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

FOURTH SECTION

DECISION

Application no. 53821/21
Carlos Manuel ROCHA GONÇALVES
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. 53821/21) 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 25 October 2021 by a Portuguese national, Mr Carlos Manuel Rocha Gonçalves ("the applicant"), who was born in 1972, is detained in Alcoentre Prison and was represented by Mr V. Parente Ribeiro, a lawyer practising in Lisbon;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

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

2. On 8 September 2021 the Lisbon Sentence-Supervision Court (*Tribunal de Execução das Penas de Lisboa* – "the TEP") rejected a request for prison leave (*licença de saída jurisdictional*) submitted by the applicant. In its decision, the TEP took into account the opinion of the prison's technical council (*Conselho técnico do estabelecimento prisional*).

THE COURT'S ASSESSMENT

3. Relying on Article 5 § 1 of the Convention, the applicant alleged that the fact that separate criminal proceedings against him were still pending had been held against him in the decision on his request for prison leave (see

paragraph 2 above). Relying on Article 6 §§ 1 and 2 of the Convention, he also complained that the proceedings regarding his request for prison leave had been unfair in that he had not been able to appeal to a higher court under domestic law against the TEP's decision rejecting his request 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 the applicant complained of the overall unfairness of the proceedings concerning prison leave.

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 request 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, it notes that under Article 76 § 2 and Article 79 § 2 of the Code of the Execution of Prison Sentences ("the CEP"), prison leave may be granted to prisoners 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 respect *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 prisoner while incarcerated, the family and social environment in which the prisoner would be hosted, the prisoner's record and the needs of the victim. Additionally, it is noteworthy that a prisoner 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 Court observes that the Portuguese Constitutional Court found in judgment no. 752/2014 of 12 November 2014 that prison leave was not a right that prisoners 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