

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

FOURTH SECTION

CASE OF VULDZHEV v. BULGARIA

(Application no. 6113/08)

JUDGMENT

STRASBOURG

18 December 2012

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



In the case of Vuldzhev v. Bulgaria,

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

David Thór Björgvinsson, *President,*
Zdravka Kalaydjieva,
Krzysztof Wojtyczek, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 27 November 2012,

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

PROCEDURE

1. The case originated in an application (no. 6113/08) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Bulgarian national, Mr Yordan Kirchev Vuldzhev ("the applicant"), on 5 October 2007.

2. The applicant was represented by Ms S. Stefanova and Mr M. Ekimdzhiev, lawyers practising in Plovdiv. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Kotseva, of the Ministry of Justice.

3. The applicant alleged, in particular, that the prison authorities monitored his correspondence in breach of Article 8 of the Convention.

4. On 13 July 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1976 and lives in Plovdiv.

6. On 12 July 2006 he was convicted of theft and sentenced to three years and two months' imprisonment. In the period between 16 April and 17 December 2007 he was detained in a low-security prison facility („затворническо общежитие") in Smolyan, part of Plovdiv Prison.**A. Alleged interference with the applicant's correspondence and contacts with his lawyers**

7. The applicant submitted that the entirety of his incoming and outgoing correspondence with his lawyers had been monitored by the prison

administration. He submitted two envelopes addressed by him to his lawyers, one from the prison facility in Smolyan and one from Plovdiv Prison. Each envelope was marked or stamped as having been monitored by the prison administration. As noted in a letter from the General Directorate of Enforcement of Sentences at the Ministry of Justice submitted by the Government, the prison administration, acting in compliance with section 33 § 1(c) of the Enforcement of Sentences Act of 1969, routinely opened all letters, including those sent to lawyers, save those addressed to certain state bodies or international organisations.

8. The applicant further submitted that he had not been allowed to contact his lawyer by phone and that his meetings with relatives and lawyers had been held in special premises with a prison officer attending the meeting.

B. The conditions of the applicant's detention

9. The applicant submitted that the conditions of his detention in the prison facility in Smolyan had been poor. In particular, the stated that (a) his cell had been small and overcrowded, not equipped with a toilet or a sink; (b) the number of toilets and showers had been insufficient; (c) the food had been of poor quality and insufficient; (d) the heating and ventilation had been insufficient; (e) the level of hygiene in the common areas had been poor; (f) dental services had not been covered by the State; (g) prison officers had often addressed inmates in an offensive way, physical harassment had not been uncommon, and disciplinary punishments had been imposed without proper observance of inmates' rights.

10. The applicant never brought an action for damages under the State and Municipalities Responsibility for Damages Act ("the SMRDA").

II. RELEVANT DOMESTIC LAW AND PRACTICE

11. The relevant domestic law and practice concerning prisoners' correspondence are set out in the Court's judgment in the case of *Iliev and Others v. Bulgaria*, nos. 4473/02 and 34138/04, §§ 25-31, 10 February 2011.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

12. The applicant complained that the prison authorities had monitored the correspondence between him and his lawyers. He relied on Article 8 of the Convention, which reads, in so far as relevant:

> "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."

13. The Government stated that unjustified monitoring of correspondence by the administration fell within the scope of the SMRDA, and argued that the applicant had failed to exhaust the available domestic remedies. They further submitted that prisoners' correspondence, save letters addressed to certain state bodies and international organisation, had been monitored for security reasons.

A. Admissibility

14. The Court has already found that the SMRDA was not an effective remedy in cases of unjustified monitoring of prisoners' correspondence (see *Shahanov v. Bulgaria*, no. 16391/05, § 59, 10 January 2012, with further references). It sees no reason to depart from that conclusion. Accordingly, the Government's preliminary objection must be dismissed.

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

B. Merits

16. The Court notes that the systematic opening of the applicant's letters was acknowledged by the Government in their observations in the present case (see paragraph 13 above). It further notes that it has frequently found violations of Article 8 of the Convention in Bulgarian cases concerning indiscriminate opening by the authorities of prisoners' correspondence with their lawyers (see, among many others, *Konstantin Popov v. Bulgaria*, no. 15035/03, § 17, 25 June 2009; *Radkov v. Bulgaria*, no. 27795/03, §§ 20-22, 22 April 2010; and *Shahanov*, cited above, § 63). It also observes

that the monitoring of prisoners' correspondence had not resulted from one individual decision taken by the authorities but directly from the application of the domestic legislation at the relevant time (see *Shahanov*, cited above, § 62).

17. Having examined all the material submitted to it, the Court considers that the Government have not put forward any fact or argument capable of persuading it to reach different conclusions in the present case. There has therefore been a violation of Article 8.

II. THE REMAINDER OF THE APPLICANT'S COMPLAINTS

18. The applicant also complained that the conditions of his detention in the prison facility in Smolyan had been poor and that he had not had effective domestic remedies in respect of those conditions and the monitoring of his correspondence by the prison authorities, that he had not been allowed to contact his lawyers by phone and that the monitoring of his correspondence had amounted to a hindrance in the effective exercise of his right of application.

19. The Court examined the remainder of the applicant's complaints as submitted by him. However, in the light of all the material in its possession, 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.

20. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

21. 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

22. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage suffered as a result of the breach of Article 8 of the Convention.

23. The Government contested that claim as excessive.

24. The Court considers that the applicant must have sustained non-pecuniary damage as a result of the breaches of his rights found in the

case. Taking into account all the circumstances of the case, and deciding on an equitable basis, it awards him EUR 1,200 under this head.

B. Costs and expenses

25. The applicant sought EUR 1,440 for 18 hours of legal work undertaken by his lawyers in the proceedings before the Court at the hourly rate of EUR 80. In support of this claim, he presented a power of attorney and a time sheet. He further claimed EUR 70 for postage and copying expenses. He requested that any award made by the Court under this head be made payable to his lawyers, Ms S. Stefanova and Mr M. Ekimdzhiev.

26. The Government considered that while the applicant's lawyers had indeed spent a certain amount of time on the case, the claims were excessive.

27. According to the Court's case-law, applicants are entitled to the reimbursement of their costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, having regard to the information in its possession and the above criteria, and noting that part of the application was declared inadmissible, the Court considers it reasonable to award the sum of EUR 700, to be paid into the bank account of the applicant's representatives, Ms S. Stefanova and Mr M. Ekimdzhiev.

C. Default interest

28. 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. *Declares* the complaint under Article 8 admissible and the remainder of the application inadmissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into Bulgarian levs at the rate applicable on the date of settlement:
      (i) EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 700 (seven hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the bank account of the applicant's representatives;

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

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

Done in English, and notified in writing on 18 December 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

David Thór Björgvinsson
President