



Interception of post in drug trafficking case was unlawful but the ensuing criminal proceedings were, as a whole, fair

The case [Dragoș Ioan Rusu v. Romania](#) (application no. 22767/08) concerned a university researcher's conviction for trafficking Diazepam via his local post office. Mr Rusu, the applicant, alleged in particular that his conviction had been unfair because it was based on unlawfully obtained evidence, namely envelopes seized by the prosecuting authorities at the post office without the approval of a court.

In today's **Chamber** judgment¹ in the case the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for correspondence) of the European Convention on Human Rights because the use of an urgent procedure provided for under domestic law for confiscating Mr Rusu's correspondence had not been adequately safeguarded from possible abuse. In particular, there was no way of knowing in Mr Rusu's case whether the domestic courts, the best guarantees of independence and impartiality, had even examined the prosecutor's orders authorising the seizure of the envelopes; but

no violation of Article 6 § 1 (right to a fair trial) of the European Convention as concerned the fairness of the ensuing criminal proceedings against Mr Rusu as a whole, bearing in mind the safeguards surrounding the assessment of the admissibility and reliability of the seized envelopes and their use in the proceedings.

Principal facts

The applicant, Dragoș Ioan Rusu, is a Romanian national who was born in 1974 and lives in Bacău (Romania).

In January 2005 a post office in Bacău informed the police about envelopes containing suspicious items. The police examined the envelopes and found that they contained Diazepam, a prohibited drug. The prosecuting authorities subsequently issued orders authorising the seizure of the envelopes under an urgent procedure provided for under domestic law, namely Article 98 § 1 of the Code of Criminal Procedure. The urgent order was sent to the Bacău County Court for information.

A criminal investigation was then launched and a surveillance operation set up in the Bacău post offices. Mr Rusu was thus identified in March 2005 in two different post offices depositing suspect envelopes to be sent abroad. The envelopes were seized under the same urgent procedure provided for by Article 98 § 1 and the County Court informed. Two pharmacists also identified Mr Rusu as the person to whom they had sold the medicine without prescription. The prosecutor concluded that Mr Rusu had been trying to sell abroad medicine classified as drugs and committed him to trial for drug dealing.

During the ensuing proceedings against him Mr Rusu, a university researcher, denied any involvement in drug trafficking, arguing that he had been sending scientific papers and samples

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.

abroad in relation to his research work. Mr Rusu was however convicted by the Bacău County Court in February 2009 of drug trafficking and given a three-year suspended sentence. The County Court relied on the evidence in the file, namely: the seized envelopes, including the expert evaluation of their content and of the writing on the envelopes (found to be Mr Rusu's); transcripts of the audio and video-surveillance; statements by witnesses (notably pharmacists, doctors, post office workers and Mr Rusu's fellow researchers); results of checks on the recipients of the envelopes and on the money transfers received by Mr Rusu from abroad; and police reports about checks on the pharmacies used by Mr Rusu and on his alleged scientific work abroad via Internet. Mr Rusu's complaints about the unlawfulness of the interception of his correspondence were dismissed. The court notably found that the prosecutor had been allowed by law to intercept the envelopes without court authorisation, given that the situation had been urgent and provided that the courts had been informed afterwards (which they had).

Mr Rusu's appeal on points of law was ultimately dismissed in June 2010.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for correspondence) Mr Rusu alleged that the interception of his correspondence had been unlawful. He also alleged under Article 6 § 1 (right to a fair trial) that his conviction had been unfair because it was based on unlawfully obtained evidence, namely envelopes seized by the prosecuting authorities at the post office without the approval of a court.

The application was lodged with the European Court of Human Rights on 6 May 2008.

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

Ganna **Yudkivska** (Ukraine), *President*,
Vincent A. **De Gaetano** (Malta),
Paulo **Pinto de Albuquerque** (Portugal),
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia **Motoc** (Romania),
Marko **Bošnjak** (Slovenia),
Péter **Paczolay** (Hungary),

and also Marialena **Tsirli**, *Section Registrar*.

Decision of the Court

[Article 8 \(interception of correspondence\)](#)

Even assuming that the urgent procedure used in Mr Rusu's case – allowing prosecutors to circumvent judicial control – could pass as legitimate, the Court recalled that it should under no circumstances be abused. Recourse to such a procedure should be justified and such justification should be examined by the domestic courts which provide the best guarantees of independence and impartiality.

However, although the courts had been informed of the surveillance measures in Mr Rusu's case, it was not possible to determine whether they had actually examined the prosecutor's orders. Nor indeed was there anything to indicate that urgency had been required in the case. There was no explanation why the prosecutor could not have used the normal procedure for secret surveillance in a case where the police had already been aware of the suspect envelopes being sent abroad a month before the surveillance operation had actually started. Moreover, the domestic courts had not apparently examined whether or to what extent it had been urgent to have recourse to such a procedure over a period of two months, from January to March 2005.

Consequently, the use of the urgent procedure for confiscating Mr Rusu's correspondence had not been adequately safeguarded from possible abuse and it had not therefore been "in accordance with the law", in breach of Article 8.

Article 6 § 1 (fairness of the criminal proceedings)

Even though the evidence against Mr Rusu had been found unlawful under Article 8 because of a lack of adequate safeguards as concerned the procedure for confiscating his correspondence, the Court nonetheless found that the ensuing criminal proceedings brought against him for drug trafficking had been fair.

In particular, he had had the possibility to question the validity of the seized envelopes and the courts had addressed his objections. Nor was there anything in the case file which cast doubt on the envelope's reliability or accuracy. Even Mr Rusu himself had not contested the results of the expert evaluation of the envelopes or the assertion that he had sent the correspondence abroad. He had only argued that the purpose of his correspondence had been to send scientific papers and samples abroad in connection with his research work. Lastly, while the envelopes were decisive for the outcome of the case, they were not the sole evidence against Mr Rusu. The seized envelopes were no more than one part of a complex body of evidence assessed by the court.

Bearing in mind those safeguards surrounding the assessment of the admissibility and reliability of the envelopes and their use, the Court found that the proceedings in his case, considered as a whole, had not been contrary to the requirements of a fair trial. There had therefore been no violation of Article 6 § 1.

Article 41 (just satisfaction)

The Court held that the finding of a violation constituted in itself sufficient just satisfaction for any non-pecuniary damage sustained by Mr Rusu.

Separate opinions

Judge De Gaetano expressed a concurring opinion and Judges Pinto de Albuquerque and Bošnjak expressed a joint partly concurring opinion. These opinions are annexed to the judgment.

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.