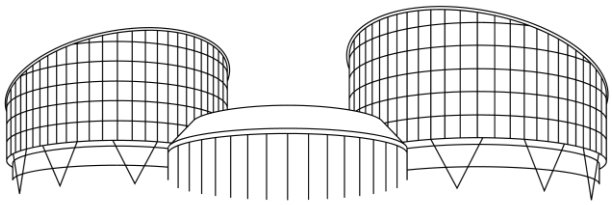

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MARIN KOSTOV v. BULGARIA

(Application no. 13801/07)

JUDGMENT

STRASBOURG

24 July 2012

FINAL

24/10/2012

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Marin Kostov v. Bulgaria

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

Lech Garlicki, *President,*
David Thór Björgvinsson,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Vincent A. De Gaetano, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 3 July 2012,

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

PROCEDURE

1. The case originated in an application (no. 13801/07) 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 Marin Yordanov Kostov ("the applicant"), on 26 February 2007.

2. The applicant was represented by Mr E. Abrashev, a lawyer practising in Pleven. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Dimova, of the Ministry of Justice.

3. The applicant alleged, in particular, that his punishment with solitary confinement for having complained against the prison administration amounted to a violation of his rights under Articles 6, 8 and 10 of the Convention.

4. On 15 December 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1). The case was later transferred to the Fourth Section of the Court, following the reorganisation of the Court's sections on 1 February 2011.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1981 and is currently serving a prison sentence in Pleven Prison.

A. Conditions of the applicant's detention in Belene Prison and his previous complaints against the prison administration

6. The applicant was detained in Belene Prison from an unspecified date in August 2002 until 29 March 2007, when he was moved to Pleven Prison. He stated that the conditions of detention in Belene Prison had been inhuman and degrading.

7. It appears that the applicant submitted frequent complaints to various institutions against the administration of Belene Prison.

8. On an unspecified date in 2005 he complained to the prosecuting authorities that some of the letters he had sent had been withheld by the administration and had never reached their addressees. Following an inquiry, his complaint was dismissed both by the regional prosecutor on 14 July 2005 and on appeal on 17 August 2005 by the prosecutor in appeal proceedings who established that between January 2004 and June 2005 the applicant had sent thirty-one letters, which had been duly entered in the prison register and forwarded to their addressees.

B. Disciplinary punishments imposed on the applicant

1. The punishments of 26 and 31 October 2006

9. On 26 and 31 October 2006 the director of Belene Prison ordered the confinement of the applicant in an isolation cell for two five-day periods following two violent incidents between the applicant and another prisoner which had occurred at short intervals. The applicant appealed.

10. The Levski District Court opened two sets of proceedings and on 10 November 2006 examined the applicants' appeals in two separate hearings held consecutively. The applicant appeared in person while the prison administration did not send a representative.

11. At the start of the first hearing the court stated that it had summoned Mr K., a prison guard, as a witness. It noted that Mr K. had not appeared, the prison administration having submitted a medical certificate to the effect that he had been admitted to hospital. The applicant requested that another prison guard, Mr S., be questioned but nevertheless agreed that the court should proceed with the examination of the case.

12. On the merits, the applicant stated that he had been insulted and attacked by an inmate. He denied having insulted the inmate concerned and claimed that he was not responsible for the incident and that the punishment was unjustified.

13. In a final decision of the same date the District Court upheld the order of 31 October 2006, stating that the director of the prison had taken into consideration all relevant circumstances and had delivered a reasoned and lawful order. The director had considered the applicant's and witnesses' statements and the report of a prison employee. The court further noted that

the written statements of the witnesses corroborated the director's conclusions and did not support the applicant's account of the events. As to the punishment, it had been determined with due regard to the gravity of the offence and the applicant's conduct as a whole.

14. Then the court proceeded with the second hearing. It noted that the prison guard Mr S., who had been summoned as a witness, was also in hospital. The applicant insisted on the appearance of Mr S. and stated that he wanted to call a second witness, Mr F. He also asked to be assigned a court-appointed lawyer and sought an adjournment.

15. The court dismissed those requests, stating that it was obliged to complete the examination of the applicant's appeal within three days of its being lodged and that the absence of a lawyer was not a reason for adjourning the hearing.

16. On the merits, the applicant explained that the incident had been similar to the first one and that he had been insulted and attacked by the same inmate.

17. In a final decision of the same date the District Court upheld the order of 26 October 2006. It found that on 28 September 2006 a conflict had arisen between the applicant and another prisoner which had developed into a fight. That had necessitated the intervention of the guard on duty. The director of the prison had taken into consideration all relevant circumstances and had delivered a reasoned and lawful order. He had considered the applicant's and witnesses' statements and the report of a prison employee. The court further noted that the written statements of the witnesses corroborated the director's conclusions and did not support the applicant's account of the events. As to the punishment, it had been determined with due regard to the gravity of the offence and the applicant's conduct as a whole.

2. The punishment of 29 January 2007

18. On 18 December 2006, while the applicant was isolated in a disciplinary cell in connection with the above punishments, his mother sent him a parcel which was not delivered to him. On an unspecified date in December 2006 the applicant asked why his right to receive parcels had been restricted. The prison administration informed him that no parcel had arrived.

19. On 3 January 2007 the applicant complained to the public prosecutor that the prison administration had refused to give him the parcel. He requested that the matter be investigated and the responsible officials punished. He stated that the prison employees often made such mistakes in respect of prisoners. Lastly, he stated that the incident amounted to a criminal offence under Article 171 of the Criminal Code, which made it an offence to, *inter alia*, hide or destroy a package intended for another person.

20. On 8 January 2007 the applicant gave a copy of his complaint to a prison employee, who transmitted it to the prison director. Following an internal inquiry, it was established that on 18 December 2006 a parcel for the applicant had indeed arrived and was sent back to the sender because the applicant was not entitled to receive parcels while in isolation. In relation to the above, the director of Belene Prison considered the applicant's statements to the public prosecutor defamatory and on 29 January 2007 punished him with fourteen days' isolation in a disciplinary cell. He also justified the punishment on grounds of the applicant's overall conduct, referring to the punishments imposed on him on 26 and 31 October 2006 (see paragraph 9 above) and the fact that the applicant had frequently sent similar complaints to various institutions. The applicant appealed.

21. The District Court held a hearing on 5 February 2007. An employee of the prison submitted that the parcel had been lawfully returned because prisoners were not allowed to receive parcels while punished with solitary confinement. The witness further stated that he had suggested that the applicant be punished because the latter had made insulting and defamatory statements against the prison administration. The witness pointed out that this was the applicant's third breach of the disciplinary rules.

22. The applicant replied that he would not have complained to the public prosecutor had the prison administration informed him about the parcel. He stated that he had not received a reply from the public prosecutor.

23. In a final decision of the same date the District Court upheld the order of 29 January 2007. It referred to the statements of the witness and the information contained in the disciplinary file and held that the order was reasoned and lawful and that the conduct of the applicant within the last year had been taken into consideration.

C. The applicant's complaint to the General Directorate of Enforcement of Sentences at the Ministry of Justice

24. On an unspecified date in 2007 the applicant requested the General Directorate of Enforcement of Sentences at the Ministry of Justice to transfer him to another prison, stating that the administration of Belene Prison had subjected him to harassment. In particular, he referred to the dispute about the parcel and the ensuing punishment (see paragraphs 18-23 above).

25. On 16 March 2007 the Deputy Minister of Justice granted the applicant's request and ordered that he be moved to Pleven Prison. He noted that the prison authorities had given inaccurate information to the applicant about the parcel and that, therefore, the applicant had acted in good faith in complaining to the public prosecutor. The honesty of his intention was also evident from the fact that he had provided the prison administration with a copy of his complaint. The Deputy Minister further noted that prisoners

were entitled to make applications and complaints to public bodies and stressed that the disciplinary liability envisaged in the Enforcement of Sentences Act could not be used to restrict that right. Noting that the punishment of 29 January 2007 had been upheld by the court and had become final, the Deputy Minister considered that the applicant had understandably lost confidence in the administration of Belene Prison and that that risked jeopardising his reform, should he remain in that prison.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Disciplinary punishment of prisoners

26. Under section 76(k) of the Execution of Sentences Act (ESA) of 1969, in force at the relevant time, a prisoner who violated prison regulations or disciplinary rules or failed to fulfil his duties could be punished by, *inter alia*, confinement in an isolation cell for up to fourteen days. During confinement, prisoners could not use the telephone or receive any visits or parcels but were still entitled to one hour's daily exercise in the open air, separated from the other prisoners (section 76a of the ESA and section 103 of the ESA Implementing Regulation of 1969).

27. Section 46 of the ESA Implementing Regulation of 1969 provided that where a prisoner used defamatory or offensive language in his or her submissions or complaints, he or she was liable to disciplinary and criminal punishment. On 1 June 2009 the ESA of 1969 was superseded by the new Enforcement of Sentences and Detention Orders Act (the "ESDOA"). Pursuant to section 90 (5) of the ESDOA, prisoners shall not be liable to disciplinary punishment because of having made a request or lodged a complaint.

28. In accordance with sections 78 and 78b of the ESA of 1969, an appeal lay to the General Directorate of Enforcement of Sentences or the district court against punishment by confinement in an isolation cell. The former was obliged to examine the case within two months, and the latter within three days. Execution of the punishment was not suspended pending the outcome of the appeal, unless the relevant appeal body decided otherwise. In proceedings before the district court the public was excluded and the absence of the prisoner's lawyer was not an obstacle to the examination of the case. The court was obliged to examine all circumstances relevant to the lawfulness of the punishment. Its decision was final.

B. Supervision of the prison administration

29. Pursuant to the ESA of 1969 and the relevant Implementing Regulation, the General Directorate of Enforcement of Sentences at the Ministry of Justice was responsible for managing and supervising prisons. Its General Director could annul the decisions of prison directors.

30. Under the Judiciary Act of 2007 and the ESA of 1969, the public prosecutor was competent to supervise prisons and the enforcement of sentences. His powers included examining complaints from prisoners, giving mandatory instructions to the prison administration for correcting irregularities, and suspending unlawful acts which were amenable to appeal.

31. Disputes between prisoners and the prison administration concerning the enjoyment of rights such as visiting rights or the rights to receive correspondence or parcels were not amenable to appeal before the court.

C. The 1988 State and Municipalities Responsibility for Damage Act

32. Section 1 of the 1988 State and Municipalities Responsibility for Damage Act ("the SMRDA"), as amended in July 2006, provides as follows:

> "The State and the municipalities shall be liable for damage caused to individuals and legal persons by unlawful decisions, actions or omissions by their organs and officials committed in the course of or in connection with the performance of administrative action."

III. RECOMMENDATION REC(2006)2 OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE EUROPEAN PRISON RULES (ADOPTED ON 11 JANUARY 2006)

33. The relevant extracts from the Recommendation on the European Prison Rules read as follows:

> "70.1 Prisoners, individually or as a group, shall have ample opportunity to make requests or complaints to the director of the prison or to any other competent authority.
>
> 70.2 If mediation seems appropriate this should be tried first.
>
> 70.3 If a request is denied or a complaint is rejected, reasons shall be provided to the prisoner and the prisoner shall have the right to appeal to an independent authority.
>
> 70.4 Prisoners shall not be punished because of having made a request or lodged a complaint.
>
> ...
>
> 70.7 Prisoners are entitled to seek legal advice about complaints and appeals procedures and to legal assistance when the interests of justice require."

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

34. The Government urged the Court to declare the application inadmissible, arguing that the applicant had not suffered any significant disadvantage. They further submitted that he had not exhausted domestic remedies because it had been open to him to bring a compensation action under the SMRDA.

35. The applicant did not comment.

36. In so far as the Government can be understood to raise an objection under Article 35 § 3 (b) of the Convention, the Court does not accept that the applicant, who served several periods of solitary confinement as a result of the orders complained of, may be regarded as not having suffered significant disadvantage within the meaning of that provision. It therefore rejects the Government's first objection. As to the availability of effective domestic remedies, the Court notes that one of the prerequisites for a successful claim under the SMRDA is the unlawfulness of the act causing the damage (see paragraph 32 above). However, the domestic court dismissed the applicant's appeals against his punishments, finding them lawful under national law (see paragraphs 13, 17 and 23 above). Accordingly, the Government's second objection should also be dismissed.

II. ALLEGED VIOLATION OF ARTICLES 8 AND 10 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S PUNISHMENT OF 29 JANUARY 2007

37. The applicant complained, without relying on a particular Convention provision, that the prison administration had punished him with fourteen days' confinement in an isolation cell because he had complained to the public prosecutor about their refusal to give him a parcel from his family.

38. Having regard to the nature and the substance of the applicant's complaint, the Court considers that it falls to be examined under Articles 8 and 10 of the Convention, which read, in so far as relevant, as follows:

Article 8

"1. Everyone has the right to respect for his private ... life..."

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."

Article 10

"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."

A. Admissibility

39. The Court notes that the above complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. Article 10 of the Convention

(a) The parties' submissions

40. The applicant submitted that the only purpose of this and the other sanctions imposed on him had been to discourage him from corresponding with the competent institutions supervising prisons. He stated that the administration of Belene Prison had subjected him to constant harassment and pressure and that the strain he had felt had prompted him to seek to be transferred to another prison. Lastly, he complained that the prison authorities had taken only his written statement regarding his complaint to the public prosecutor and had not heard his explanations in person.

41. The Government submitted that the applicant's disciplinary punishment had been lawful and justified for the prevention of crime and for the protection of the rights and freedoms of others. They argued that the applicant had complained to the public prosecutor that the prison authorities had breached the law by refusing to give him the parcel, which had not been true. The Government further stressed that, in imposing the sanction, the authorities had taken into consideration the applicant's overall conduct, notably his previous disciplinary offences and the fact that he had submitted other complaints or requests containing denigrating language to various institutions.

(b) The Court's assessment

(i) The existence of interference

42. The Court observes that the applicant was punished by the prison administration with fourteen days' confinement in a disciplinary cell for having made a complaint to the public prosecutor that was perceived as defamatory (see paragraphs 18-23 above). There was therefore interference with his right to freedom of expression (see *Skałka v. Poland*, no. 43425/98, § 30, 27 May 2003, and *Yankov v. Bulgaria*, no. 39084/97, § 126, 11 December 2003). Such interference entails a violation of Article 10 of the Convention unless it is prescribed by law and is necessary in a democratic society in pursuance of a legitimate aim.

(ii) Legitimate aim and lawfulness

43. It appears that the applicant's punishment had a legal basis in section 46 of the Implementing Regulation of the Enforcement of Sentences Act of 1969 (see paragraph 27 above). The Court further accepts that in principle it pursued a legitimate aim, which was the protection of the reputation and the rights of others, and specifically the officials of Belene Prison.

(iii) "Necessary in a democratic society"

44. The Court reiterates that it is open to the competent State authorities to adopt measures intended to respond appropriately and without excess to defamatory accusations devoid of foundation or formulated in bad faith (see *Heinisch v. Germany*, no. 28274/08, § 67, 21 July 2011, and *Castells v. Spain*, no. 11798/85, § 46, 23 April 1992). Public servants, in particular, may need protection from offensive, abusive and defamatory attacks which are calculated to affect them in the performance of their duties and to damage public confidence in them and the office they hold (see *Janowski v. Poland* [GC], no. 25716/94, § 33, ECHR 1999-I, *Bezymyannyy v. Russia*, no. 10941/03, § 38, 8 April 2010, and *Siryk v. Ukraine*, no. 6428/07, § 41, 31 March 2011). In the context of prison discipline, however, regard must be had to the particular vulnerability of persons in custody and therefore the authorities must provide particularly solid justification when punishing prisoners for having made allegedly false accusations against the penitentiary authorities (see *Yankov*, cited above, § 134). In exercising its supervision, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based themselves on an acceptable assessment of the relevant facts. In doing so, the Court must assess the interference in the light of the case as a whole, including the content of the remarks held against the applicant and the context in which he made them. It must determine whether the interference in issue was "proportionate to the legitimate aims pursued" and whether the reasons adduced by the

national authorities to justify it are "relevant and sufficient" (see, among many other authorities, *Janowski v. Poland* [GC], cited above, § 30, and *Raichinov v. Bulgaria*, no. 47579/99, § 47, 20 April 2006).

45. Applying these principles to the present case, the Court notes that the applicant's statements were made in the context of a dispute between him and the prison administration on the restriction of a clearly personal right, which is the right to receive a parcel from his family. They were made in a letter to the public prosecutor, who is competent to supervise penitentiary institutions and deal with such disputes. The Court notes that the applicant first tried to obtain information about the parcel from the prison administration but was told that no such parcel had arrived (see paragraph 18 above). He then decided to write to the public prosecutor and ask him to investigate the matter. Thus, it appears that the applicant acted in the belief that the information disclosed in his letter was true. There is nothing to suggest that he did not act within the framework established by law for making such complaints or that he had other intentions than to have the alleged unlawful conduct of the prison authorities examined. The fact that he showed his letter to the prison officials also supports the finding that he acted in good faith (see paragraph 20 above). The Court is therefore not convinced that the interference at issue corresponded to any "pressing social need" (see *Zakharov v. Russia*, no. 14881/03, § 26, 5 October 2006).

46. The applicant did not resort to abusive, strong or intemperate language, although his letter did contain some expressions verging on exaggeration, such as the allegation that the impugned incident amounted to a criminal offence (see paragraph 19 above). Furthermore, the letter did not pose a threat to the prison officials' authority and public reputation, as its content was not made known to the general public or to other prisoners.

47. The Court observes that complaining to the public prosecutor was, under domestic law, an appropriate manner to challenge restrictions on prisoners' personal rights (see paragraphs 30-31 above). In particular, prisoners could not refer matters such as the one at issue – about a parcel – to the courts. The Court considers that this fact is of crucial importance to its assessment of the proportionality of the interference. In his decision of 16 March 2007 the Deputy Minister of Justice stressed that the disciplinary liability of prisoners should not be used to restrict their right to petitions and complaints and considered that, by punishing the applicant, the authorities of Belene Prison had betrayed his confidence and jeopardised his correction (see paragraph 25 above). The Court subscribes to this view of the domestic authorities, which is also in line with the Recommendation of 11 January 2006 (Rec(2006)2) on the European Prison Rules (see paragraph 33 above). It considers that punishment for non-abusive complaints filed by prisoners could have a serious chilling effect and discourage them from reporting irregularities in prison.

48. As to the proportionality of the sanction, the Court notes that the applicant was punished by the maximum period of isolation permissible by law and that that punishment entailed restrictions of his visiting rights, correspondence and human contact, which adversely affected his private life. The severity of this punishment is, in the Court's view, particularly striking and clearly disproportionate in the light of the facts on which it was based – the applicant having sent to the relevant authorities a complaint about a missing parcel and, allegedly, in the past, many other unidentified complaints.

49. Regrettably, none of these factors was adequately addressed by the domestic court which reviewed the applicant's punishment. The Court reiterates that in securing the rights protected by the Convention, the Contracting States, notably their courts, must apply the provisions of national law in the spirit of those rights (see *Storck v. Germany*, no. 61603/00, § 93, 16 June 2005). It finds that in the present case the domestic court failed to examine the question whether the punishment had been imposed in view of defamatory or insulting statements and whether it had been necessary and proportionate to the achievement of the alleged aim of protecting the prison officials' reputation. It failed, moreover, to have regard to the applicant's right to freedom of expression.

50. In the circumstances, the Court finds that the interference with the applicant's right to freedom of expression was not necessary in a democratic society.

51. There has accordingly been a violation of Article 10 of the Convention.

2. Article 8 of the Convention

52. The Court has already taken into consideration the effects of the punishment on the applicant's private life in the analysis of proportionality under Article 10 of the Convention. It therefore considers that there is no need to examine separately the complaint under Article 8 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

53. The applicant complained, without relying on a particular Convention provision, that he did not have a fair hearing of his appeals against the punishments of 26 and 31 October 2006 and 29 January 2007.

54. Having regard to the nature and the substance of the applicant's complaint, the Court considers that it should be examined under Article 6 § 1 of the Convention, which reads, in so far as relevant, as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal...".

A. Admissibility

55. The Government submitted that the Article 6 was applicable in its civil limb.

56. Having regard to its established case-law, the Court finds that the criminal head of Article 6 is inapplicable in the present case as the proceedings in issue did not concern the determination of a criminal charge (see *Štitić v. Croatia*, no. 29660/03, §§ 51-63, 8 November 2007; *Gülmez v. Turkey*, no. 16330/02, § 26, 20 May 2008; and *Stegarescu and Bahrin v. Portugal*, no. 46194/06, § 34, 6 April 2010, with further references).

57. The Court should further examine whether there was a genuine and serious dispute over a "civil" right which can be said, at least on arguable grounds, to be recognised under domestic law. In addition, the outcome of the proceedings must be directly decisive for the right in question (see *Enea v. Italy* [GC], no. 74912/01, § 99, 17 September 2009, and *Boulois v. Luxembourg* [GC], no. 37575/04, § 90, 3 April 2012).

58. The Court observes that the national law envisaged judicial review of the applicant's punishment by solitary confinement. That punishment entailed restrictions of a set of prisoners' rights explicitly recognised by the domestic law, such as visiting rights and correspondence, and his contacts with other inmates (see *Stegarescu and Bahrin*, §§ 37-39, and *Gülmez*, § 30, both cited above). Those rights fell within the sphere of personal rights and were therefore civil in nature (see *Enea*, cited above, § 103). The outcome of the proceedings concerning the applicant's solitary confinement was decisive for those rights (see *Gülmez*, cited above, § 29).

59. It follows that Article 6 of the Convention is applicable in its civil limb.

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

B. Merits

1. The proceedings concerning the punishments of 26 and 31 October 2006

61. The applicant argued that his appeals against his disciplinary punishments of 26 and 31 October 2006 proved useless because the domestic court had taken the side of the prison administration and had refused his requests to be assigned a court-appointed lawyer and to call witnesses.

62. The Government stated that the domestic court had taken into account all relevant circumstances and delivered well-reasoned judgments based on the national law.

63. In connection with the applicant's complaint that his request to call witnesses was refused, the Court reiterates that while Article 6 § 1 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, 21 January 1999). It considers that the domestic court was entitled to rely on the assessment made by the director of the prison, which it found to have been reasoned, based on all relevant evidence and corroborated by the written statements of witnesses available in the file. It further notes that the applicant was heard by the domestic court and was able to submit, and indeed submitted, the arguments he considered relevant to the case (compare and contrast, *Gülmez*, cited above, § 37). In the circumstances, the Court finds that the domestic court's failure to adjourn the hearing in order to obtain the testimony of Mr S. and to summon Mr K. did not affect the fairness of the trial. In particular, the applicant did not object to the continuation of the hearing without the testimony of Mr S. and did not substantiate the points on which he wished to have Mr K. heard.

64. As to the applicant's complaint that he was not provided with legal assistance, the Court notes that the applicant did not claim that he had been prevented from securing legal representation of his own choosing. It does not consider that the case was sufficiently complex to require the applicant to have free legal assistance under Article 6 § 1. The outcome of the two sets of disciplinary proceedings turned on the simple question whether the applicant was responsible for two violent conflicts with his fellow inmate. The cases did not therefore present special features calling for the provision of legal assistance (see, *mutatis mutandis*, *McVicar v. the United Kingdom*, no. 46311/99, § 55, 7 May 2002, and, conversely, *Airey v. Ireland*, 9 October 1979, § 24, Series A no. 32).

65. Lastly, the Court notes that the applicant's complaint that the domestic court was not impartial is not supported by any facts or arguments. It is therefore unsubstantiated.

66. It follows that there has been no violation of Article 6 § 1 of the Convention.

2. The proceedings concerning the punishment of 29 January 2007

67. The applicant stated that the domestic court had not been impartial and objective and had taken only the arguments of the prison administration into account.

68. The Government stated that the domestic court had delivered a well-reasoned judgment based on the national law.

69. Having regard to its findings under Article 10 of the Convention (see paragraphs 44-51), the Court does not consider it necessary to examine

whether there has been a violation of Article 6 as well (see *Kasabova v. Bulgaria*, no. 22385/03, § 80, 19 April 2011, with further references).

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

70. The applicant also complained, without relying on a particular Convention provision, that the administration of Belene Prison had harassed him by imposing frequent and unjustified disciplinary sanctions, that the living conditions in which he had been held in Belene Prison from an unspecified date in August 2002 to 29 March 2007 had been poor, and that some of the letters he had sent to the public prosecutor or to other institutions, in which he had complained about the conditions of his detention, had been withheld by the administration of Belene Prison and had never reached their addressees.

71. The Court has examined the remainder of the applicant's complaints as submitted by him. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

72. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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

74. The applicant claimed 20,000 euros (EUR), in respect of non-pecuniary damage generally, for violations of the Convention in his case.

75. The Government argued that the claim was excessive.

76. The Court considers that the applicant must have sustained non-pecuniary damage as a result of the breaches of his rights in the present case. Taking into account all the circumstances of the case, and deciding on an equitable basis, the Court awards him EUR 4,500 under this head.

B. Costs and expenses

77. The applicant made no claim for costs and expenses.

C. Default interest

78. The Court considers it appropriate that the default interest rate 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 complaints under Articles 6, 8 and 10 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds* that there is no need to examine separately the complaint under Article 8 of the Convention;

4. *Holds* that there has been no violation of Article 6 of the Convention in respect of the judicial review proceedings concerning the punishments of 26 and 31 October 2006;

5. *Holds* that there is no need to examine separately the complaint under Article 6 of the Convention in respect of the judicial review proceedings concerning the punishment of 29 January 2007;

6. *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 4,500 (four thousand and 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 amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 24 July 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Lech Garlicki
Deputy Registrar	President