2005), while the applicant's correspondence with the Court has been monitored by the SIZO administration both before and after that date. Accordingly, the Court will examine whether such monitoring was justified under Article 8 § 2 of the Convention during those two periods taken separately.

i. Before 21 December 2005

56. Having regard to its finding in paragraph 45 above, the Court is satisfied that the applicant's correspondence with the Court before 21 December 2005 had been monitored in compliance with the domestic legislation.

57. The Court has already held that the applicable legislation in force at the material time did not indicate with reasonable clarity the scope and manner of exercise of the discretion conferred on the public authorities in respect of the monitoring of detainees' correspondence, which rendered such monitoring counter to the lawfulness requirement of Article 8 § 2 of the Convention (see *Sergey Volosyuk v. Ukraine*, no. 1291/03, § 86, 12 March 2009).

58. The Court does not find any reasons to reach a different conclusion in the present case.

59. Consequently, there has been a violation of Article 8 of the Convention with regard to the monitoring of the applicant's correspondence with the Court before 21 December 2005.

ii. Since 21 December 2005

60. Given the explicit prohibition on any monitoring of detainees' correspondence with the Court, applicable since 21 December 2005 (see paragraphs 39 and 40 above), the Court finds that the monitoring of the applicant's correspondence with the Court after that date (see paragraphs 27 and 28 above) was contrary to the domestic legislation and thus not “in accordance with the law” within the meaning of Article 8 § 2 of the Convention.

61. The Court therefore does not consider it necessary in the instant case to ascertain whether the other requirements of paragraph 2 of Article 8 were complied with and holds that there has been a violation of that provision with regard to the monitoring of the applicant's correspondence with the Court after 21 December 2005.

II. ALLEGED VIOLATIONS OF ARTICLE 34 OF THE CONVENTION

62. The Court notes that the applicant failed to comply with the Court's request to submit the documents related to his case, of which he had been reminded on eight occasions (see paragraph 29 above). Furthermore, he sought the withdrawal of his application, alleging, in particular, that the SIZO administration had failed to forward his letter to the Court and that he had been pressurised by the authorities.

63. The Court considers that the aforementioned facts give rise to an issue of the authorities' hindrance with the effective exercise of the applicant's right of petition, guaranteed by Article 34 of the Convention, which reads as follows:

“The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.”

A. Submissions by the parties

64. The Government submitted that the applicant's communication with the Court had been free from any hindrance by the authorities. They contended, in particular, that the SIZO administration had dispatched his letters to the Court and handed him the letters from the Court in a diligent and timely fashion. In substantiation, they submitted copies of the relevant pages of the SIZO logbooks of incoming and outgoing correspondence and receipts issued by the Odesa-59 Post Office and signed by the SIZO officials, referred to as “correspondence delivery acts”.

65. The applicant, in his turn, criticized the existing procedures for dispatching and delivering correspondence, having pointed out that the respective logbooks and the “correspondence delivery acts” did not contain his signatures. He further argued that the Government had failed to submit any documentary proof of the dispatch of his correspondence to the Court.

B. The Court's assessment

66. The Court reiterates that it is of the utmost importance for the effective operation of the system of individual petition instituted by Article 34 of the Convention that applicants should be able to communicate freely with the Convention organs without being subjected to any form of pressure from the authorities to withdraw or modify their complaints. The expression “any form of pressure” must be taken to cover not only direct

coercion and flagrant acts of intimidation of applicants or their legal representatives but also other improper indirect acts or contacts designed to dissuade or discourage them from pursuing a Convention remedy (see *Kurt v. Turkey*, 25 May 1998, § 160, *Reports* 1998-III, and *Tanrikulu v. Turkey* [GC], no. 23763/94, § 130, ECHR 1999-IV).

67. In order to reach a conclusion as to whether the State has respected its obligations under Article 34 of the Convention in the present case, the Court will examine the facts of the case and the arguments of the parties from the prospective of the following three questions: 1) whether the SIZO administration failed to dispatch any of the applicant's correspondence to the Court; 2) whether it failed to deliver any correspondence of the Court to the applicant; and 3) whether there was any pressure by the authorities on the applicant with a view to discouraging him from pursuing his application before the Court.

1. The alleged failure of the SIZO administration to dispatch the applicant's correspondence to the Court

68. The Court notes that the applicant alleged that the SIZO administration had failed to forward to the Court only one of his letters, which was dated 13 December 2005 and consisted of fifty-three pages.

69. The Court observes that the applicant neither specified the contents of that letter nor provided any details whatsoever as regards the circumstances of or reasons for the administration's failure (or refusal) to dispatch it. On the other hand, the Government provided documentary evidence of the fact that the letter from the applicant of the aforementioned date had been transmitted by the SIZO administration to the post office to be sent on to the Court (see paragraph 32 above), and his letter of that date, *albeit* consisting of ten pages, did reach the Court without major delay (see paragraph 33 above).

70. In these circumstances, and given the fact that all of the applicant's previous (as well as subsequent) letters were sent to the Court without significant delay (see paragraph 31 above), the Court dismisses the applicant's allegation as unsubstantiated (see *Valašinas v. Lithuania*, no. 44558/98, § 136, ECHR 2001-VIII).

2. The alleged failure of the SIZO administration to deliver the Court's correspondence to the applicant

71. The Court notes that this complaint is limited in substance to the applicant's criticism of the existing procedures for delivering incoming correspondence to detainees, who are not required in practice to confirm its receipt by their signatures. It further observes that although the contents of the applicant's letters to the Court following its repeated requests for documents contain no explicit reference to those requests, they do not contain any indication that he had not received them (see paragraph 30 above). To sum up, there is nothing in the materials of the case file to suggest that the SIZO administration failed to deliver any of the Court's correspondence to the applicant.

72. It follows that no hindrances in the delivery of the Court's correspondence to the applicant have been established in the present case.

3. The alleged pressure of the authorities on the applicant with a view to discouraging him from pursuing his application before the Court

73. The Court observes that the applicant underpinned this allegation with a reference to an unspecified change of the charges against him in the course of the criminal investigation, an equally unspecified ruling of a court, as well as some other "pressure" by the authorities (see paragraph 34 above).

74. The Court considers that the applicant has failed to provide a single concrete example of his having been pressurized by the authorities and dismisses his allegations as wholly unsubstantiated.

4. General conclusion

75. In the light of the above facts and considerations, the Court finds that the allegations of hindrance with the applicant's right to petition under Article 34 of the Convention have not been made up and that no further examination is required.

III. ALLEGED VIOLATIONS OF ARTICLES 3 AND 5 OF THE CONVENTION

76. The applicant alleged, relying on Articles 3 and 5 of the Convention, that he had been ill-treated in police custody, that he had unlawfully been detained and that the conditions of his detention had been inadequate.

77. The Court recalls that it requested the applicant on many occasions to provide documentary substantiation of the above complaints, which he failed to do and for which he is entirely at fault (see paragraphs 70, 72 and 74 above).

78. At the same time, the Court is mindful of the fact that applicants might face particular difficulties as regards collection of evidence concerning the conditions of their detention. It notes that in the present case, however, the applicant failed even to specify his complaints in that connection (see paragraph 18 above), while the Government, in their turn, provided evidence that the conditions of his detention were not such as to raise an issue under Article 3 of the Convention (see paragraphs 19-21 above).

79. It follows that the applicant's complaints under Articles 3 and 5 of the Convention are manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

80. The applicant complained, in a confused manner, about violations of Articles 2, 6, 7, 11, 13 and 14 of the Convention. He alleged, in particular, that his life was in danger and that he had been convicted unfairly.

81. However, in the light of all the material before it, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

82. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

83. 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

84. The applicant claimed 20,000 euros (EUR) in respect of non-pecuniary damage, referring to the allegedly serious nature of the violation.

85. The Government contested that claim and considered it excessive.

86. The Court considers that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage which the applicant may have sustained.

B. Costs and expenses

87. The applicant made no claim for costs and expenses. Accordingly, the Court makes no award.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaint concerning the alleged monitoring of the applicant's correspondence with the Court admissible;
2. *Declares* by six votes to one the remainder of the application inadmissible;
3. *Holds* unanimously that there had been a violation of Article 8 of the Convention as regards the monitoring of the applicant's correspondence with the Court;
4. *Decides* by six votes to one not to pursue the allegations of hindrance with the applicant's right to petition under Article 34 of the Convention;

5. *Holds* unanimously that the finding of a violation of Article 8 of the Convention constituted in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;
6. *Rejects* unanimously the remaining claim for just satisfaction.

Done in English, and notified in writing on 19 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips
Deputy Registrar

Peer Lorenzen
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following partly dissenting opinion of Judge Kalaydjieva is annexed to this judgment.

P.L.
S.P.

DISSENTING OPINION OF JUDGE KALAYDJIEVA

In declaring the application admissible, the majority noted that “the Government did not submit any information that would undermine [the applicant's] allegation” that he was “completely ignorant of the monitoring of his correspondence (with the Court)” and “consider[ed] that the applicant cannot be reproached for his failure to complain about what is not proven to have been within his knowledge” (paragraph 46).

I fully agree with this conclusion and I join the majority in finding a violation of Article 8 with regard to the monitoring of the applicant's correspondence with the Court before 21 December 2005. This conclusion was based on the fact that a considerable number of the applicant's letters were opened and that some of them were accompanied by letters and summaries produced by SIZO officials as well as on the view that “the applicable legislation... did not indicate with reasonable clarity the scope and manner of exercise of the discretion conferred on the public authorities in respect of the monitoring of detainees' correspondence” (paragraph 57).

Having voted that the domestic law and practice left the applicant's correspondence open to interferences of which he could remain ignorant, I find myself unable to conclude whether and/or to what extent the applicant attempted to “provide documentary substantiation of his complaints under Articles 3 and 5” (see paragraph 77) and whether he was aware of the Court's requests for further information. In such circumstances it is not possible to exclude other occasions of interferences with the applicant's correspondence with the Court and/or to determine the extent or manner of such interferences. I find myself also unable to join the majority's satisfaction that a letter from the applicant “albeit consisting of ten pages”, opened and accompanied by a cover letter prepared by the prison authorities, which allegedly consisted of 53 pages, reached the Court without major delay. Should the Court be satisfied with such a dispatch? Following the logic of the conclusions in Article 8, there is nothing to exclude that the allegedly missing 43 pages contained the documentary substantiation of the applicant's complaints under Articles 3 and 5 requested by the Court. If this was so, could one conclude with certainty that there was no hindrance of the applicant's right to individual petition under Article 34? Taken together with the letter of withdrawal under alleged pressure and the subsequent restoration of the application to the list, can it be certain that the applicant was not subject to “any form of pressure” in exercising this right?