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

# THIRD SECTION

# DECISION

Application no. 19345/15
Plamen Yovchev STAYKOV
against Bulgaria

The European Court of Human Rights (Third Section), sitting on 30 January 2024 as a Committee composed of:

Ioannis Ktistakis*, President*,
Yonko Grozev,
Andreas Zünd*, judges*,
and Olga Chernishova, *Deputy Section Registrar*,

Having regard to:

the application (no. 19345/15) against Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 16 April 2015 by Mr Plamen Yovchev Staykov ("the applicant"), a Bulgarian national who was born in 1973 and is detained in Stara Zagora Prison, and who was represented initially by his father, Mr I. Staykov, and subsequently by Mr S. Stoychev, a lawyer practising in Stara Zagora;

the decision to give notice of the complaints concerning the monitoring in practice of all of the applicant's telephone conversations in prison, as well as the opening by the prison authorities of one letter addressed to the applicant, under Article 8 of the Convention to the Bulgarian Government ("the Government"), represented by their Agent, Ms V. Hristova;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

Having deliberated, decides as follows:

## SUBJECT MATTER OF THE CASE

1. The application concerns a complaint that a telephone communication system, introduced by the prison authorities in 2007, monitored in practice all of the applicant's conversations "in live mode", including the applicant's conversations with his legal representatives. The applicant further

complained that a letter from the Court had been handed over to him open on one occasion in 2011, without any justification or explanation.

2. The applicant has been serving a sentence of life imprisonment since August 2009.

3. On 20 March 2013 he filed three claims before the Stara Zagora Administrative Court ("SZAC") under the State and Municipalities Responsibility for Damage Act ("SMRDA"). He sought compensation for non-pecuniary damage in the amount of 5,000 euros (EUR) from the General Directorate of Execution of Punishments ("GDEP"). He claimed that he had incurred damage between 20 September 2009 and 11 March 2013 as a result of the prison authorities having, among other things, listened into his telephone conversations with his lawyer and interfered with his correspondence with the Court on one occasion in 2011. His claims were rejected as unproven and unjustified in a final decision of the Supreme Administrative Court ("SAC") of 11 November 2014.

4. Once the present application had been communicated to the Government in November 2022, they informed the Court of the following developments. Having lodged on 16 April 2015 the application with the Court, on 1 June 2015 the applicant had filed another claim against the GDEP under the SMRDA before the SZAC. He had claimed non-pecuniary damages in the amount of EUR 2,500 stemming from actions and omissions of the prison administration during the period between 1 June 2010 and 1 June 2015. Specifically, the applicant had asserted that the confidentiality of his telephone conversations and conversations during visits had not been respected, in breach of his right to private life.

5. In a final judgment of 24 April 2017, the SAC found for the applicant, awarding him EUR 750 and upholding the lower court's conclusions. In particular, the courts observed that section 86(1)(5) of the Execution of Punishments and Pre-Trial Detention Act 2009 ("the 2009 Act") provided that prisoners could hold telephone conversations in a manner defined by the GDEP's head. Regulation 79(2) of the implementing regulations of the 2009 Act provided that prisoners' telephone conversations were to be monitored, save for their conversations with their lawyers (regulation 79(6)). Consequently, the 2009 Act did not unconditionally guarantee the confidentiality of correspondence.

6. The courts then observed that, under Article 8 of the Convention, prisoners had the right to private correspondence, including telephone conversations. They further reiterated that, under Article 5 § 4 of the Bulgarian Constitution, international treaties which had been ratified and had come into force with respect to Bulgaria were part of domestic law and took precedence over any conflicting provisions of domestic legislation. In the applicant's case it was established that prison staff had been present during all his telephone conversations, including those with his lawyer, despite the latter being protected by a special privilege. Consequently, the principle of

proportionality had not been applied to the applicant, in violation of Article 8 of the Convention. Despite his related protests, the prison administration had only discontinued the practice of monitoring all telephone conversations of prisoners on 26 May 2015.

7. The applicant, who had been represented by his father at the time of lodging his application with the Court, did not inform the Court at any point in time of the above development. Upon receipt by the applicant of the Government's observations on the present application, which contained information on the above-described proceedings, the applicant apprised the Court that his father had passed away in March 2021. He also advanced that those proceedings had a different subject and as such did not concern his complaints before the Court in the present application.

## THE COURT'S ASSESSMENT

8. The Court reiterates that an application may be rejected as an abuse of the right of individual application under Article 35 § 3 of the Convention if applicants fail to inform the Court of important new developments regarding their pending applications, given that such conduct prevents the Court from ruling on the matter in full knowledge of the facts (see *Bekauri v. Georgia*, (dec.) no. 14102/02, §§ 21-23, 10 April 2012).

9. Incomplete and therefore misleading information may also amount to abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation was given for the failure to disclose that information (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014).

10. In the circumstances of the present case, the applicant, represented in the proceedings before the Court, has not submitted any plausible explanation for his failure to inform the Court of the fact that he pursued the proceedings described in paragraphs 4 to 6 above after he had submitted his application to the Court and that their outcome was in his favour. The final judgment in those proceedings had been delivered in April 2017 while the applicant's father, who had represented him initially before the Court, passed away in March 2021, that is to say almost four years later. The Court observes that in those proceedings the domestic courts, having applied the principles developed by the Court in its case-law under Article 8 of the Convention, found a violation of the applicant's right to private life, specifically as a result of the systematic monitoring of all of his telephone conversations and awarded him related damages. That was precisely the core of the present application (compare *Zbyranyk and Smetanin v. Ukraine* (dec.) [Committee], nos. 453/21 and 9741/21, 10 March 2022).

11. Having regard to the importance of the information at issue for the proper determination of the present case, the Court finds that the applicant's conduct was contrary to the purpose of the right of individual application

provided for in Article 34 of the Convention. Consequently, it constitutes an abuse of the right of individual application within the meaning of Article 35 § 3 (a) of the Convention. The application must therefore be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

*Declares* the application inadmissible.

Done in English and notified in writing on 22 February 2024.

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| Olga Chernishova<br>Deputy Registrar | Ioannis Ktistakis<br>President |