



Copying of photojournalist's laptop data by Russian customs violated Article 8 of the Convention

In today's **Chamber judgment**¹ in the case of **Ivashchenko v. Russia** (application no. 61064/10) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private life) of the European Convention on Human Rights.

The case concerned the copying of the data from a photojournalist's laptop by Russian customs officials.

The Court found that customs rules on inspecting goods and other regulations had not provided any legal basis for copying electronic data in a laptop. There had been no requirement to assess whether the measure was proportionate and it had been carried out without there being a reasonable suspicion of an offence. The data had been inspected under anti-extremism legislation but the courts had made no effort to define the terms under that law or apply them to the facts.

The case had highlighted deficiencies in the legal framework for such inspections. The domestic authorities, including the courts, had not had to give proper reasons for justifying the copying of the data, there had been no requirement to check whether the measure had pursued any legitimate aim in a proportionate manner and no consideration had been given to the fact that the applicant had been carrying journalistic material.

Principal facts

The applicant, Yuriy Nikolayevich Ivashchenko, is a Russian national who was born in 1983 and lives in Krasnodar (Russia).

In August 2009 Mr Ivashchenko, a photojournalist, was stopped for checks by Russian customs officers as he returned from the disputed region of Abkhazia, where he had been preparing an article. An officer decided to carry out an inspection of his bags and equipment on the grounds that he might be carrying banned extremist content, in violation of a 1995 presidential decree. Thirty-four folders including over 16,300 files were eventually copied from his laptop and transferred to DVDs. Mr Ivashchenko stated that personal correspondence was also copied.

The DVDs were handed over to him in November 2011 after a criminal forensics expert found that there was no extremist material in the files. Mr Ivashchenko challenged the customs officials' acts in court but his complaint was dismissed at first-instance and on appeal.

Complaints, procedure and composition of the Court

Mr Ivashchenko complained that the customs officers' actions in examining and copying the data had violated his rights under Article 8 (right to respect for private and family life, the home and the

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

correspondence) and Article 10 (freedom of expression). He also complained under Article 13 (right to an effective remedy) in conjunction with Articles 8 and 10 about the courts' review of his case.

The application was lodged with the European Court of Human Rights on 18 October 2010.

Judgment was given by a Chamber of seven judges, composed as follows:

Helena **Jäderblom** (Sweden), *President*,
Branko **Lubarda** (Serbia),
Luis **López Guerra** (Spain),
Helen **Keller** (Switzerland),
Dmitry **Dedov** (Russia),
Georgios A. **Serghides** (Cyprus),
Jolien **Schukking** (the Netherlands),

and also Stephen **Phillips**, *Section Registrar*.

Decision of the Court

Article 8

In the Court's view, by submitting his or her effects to customs controls when arriving in a country, a person did not automatically and in all instances waive or otherwise forgo the right to respect for "private life" or, as the case may be in other applications, his or her "correspondence". The applicant's complaint was not related to being asked questions during the initial customs procedure or about customs officers looking inside his bags. The thrust of his complaint was about the search of his laptop, which had lasted several hours, allegedly without any reasonable suspicion of any offence or unlawful conduct; the copying of his personal and professional data, followed by its communication for a specialist assessment; and the retention of his data for some two years. In the Court's view, those actions had gone beyond what could be perceived as procedures that were "routine", relatively non-invasive and for which consent was usually given. The applicant had not been able to choose whether he wanted to present himself and his belongings to customs and a possible customs inspection. The Court concluded that the comprehensive and intrusive measures relating to the computer data had amounted to interference with Mr Ivashchenko's right to respect for his private life.

The Court then examined whether those measures had been in line with the Convention standard of being "in accordance with the law". That meant that, first, the measure had to be based in law and people had to be able to understand how the law would be applied and, second, that when it came to searches and seizures, they would be protected from arbitrary interference.

The Court observed that the Russian officials had acted under customs rules for the sampling of goods for inspection and had applied those rules to the laptop and electronic data. However, the Court was not satisfied that it had been possible to foresee that the customs regulations and other legislation would be interpreted in such a way or that they had provided a legal basis for copying data in a laptop.

The Court also considered that neither the domestic regulatory framework nor the judicial-review procedure provided adequate protection against arbitrariness and sufficient safeguards against abuse. Having examined the arguments and evidence submitted by the Government, the Court was not satisfied that there had been a clear obligation at the authorisation stage for the inspection and, in particular, the copying to be subjected to a requirement of any assessment of the proportionality of the measure, or any need for the customs officers to have a reasonable suspicion of an offence to carry it out. Furthermore, no attempt had been made by the domestic authorities, including the courts, to define and apply terms such as "propaganda for fascism" or "social, racial, ethnic or

religious enmity” in the presidential decree on extremism. The Court was not convinced by the Government’s argument that Mr Ivashchenko’s returning from a disputed region was suspicion enough for such an examination.

The Court considered that the case highlighted deficiencies in the regulatory framework for such inspections. Furthermore, although the exercise of the powers to inspect and sample was amenable to judicial review under Chapter 25 of the Russian Code of Civil Procedure read in conjunction with the other applicable legislation, the width of those powers was such that the applicant had faced great obstacles in showing that the customs officers’ actions were unlawful, unjustified or otherwise in breach of Russian law, or in obtaining an adequate assessment of whether they had been “necessary in a democratic society” within the meaning of the Court’s case-law under Article 8. The domestic authorities, including the courts, had not been required to give relevant and sufficient reasons for the interference on account of the specific circumstances of a case, for instance, whether or not the applicant was carrying journalistic material.

Overall, the Government had not shown that the legislation and practice applied in the case had provided the necessary safeguards against abuse when it came to applying the customs sampling procedure for electronic data contained in an electronic device.

Other articles

Given the nature and scope of its findings under Article 8, the Court saw no need to separately examine the merits of the complaints made under other provisions of the Convention.

Just satisfaction (Article 41)

The Court held that Russia was to pay the applicant 3,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,700 in respect of costs and expenses.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.