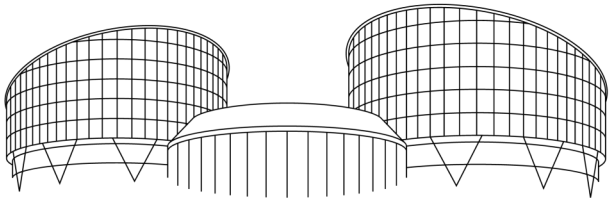

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF RADKOV v. BULGARIA

(Application no. 27795/03)

JUDGMENT

STRASBOURG

22 April 2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Radkov v. Bulgaria,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Peer Lorenzen, *President,*
Renate Jaeger,
Karel Jungwiert,
Rait Maruste,
Isabelle Berro-Lefèvre,
Mirjana Lazarova Trajkovska,
Zdravka Kalaydjieva, *judges,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 23 March 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 27795/03) 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") by a Bulgarian national, Mr Plamen Todorov Radkov ("the applicant"), on 19 August 2003.

2. The Bulgarian Government ("the Government") were represented by their Agent, Mrs R. Nikolova, of the Ministry of Justice.

3. The applicant alleged, in particular, that his correspondence received in prison had been monitored by the prison administration.

4. On 3 February 2009 the Court declared the application partly inadmissible and decided to communicate to the Government the complaint concerning the monitoring of the applicant's correspondence in prison. It also decided to examine the merits of the remainder of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1972 and is at present detained in Bobov dol Prison.

6. Criminal proceedings for murder were opened against him on 11 January 2000. They continued until 27 November 2003 when he was

convicted and sentenced to life imprisonment by means of a final judgment of the Supreme Court of Cassation.

7. From 8 March 2000 to 5 November 2008 the applicant was detained in Lovech Prison, initially being held there in pre-trial detention and after 27 November 2003 as a prisoner serving a life imprisonment sentence. On 5 November 2008 he was transferred to Bobov dol Prison.

8. On 4 August 2003 the applicant received a letter dated 1 August 2003 from the lawyer representing him in the criminal proceedings. The letter concerned the possible outcome of the proceedings and the strategy of the defence. The envelope had been opened and bore the signature of an official of the prison administration.

9. After the conclusion of the domestic proceedings, between 12 January and 13 April 2004 the applicant received two more letters from the same lawyer and two letters from another lawyer. All four envelopes had been opened and bore the signatures of officials of the prison administration.

10. On 10 December 2003 the applicant received a letter from the Registry of the Court, dated 2 December 2003 and concerning his application in the present case. The envelope had been opened and bore the signature of an official of the prison administration.

11. On 5 February and 16 April 2004 the applicant complained to the prison administration of the practice of opening and reading his letters. In reply, he was informed that the monitoring of detainees' and prisoners' correspondence was envisaged by section 33 of the Execution of Punishments Act, that it concerned all inmates and that it pursued "security-related" and "educational" aims.

II. RELEVANT DOMESTIC LAW AND PRACTICE

12. The relevant domestic law and practice concerning the correspondence of detainees and prisoners have been summarised in the Court's judgment in the case of *Petrov v. Bulgaria* (no. 15197/02, §§ 17-18, 20-23 and 25, 22 May 2008).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

13. The applicant complained under Articles 6 § 3 (c) and 8 of the Convention that letters from his lawyers and from the Registry of the Court had been opened and read by the administration of Lovech Prison. The

Court is of the view that the complaint falls to be examined solely under Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

14. The Government acknowledged that the applicant's correspondence had been routinely checked. However, they argued that it was not established whether the letters had been merely opened or also read. Furthermore, they considered that the monitoring of the applicant's correspondence had been necessary for reasons of security and for the prevention of crime.

15. The applicant contested these arguments.

A. Admissibility

16. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

17. The Court notes that at least five letters sent to the applicant by his lawyers were opened and possibly read by the Lovech Prison administration (see paragraphs 8-9 above). Furthermore, a letter sent by the Registry of the Court was also opened and possibly read (see paragraph 10 above). In fact, the systematic opening of inmates' letters was acknowledged by the Lovech Prison administration and by the Government in their observations in the present case (see paragraphs 11 and 14 above). In these circumstances the Court finds that there was an interference with the applicant's right to respect for his correspondence guaranteed under Article 8.

18. Such interference will give rise to a breach of Article 8 unless it can be shown that it was "in accordance with the law", pursued one or more legitimate aims as defined in paragraph 2 and was "necessary in a democratic society" to achieve those aims.

19. The Court does not find it necessary to determine whether the interference was "in accordance with the law" as it considers that it was in breach of Article 8 of the Convention in other respects (see *Petrov*, cited above, § 41, and *Konstantin Popov v. Bulgaria*, no. 15035/03, § 16, 25 June 2009).

20. Concerning the requirement that the interference be "necessary in a democratic society" for the achievement of a legitimate aim, the Court notes that correspondence with lawyers, whether it concerns actual judicial proceedings or is of a general nature, is in principle privileged under Article 8. The routine scrutiny of such correspondence cannot be seen as being in keeping with the principles of confidentiality and professional privilege attaching to relations between a lawyer and his client (see *Campbell v. the United Kingdom*, 25 March 1992, §§ 47-8, Series A no. 233, and *Petrov*, cited above, § 43).

21. However, in the case at hand the Lovech Prison administration systematically opened and checked detainees' and prisoners' correspondence, including that with their lawyers (see paragraph 17 above), without seeking to justify the interference by referring to specific reasons or suspicions. Nor did it attempt to justify the opening and the possible reading of the letters from the applicant's lawyers in the particular circumstances of his case. The Court thus concludes that the applicant's correspondence with his lawyers was subject to routine scrutiny, which, as noted above (see paragraph 20), cannot have been in keeping with the principles of confidentiality and professional privilege attaching to relations between a lawyer and his client.

22. Furthermore, the Court notes that the present case also concerns the opening and possible reading of a letter sent to the applicant by its Registry (see paragraph 10 above). The Court considers that even if the prison authorities might have pursued a legitimate aim in opening that letter (see, for example, *Campbell*, cited above, § 60), they should have provided for suitable guarantees preventing its reading, like, for example, opening it in the applicant's presence. However, no such guarantees were provided for. Moreover, it does not appear that the prison administration had any concrete suspicions justifying the opening of the Court's letter since, as the Government acknowledged (see paragraph 14 above), the applicant's correspondence was being checked on a routine basis.

23. It follows from the above that in the present case there has been a breach of the applicant's right to respect for his correspondence, as guaranteed by Article 8 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

24. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

25. The applicant made no claim in respect of pecuniary damage. He claimed 2,000 euros (EUR) in respect of non-pecuniary damage.

26. The Government considered this claim to be excessive.

27. The Court considers that the applicant must have sustained non-pecuniary damage as a result of the breach of his right to respect for his correspondence. Taking into account all the circumstances of the case, the Court awards him EUR 1,500 under this head, plus any tax that may be chargeable.

B. Costs and expenses

28. The applicant also claimed EUR 200 for costs and expenses.

29. The Government urged the Court to dismiss this claim, pointing out that it was not supported by any documents.

30. According to the Court's case-law, applicants are entitled to the reimbursement of their costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. To this end, Rule 60 §§ 2 and 3 of the Rules of Court stipulate that applicants must enclose with their claims for just satisfaction "any relevant supporting documents", failing which the Court "may reject the claims in whole or in part". In the present case, noting that the applicant has failed to produce any documents in support of his claim, the Court does not make any award under this head.

C. Default interest

31. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Bulgarian levs at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 22 April 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Registrar	Peer Lorenzen President