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

FOURTH SECTION

DECISION

Application no. 31878/18
Jorge Manuel FRUTUOSO DA COSTA
against Portugal

The European Court of Human Rights (Fourth Section), sitting on 30 May 2023 as a Committee composed of:

Armen Harutyunyan, *President*,
Anja Seibert-Fohr,
Ana Maria Guerra Martins, *judges*,
and Crina Kaufman, *Acting Deputy Section Registrar*,

Having regard to:

the application (no. 31878/18) against the Portuguese Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 2 July 2018 by a Portuguese national, Mr Jorge Manuel Frutuoso da Costa ("the applicant"), who was born in 1972, is detained in Évora Prison and was represented by Mr P.J. Silva, a lawyer practising in Murça;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The applicant is serving a sentence in Évora Prison.

2. On 17 January 2017, 5 July 2017, 11 December 2017 and 15 May 2018 the Évora Sentence-Supervision Court (*Tribunal de Execução das Penas* – hereinafter "the TEP") rejected four requests for prison leave (*licença de saída jurisdictional*) submitted by the applicant on 25 November 2016, 13 June 2017, 6 November 2017 and 18 April 2018 respectively. In its decisions, the TEP took into account the opinion of the technical council of the prison (*conselho técnico do estabelecimento prisional*).

THE COURT'S ASSESSMENT

3. Relying on Article 5 and Article 6 § 1 of the Convention, the applicant alleged that he had made several submissions to the prison director about interactions with other detainees and prison guards which had gone unanswered and which had been used against him in connection with his requests for prison leave (see paragraph 2 above). Relying on Article 5 § 4, Article 6 §§ 1 and 3, Article 13 and Article 34 of the Convention, he also complained that the proceedings concerning his requests for prison leave had been unfair in that he had not been heard and had not been able to defend himself, and that no appeal to a higher court had been available under domestic law against the TEP's decisions rejecting his requests for prison leave.

4. The Court, being the master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), finds it appropriate to examine the applicant's complaints from the standpoint of Article 6 of the Convention taken alone in so far as it is the overall unfairness of the proceedings concerning prison leave that is at issue.

5. The Court notes that the criminal limb of Article 6 of the Convention is not applicable to matters relating to the prison system, as they do not relate in principle to a "criminal charge" (see *Enea v. Italy* [GC], no. 74912/01, § 97, ECHR 2009). It must therefore consider whether the applicant had a "civil right" in order to determine whether the procedural safeguards afforded by Article 6 § 1 of the Convention were applicable to the proceedings concerning his requests for prison leave.

6. The Court refers to the general principles established in *Boulois v. Luxembourg* ([GC], no. 37575/04, §§ 90-94, ECHR 2012).

7. In the present case the Court notes that under Article 76 § 2 and Article 79 § 2 of the Code of Execution of Prison Sentences (hereinafter "the CEP"), prison leave may be granted to detainees provided that they have completed a minimum period of their sentence and that they are placed under the general or open security regime (see, in this connection, *Petrescu v. Portugal*, no. 23190/17, § 36, 3 December 2019). Under Article 78 of the CEP, when deciding whether to grant prison leave the TEP must consider the behaviour of the detainee in prison, his or her family and the social environment in which he or she would be hosted, his or her record, and the needs of the victim. Additionally, it is noteworthy that the detainee may reapply for prison leave four months after a previous decision, or after a shorter period if the TEP so allows in its decision (Article 84 of the CEP).

8. Furthermore, the Portuguese Constitutional Court found in judgment no. 752/2014 of 12 November 2014 that prison leave was not a right that detainees were recognised as having. The Constitutional Court also found that decisions of the TEP in respect of this issue were discretionary in nature.

9. It is thus apparent from both the national legislation and the judgment of the Constitutional Court that the applicant cannot claim on arguable grounds to possess a "right" recognised in the domestic legal system (see *Boulois*, cited above, § 101).

10. It follows that the application is incompatible *ratione materiae* with the provisions of the Convention and must be rejected pursuant to Article 35 § 4 thereof (ibid., § 104).

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 22 June 2023.

Crina Kaufman Acting Deputy Registrar	Armen Harutyunyan President