

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

FIFTH SECTION

CASE OF VASILENKO v. UKRAINE

(Application no. 70777/12)

JUDGMENT

STRASBOURG

13 January 2022

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



In the case of Vasilenko v. Ukraine,

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

Lətif Hüseynov, *President,*
Lado Chanturia,
Mattias Guyomar, *judges,*
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 70777/12) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 12 October 2012 by a Ukrainian national, Mr Valeriy Viktorovich Vasilenko, born in 1980 and serving a sentence of life imprisonment ("the applicant"), who had been granted legal aid and was represented by Mr A. Pustyntsev, a lawyer practising in Dnipro;

the decision to give notice of the application to the Ukrainian Government ("the Government"), represented by their Agent, Mr I. Lishchyna;

the parties' observations;

Having deliberated in private on 2 December 2021,

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

SUBJECT-MATTER OF THE CASE

1. The case mainly concerns the alleged monitoring by the prison administration of the applicant's correspondence in breach of Article 8 of the Convention and the lack of an effective domestic remedy in that regard, contrary to Article 13 of the Convention.

2. In December 2010 the applicant complained to the prosecution authorities that the administration of Gorodyshche Prison no. 96 ("the prison"), in which he had been serving his sentence until 8 June 2010, had been monitoring his correspondence with the Court, in breach of the legal prohibition to that effect. At about the same time he instituted administrative proceedings against the prison administration alleging that it had been unlawfully monitoring his correspondence addressed to the prosecution authorities and the Ombudsman. On 4 February 2011 the regional prosecutor reported to the State Prisons Department certain breaches of the domestic law pertaining to prisoners' correspondence in that prison. The prosecutor referred to the situation of several prisoners. In so far as the applicant was concerned, it was noted that three letters sent by him to the prosecution authorities in August 2009 and March 2010 had been accompanied by brief notes drawn up by the prison administration containing their summaries and indicating the number of pages. The prosecutor further stated that "the prison administration [had] committed similar breaches of legal provisions in respect of [the applicant's] letters to the [Court]". Although initially, in its

letter to the prosecutor dated 10 February 2011, the regional office of the State Prisons Department denied any violations (relying on the prison staff's statements, according to which the applicant had himself asked for accompanying notes and had provided verbal summaries of his letters), two staff members of the prison were eventually (on 9 March 2011) disciplined in the light of the prosecutor's findings. Nonetheless, the administrative courts of the lower two instances rejected the applicant's administrative claim on the following grounds: firstly, they held that the prosecutorial investigation had not concerned the subject-matter of the case, given that the applicant had complained to the prosecutor of the alleged monitoring of his correspondence with the Court only; and, secondly, the courts relied on the prison staff's testimonies, according to which the applicant's letters to the prosecution authorities and the Ombudsman had been submitted sealed for dispatching and that it had been the applicant who had insisted that accompanying notes be drawn up and had verbally provided their brief summaries. On 21 May 2012 the Higher Administrative Court ("the HAC") refused to exempt the applicant from the court fees and returned his appeal on points of law unexamined. It considered the applicant's allegation that he could not afford paying court fees to be unsubstantiated, without commenting on his reference to the lower courts' decisions granting him such an exemption on the grounds of his having no income.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLES 8 AND 13 OF THE CONVENTION ON ACCOUNT OF THE ALLEGED MONITORING OF THE APPLICANT'S CORRESPONDENCE WITH PROSECUTION AUTHORITIES

3. The applicant complained that the routine monitoring by the administration of Gorodyshche Prison of his correspondence with prosecution authorities had been in breach of Article 8 of the Convention and that he had no effective domestic remedy in that regard, contrary to the requirements of Article 13 of the Convention.

4. The Government submitted that the matter had been duly examined by the domestic courts, which had considered the applicant's allegation unfounded, and that there were no reasons for questioning that conclusion.

5. The Court notes that these complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

6. The general case-law principles of relevance can be found, for example, in *Glinov v. Ukraine* (no. 13693/05, § 54, 19 November 2009, with further references).

7. The Court takes note of the undisputed fact that two staff members of the prison were disciplined following the prosecutorial investigation, which had criticised the practice of enclosing cover notes to the applicant's letters addressed to prosecution authorities, with those letters' summaries and number of pages, as being contrary to the domestic prohibition of monitoring of prisoners' correspondence with those authorities. That measure was applied in spite of the prison staff's arguments that the applicant had in fact submitted the letters in question sealed and that the cover notes had been drawn up at his request and on the basis of the information provided by him. Without commenting on the disciplinary measure in question and without referring to any newly-discovered circumstances, the administrative courts of two levels of jurisdiction found the same arguments of the prison staff convincing and dismissed the applicant's claim on those grounds. Furthermore, the administrative courts chose to disregard the prosecutor's findings altogether for the only reason that the applicant's complaint to the prosecutor had been limited to the alleged monitoring of his correspondence with the Court.

8. The Court cannot find the assessment of the case by the administrative courts satisfactory as argued by the Government. It also notes that the proceedings did not go beyond the appellate stage, given the HAC's refusal to exempt the applicant from court fees, even though his similar request had been granted by both lower courts. At the same time, the Court sees no reasons to question the prosecutor's conclusions.

9. It follows that the prison administration had breached the legal ban on monitoring of prisoners' correspondence with prosecution authorities and that the domestic courts had failed to provide an adequate response to the applicant's complaint in that regard.

10. There has accordingly been a violation of Articles 8 and 13 of the Convention.

II. OTHER COMPLAINTS

11. The applicant further complained that the administration of Gorodyshche Prison had monitored his correspondence with the Ombudsman and the Court in breach of Articles 8 and 13 of the Convention. In so far as the last-mentioned issue is concerned, he also alleged a violation of Article 34 of the Convention. Lastly, the applicant complained that, by having refused to exempt him from court fees, the HAC breached his right to access to a court under Article 6 § 1 of the Convention. Having regard to the facts of the case, the submissions of the parties, and its findings under Articles 8 and 13 of the Convention, the Court considers that it has examined the main legal questions raised in the present application, and that there is no need to

examine separately the above-mentioned complaints[1] (compare *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

APPLICATION OF ARTICLE 41 OF THE CONVENTION

12. The applicant claimed 8,000 euros (EUR) in respect of non-pecuniary damage, 2,300 euros (EUR) in respect of costs and expenses incurred before the Court, as well as 6,700 Ukrainian hryvnias in respect of costs and expenses incurred before the domestic courts. 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. At the same time, having regard to the documents in its possession, the Court considers it reasonable to award the sum of EUR 1,000, covering costs under all heads (which is equal to EUR 1,850 less EUR 850, the sum received by way of legal aid).

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the alleged monitoring of the applicant's correspondence with prosecution authorities and the lack of an effective domestic remedy in that regard admissible;

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

3. *Holds* that there has been a violation of Article 13 of the Convention;

4. *Holds* that there is no need to examine the remaining complaints;

5. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for the non-pecuniary damage sustained by the applicant;

6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 1,000 (one thousand euros) for costs and expenses, plus any tax

[1] That is, to give a separate ruling on the admissibility and merits of the complaints under Articles 6 § 1, 8 and 13 of the Convention and the merits of the complaint under Article 34 of the Convention, the latter being of a procedural nature and therefore not giving rise to any issue of admissibility under the Convention (see, among other authorities, *Rasul Jafarov v. Azerbaijan*, no. 69981/14, § 176, 17 March 2016, with further references).

that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

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

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

Done in English, and notified in writing on 13 January 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller	Lətif Hüseynov
Deputy Registrar	President