CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 11932/02
by Iraida Ivanovna MIKHAYLYUK and Vladimir Petrovich PETROV
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 3 April 2007 as a Chamber composed of:

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having regard to the above application lodged on 24 November 2001,

Having deliberated, decides as follows:

THE FACTS

The applicants, Ms Iraida Ivanovna Mikhaylyuk (the "first applicant") and Mr Vladimir Petrovich Petrov (the "second applicant"), are Ukrainian nationals who were born in 1949 and 1951, respectively, and live in the town of Odessa.

I. THE CIRCUMSTANCES OF THE CASE

The facts of the case, as submitted by the applicants, may be summarised as follows.

A. Background

From 1976 until 1996 the second applicant worked for the Chernomorska Penitentiary Institution no. 74 (the "Colony"). He was provided with a room in a residence, which was situated on the site of the Colony and had the same postal address. He resided there until 1991. Afterwards, the applicants lived together in the first applicant's flat. The second applicant is still entitled to reside in the Colony and it remains his official place of residence.

B. Monitoring of correspondence

In September 1998 the applicants instituted civil proceedings in the Prymorskyy District Court of Odessa against the Colony and the local post office. They alleged that letters addressed to them by domestic and international courts had been unlawfully opened and read by the defendant organisations. The applicants sought compensation for non-pecuniary damage.

On 29 March 2001 the court rejected the applicants' claims. It found that the Colony had lawfully opened the letter of 27 October 1998, sent by the Starokyivskyy District Court of Kyiv to the first applicant, and the letter of 24 August 1998, sent by the European Court of Human Rights to the second applicant in the context of his previous application to the Court (no. 44997/98, declared inadmissible on 26 October 1999), as the Colony had been authorised by law to monitor the correspondence delivered to it. The court relied on the provisions of several legislative acts governing the conditions of detention of persons charged or convicted of crimes, in particular Article 7 of the Pre-Trial Detention Act of 1993 and Article 28 of the Correctional Labour Code of 1970. It also relied on some internal instructions of the Ministry of Interior, not accessible to the public, regulating the procedure for monitoring of the detainees' correspondence. It stated that, since the room of the second applicant was situated in the premises of the Colony, his correspondence had been dealt with by its administration in accordance with the rules applicable to detainees' correspondence.

On 19 July 2001 the Odessa Regional Court upheld the first instance court's decision. On 15 May 2002 a panel of three judges of the Supreme Court rejected the applicants' request for leave to appeal in cassation.

C. Labour proceedings

In July 2001 the first applicant instituted civil proceedings in the Zhovtnevyy District Court of Odessa against her employer, the Odessa Architecture College (the "College"), and the Odessa Regional Department for Education, seeking the annulment of the results of her work appraisal, the recovery of salary arrears, and compensation for non-pecuniary damage. She alleged that the College had unlawfully cut down her wages and refused to pay timely her salary due to her public criticism of the work of the management of the College.

On 29 July 2002 the court rejected her claims as unsubstantiated.

On 13 March 2003 the Odessa Regional Court of Appeal partially changed the decision of the first instance court and awarded the applicant UAH 2,329.56[1] in salary arrears.

On 23 March 2004 the panel of three judges of the Supreme Court rejected the applicants' request for leave to appeal in cassation.

D. Other civil proceedings

In November 2002 the first applicant lodged with the Pecherskyy District Court of Kyiv a civil claim against the President of Ukraine, alleging the latter's failure to protect her rights and seeking compensation for non-pecuniary damage.

On 25 December 2002 the court refused to consider the applicant's claim and returned it to her. The court held that the applicant's claim was vague and did not contain any substantiation.

On 26 March 2003 and 17 March 2004, respectively, the Kyiv City Court of Appeal and the Supreme Court upheld the decision of the first instance court.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of Ukraine

The relevant provisions of the Constitution read as follows:

Article 31

"Everyone shall be guaranteed privacy of mail, telephone conversations, telegraph and other correspondence. Exceptions shall be established only by a court in cases envisaged by law, with the purpose of preventing crime or ascertaining the truth in the course of the investigation of a criminal case, if it is not possible to obtain information by other means."

1. Around 409 euros – "EUR".

Article 56

"Everyone shall have a right to compensation from public or municipal bodies for losses sustained as a result of unlawful decisions, acts or omissions by public or municipal bodies or civil servants in the performance of their official duties."

B. Pre-Trial Detention Act 1993 ("the Act")

According to Article 1 of the Act, pre-trial detention is a preventive measure in respect of an accused, a defendant or a person suspected of having committed a crime punishable with imprisonment, or a convicted person whose sentence has not yet become final.

Article 7 of the Act provides that detainees' personal belongings and correspondence must be checked.

C. Correctional Labour Code of 1970 (repealed as of 1 January 2004) ("the Code")

According to Article 2 of the Code, the correctional labour legislation regulated the procedure and conditions of serving criminal sentences and the activities of the organs enforcing criminal sentences.

Article 28 of the Code provided that detainees' correspondence is subject to censorship, their parcels and packages are subject to opening and checking.

COMPLAINTS

1. The applicants complained under Article 8 of the Convention about the allegedly unlawful interception of their correspondence by the State authorities. They maintained that the interference by the authorities with their correspondence was not in accordance with the law and that the courts had groundlessly relied in their case on the rules applicable to persons detained in the course of criminal proceedings against them. The applicants also complained about a violation of Article 5 § 1 of the Convention on the same ground.

2. They further alleged that the effective exercise of their right of individual petition was unlawfully hindered by the State authorities on account of their practice of monitoring and censoring of correspondence. They invoked Article 34 of the Convention.

3. The first applicant complained about the outcome, unfairness and length of the proceedings against her employer. She alleged the wrongful assessment of evidence by the courts and invoked Articles 6 § 1 and 13 of the Convention. She further complained about a violation of Article 10 of

the Convention, alleging that she had been persecuted by her employer due to her public criticism of the work of its management.

4. The first applicant complained under Articles 6 § 1 and 13 of the Convention about the refusal of the courts to consider the merits of her claim against the President of Ukraine. She alleged a violation of Article 10 of the Convention on the same ground.

THE LAW

1. The applicants complained about the allegedly unlawful interception of their correspondence by a public authority. They invoked Article 8 of the Convention which reads, in so far as relevant, 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."

The Court considers that it cannot, on the basis of the case file, determine the admissibility of this part of the application and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of the Court, to give notice of it to the respondent Government.

2. The Court has examined the remainder of the applicants' complaints and considers that, in the light of all the material in its possession and in so far as the matters complained of were within its competence, they did not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that the remainder of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicants' complaints under Article 8 of the Convention;

Declares the remainder of the application inadmissible.

Claudia WESTERDIEK
Registrar

Peer LORENZEN
President