

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

FOURTH SECTION

DECISION

Application no. 17756/22
José Manuel GOMES LEONARDO
against Portugal

The European Court of Human Rights (Fourth Section), sitting on 22 October 2024 as a Committee composed of:

Tim Eicke*, President*,
Ana Maria Guerra Martins,
Mateja Đurović*, judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 17756/22) 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 1 April 2022 by a Portuguese national, Mr José Manuel Gomes Leonardo ("the applicant"), who was born in 1954 and was represented by Mr V. Carreto, a lawyer practising in Torres Vedras;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the length of a prison sentence, conditions of detention and limitations on the duration of telephone calls following the applicant's conviction in Brazil and his transfer to in Vale de Judeus Prison in Portugal to serve the remaining part of the sentence.

2. On unspecified dates the applicant was convicted in two separate sets of criminal proceedings in Brazil and sentenced to two prison terms of twenty-two and sixteen years, respectively. Following his transfer to Portugal he has been held in an individual cell in Vale de Judeus Prison since 11 November 2018.

3. By a judgment of the Criminal Court of Leiria on 17 March 2022, the applicant's sentences were reviewed pursuant to Article 234 of the Code of Criminal Procedure and the two penalties imposed in Brazil were converted into a single term of thirty years' imprisonment.

4. Relying on Article 3 of the Convention, the applicant complained of the excessive length of the prison sentence imposed on him by the Criminal Court of Leiria, in view of his advanced age and poor state of health. Under Articles 3 and 13 of the Convention, he complained of the conditions of his detention and the lack of an effective remedy in this regard. Relying on Article 7, he further argued that, due to its length, the prison sentence he is serving in Portugal was unlawful under the domestic law. Lastly, relying on Article 8, the applicant complained about the short duration of telephone calls (5 minutes per day) he was allowed to make in Vale de Judeus Prison.

THE COURT'S ASSESSMENT

A. Complaints under Articles 3 and 13 of the Convention

5. With regard to the applicant's complaint that, given his age and poor health, the length of the prison sentence imposed on him by the Criminal Court of Leiria was excessive, the Court reiterates that if it is to fall within the scope of Article 3 of the Convention, the suffering and humiliation involved must go beyond the inevitable element of suffering and humiliation connected with detention (see *Muršić v. Croatia* ([GC], no. 7334/13, § 99, 20 October 2016, and the cases cited therein). Whereas advanced age is not a bar to a prison sentence, the detention of an elderly person over a lengthy period might raise an issue under Article 3. Nonetheless, regard is to be had to the particular circumstances of each specific case (see *Papon v. France* (no.1) (dec.), no. 64666/01, 7 June 2001).

6. In the present case, the Court notes that the applicant was convicted in Brazil and received two prison sentences of twenty-two years and sixteen years. The Criminal Court of Leiria converted these sentences into a single prison sentence of thirty years, pursuant to Article 234 of the Code of Criminal Procedure (see paragraphs 2 and 3 above). The Court further notes that the applicant was 67 years old when he submitted his application to the Court and that he did not submit any evidence to substantiate his allegations of poor health. Thus, it is not possible to assess whether the combination of his age and state of health is incompatible with his continued detention.

7. As regards the material conditions of detention in Vale de Judeus Prison, the Court notes that the applicant has been held in an individual cell since 11 November 2018 (see paragraph 2 above). Having regard to all of the evidence submitted by the applicant, the Court finds that it cannot be established that he suffered from a lack of personal space that could entail, on its own, a violation of Article 3 (see *Muršić,* cited above, § 117). Nor can it be found that the cumulative effect of the other aspects of the detention that the applicant complained about reached the threshold of severity required to characterise the treatment as inhuman or degrading within the meaning of

Article 3 (see *Bokor v. Portugal* (dec.), no 5227/18, §§ 32-34, 10 December 2020).

8. In view of the foregoing, the Court does not find it established that the applicant was subjected to ill-treatment that attained the requisite level of severity to fall within the scope of Article 3 of the Convention.

9. Having regard to the above finding concerning the applicant's complaints under Article 3 of the Convention, he does not have an "arguable" claim under Article 13 of the Convention (see *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 57, Series A no. 131, and *Narcisio v. Netherlands* (dec.), no. 47810/99, 27 January 2005).

10. It follows that his complaints under these Articles are manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

B. Complaint under Article 7 of the Convention

11. The Court reiterates that a distinction must be drawn between a measure that constitutes in substance a "penalty" and a measure that concerns the "execution" or "enforcement" of a "penalty"; Article 7 applies only to the former (see *Del Río Prada v. Spain* [GC], no. 42750/09, § 85, ECHR 2013, and the references contained therein).

12. The applicant was transferred to Portugal in order to serve the remaining part of the two prison sentences imposed in Brazil, which were converted into a single prison sentence by the Criminal Court of Leiria, pursuant to Article 234 of the Code of Criminal Procedure (see paragraph 3 above). The conversion in question aimed to ensure that the penalties imposed by the foreign court be enforced in Portugal in a manner compatible with domestic law. The penalty itself remained the same – that is a deprivation of liberty in a prison for a set term. The conversion complained of cannot therefore be considered as amounting to a "penalty" within the meaning of Article 7 of the Convention (compare *Muller v. Czech Republic* (dec.), no. 48058/09, 6 September 2011, and *Ciok v. Poland* (dec.), no. 498/10, §§ 30-36, 23 October 2012).

13. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention, within the meaning of Article 35 § 3 (a), and must be rejected pursuant to Article 35 § 4 of the Convention.

C. Complaint under Article 8 of the Convention

14. The Court has previously found that limitations on the duration of daily telephone calls was not a disproportionate measure (see *Bădulescu v. Portugal*, no. 33729/18, §§ 36-37, 20 October 2020). This complaint must therefore be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 21 November 2024.

Simeon Petrovski Deputy Registrar	Tim Eicke President