

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

FOURTH SECTION

DECISION

Application no. 62942/16
Kamen Sashev RADEV
against Bulgaria

The European Court of Human Rights (Fourth Section), sitting on 11 January 2022 as a Committee composed of:

Tim Eicke, *President,*
Faris Vehabović,
Pere Pastor Vilanova, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 62942/16) against Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 25 October 2016 by a Bulgarian national, Mr Kamen Sashev Radev, who was born in 1969 and is detained in Burgas ("the applicant") and was represented by Ms M.H. Kirova, a lawyer practising in Varna;

the decision to give notice of the complaints concerning the applicant's poor conditions of detention and prolonged isolation to the Bulgarian Government ("the Government"), represented by their Agent, Ms M. Dimitrova, of the Ministry of Justice, and to declare inadmissible the remainder of the application, save for a complaint under Article 6 § 1 concerning the outcome of judicial proceedings initiated by the applicant in 2015;

the parties' observations;

the decision to reject the Government's objection to examination of the application by a Committee;

Having deliberated, decides as follows:

SUBJECT-MATTER OF THE CASE

1. The applicant has been serving a life sentence since 1999, when his death sentence (imposed in 1990) was commuted to life imprisonment by an act of presidential clemency. He served his sentence in Varna Prison until 2019, when he was moved to Burgas Prison where he continues serving his sentence.

2. His earlier complaint before the Court, relating to his prolonged isolation in his cell and the lack of ready access to a toilet and running water concerning the period after 1999, was examined by the Court in the case of *Radev v. Bulgaria* (no. 37994/09, judgment of 17 November 2015, hereinafter referred to as "the 2015 Court judgment"). In it the Court found a violation of Article 3 of the Convention as a result of the cumulative effect of the applicant's extended isolation in his cell and his lack of ready access to a toilet, and awarded the applicant 8,000 euros (EUR) in respect of non-pecuniary damage.

3. In the present case, the applicant complains under Article 3 of the Convention about the inhuman and degrading conditions of his detention, including his almost permanent isolation in prison. He made specific complaints about the lack of adequate medical care, sufficient amount of drinking water and acceptable quality of food, and about inadequate hygiene and absence of fresh air in Varna Prison, in the period between 11 January 2011 and 3 September 2012.

THE COURT'S ASSESSMENT

4. The application concerns complaints about poor conditions of detention of the applicant, a prisoner serving a life sentence.

5. Following the exchange of observations between the parties, the Government informed the Court that the applicant had brought two parallel related sets of proceedings for damages at the national level: one in 2017 in connection with his prolonged isolation between 1 January 2014 and 13 March 2017, and one in 2018 in connection with lack of meaningful activities in detention between 2007 and 18 April 2017. The first set of proceedings was still pending, while the applicant's claim in the second set of proceedings had been rejected. The Government considered that the applicant had abused his right to an individual application as he had not informed the Court about those proceedings. Specifically, the applicant had not provided all information essential for the Court to rule in full knowledge of the facts, given that the domestic proceedings concerned complaints brought before the Court in the present application.

6. In reply, the applicant's legal representative emphasised that the present application only concerned complaints in relation to the authorities' failure to provide the applicant with adequate conditions of detention for the period between 1999 and 2012. The prolonged isolation of which the applicant had also complained was not a separate complaint; it had been made in the context of the specific complaints concerning the material conditions of detention, in order to highlight that those had to be examined against the background of his isolation. As that complaint, of prolonged isolation, did not concern a different period of the above, there was no overlap between the present application before the Court and the two sets of domestic proceedings to which the Government had referred (see paragraph 5 above). The applicant further reiterated the specific complaints he had made in relation to the period between 11 January 2011 and 3 September 2012 in Varna Prison (see paragraph 3 above).

7. The Court observes that in 2015 the applicant brought proceedings domestically, under the State and Municipalities Responsibility for Damage Act, seeking damages in connection with his specific complaints concerning the period between 11 January 2011 and 3 September 2012 in Varna Prison (see paragraph 3 above). The Varna Administrative Court partially upheld his claim on 20 October 2015, awarding him about EUR 450. Specifically the court found that the applicant had sustained damage as a result of the inadequate material conditions of detention and in particular the absence of sanitary facilities in his cell during that period. Referring to expert reports on the care provided to the applicant in detention, the court found that it had not been deficient and his medical conditions had not been aggravated as a result of his stay in prison or the absence of adequate care. The Supreme Administrative Court confirmed those findings in a final judgment of 16 January 2017.

8. On the basis of the material in its possession, the Government's submissions and the applicant's clarifications (see paragraph 6 above), the Court will only deal with the applicant's complaints which relate to the period between 1999 and 2012. Consequently, there is no need for it to examine the Government's objection of abuse of the right of individual petition.

9. As regards the applicant's complaint about his prolonged isolation in his cell coupled with the lack of ready access to sanitary facilities concerning the period before 2012, the Court has already examined it in its 2015 judgment where it found a violation on those grounds and awarded him just satisfaction (see paragraph 2 above). Accordingly, the Court finds that the this part of the application is substantially the same within the meaning of Article 35 § 2 (b) of the Convention as the one dealt with by the 2015 judgment. Therefore, this complaint must be rejected as inadmissible pursuant to Article 35 § 4.

10. Concerning the applicant's specific complaints in respect of the period between 11 January 2011 and 3 September 2012 (see paragraph 3 above), the Court finds that, to the extent that those were not covered by the proceedings referred to in paragraph 2 above, they were carefully examined by the domestic courts at two levels. Those courts, having found the complaints partly justified, recognised a breach of Article 3 of the Convention and awarded the applicant compensation which does not appear unreasonable as to quantum. Accordingly, the Court finds that the applicant cannot claim to be a victim of a breach of Article 3 in respect of those complaints, and finds that this part of the application must be rejected as incompatible *ratione personae* pursuant to Article 35 §§ 3 and 4 of the Convention.

11. The applicant also raised another complaint, under Article 6 § 1 of the Convention, namely about the wrong assessment of evidence and wrong conclusions drawn by the courts which had dealt with his claims brought domestically in 2015 (see paragraph 7 above). The Court considers that, in the light of all the material in its possession and in so far as the matters complained of are within its competence, this complaint either does not meet the admissibility criteria set out in Articles 34 and 35 of the Convention or does not disclose any appearance of a violation of the rights and freedoms enshrined in the Convention or the Protocols thereto. It follows that this part of the application must be rejected in accordance with Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 3 February 2022.

Ilse Freiwirth Deputy Registrar	Tim Eicke President