**BOSSY Y UKRAINE**

**Closed**

Expands Expression

**Region & Country**
Ukraine, Europe

**Mode of Expression**
Written Speech

**Date of Decision**
November 22, 2018

**Outcome**
Article 8 Violation/ Monetary Damages / Fines

**Case Number**
13124/08

**Judicial Body**
European Court of Human Rights (ECtHR)

**Type of Law**
International/Regional Human Rights Law

**Themes**
Privacy, Data Protection and Retention

**Tags**
Letters, Interference

**CASE ANALYSIS**

**Case Summary and Outcome**

The European Court of Human Rights issued a judgment on the right in respect of correspondence under Article 8 § 1. The court held that monitoring of the applicant’s correspondence with various entities which were not exempt from monitoring under domestic law in force at the relevant time constituted a violation of applicant’s right of respect for his correspondence.

The case concerned Mr. Vasyl Ivanovych Bosyy, a Ukrainian national, who was found guilty of aggravated robbery and sentenced to seven years’ imprisonment on 8 February 2008. He lodged a complaint with the Court against Ukrainian Government, concerning the conditions of his detention, alleged ill-treatment by guards in the detention facility and alleged essentially monitoring of his correspondence in prison and alleged hindrance of the exercise of his right of individual application (through failure to provide him with documents for his application to the Court, interference with his communication with the Court and intimidation on account of his application to the Court), in the duration of his detention at correctional colonies from 4 October 2006 to until his release on 25 May 2012.

The European Court held that the domestic law had not offered an appropriate degree of protection against arbitrary interference with a prisoner’s right to respect for his correspondence and that interference with the applicant’s rights under Article 8 on account of that monitoring had not been in accordance with the law.

**Facts**

In 2005 to 2006 the applicant was prosecuted for various crimes. He was eventually found guilty of aggravated robbery and sentenced to seven years’ imprisonment, the final decision having been adopted on 19 September 2006. From 27 May 2005 to 3 October 2006 the applicant was detained at a pre-trial detention centre (SIZO) in Kropyvnytskyi (then named Kirovograd).

From 4 October 2006 to 20 March 2008 the applicant was detained at correctional colony no. 6 in Kropyvnytskyi (hereinafter “the first colony”). According to the applicant, he was held in a dormitory measuring 6 by 8 sq. m and containing twelve double bunk beds. The Government submitted that the dormitory concerned measured 41.68 sq. m and contained ten single beds. They submitted photographs supposedly corroborating their submissions in that regard.

The applicant alleged that electricity in the colony had been regularly switched off. The Government submitted that electricity was supplied round the clock but to reduce power consumption as part of a nationwide energy-saving strategy, the voltage of the general lighting in the institution had been reduced from 220 to 110 V. The applicant submitted that that meant that even when the lighting had been on, the cell had been dimly lit and the light insufficient for activities such as reading and sewing. The applicant also alleged that he had not been given the essential items and that he had been “beaten, humiliated, tortured [and] placed in a disciplinary cell”. In particular, he alleged that he had been beaten on arrival at the colony on 4 October 2006 and that the guards had tried to place him into a psychiatric clinic in March 2007. The Government denied those allegations.

On 23 May 2008 the applicant was transferred to correctional colony no. 78 in the village of Raikivtsi, Khmelnytsk Region (hereinafter “the second colony”), where he stayed until his release on 25 May 2012. The applicant alleged that he had been repeatedly ill-treated by prison guards, that the prison authorities had intercepted, reviewed, blocked and delayed his correspondence, particularly that with the Court and the Parliamentary Commissioner for Human Rights, and had persecuted and threatened him for having applied to the Court. The Government denied those allegations.

It appears from the documents submitted by the parties that the applicant complained many times to various domestic authorities, notably the prosecutor’s office, alleging, in general, ill-treatment and persecution by the prison authorities. In May and August 2010 he withdrew two of his complaints, stating that they had been lodged in a state of heightened emotions.

Registers of incoming and outgoing mail from the correctional colonies submitted by the Government show that, in the period from 17 June 2008 to 1 December 2011 – the only period of the applicant’s detention for which specific information in this regard is available – the applicant sent and received more than sixty letters to and from various public entities, most notably various domestic courts, disciplinary commissions of judges, members of Parliament and the Presidential Administration. Under domestic law, this correspondence was subject to monitoring by the prison authorities. The prison registers show that the applicant also corresponded extensively with other entities, namely prosecutors, the Parliamentary Commissioner for Human Rights and the Court. These correspondence were, under domestic law, exempted from monitoring.

The Government also submitted a number of cover letters prepared by the prison authorities relating to the letters sent out by the applicant. For instance, in a cover letter of November 2011 to the Judges Qualifications Commission of Ukraine the governor of the second colony stated that he was forwarding a letter by the applicant concerning the initiation of criminal proceedings against the judges of the trial court that had convicted him. The applicant alleged that the domestic authorities had denied him access to his criminal case file, thus preventing him from obtaining copies of documents related to his application to the Court. The Government denied those allegations. They submitted documents from the domestic courts showing that the applicant had examined his criminal case file on 23 December 2001 and 11 January 2012 and that, by a letter of 25 January 2012, the trial court had sent him a number of copies of documents from that file.

After sending the Court an authority form empowering Mr. Markov to represent him, the applicant sent the Court two letters, in April 2014 and April 2015, informing it that he wished to revoke the lawyer’s authority. He said that the lawyer, by seeking to derive financial benefit from the case, had demonstrated conduct unworthy of his status. In subsequent correspondence between the Registry, the applicant and the lawyer it transpired that the applicant was apparently upset about the lawyer’s inability to help him with matters unrelated to the proceedings before the Court, such as sending him various goods and representation in unrelated domestic judicial and pardon proceedings.

**Decision Overview**

In its assessment of the issue at hand, the European Court of Human Rights had to analyze the submissions of both the applicant and the Ukrainian Government to assess whether there was an actual interference with Mr Vasyl Ivanovych Bosyy correspondence in prison and alleged hindrance of the exercise of his right of individual application and if so, does it serve a legitimate aim or was necessary in a democratic society? It concluded that domestic law had not offered an appropriate degree of protection against arbitrary interference with a prisoner’s right to respect for his correspondence and that interference with the applicant’s rights under Article 8 on account of that monitoring had not been in accordance with the law.

The Court noted that the applicant failed to provide any details or any prima facie evidence to substantiate his complaints, see *D.G. v. Poland*. His allegations are sweeping and unspecific. It reiterated that as per the precedent in *Diri v. Turkey* and *Dolenec v. Croatia*, there is no evidence of any injuries or even established instances of the use of force against the applicant or prisonwide operations by which he could have been affected. See also *Karabet and Others v. Ukraine.* It added that The applicant did not submit that he had had any injuries which he had brought to the authorities’ attention, but which had gone undocumented despite his efforts, (see *Sarac v. Turkey)* nor did he explain why he was not in a position to take such steps as it was in the case of *Balogh v. Hungary*, where the applicant provided detailed reasons for his failure to undergo a medical examination.

The Court has already found in *Belyaev and Digtyar v. Ukraine* that, under the law in force prior to 21 December 2005, prison officers monitored all letters sent by prisoners with the exception of letters to the Parliamentary Commissioner for Human Rights or prosecutors. The relevant legislation did not draw any further distinctions between the different categories of persons with whom detainees could correspond, such as, for example, law-enforcement and other domestic authorities, Convention and other international bodies, relatives, legal counsel, and so on. It did not elaborate on the manner in which the screening measures would be exercised. In particular, it did not provide for any participation by or involvement of prisoners at any stage of the monitoring process. Nor did it specify whether the detainee was entitled to be informed of any alterations to the contents of his or her outgoing correspondence. Moreover, the monitoring was automatic, without any time-limits and did not require any reasoned decision giving grounds for the screening measures and/or setting a time frame for it. Lastly, there was no specific remedy enabling the detainee to contest the measure and obtain adequate redress. On account of those characteristics of the applicable domestic legal regime the Court concluded that the applicable domestic law had not offered an appropriate degree of protection against arbitrary interference with a prisoner’s right to respect for his correspondence and that interference with the applicant’s rights under Article 8 on account of that monitoring had not been “*in accordance with the law*”

The Court noted that the Law of 1 December 2005 introduced an amendment to the legal regime found to be defective in *Belyaev and Digtyar* by exempting correspondence addressed to the Court and other international institutions from monitoring. That was the regime which applied to the applicant’s correspondence during the bulk of his detention. Further exemptions were added, which became effective on 9 February 2010. Subsequent amendments introduced in 2014 are of no relevance to the case. To the extent that the applicant complained that his correspondence addressed to the Court, the Parliamentary Commissioner for Human Rights and the prosecutors (prior to 9 February 2010) or received from them (from 9 February 2010 onwards) had been monitored in breach of the domestic law prohibiting such monitoring, there is no material before the Court which would corroborate his allegations. It appears that the applicant did not initiate any proceedings in that regard before the domestic courts, as was his right. See *Chaykovskiy v. Ukraine*. The Court finds, therefore, that this part of the application should be rejected as manifestly ill-founded in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

The Court observed that, although the parties disagreed as to whether some of the applicant’s letters had been withheld by the prison authorities, the Government did not specifically contest the applicant’s submission that his correspondence with non-exempt entities had been routinely monitored by the prison administration, pursuant to the applicable domestic law (see *Vintman v. Ukraine*. Indeed, the prison authorities’ cover letter submitted by the Government, which contains a summary of the content of the applicant’s letter, illustrates that the authorities did in fact monitor his letters to non-exempt addresses, as provided for by domestic law, see *Glinov v. Ukraine* and *Trosin v. Ukraine.* The Court affirms that the act of the monitoring constituted an interference with the exercise of the applicant’s right to respect for his correspondence under Article 8 § 1. Such interference will contravene Article 8 § 1 unless, among other conditions, it is “*in accordance with the law*”, see *Enea v. Italy.*

Lastly, the Court stated as far as the applicant complained of the monitoring of the Applicant’s correspondence with various entities not exempt from monitoring under the relevant provisions of the domestic law, that part of the complaint is not manifestly ill-founded. It is not inadmissible on any grounds. It must, therefore, be declared admissible and same was. On the basis of the above, the European Court of Human Rights Court found that there has been a violation of Article 8 of the Convention on account of the monitoring of the applicant’s correspondence with various entities which were exempted from monitoring under domestic law in force at the relevant time; that the Government has not failed to comply with its obligations under Article 34 of the Convention but there has been a disproportionate restriction on its interference with a prisoner’s right to respect for his correspondence.

### Expands Expression

This important judgment of the European Court of Human Rights expands expression when it found that the right to privacy of correspondence of the Applicant was unjustifiably interfered with noting that the action of the respondent can only be justified when as a public authority the exercise of such action of interference is in accordance with the law and necessary in a democratic society and 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 holding of the court that the respondent indeed violated the Applicant’s right to private life under Article 8 of the Convention when it monitored his correspondences that were exempted from monitoring under the domestic law and that same was indeed disproportionate, clearly expands expression.

GLOBAL PERSPECTIVE

### Table of Authorities

### Related International/or Regional laws

Convention for the Protection of Human Rights and Fundamental Freedoms. Art. 8

**ECtHR,** Enea v. Italy [GC], App. No.74912/01 (2009).

**ECtHR,** Glinov v. Ukraine, App. No.13693/05, (2009).

**ECtHR,** Trosin v. Ukraine, App. No.39758/05, (2012).

**ECtHR,** [Vintman v. Ukraine, App. No. 28403/05,(2014)](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109034#{)

**ECtHR,** Chaykovskiy v. Ukraine, App. No.2295/06,(2009).

**ECtHR,** Belyaev and Digtyar v. Ukraine App. No.16984/04 and 9947/05,(2012)

**ECtHR,** Valeriy Fuklev v. Ukraine, App. No.6318/03,(2014)

**ECtHR,** Orlovskiy v. Ukraine, App. No.12222/09,(2015).

**ECtHR,** Sergey Savenko v. Ukraine, App. No.59731/09,(2013).

**ECtHR,** Danilov v. Ukraine, App. No.2585/06, (2014).

**ECtHR,** Balogh v. Hungary, App. No.47940/99,(2004)

**ECtHR,** Sarac v. Turkey, App. No.35841/97

**ECtHR,** Karabet and Others v. Ukraine, App. No.38906/07 and 52025/07,(2013).

**ECtHR,** Dolenec v. Croatia, App. No.25282/06,(2009)

**ECtHR,** Diri v. Turkey, App. No.68351/01,(2007)

**ECtHR,** D.G. v. Poland, App. No.45705/07,(2013).

**ECtHR,** Naydyon v. Ukraine, App. No.16474/03,(2010)

**ECtHR,** [Muršić v. Croatia ([GC], App. No. 7334/13,(2016)](http://hudoc.echr.coe.int/eng?i=001-82846)

**National Standards, law or jurisprudence**

Code on the Enforcement of Sentences (2003) art. 113

**CASE SIGNIFICANCE**

### The decision establishes a binding or persuasive precedent within its jurisdiction.