CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 32524/05
by Peter SENGER
against Germany

The European Court of Human Rights (Fifth Section), sitting on 3 February 2009 as a Chamber composed of:

Peer Lorenzen, *President,*
Rait Maruste,
Karel Jungwiert,
Renate Jaeger,
Mark Villiger,
Isabelle Berro-Lefèvre,
Zdravka Kalaydjieva, *judges,*

and Claudia Westerdiek, *Section Registrar,*

Having regard to the above application lodged on 8 August 2005,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Peter Senger, is a German and Russian national who was born in 1961 and lives in Mannheim.

A. The circumstances of the case

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

The applicant is in detention in the Mannheim penal institution.

On 28 and 29 August 2003, the Mannheim prison authorities stopped letters and refused to hand them over to the applicant pursuant to section 31(1)(6) of the Penal Code (*Strafvollzugsgesetz*) on the ground that they were written in Russian. Pursuant to the said provision, the head of the penal institution may halt letters to inmates that are written in a foreign language without a compelling reason (see Relevant domestic law below).

The applicant lodged an appeal against the decision of the prison authorities alleging that the letters were written by his aunt and cousin who, despite having dual German and Russian nationality, were not capable of corresponding in German. He further submitted that both of the said relatives had been allowed to communicate with him in Russian on the occasion of previous visits to the Mannheim prison.

On 28 January 2004 the Mannheim Regional Court rejected the appeal. It noted that it was undisputed that the applicant himself had full command of the German language and that the senders of the letters had both German and Russian nationality and had been residing in Germany for some years. The Regional Court found that since the applicant had failed to make any submissions as to why the authors of the letters were not capable of corresponding in German – for example personal data relating to their age, the length of their residence in Germany or their language skills - , there was nothing to establish that there existed a compelling reason for them to write in Russian. The mere fact that it would be easier for them to correspond in Russian could not be regarded as a compelling reason in this regard. The Regional Court further observed that the applicant had extensive contacts with the outside world by means of visits and telephone calls. The Regional Court clarified that the general decision whether the correspondence of the applicant had to be monitored had already been the subject of previous court decisions in 2002 and was not the subject of the instant appeal.

On 17 November 2004 the Karlsruhe Court of Appeal rejected an appeal by the applicant and upheld the decision of the Mannheim Regional Court. The Court of Appeal also found that the applicant had not substantiated that there were compelling reasons for the authors of the letters to write in Russian. It pointed out that should the applicant wish to have the entire correspondence with the said relatives excluded from monitoring, he would be free to lodge a pertinent request with the prison authorities.

On 27 July 2005 the Federal Constitutional Court declined to consider a constitutional complaint lodged by the applicant.

B. Relevant domestic law

Section 31 (1)(6) of the Penal Code reads as follows:

"§ 31 Stoppage of Letters

(1) The leader of the institution may halt letters,

1. if the purpose of the imprisonment or the security or order of the penal institution would be jeopardised,
2. if the transmission of the letters in knowledge of their content constituted a criminal offence or summary offence,
3. if they contain grossly incorrect or seriously distorting descriptions of prison conditions,
4. if they contain gross insults,
5. if they might jeopardise the integration of another prisoner,
6. if they are drafted in a secret language, illegible, incomprehensible or drafted in a foreign language without a compelling reason.
..."

COMPLAINTS

1. The applicant complained under Article 10 of the Convention that the Mannheim prison authorities, by refusing him, his mother, aunt and other relatives the opportunity to correspond in Russian, had deprived him of his right to communicate with his relatives who are not capable of writing in German and thus violated his right to freedom of expression.

2. He further complained that the refusal to hand over the letters written by his relatives in Russian constituted an aggravation of the conditions of his detention that amounted to a violation of Article 3 of the Convention.

THE LAW

1. The complaint regarding a violation of the right to respect of the applicant's correspondence

The applicant complained of a violation of his right to freedom of expression under Article 10 of the Convention on the ground that he was denied the right to receive letters in prison written by his relatives in Russian and to correspond with them in Russian.

The Court considers that in the context of correspondence, the right to freedom of expression falls to be examined under Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and 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 notes in the first place that the applicant does not complain about the monitoring of his correspondence in general but about the prison authorities' refusal to hand over the letters sent to him in Russian by his relatives and about the authorities' depriving him of the right to correspond with his relatives in Russian.

The Court considers that the applicant's submissions can in substance be interpreted as a complaint about (a) the fact that the letters exchanged with his relatives were not excluded from the general supervision of his correspondence and (b) the decision of the prison authorities to halt the letters by his relatives written in Russian.

a) The monitoring of the correspondence with the applicant's relatives

As regards a possible exclusion of letters exchanged between the applicant and his relatives from the general supervision of his correspondence, the Court observes that the applicant has not lodged a request to this respect with the prison authorities even though the Karlsruhe Court of Appeal in its decision of 17 November 2004 has explicitly pointed out such a possibility.

The Court therefore finds that domestic remedies have not been exhausted as required by Article 35 § 1 of the Convention and therefore holds that the applicant's complaint must be rejected in accordance with Article 35 § 4 of the Convention.

b) The stoppage of the letters by the prison authorities

The Court observes that the prison authorities' decision to stop the letters sent to the applicant in the Russian language constituted an interference with his right to respect for correspondence under Article 8 of the

Convention (see *Silver and Others v. the United Kingdom*, 25 March 1983, § 84, Series A no. 61). Such interference amounts to a violation of this provision unless it was "in accordance with the law", had an aim or aims that is or are legitimate under Article 8 § 2 of the Convention and was "necessary in a democratic society" for the aforesaid aims.

The decision of the prison authorities to halt the letters was based on Section 31 (1)(6) of the Penal Code which allows the stoppage of letters sent to inmates, *inter alia*, if they are drafted in a foreign language without a compelling reason. The prison authorities had found that the applicant did not substantiate why the relatives in question were not capable of corresponding in German and thus failed to demonstrate any compelling reasons for them to write in Russian. The finding of the prison authorities was confirmed by the national courts on the occasion of the corresponding remedies lodged by the applicant. Accordingly, the Court finds that the stoppage of the letters by the prison authorities occurred “in accordance with the law” in the meaning of Article 8 § 2 of the Convention.

Furthermore, the Court sees no reason to doubt that the interference had the aim to ensure that the correspondence did not contain material which was harmful to prison security or the safety of others or was otherwise of a criminal nature and thus pursued a legitimate aim within the meaning of Article 8 § 2 of the Convention such as the “prevention of disorder or crime”. The Court notes in this context from the wording of the various alternatives as stipulated under Section 31 of the Penal Code that the entire provision pursues the said legitimate aims. The Court further recalls that the general decision whether the correspondence of the applicant had to be monitored had already been the subject of previous decisions of the national courts and is not challenged within the scope of the instant complaint.

As regards the question as to whether the stopping of the letters was necessary for the aim pursued, the Court recalls that the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued. In determining whether an interference is "necessary in a democratic society" regard may be had to the State’s margin of appreciation. It has also been recognised that some measure of control over prisoners’ correspondence is called for and is not itself incompatible with the Convention, regard being paid to the ordinary and reasonable requirements of imprisonment (see *Silver and Others v. the United Kingdom*, cited above; *Campbell v. the United Kingdom*, 25 March 1992, §§ 44 and 45, Series A no. 233).

The Court observes that it is undisputed that both the applicant and the authors of the letters have dual German and Russian nationality, that the applicant himself is in full command of the German language and that his relatives have lived in Germany for some years. The applicant did not substantiate why the authors in question were not capable of corresponding in German and failed to demonstrate any compelling reasons for them to

write in Russian. The Court therefore finds that the authorities had sufficient reason for concluding that the stopping of the letters was necessary "for the prevention of disorder or crime" within the meaning of Article 8 § 2 of the Convention. The Court again points out in this context that the general decision whether the correspondence of the applicant had to be monitored had already been the subject of previous decisions of the national courts and is not challenged within the scope of the instant complaint.

The Court also notes that the applicant did not avail himself of the possibility to request to have the entire correspondence with the said relatives excluded from monitoring. There is thus no indication that the interference with the applicant's right to the respect of his correspondence was disproportionate.

For these reasons, the Court concludes that the stopping of the letters was both "in accordance with the law" and justifiable as "necessary in a democratic society". This part of the application is thus manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

The Court further observes that within the scope of the appeals lodged with the national courts the applicant referred only to letters written by his aunt and cousin. In so far as the applicant now specifies that also his mother and - without further specification – other relatives hardly speak German and are not capable of writing in German at all, the Court holds that these allegations constitute new submissions as to the identity of the authors of the letters that have not been the subject of the proceedings before the national courts. The Court therefore holds that in this respect national remedies have not been exhausted and the applicant's complaint must be rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

2. The remainder of the applicant's complaint

The applicant further argued that the refusal to hand over the letters written by his relatives in Russian constituted an aggravation of the conditions of his detention that amounted to a violation of Article 3 of the Convention.

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.

It follows that this part of the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court by a majority

Declares the application inadmissible.

Claudia Westerdiek
Registrar

Peer Lorenzen
President