



# Prisoners' Right to Freedom of Thought and Religion and Freedom of Expression

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# Structure of the Presentation



## Presentation Structure



- **Relevance of ECtHR judgments adopted against other states?**
  - **ECtHR judgments against Austria, Azerbaijan, Bulgaria, Estonia, Finland, Georgia, Latvia, Lithuania, Luxembourg, Moldova, Poland, Romania, Russia, the Netherlands, the United Kingdom, Türkiye, and Ukraine**
- **Supremacy of the ECHR over the domestic legislation, including the Constitution**

## Presentation Structure



- General rule of freedom of expression v. the right to thought, conscience and religion
- The three pillars of serving punishment
- Prisoners' rights under Articles 9 (right to thought, conscience and religion) and 10 (freedom of expression)
- Public officer's freedom of expression
  - Subsidiarity and margin of appreciation

**Questions and Comments are welcome at any time of the presentation**

# Relevance and Supremacy





- ***Hirst v. the United Kingdom (no. 2)* [GC], 2005; *Ramishvili v. Georgia*, 2018**
- **Article 26 – “*Pacta Sunt Servanda*”**
  - Every treaty in force is binding upon the parties to it and must be performed by them in good faith
- **Article 27 – Internal law and observance of treaties**
  - A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty

# General Principles



## General Principles

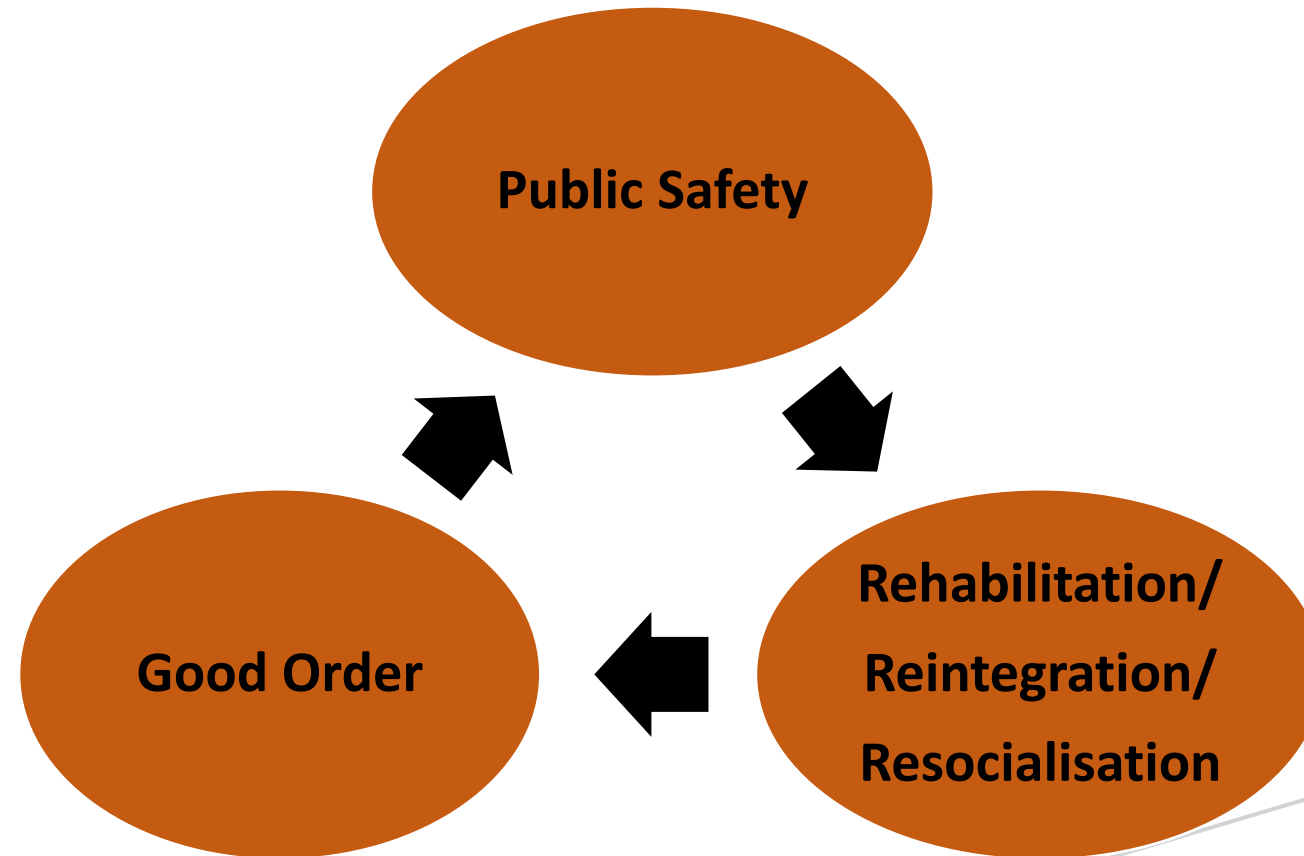


- Article 10 is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb
- The exercise of the freedom of expression carries with it duties and responsibilities
- A religious group must tolerate the denial by others of their religious beliefs and even the propagation by others of doctrines hostile to their faith, as long as the statements at issue do not incite to hatred or religious intolerance
- Expressions that go beyond the limits of a critical denial of other people’s religious beliefs and are likely to incite religious intolerance, for example in the event of an improper or even abusive attack on an object of religious veneration, are unacceptable
  - *E.S. v. Austria, 2018*

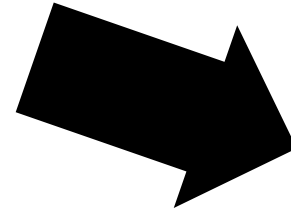


# **Pillars of Serving Punishment**

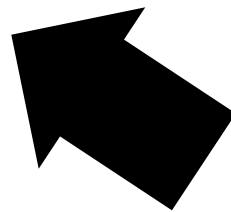




**Effective Security**

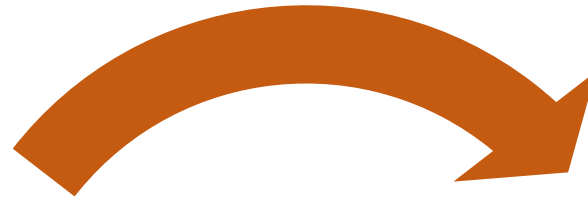


**Rehabilitation/  
Reintegration/  
Resocialisation**



**Effective  
Security**

**Human  
Rights**





# **Article 9 of the ECHR**

**Freedom of Thought, Conscience  
and Religion**



## Article 9 ECHR



-  1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
-  2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

# Acts of Worship





- ❁ *Muslim prisoner reprimanded for performing acts of worship at night time in breach of prison schedule*
- ❁ The applicant is a practising Muslim
  - Detained in penal colony no. IK-18, in Yamalo-Nenetskiy Region
- ❁ Was reprimanded for two acts of worship (“Salah”)
  - At night time, prisoners were supposed to “sleep without interruption”
- ❁ The Prisoner disregarded the prison guards’ orders to return to his sleeping place
- ❁ The requirement is provided in the prison regulations
  - Is there interference with the prisoner’s right to freedom of religion?





- If the imposition of the disciplinary punishment is based on the prison regulations and the prisoner is reprimanded based on his actions (disobedience) can he still claim the violation of the ECHR?

## Article 9 ECHR



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2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are **prescribed by law** and are **necessary in a democratic society** in the interests of **public safety**, for the **protection of public order, health or morals**, or for the **protection of the rights and freedoms of others**.



- The imposition of a disciplinary punishment on the applicant amounted to interference with his right to freedom of religion
- Even if it was based on the regulations, the question remained whether the interference sought a legitimate aim and was necessary in a democratic society
  - Law
  - Legitimate aim
  - Necessary in a democratic society (pressing social need and proportionality)
    - Relevant and sufficient reasons provided by domestic authorities



- Formal incompatibility of the prisoner's actions with the prison schedule, and
  - The authorities' attempt to ensure full and unconditional compliance with that schedule
- The importance of prison discipline
- But unacceptability of a formalistic approach
  - Disregard for the prisoner's individual situation
  - Not taking into account the requirement of **striking a fair balance between the competing private and public interests**



- **ECtHR**
- **Particular importance of complying with the duty to perform acts of worship**
  - At the **time** prescribed by the religious belief
  - That duty had to be complied with **every day**, not least during Ramadan
- No apparent risks to prison order or safety
- No dangerous objects used
- Did not try to engage other prisoners in collective worship in a large group (NB)



- The applicant's worship had not disturbed the prison population or the prison guards
  - He performed Salah while in solitary confinement
  - Without any noise or other disturbing factor
- It did not appear that performing Salah left the applicant exhausted
  - Or could have undermined his health
  - Or his ability to participate in criminal proceedings



- ✿ The prison schedule did not explicitly set out “time for worship” or “personal time”
  - As recommended by the [European Prison Rules](#)\*
  - No special arrangements were needed to have respected the applicant’s wish to worship
- ✿ There was no pressing social need for the interference
- ✿ What is another aspect of the interference being “necessary in a democratic society?”
- ✿ The reprimand decreased the applicant’s chances of early release

## *Korostelev v. Russia, 2020*



- ❁ Decreased the chances of mitigation of the prison regime or obtaining a reward
- ❁ It had a chilling effect on other prisoners
- ❁ The proportionality of the sanction not assessed by the domestic authorities
  - Whether or not the applicant's conduct had breached the prison schedule
  - Failed to identify the legitimate aim, and to carry out a balancing exercise
- ❁ Interference with the freedom of religion was not necessary in a democratic society
  - **EUR 2,600 in respect of non-pecuniary damage**



# **Congregational Friday Prayers**



## **Abdullah Yalçın v. Turkey (No. 2), 2022**



- ❁ ***Refusal to allocate room in high-security prison to Muslim prisoner for congregational Friday prayers***
- ❁ **Prisoner serving his sentence in high-security prison**
- ❁ **Administration refused to allocate a room so he could offer congregational Friday prayers**
- ❁ **Congregational Friday prayers are one of the precepts of Islam**
- ❁ **No reason to doubt that the applicant's wish to offer them had been genuine, reasonable and sufficiently connected to his right to manifest his religion**
- ❁ **The prisoner was entitled to lay claim to the protection afforded by Article 9**

## *Abdullah Yalçın v. Turkey (No. 2), 2022*



- The applicant had been able to perform individual acts of worship in his cell
- He could obtain and possess books or other written material relating to his religious beliefs
- His cell mates were not willing to offer congregational Friday prayers
  - Government's argument that the applicant could have practised those prayers in his cell
- Complaint – a refusal to make the arrangements for offering congregational Friday prayers
- The Court had to determine whether the State complied with its positive obligations

## *Abdullah Yalçın v. Turkey (No. 2), 2022*



- **State's positive obligations**
- **No fair balance between the competing rights and interests at stake**
  - Prisoner's freedom of collective worship in the prison and the public order interests (security and order in prison)
  - By providing relevant and sufficient reasons for the refusal



- The reasons adduced by the prison authorities were based on three grounds:
  - (i) **The institution in which the prisoner was held was a high-security prison**
    - Such prisons were subjected to a stricter set of rules
      - Might call for a higher degree of restrictions on the exercise of rights under Article 9
- This fact alone should not be construed as excluding any real weighing of the competing individual and public interests
- Should be interpreted in the light of the circumstances of each individual case

## *Abdullah Yalçın v. Turkey (No. 2), 2022*



- **No individualised risk assessment in respect of the applicant**
- **Authorities did not consider whether he was classified as a dangerous or high-risk inmate**
  - Or otherwise acted violently
  - Or attempted to escape from prison
  - Or failed to abide by the disciplinary rules relating to prison order



- ❁ (ii) **Collective gatherings posed a risk to prison security:**
- ❁ No sufficient assessment whether the gathering of a certain number of inmates for Friday prayers could generate a security risk
- ❁ **In the individual circumstances of the case**
  - That they should have been treated differently from **the permitted collective gatherings of for cultural or rehabilitative purposes**



- ❁ (iii) **Absence of appropriate premises for Friday prayers in the prison:**
- ❁ No other modalities explored
  - less restrictive of the applicant's rights under Article 9
- ❁ ~~Government's argument that realising the applicant's request could only have been possible by opening the doors of all the cells~~
- ❁ Violation of Article 9



# Religious Dietary Precepts



## *Erlich and Kastro v. Romania, 2020*



- *The right of two Jewish prisoners to have kosher meals*
- The decision whether or not to adopt detailed regulations on the practical exercise of a given religion in prison falls within the margin of appreciation available to the State authorities
- The prison authorities co-operated with a Jewish religious foundation
  - A separate area was fitted out in the prison kitchen
  - Jewish prisoners helped prepare the meals
    - The positive aspects of communal life

## *Erlich and Kastro v. Romania, 2020*



- The foundation was present in the prison during Jewish religious festivals
- It supplied the applicants with specific foodstuffs for the occasion
- The foundation's involvement, although not decisive, was an important criterion for assessing how the domestic authorities had fulfilled their positive obligations under Article 9
- The applicants could obtain by their own means foodstuffs to be cooked and prepared on the spot
  - They could apply for reimbursement of any expenses by lodging a civil action

## *Erlich and Kastro v. Romania, 2020*



- A whole set of appropriate measures had thus been put in place by the prison authorities
  - To respect the applicants' religious convictions, particularly since kosher meals had to be prepared under special, strict conditions
- The national authorities had thus honoured their positive obligations to a reasonable degree given the particular circumstances of the case.

## *Erlich and Kastro v. Romania, 2020*



- Different from *Jakóbski and Vartic* (no. 2)
  - the applicants requested vegetarian meals not requiring any special mode of preparation
- The kosher meals had to contain special ingredients obtained by following very specific rules, and
  - Had to be prepared separately, in separate containers and with separate utensils
  - In a particular manner and under the supervision of a representative of the religion in question
- No violation of Article 9

# Prison Files





- ❁ ***Refusal to rectify entry in prison file giving wrong religion for a prisoner***
- ❁ **The applicant, who was Jewish, was wrongly listed as an Orthodox Christian in the prison register**
  - He unsuccessfully asked for the entry indicating his religion to be rectified
- ❁ **A rather abstract and theoretical complaint**
- ❁ **The entry in his file had not had any consequences for his ability to manifest or practise his religion during the relevant period**
  - Imprisoned in 2002, did not request the rectification until 2013



- **No refusal by the prison authorities to allow him to fulfil the obligations of his faith**
- - **To meet a representative of his religion**
  - **To attend religious services or**
  - **To be served meals according to religious dietary precepts**
- **Nor did he allege that the prison authority prevented him from engaging in any acts of worship or subjected him to any pressure, intimidation or sanctions on account of his religion**





- The entry in the file was not for public consultation or for use in daily life
  - It was accessible only to the prison authorities
- The applicant did not renew his request for rectification of his file after being transferred to another prison
- The application not admitted for the consideration of the merits, no violation of Article 9

# **Fulfilling Obligations of Faith**





- ❁ The applicant was detained at pre-trial detention centre “the SIZO”
- ❁ According to the applicant he was not allowed to visit the SIZO church
  - His requests to the SIZO governor to meet with a priest also remained unanswered
  - His religious literature and some items of a religious nature were seized
- ❁ Meeting with a priest
  - Under the applicable domestic law, any request of that kind should have been lodged with the investigator or the court dealing with the applicant’s criminal case
    - Failure to exhaust domestic remedies, not admitted for the consideration of the merits



- Other complaints about restrictions
  - The Government provided no observations in this regard
    - The Court therefore cannot but accept the applicant's factual submissions concerning the seizure of religious literature and items and refusal to allow visits to the prison chapel
- Ukrainian legislation guarantees the right to perform religious rituals and to use religious literature and objects



- ❁ The interference would be contrary to domestic law unless it was justified by the need to secure
- ❁ observance of the **prison rules** or **respect for the rights of other individuals**
  - Not claimed to be the situation in the present case
- ❁ Interference with the applicant's freedom to manifest his religion was not "in accordance with the law"
- ❁ A violation of Article 9 of the Convention in respect of this part of the application

# Restrictions Imposed



## *Kovaļkovs v. Latvia, 2012*



- According to the applicant his cellmates ridiculed him because of his religious beliefs
  - Vaishnavism (the Hare Krishna movement)
- He was prevented from adequately performing the fundamental rituals of Vaishnavism
  - He was unable to read religious writings because of his cellmates' tendency to discuss their immoral lifestyles by using countless swear words
- He was not receiving the same level of spiritual support as the prisoners belonging to the Christian faith



● According to the government

- “[the applicant’s] religious activities create tense situations. [The applicant] in the presence of other convicted persons in the residential areas regularly and openly performs religious rituals – singing, meditation, massages with oils and so on – thus disturbing the other convicted persons. Despite the fact that the administration of the prison indicated [to the applicant] that residential areas are not meant for carrying out religious activities and offered the use of another room for this purpose, [the applicant] refused and stubbornly continued to perform religious rituals in the residential areas. ... With his actions [the applicant] offends the honour and dignity of other convicted persons and creates a negative attitude towards himself.”





- A guard found and confiscated some incense sticks
  - According to the applicant, the incense was necessary for him to perform the religious rituals of Vaishnavism
- A letter to the International Society of Krishna Consciousness
  - Did Vaishnavism require a twice-daily loud chanting of mantras for fifteen minutes
- Response – two methods for praying to Krishna.
  - The first – japa – repetition of a mantra in a soft voice by using prayer beads
  - The second – kirtan – is chanting of the Hare Krishna mantra at a regular volume



• ECtHR

- Concentrated on the applicant's purported inability to read religious literature, to meditate and to pray because of being placed in a cell together with other prisoners and that incense sticks were taken away from his cell
- The Court considers that the applicant's wish to pray, to meditate, to read religious literature and to worship by burning incense sticks **can be regarded as motivated or inspired by a religion** and not unreasonable



- There was interference with the prisoner's right to manifest his religion
  - However, the fair balance has to be struck between the competing interests of the individual and of the community as a whole
  - The State enjoys a certain **margin of appreciation** in determining the steps to be taken to ensure compliance with the Convention
-



✿ Legitimate aims sought by the interference

- Other prisoners' wish not to be disturbed by the applicant's performance of religious rituals
- Concerning the confiscation of the incense sticks, the legitimate aim is the protection of the rights and freedoms of others and
- public safety by limiting the types of objects that may be kept in prison cells





- The impugned restrictions of the applicant's freedom of religion were proportionate to the legitimate aims sought to be achieved for the following reasons
- Offer to use alternative premises for performing religious rituals
  - Having to pray, read religious literature and to meditate in the presence of others is an inconvenience, which is almost inescapable in prisons
  - It does not go against the very essence of the freedom to manifest one's religion



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❁ Correspondence with Rīga Vaishnavist congregation

- The obligation to observe the religious tradition of burning incense sticks **depends on the circumstances of the person in question**
- The burning of incense sticks typically creates a powerful odour which is not pleasant to everyone and which might be disturbing to other prisoners
- A proportionate response to the necessity to protect the rights and freedoms of others
- No violation of Article 9

# Psychiatric Care







- The applicant is convicted for murder, sexual intercourse with a minor, possession of edged weapon
  - Ordered to undergo compulsory psychiatric care
- He is a Jehovah's witness and is allowed to have meetings from members of that organisation
- Was admonished for preaching and distributing leaflets to other patients and staff
  - ECtHR
- Was there any appearance that any of the measures taken were motivated strictly by the applicant's specific religious belief



- The applicant could not show that he had been pressured to change his religious views
  - The applicant rather appears to argue that he was well as a whole when receiving psychiatric care
- He had sought a higher degree of exposure to the beliefs of the Jehovah's Witnesses
  - To enjoy daily visits by representatives and
  - To be allowed to proselytise
- No such right can be considered protected by Article 9 §
  - The need to maintain order and
  - To protect atheists, agnostics, sceptics and the unconcerned



No violation of article 9



- Difference from *Mockutė v. Lithuania*, 2018



- State cannot dictate what a person believes or take coercive steps to make him change his beliefs
- Freedom to manifest one's religious beliefs comprises also a negative aspect, namely the right of individuals not to be required to reveal their faith or religious beliefs and not to be compelled to assume a stance from which it may be inferred whether or not they have such beliefs (*Believers in God religious sect and parents claim that she had become agitated and disorientated after joining the sect*)

# **Philosophical Belief, or Conscience**



## *W. v. the United Kingdom (Dec), 1993*



- In 1991 the applicant was sentenced to three years' imprisonment for common assault
- A policy that prisoners should work 13 weeks in a workshop, unless medical reasons prevent it
- The applicant was told that he would be expected to work in the print shop
  - The applicant refused to work in the print shop because his Vegan beliefs prevented him from working with animal tested products (i.e. dyes)
- Veganism can be considered a philosophical belief or conscience protected under Article 9
  - The prisoner was charged with the disciplinary offence of disobeying a lawful order
  - Was there an interference with the manifestation of that belief?

## *W. v. the United Kingdom (Dec), 1993*



- Letter of the Vegan Society
  - Although the majority of printing dyes are synthetic they will be tested on animals at some stage
- Even assuming that there was an interference with the applicant's rights under Article 9 such interference to be justified
- The interference was "prescribed by law and pursued the aim of preserving **good order** in the prison

## *W. v. the United Kingdom (Dec), 1993*



- All prisoners were generally required to work in the print shop for a period of 13 weeks
- After which time other employment was available
- The nature and extent of the connection between the dyes and animals
  - It was only one of the applicant's reasons for refusing the work and
- The relatively minor nature of the penalties imposed on the applicant for refusing to comply with the normal work regime
  - 2 days' loss of remission
- No violation of Article 9

# **Criteria for Beliefs and Religions**





*de Wilde v. the Netherlands (Dec.), 2021*





- For a construct of views to be considered a religion or a belief within the meaning of Article 9 of the Convention, those view must have obtained a certain level of cogency, **seriousness**, **cohesion** and **importance**
- Pastafarianism, Church of the Flying Spaghetti Monster - lacks the required conditions of seriousness and cohesion
  - Not a religion or a belief
- The wearing of a colander by followers of Pastafarianism could not be considered a **manifestation** of a “religion” or “belief”, even if the person concerned submitted that he or she chose to do so out of a conviction that was genuine and sincerely held



- Even where the belief in question attains the required level of cogency and importance, it cannot be said that every act which is in some way inspired, motivated or influenced by it constitutes a “manifestation” of the belief.
- Acts or omissions which do not directly express the belief concerned or which are only remotely connected to a precept of faith fall outside the protection of Article 9
- In order to count as a “manifestation” within the meaning of Article 9, the act in question must be intimately linked to the religion or belief. An example would be an act of worship or devotion which forms part of the practice of a religion or belief in a generally recognised form. However, the manifestation of religion or belief is not limited to such acts; the existence of a sufficiently close and direct nexus between the act and the underlying belief must be determined on the facts of each case

## Manifestation of religion or beliefs



### ❁ *X. v. the UK, 1974* (application no. 5442/72)

- Prisoner's articles were refused to be sent out to a Buddhist magazine for publication

### ❁ *X. v. Federal Republic of Germany, 1974* (application no. 4445/70)

- The applicant claims that he is a worshipper of light (*Lichtanbeter*) and that the prison authorities refused him the right to practice his religious belief
  - The applicant failed to explain in what manner he wished to practise his religious belief and in what way the prison authorities refused him the right to do so



# **Article 10 of the ECHR**

## **Freedom of Expression**



## Article 10 ECHR



-  1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
-  2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

# **Complaints To Administrative Bodies**



## *Shahanov and Palfreeman v. Bulgaria, 2016*



- Mr Shahanov and Mr Palfreeman were serving prison services in Plovdiv and Sofia prisons respectively
- In 2011, Mr Shahanov made two complaints to the Minister of Justice
  - An inmate in his ward, X, was bragging that two prison officers, Y and Z, were relatives of his and was threatening and intimidating the other inmates
- An inquiry found no relationships between X and any of the officers, nor a risk for Mr Shahanov
- Mr Shahanov was placed in solitary confinement for ten days ~~for making defamatory statements and false allegations against prison officers~~





- **Mr Palfreeman's complaint to the governor of the Sofia Prison:**
  - “On 23 May 2012, during the midday visit, personal items of visitors were stolen from the visitors’ lockers, which are only accessible to the guards. The stolen items are a mobile telephone case, MP3 headphones, a mobile telephone battery, and a sum of money. Also, the guards behaved very rudely and coarsely with the visitors, yelling at them and insulting them for no reason. Could you please carry out an inquiry into the conduct of that shift, and take measures to ensure that the guards work in a disciplined way and with respect towards inmates and others.
- **Disciplinary proceedings were opened against Mr Palfreeman in relation to the complaint**



- “Interference”, in the form of a “penalty”, with the exercise of the right to freedom of expression
  - Such interference will only be compatible with Article 10 of the ECHR if it was “prescribed by law” and was “necessary in a democratic society” for one of the legitimate aims
- The relevant law was accessible and foreseeable
- The interferences were intended to protect the reputation and rights of the prison officers who were the subject of the applicants’ allegations, and hence pursued a legitimate aim
- **Whether the interference was necessary in a democratic society**



- The state's margin of appreciation - to adopt measures intended to respond appropriately and without excess to defamatory accusations devoid of foundation or formulated in bad faith,
  - public servants, in particular, may need protection from offensive, abusive and defamatory attacks calculated to affect them in the performance of their duties and
  - to damage public confidence in them and the office they hold.
- **But** the particular vulnerability of persons in custody, which means that the authorities must provide particularly solid justification when punishing prisoners for having made allegedly false accusations against the prison authorities



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## *Shahanov and Palfreeman v. Bulgaria, 2016*



- ❁ (a) the nature and exact manner of communication of the statements;
- ❁ (b) the contexts in which they were made;
- ❁ (c) the extent to which they affected the officials concerned; and
- ❁ (d) the severity of the sanctions imposed on the applicants.

## *Shahanov and Palfreeman v. Bulgaria, 2016*



- Serious allegations but the language was not strong, vexatious or immoderate
- The wider limits of acceptable criticism with regard to public officials
- The statements were not made publicly or outside the proper channels of complaint
- An effect on the professional standing of the prison officers concerned,
  - undermining their authority with respect to prisoners, and
  - taking up time and resources.
- made in the exercise of the possibility to report an alleged irregularity in the conduct of a public official to an authority competent to deal with such an issue, **an added importance in the case of persons**

## *Shahanov and Palfreeman v. Bulgaria, 2016*



- ❁ It was not examined whether the disciplinary punishments interfered **with the applicants' right to freedom of expression**
- ❁ The serious sanctions imposed could only be regarded as necessary in exceptional circumstances
  - ❁ If the persons concerned, despite being aware that their allegations were false, proceeded to criticise the conduct of the officials anyway
- ❁ The nature of the complaints, the manner of their communication, the context in which they were made, and the effect, if any, on the officials concerned – Violation of Article 10
- ❁ 5,500 and 3,500 Euros respectively in respect of non-pecuniary damage

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## *Shahanov and Palfreeman v. Bulgaria, 2016*



### **Difference from *Skalka v. Poland, 2003***

- Letter to the court
- Pressing social need for an interference
- Disproportionate sanction
- Violation of Article 10

# **Right to Receive and Impart Information**



## Case-Law Overview



- *Lowes v. the United Kingdom* (Dec.), 1988
- *Sarıgül v. Turkey*, 2017
- *Zayidov v. Azerbaijan* (no. 2), 2022
- *Kalda v. Estonia*, 2016
  - *Jankovskis v. Lithuania*, 2017
  - *Ramazan Demir v. Turkey*, 2021

# Prison Officer's Freedom of Expression





• **Conviction of prison officer for providing information about prison to journalist in exchange for money**

• **Protection of whistle-blowers (*Guja v. Romania*, 2008 GC)**

- (1) The disclosures had been of public interest;
- (2) The information disclosed had been true;
- (3) Informing the public through the media had been the only realistic means of alerting them;
- (4) The applicant had acted in good faith.
- (5) The public interest in receiving the information v. the harm caused to the employer, and
- (6) The proportionality of the penalty.

## *Norman v. the United Kingdom, 2021*



### Protection of whistle-blowers (*Halet v. Luxembourg, 2023 [GC]*)

#### Refined six criteria

- (1) The channels used to make the disclosure
- (2) The authenticity of the disclosed information
- (3) Good faith
- (4) The public interest in the disclosed information
- (5) The detriment caused, and
- (6) The severity of the sanction



• The reporting by an employee of

- (1) unlawful acts, practices or conduct in the workplace,
- (2) of acts, practices or conduct which, although legal, were reprehensible, or
- (3) to certain information that concerned the functioning of public authorities in a democratic society and sparked a public debate, giving rise to controversy likely to create a legitimate interest on the public's part in having knowledge of the information in order to reach an informed opinion as to whether or not it revealed harm to the public interest.

• The weight of the public interest in the disclosed information **would decrease** depending on whether the content of the information related to the category (1), (2) or (3)

## ***Norman v. the United Kingdom, 2021***



- The applicant – then a prison officer – passed information about the prison he was working in to a tabloid journalist in exchange for money for years
- The name of the applicant was disclosed to the police
- Dismissal and conviction of the applicant
  - Sentenced to twenty months' imprisonment
- Complained before the ECtHR of the breach of the freedom of expression



## *Norman v. the United Kingdom, 2021*



- The prosecution and conviction had been prescribed by law and
  - pursued the legitimate aims of
    - the interests of public safety,
    - the prevention of disorder or crime,
    - the protection of health or morals,
    - the protection of the reputation or rights of others, and
    - the prevention of the disclosure of information received in confidence

## *Norman v. the United Kingdom, 2021*



- **Necessity of the interference in a democratic society**
  - There had been no public interest in the majority of the information disclosed by the applicant
  - No public interest concerns (money and an intense dislike of the prison governor)
- **Not the case of the protection of a whistle-blower**
  - No need to look into other criteria
    - A trade union representative – dissemination of information
- **The prosecution and conviction relevant and sufficient**

**Thank You For Your Attention!**

