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

THIRD SECTION

DECISION

Application no. 6035/19
Jock Anthony PALFREEMAN
against Bulgaria

The European Court of Human Rights (Third Section), sitting on 11 February 2025 as a Committee composed of:

Peeter Roosma*, President*,
Diana Kovatcheva,
Mateja Đurović*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 6035/19) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 15 January 2019 by an Australian national, Mr Jock Anthony Palfreeman ("the applicant"), who was born in 1986, was detained in Kazichene, and was represented by Mr K. Kanev and Ms E. Koutra, lawyers practising, respectively, in Sofia and Athens;

the decision to give notice of the complaints under Articles 10, 13 and 18 of the Convention to the Bulgarian Government ("the Government"), represented by their Agent, Ms M. Kotseva from the Ministry of Justice, and to strike out a complaint under Article 8 of the Convention;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns disciplinary punishments imposed on the applicant in prison.

2. At the relevant time the applicant was serving a sentence in Kazichene open-type prison hostel. In September 2019 he was granted early release. Earlier the applicant became president of the Bulgarian Prisoners' Rehabilitation Association (hereinafter "the BPRA"), founded by prisoners

and former prisoners to defend their rights. He was well-known for publicly criticising the prison authorities on various matters.

3. The BPRA's logo is a raised fist. On 31 May 2018 prison officers searched the Kazichene hostel and found eight stickers, featuring an image similar to it, but with the thumb wedged between two fingers (the so-called "fig sign"). The stickers carried in addition the inscription: "When injustice is law, resistance becomes duty".

4. The prison authorities also seized a computer used by the applicant on which they found video files with pornographic content, and carried out a search in his cell.

5. Three disciplinary punishments were imposed on the applicant on 21 and 25 June 2018 in relation to the events above:

a) additional cleaning duties for seven days, in relation to the stickers. It was considered that it had been him who had stuck them, that the image on them was obscene, and that the inscription was offensive to the staff;

b) deprivation of the right to receive food parcels from outside prison for three months for having swallowed a memory card during the search of his cell (which the applicant denied);

c) a ban from taking part in collective activities in relation to the files with pornographic content found on the seized computer.

6. The applicant appealed against all three punishments to the governor of Sofia Prison. In July 2018 a senior inspector acting on behalf of the governor dismissed the appeals.

7. The applicant sought judicial review. The Sofia City Administrative Court (hereinafter "the Administrative Court") opened three separate cases.

8. As concerns the stickers, in April 2019 it found the claim admissible, based on a general judicial-review clause in the Constitution, even though domestic law did not provide expressly for such review. However, it found the claim unfounded. After having heard witnesses, the Administrative Court concluded that it had been the applicant who had stuck the stickers. It considered further that the stickers had been offensive to prison staff, that they did not convey any value judgment or opinion, and that in sticking them in various places the applicant had breached the prison rules. The punishment given to him had been adequate and proportionate. That judgment was upheld on 2 December 2020 by the Supreme Administrative Court.

9. In the case relating to the memory card, the Administrative Court found the claim inadmissible, seeing that domestic law did not provide for judicial review of such types of punishment. That decision was also upheld by the Supreme Administrative Court on 30 May 2019.

10. Lastly, in the case relating to the files with pornographic content, in October 2019 the Administrative Court found the claim admissible and well-founded, since it had been insufficiently established that it had been the applicant who had placed the files on the hard drive.

11. The applicant complained under Articles 10 and 11 of the Convention of his disciplinary punishment in relation to the stickers, and under Article 13 that he did not have an effective remedy in that respect. He also complained under Article 14 of the Convention that he had been treated differently on account of his status as someone engaging in advocacy of prisoners' rights. The applicant denied having been involved in the stickers' distribution.

12. He further complained under Article 18 of the Convention that the real purpose of all three disciplinary punishments had been to silence him and discourage the activities of the BPRA.

THE COURT'S ASSESSMENT

13. The applicant complained, in the first place, about his disciplinary punishment related to the distribution of the stickers (see paragraph 11 above). Even though he relied on Articles 10, 11, 13 and 14, the Court finds it appropriate in the circumstances of the present case to examine the matter solely under Articles 10 and 13 of the Convention (compare *Aliyev v. Azerbaijan*, nos. 68762/14 and 71200/14, § 219, 20 September 2018; and *Ecodefence and Others v. Russia*, nos. 9988/13 and 60 others, § 189, 14 June 2022).

14. The Government argued that Article 10 of the Convention had not been breached. Any interference with the applicant's rights under that provision had been based on law and pursued the legitimate aim of protecting the reputation and rights of others. The interference was proportionate, seeing the clearly offensive nature of the stickers and the rather lenient punishment given to the applicant. The stickers could in no way be seen as constructive criticism of the prison administration. The specific context of the events, namely occurring in prison where the rules of conduct and restrictions are stricter, had to be taken into account as well. As concerns Article 13 of the Convention, the Government pointed out that the applicant had been able to contest the impugned punishment before two levels of court.

15. The applicant disputed that he had put up the stickers. Nevertheless, his rights under Article 10 of the Convention had been breached. The stickers at issue had not been particularly offensive, and the "fig sign" represented "an expression of the prisoners' attitude to the system of imprisonment" and to its daily injustices. Interpreting such sign as offensive amounted to "gross misinterpretation". Moreover, punishing him for the stickers had been excessive, as they could have simply been removed. The punishment had prevented him from seeking early release on an earlier date. As to Article 13, the administrative remedy the applicant had used, namely an appeal before the prison governor (see paragraph 6 above), had been ineffective, since the officer deciding on it had not been independent. As to the possibility of judicial review, the domestic courts' approach as to whether such review was permissible was uncertain, rendering the remedy ineffective in practice.

16. The Court is satisfied that the disciplinary punishment at issue represented an interference with the applicant's rights under Article 10 of the Convention. Even though the applicant denies any involvement in the distribution of the stickers, the fact remains that the punishment was given for an activity which falls within the scope of freedom of expression (see *Müdür Duman v. Turkey*, no. 15450/03, § 30, 6 October 2015, and *Genov and Sarbinska v. Bulgaria*, no. 52358/15, § 63, 30 November 2021).

17. The Court has no reason to doubt that such interference was in accordance with the law and pursued one of the legitimate aims. Indeed, the main question the parties disagreed on was whether the interference was proportionate (see paragraphs 14-15 above).

18. In that regard, the Court observes that the Administrative Court gave adequate reasons for concluding that the applicant had stuck the impugned stickers, relying in particular on witness statements (see paragraph 8 above). The national court's conclusion that the stickers, and in particular the image on them, were offensive, is acceptable as well. It should be noted that a domestic court is best suited to reach conclusions in that regard, as it is well aware of the local meaning and significance of a particular depiction. The Administrative Court explained also that it did not consider the stickers to convey any value judgment or opinion, and that the applicant had breached the prison rules. Lastly, it found the punishment imposed on the applicant – additional cleaning duties for seven days – appropriate and proportionate (ibid.).

19. The Court finds the above reasons justifying the applicant's disciplinary punishment, upheld by the Supreme Administrative Court (ibid.), adequate and sufficient. It agrees that the rather light punishment does not appear disproportionate in the context of breach of prison rules. As to the applicant's allegation that the punishment delayed his application for early release (see paragraph 15 above), the Court finds such a statement speculative and not supported by any specific evidence.

20. As concerns the complaint under Article 13 taken in conjunction with Article 10 of the Convention, the Court does not have to asses the aptness of the administrative remedy resorted to, namely an appeal to the prison governor (see paragraph 6 above). It observes that eventually the applicant had access to two levels of judicial review, where the courts examined the merits of his appeal against his disciplinary punishment (see paragraph 8 above). It has not been contested that the judicial review performed met the requirements of Article 13. The applicant took issue instead with the uncertainty as to the remedy's availability (see paragraph 15 above *in fine*). However, the Court is not examining the effectiveness of the remedy *in abstracto*, but in the circumstances of the case, *in concreto*. In the case the national courts accepted the applicant's appeal against the disciplinary punishment and examined the subject matter of the case.

21. In view of the foregoing, the Court concludes that the complaints under Articles 10 and 13 are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

22. The applicant complained in addition under Article 18 of the Convention that the real purpose of the administrative punishments described above was to silence him and to punish him for his work with the BPRA (see paragraph 12 above).

23. The Government contested the complaint. They pointed out that the authorities had never opposed the activities of the BPRA, had had a "normal dialogue" with it, and had even included its representative in a working group on a penitentiary reform.

24. The applicant argued that the three punishments were "merely pretexts", and that he had been punished for his "entirely legitimate work as a human rights defender". The punishments had been given shortly after in March 2018 the BPRA had made submissions to the Committee of Ministers of the Council of Europe in relation to the execution of judgments of the Court on the conditions of detention in prisons, and in response to them. About the same time the association had also made a statement regarding recent escapes from prison, critical of the authorities. The applicant had been sanctioned after years in prison without disciplinary punishments. He referred additionally to a television interview of 10 July 2018 of a then Deputy Minister of Justice, who had called the stickers which were subject to the complaints under Articles 10 and 13 (see above) "anti-State".

25. The complaint under Article 18 of the Convention was raised with regard to all three punishments given to the applicant (see paragraph 12 above). The Court is therefore to examine it, regardless of the fact that it dismissed as inadmissible the complaints under Article 10 and 13 concerning one of these punishments.

26. The Court refers to the general principles on the interpretation and application of Article 18 (see *Merabishvili v. Georgia* [GC], no. 72508/13, §§ 287-317, 28 November 2017).

27. However, the Court sees no sufficient proof that the sanctions against the applicant were undertaken in response to the stances taken by the BPRA, and in order to punish him for them. Apart from the fact that the punishments were given some months after the association made submissions to the Committee of Ministers and took a position on a prison break, it is unable to perceive a link between the two sets of events. As to the statement of the Deputy Minister the applicant referred to, even if it could be seen as relevant, it was made in July 2018, after the prison administration had given the punishments. The applicant has not shown any improper interference or other action on the part of public officials indicative of the ulterior purpose claimed by him (contrast, for instance, *Miroslava Todorova v. Bulgaria*, no. 40072/13, §§ 208-10, 19 October 2021, and *Kogan and Others v. Russia*, no. 54003/20, §§ 72-73, 7 March 2023).

28. It follows that this part of the application is manifestly ill-founded as well and must be rejected in accordance with 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 13 March 2025.

Olga Chernishova Deputy Registrar	Peeter Roosma President