

## Prison visit for those behind bars in Europe - an essential element for reintegration into society

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### Abstract

*The support of loved ones is beneficial at any time and in any activity that an individual wants to pursue. In difficult moments in life, the importance of the support given by the loved ones increases. This is also the case at the time of separation from society by being sentenced to a prison sentence due to committing an act condemned by the criminal law. Periodic visits from family, friends or other acquaintances help the condemned to get over the dark period in his life more easily. Also, being released into society for short periods is extremely important for the moral tonus of the person serving a custodial sentence. Such rewards are predominantly used near the time when the prisoner will end his prison sentence to alleviate the shock of reintegration into the community.*

*Keywords:* reintegration, abandonment, family, contact, punishment

### Introduction

The hard times in a person's life can become easier if he has by his side people who care about him, support him with the things he has to do or alleviate his pain during difficult times. In these situations, the family plays an extremely important role. Most of the time, the notion of family leads to the idea of connection, a connection of blood, of name, of love, of common goals, of living in the same space, and the relationship with the subject is always highlighted (Băran-Pescaru, 2004, p. 11).

A very painful or difficult time in life can occur at any time for various reasons, be it personal, financial, spiritual or physical. Life's hardships are often unpredictable, are always unwanted and unplanned, cannot be passed on to others and certainly cannot be postponed. For everyone, suffering occurs to everyone throughout their lives caused by the loss of a loved one, father or mother, brother or sister, husband or wife, child or grandchild, uncle or aunt, cousin or close friend. Sometimes there are also financial problems, when some people lose all their belongings, lose their job or are left

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without the material possibilities they previously had being forced to change their priorities and whole lifestyle. Sometimes people face serious health problems that negatively affect their lives both physically and mentally.

A very difficult time in life, less common for most people, is being sentenced to deprivation of liberty following a final court decision. Most citizens believe that all those who have ended up behind bars have done so through their own fault and that they must pay the burden of imprisonment with all the hardships of deprivation of liberty. However, the separation from the community, and in particular from close relatives, is sometimes sufficient for the convicted person to be aware of the seriousness of his or her actions and a reason sufficient to persuade him or her not to commit criminal acts after release. A very important factor for reintegration into society as a useful element that no longer poses a danger to the community is the contact of the person deprived of liberty with the family during detention. Regular visits by close relatives can have a decisive impact on the detainee's conduct both during his detention by the prison administration and in the subsequent period after he is released. Just the thought that he has not been abandoned by his loved ones can represent a sufficient incentive for the detainee to determine him to make all the necessary effort to regain his freedom as soon as possible.

During the period of incarceration, prisoners lose an essential right, the right to freedom, but they retain enough benefits to continue a life as close to normality as possible. The idea of family visits to those behind bars appeared with penance, being one of the oldest rights, along with the right to food. Gradually, in parallel with the development of society, benefits such as the right to legal assistance, to information, to education, to petition, the right to vote, to shop, to freedom of conscience, opinions and religious beliefs appeared.

Even if, at first glance, the right to visit does not seem very important, for maintaining the moral tone and the chances of reintegration into society, this is an essential element. Keeping in touch with family and friends is strengthened by the right to correspondence, the right to phone calls and online conversations, as well as through conjugal visits.

## **1. Normative sources of general interest**

The source of the rules regarding the visits for persons incarcerated in European space is based on unanimously accepted documents at the international level. The rules are in a slow state of change and development, but the importance of family support is clearly accepted by most prison specialists.

Recently, there have been conflicting discussions about eliminating or keeping the possibility of prison administrations to use the suspension of visits as a disciplinary sanction.

Discussions in this regard were initiated following visits made to prison in different states by delegations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment (Council of Europe, 2021). During 2021, a delegation of the Committee visited several penitentiary units in Romania, especially the units profiled on the maximum security regime. After the analysis of the activities carried out and the evaluation of the mechanisms used in the prison, the members of the delegation felt the need to emphasize the importance of contact with the outside and to recommend the limitation of the sanction with the suspension of the right to visit from the range of disciplinary sanctions that can be applied to prisoners. Furthermore, the final report recommended that visits with friends and family should generally take place without separation devices, unless there is a danger to the visitor or the person being visited.

The representatives of this international institution have extensive experience in the prison environment and form multidisciplinary teams with members who have activated in all sectors of work in penitentiary units. The committee is not a control entity but rather an element that tries to prevent any form of bad treatment of persons deprived of their liberty. The members of this institution are experts in the field and carry out their work impartially and independently, with the aim of assessing the situation of incarcerated persons and preventing abuses against them. The visits of the delegations are usually planned, but they can also be unannounced, in the event of reporting irregularities or receiving complaints.

### **1.1. Declaration of the Rights of Man and of the Citizen**

Usually, in the 18th century, the world did not place much emphasis on individual interest, often, only the general interest, the interest of the collective, being addressed and legislated. Nations were mostly ruled by an authoritarian leader supported by a small group of people with influence and financial power. Most of the rules were dictated and enforced without regard to the opinion of the masses. The mass of people was for the most part with very little education and with a living standard commensurate with their studies, and the financial power was most often the equivalent of power and influence within the decision-making factor.

In the field of directing the interest to the individual as well, the French state opened the way towards the end of the 18th century. Starting from ideas according to which the ignorance, forgetting or contempt of human rights are the basis of the problems of the population and of the corruption of

the leaders, on August 26, 1789 the National Assembly recognizes and declares in the presence and under the auspices of the Supreme Being the act called the Declaration of Human and Citizen Rights (OHCHR, 1789). The document includes a preamble and 17 articles, representing the starting point for the foundations of democracy in France and, at the same time, an important source of inspiration for the principles provided by the State Constitution of 1791. Thus, the privileges of several categories of people such as French, foreigners or stateless were highlighted, then of citizens in particular and of French society in general.

From an economic point of view, this was also the moment when loans started, thus the possibility of individuals and institutions borrowing money with interest was legislated. Although the declaration did not exactly indicate the citizen's rights to family and private life, it was emphasized that people are born and remain free and equal in rights and social differences can only be based on public utility (National Assembly of France, 1789).

## **1.2. The Universal Declaration of Human Rights**

Towards the end of the Second World War, the armed conflict resulting in the greatest loss of human life and damage in history, the great decision-makers of the planet drew up a document consisting of thirty articles concerning the main rights of the human being. Called the Universal Declaration of Human Rights, the act was adopted on December 10<sup>th</sup>, 1948, by Resolution 217 of the third session of the United Nations General Assembly.

The Declaration was originally drafted and viewed not as an international treaty or convention but rather as a goal for all nations to pursue, later becoming a source of inspiration for most international legislation and treaties. The historic document was a trailblazer for individual freedom, defining and detailing individual rights such as economic, political, civil, procedural, and social. Among the civil rights, the right to life was highlighted, and later rights such as the right to peaceful assembly, the secrecy of correspondence, the inviolability of the home, the freedom and security of the person, free movement, the right to marry and found a family, private life and family life were emphasized.

The document recalled and emphasized the importance of the family in a person's life and stated that no one shall be subjected to arbitrary interference with his personal life or his family and in case of such danger the individual is entitled to the protection of the law against such interference or touching (United Nations, 1948). The notion of family within the community was strengthened, clearly indicating that it constitutes the natural and fundamental element of society and has the right to protection from the state and society.

### **1.3. European Convention on Human Rights**

Most of the time, after a major conflict between people, groups of people, institutions, or nations a period of calm and peace follows in which all actions are analyzed twice before being put into practice and ideas, contracts, conventions, or treaties that provide benefits for all parties are born. This is what happened in the middle of the 20th century, shortly after the end of the Second World War, when an international treaty appeared that guarantees and protects the fundamental rights and freedoms of European citizens. The international document drawn up by the Council of Europe in the Italian capital, Rome, was and still is a model to be followed and a real source of inspiration for the constitutions and basic laws of several countries. The declaration was cataloged as an innovation in the field of the rights and freedoms of individuals, being the first time that they were established and guaranteed on an international scale.

Through this document, the European Court of Human Rights was also established, an entity with the purpose of protecting natural persons against the violation, limitation or non-granting of the rights established by the convention. Over time, the institution has proven its necessity and usefulness, being requested many times by people who have not been able to prove their justice at the national level. It was also at this time that the foundations of the European Commission were created, a body that was assigned responsibilities for the examination and verification of legislative projects proposed by the member states, the implementation of decisions and the observance of treaties between states.

For the first time in an international document, the individual's right to private and family life was directly and clearly emphasized. This established the age at which a man and a woman can marry, which differs according to the legislation of the state where the event takes place. The two life partners are free to find a family within the limits and with the benefits of the national legislation of the state on whose territory the two join their destinies (Council of Europe, 2016).

### **1.4. Recommendation of the Committee of ministers of the member states regarding European prison rules**

Unlike the other documents that supported the promotion and development of people's rights in general, the 2006 recommendation was focused only on the protection of the rights and freedoms of people serving a custodial sentence.

The document had a positive influence on the penitentiary environment and reminded some penitentiary administrations that persons deprived of their liberty, with the decision to sentence them

to prison, lose their freedom but partially retain some of the rights they had in society. It was also emphasized that penitentiary units should try as much as possible to reduce restrictions to the minimum necessary, the lack of detention conditions should not be justified by the lack of staff and life in a penitentiary should resemble as much as possible positive aspects from outside prisons. Although the document drawn up by the Committee of Ministers was only a recommendation for the European states, it had a very important role and became a source of inspiration for subsequent documents in the penitentiary environment and at the same time a guide on how to work for employees in detention facilities. Ideas and rules regarding detention facilities, the deposition of persons deprived of their liberty, the distribution of rooms, hygiene conditions, food regime, use for gainful activities, education, transfers, medical assistance, the use of force, legal advice, personal safety, etc., were discussed.

When the document was drawn up (Council of Europe, 2006), special attention was paid to the contact of those behind bars with the outside, especially with family, representatives of various institutions and other people close to the inmates. It has been recommended that during the period of separation from society, all restrictions on visits or communications with outsiders cannot completely cancel contact with civilians, and a minimum acceptable level of contact must be maintained. It was considered imperative that the individual deprived of his liberty should be able to notify his family whenever he suffered a serious illness or injury; in the same way, inmates will be informed of the serious illness or death of a family member and, when possible, must be allowed to go outside to attend the burial of close relatives. Communication with the media was also taken into account and it was highlighted that this should be allowed as long as the safety of victims, staff or other prisoners is not endangered and there are no other good reasons to prohibit the prisoner's contact with the exterior.

The Committee of Ministers recommended that the methods of making visits between relatives and inmates should be ones that favor the maintenance and development of relations with the family and that communication by mail, phone calls or other means of communication should be easily accessible for all those who are incarcerated in penitentiary institutions. It was considered necessary that the persons and institutions that can contact the inmates should be clearly specified in the national legislations so as not to leave room for restrictive interpretations or decisions. The role of the penitentiary administrations in terms of maintaining links with the outside environment is a decisive one, as they have the duty to encourage persons deprived of their liberty to maintain contact with civil society. At the same time, the penitentiary must make every effort to provide the persons in custody with all the necessary information possibilities regarding issues of public interest, through television and radio broadcasts, publications, newspapers, etc.

### **1.5. The guide regarding article 8 of the European Convention on Human Rights.**

Society is in continuous movement, development, and change, which requires humanity to form or adapt according to new rules and requirements. In this sense, in 2016, the Council of Europe drew up a guide that is periodically updated according to the transformations and new aspects involved in the jurisprudence of the courts. The Guide generally focused on the need to respect the right to private and family life as well as the freedoms of home and correspondence.

It was recalled that respect for private and family life, home and correspondence are the rights of all people without any discrimination based on gender, race, political affiliation, religious or sexual orientation, financial power, etc. The Guide (Council of Europe, 2016) emphasized once again the fact that, in a democratic society, the intervention of a public authority in the private and family life of citizens is prohibited except in strictly limited cases such as measures regarding national security, the defense of public order, health protection, crime prevention, economic stability of the state and the need to protect morals, rights and freedoms of third parties.

According to some studies (Albu *et al.*, 2014, p. 178), even in the criminal field, the role of the family is essential, with a major impact on delinquency. Predictors along this line have been indicated to be parental management, behavior problems, delinquent behavior of family members, and the individual's school performance.

### **1.6. The Charter of Fundamental Rights of the European Union**

All international pacts, treaties or conventions had for their purpose a common interest of the signatory countries and a benefit to their citizens. At the end of the year 2000, through the joint effort of the European Parliament, the European Commission and the Council of the European Union, a document was born that has among its goals a peaceful future for the members of the union based on common values. The document issued in Nice was also called the Charter of Fundamental Rights of the European Union and brought together in a single text the social, political, civic and political rights of European residents and citizens.

The charter was drawn up in an original way; it was conceived as a basic standard for the uniform observance of the rights of the individual, rights considered essential and inalienable. Spread over six chapters made up of 54 articles, it covered ideas such as solidarity, equality, dignity, freedoms and rights of citizens, as well as justice. The document did not omit the importance of the family and emphasized the need to protect and respect family life as well as private life. It was emphasized that



in the European Union the family is protected from a social, economic and legal point of view. Moreover, in order to combine professional and family life in a balanced way, it has been established that any person has the right to maternity or paternity leave in the event of the adoption or birth of a child and citizens cannot be fired in these exceptional situations (European Parliament, 2012).

## **2. The jurisprudence of the European Court of Human Rights on cases relating to the right to private and family life**

Not infrequently, due to the multiplicity of tasks, the complexity of the activities, the lack of funds or human resources, due to limitations in open thinking and forward thinking or sometimes even with intention and lack of goodwill, several states have violated the rights of persons deprived of liberty. These have been affected, limited, suspended, or sometimes even cancelled, although previously the complained states have positively endorsed treaties or international conventions regarding the guarantee and respect of those rights. As the process of public information is on an upward trend thanks to mass media such as television or the Internet, in recent decades, more and more citizens have had the courage, dedicated their time, and allocated physical, pecuniary and moral resources to establishing, maintaining or regaining benefits or privileges.

Thus, the idea of asking for what you consider to be your due from higher authorities to those who refused the first request has also reached the incarcerated people. More and more requests, more or less well-founded, began to flow from inside of the detention facilities to state institutions or to authorities with international jurisdiction. Internationally, the European Court of Human Rights is bombarded with complaints from prisoners, most of them are unfounded and are rejected, but some are well founded and have a positive result for the incarcerated petitioner. One by one, slowly but surely, several states have lost the lawsuits started by persons deprived of their liberty regarding certain standards that they should have had according to the legal framework during the period of detention but did not have, have lost or do not have been fully fulfilled.

### **2.1. Complaints against Italy**

Located geographically in the southern part of the European continent, the Italian Republic is a unitary state, it has a temperate climate and internationally it is often likened and recognized for its territorial surface close to a boot shape. Although Italy is a developed country and from an economic



point of view ranks among the first in the world, it has not been bypassed by the petitions of people incarcerated on its territory.

*The case of Marincola and Sestito against Italy*

During 1998, civilian Felicia Sestito, the wife of a person deprived of liberty incarcerated on the territory of the Italian state, addressed a complaint <sup>2</sup> to the European Court of Human Rights, citing the fact that her right to family life was affected due to the measures ordered by the administration of the penitentiaries that guarded her husband. He was initially accommodated in the Siano prison but was later transferred to several detention facilities such as Spoleto, Sulmona, Lanciano and Catanzaro and others. The detainee, named Cataldo Marincola, was suspected of belonging to a mafia organization, after having committed several crimes of murder and drug trafficking in the time interval 1995-1996, and the investigating judge issued two arrest warrants against him. For these reasons, a special detention regime with limited rights was applied to him for a period established by the judge, during which contact with family members was restricted.

The special detention regime, which was argued by the management of the detention facilities for reasons of order and public safety, greatly limited the applicant's contact with the outside. Thus, the number of telephone conversations with his family was limited to one call per month, he was prohibited from participating in recreational activities with other incarcerated persons, the possibility of visits from close people was canceled except for family members, his life partner and the lawyer. Furthermore, the time interval available to be spent outside the detention room was restricted to a maximum of two hours per day, the number of visits per month was reduced to two visits, he was limited to receiving goods from his family to two packages per month, he was denied the right to receive or send money and his right to participate in productive activities involving the use of potentially dangerous tools was revoked. Another end of the petitioners' complaint also focused on the fact that during the period of incarceration the correspondence was subjected to a censorship visa especially in the Catanzano penitentiary unit. Also during the period of deprivation of liberty, although the prisoner requested permission to participate in the burial of his brother in the summer of 1997, due to the special regime applied, he did not receive a favorable opinion from the prison management.

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<sup>2</sup> Marincola and Sestito against Italy, retrieved from [https://hudoc.echr.coe.int/eng#%7B%22itemid%22:\[%22001-30819%22%7D](https://hudoc.echr.coe.int/eng#%7B%22itemid%22:[%22001-30819%22%7D);

It was only at the end of 1999 that the Court finally settled the case and although the petitioners made every effort to win, the two applicants did not receive a positive response. The court considered that during the trial the negative effects of detention on the detainee, effects likely to affect the right to respect for private life, were not demonstrated. The crimes committed by Cataldo Marincola had a significant role in influencing the final decision and in the final decision it was emphasized that the applicant was subjected to relative social isolation by limiting contact with his family, the isolation being determined by the need to protect public order, national security and the economic well-being of the country. The action of the person deprived of liberty and his wife was also declared inadmissible with regard to the point regarding the alleged violation of correspondence limits because sufficient evidence was not brought in this regard.

### *The case of Pesce against Italy*

Article 8 of the European Convention on Human Rights was also invoked by an Italian citizen, sentenced to life imprisonment for murder, weapons transport and mafia-type criminal association. Thus, during 2007, the person deprived of liberty Antonino Pesce, being convicted in Naples, at the Secondigliano Penitentiary, submitted a complaint<sup>3</sup> to the European Court of Human Rights and presented the fact that the Italian state violated his right to private and family life through the limitations imposed during custody in prison.

Due to the petitioner's criminal history, a special detention regime was established for him that restricted his contact with the outside, implicitly with family members. The rules of the special regime imposed the ban on the use of the telephone, the limitation of the amount of money that the prisoner could receive or send to third parties, the possibility of receiving articles of underwear only twice a year, the impossibility of receiving more than two packages of goods per month and other restrictions that diminished the continuity of his relationship with his family.

During the detention time interval, the prisoner also faced serious health problems and tried to use this aspect in his favor by citing this in the complaint formulated with the aim of obtaining the annulment of the restrictive measures imposed by the prison administration. Moreover, emphasizing the fact that he had a very serious disease, colon cancer, he even tried to obtain the suspension of the execution of the sentence, but even this request did not receive a positive opinion due to his criminal history. Although the petitioner appealed hierarchically to all competent courts in the penitentiary

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<sup>3</sup> Antonino Pesce against Italy, retrieved from [https://hudoc.echr.coe.int/eng#%7B%22itemid%22:\[%22001-85122%22\]%7D](https://hudoc.echr.coe.int/eng#%7B%22itemid%22:[%22001-85122%22]%7D)

field, all the measures by which the right to private and family life was limited were justified by the management of the units and the Italian state by invoking security requirements. Thus, without underestimating the difficulties that the members of the petitioner's family encountered, at the beginning of 2008 the European Court of Human Rights decided that the request of the prisoner Antonino Pesce is inadmissible due to security needs.

*The case of Bellomonte against Italy*

The Italian mafia has been the subject of numerous discussions and often the target of successful screenings that more or less managed to expose the reality outside the legal framework. More often those who enter this illegal and dangerous game, after a period of financial success, end up serving very long prison sentences or even life imprisonment. This also happened in the case of Bruno Bellomonte, an Italian citizen born in 1949, who was part of a terrorist group called the New Red Brigades. He was remanded in custody during 2009 and was lodged at the Regina Coeli Penitentiary in the Italian capital. Due to the facts of which he was accused, the decision was made to include him in a high security prison, with restrictions on all levels. The established regime required the individual accommodation of the detainee, the reduction of the time allocated to the daily walking schedule, the limitation of contact with the family and other persons deprived of liberty, as well as his transfer to the Catanzano prison.

By transferring him to another penitentiary unit, the possibilities for the family to visit him were significantly reduced due to the very long distance from home to the penitentiary. The petitioner requested the Department for the administration of penitentiaries within the Ministry of Justice to grant him the possibility of serving his custodial sentence in a prison in Rome or Sardinia, closer to his home, in order to facilitate contact with his family and relatives. His request was rejected citing expediency reasons related to the management of prisons.

Observing that his request was not successful domestically, the incarcerated person turned to the European Court of Human Rights and complained that his right to family life was being violated. During the case<sup>4</sup>, he also emphasized the fact that placing a person in preventive detention in the restrictive detention regime is incompatible with the presumption of innocence.

Through the final decision that came only in 2014, the Court took into account the fact that the great distance between the family's home and the penitentiary where the petitioner was serving his sentence made it difficult to make visits, but the transfer was well motivated by security needs and

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<sup>4</sup> Bellomonte against Italy, retrieved from <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-142815%22%7D>

the measure was considered proportionate with the legitimate aims pursued. The international court concluded that the transfer away from the family did not involve any limitation of the right to private and family life and unanimously declared the claim as inadmissible.

The decision no longer had much importance for Bellomonte because, in November 2011, the applicant prisoner had been acquitted by the court which also ordered his immediate release because there was not enough evidence to incriminate him regarding the facts of which was accused.

## **2.2. Complaints against Russia**

Known for its rigidity and dictatorial way of ruling, the largest country in the world by area, the Republic of Russia, has not been spared from the complaints of people deprived of their freedom. The state that has the most weapons of mass destruction is also known for its harsh prison conditions, where it is very easy to get into and very difficult to get out of without major physical or mental trauma. However, although the repressive power of the authorities is constantly cracking down on those who do not respect or challenge the rules, there were also some braver prisoners who started lawsuits against the Russian state when they were distanced from what they valued most, their families.

### *The case of Polyakova and others against Russia*

Over the course of five years, starting in 2009, the European Court of Human Rights was assailed by multiple complaints from several people imprisoned on Russian territory, complaints that concerned the violation of the right to private and family life for detainees.

The case was initiated and represented by a woman named Elvira Vasilyevna Polyakova, convicted of crimes related to the use and distribution of drugs. The prisoner was strongly motivated by the fact that at that time she had a son who was only six years old and contact with him was drastically reduced by the sentence. After the opening of the case, the petitioner was joined by other incarcerated persons and families of some persons in detention. The main dissatisfaction was focused on the fact that they were sent to serve their custodial sentences in prisons located hundreds of kilometers, sometimes even thousands of kilometers from the prisoners' homes. This aspect made it difficult to maintain contact with family members, raising issues related to the time they had to spend in order to visit them in prison, as well as the very high financial effort required to travel hundreds or thousands of kilometers. Although some of the applicants requested to serve the prison sentence as

close to home as possible, their request was rejected both by the local public authorities and by the national courts to which they appealed.

The decision<sup>5</sup> of the international court was in favor of the petitioners and obliged the Russian state to pay the main claimant the amount of 652 euros in damages and a total of 24,800 euros in total for all claimants.

### *The case of Voynov against Russia*

During 2010 a prisoner serving a prison sentence on Russian territory appealed to the European Court of Human Rights because he believed that his right to family and private life had been affected by his incarceration in a penitentiary located 4200 kilometers from his home. The petitioner, Timur Voynov, had been sentenced the previous year to a 12-year prison sentence for crimes related to the regime of substances with prohibited psychoactive effects, and in his case it was ordered that the sentence be executed in the Krasnoyarsk region, at a great distance from Oryol, a town where there were his mother and his life partner.

Although the prisoner repeatedly requested to be approved to serve his sentence closer to his family, each time the transfer was justified by the Russian authorities by the overcrowding of prison units in the area of his residence. Due to the very long distance and the costs of travel, during the period of detention Voynov was visited sporadically only by his concubine and did not have the opportunity to see his underage child.

The decision<sup>6</sup> favorable to the applicant came only in 2018 and even if it was not taken unanimously, the Court obliged the state to pay the petitioner the sum of 6,000 euros as moral damages and the sum of 850 of euros as court costs.

Unfortunately, the subsequent practice of the management of the Russian prison system demonstrated that the state's policy of imprisoning people deprived of their liberty hundreds of kilometers from their homes did not stop despite international court decisions that found this to be a flagrant violation of Article 8 of the European Convention on Human Rights.

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<sup>5</sup> Polyakova and others against Russia, retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-171774%22%5D%7D>

<sup>6</sup> Voynov against Russia, retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-184276%22%5D%7D>

### 2.3. Complaints against Bulgaria

Located in the South-East area of the European continent, with a generous coastline to the Black Sea, the Bulgarian state left the zone of Soviet influence in 1990 and since then has enjoyed a developing democracy and the possibility of holding free elections. In the unitary parliamentary republic, although most commercial activities are concentrated in the Sofia capital region, the sea coast to which the state has access has exponentially developed tourism, especially in the warm season. Despite the relatively small number of citizens, implicitly the small number of persons deprived of liberty, the country has not been bypassed by the complaints of those in a situation of deprivation of liberty for committing crimes.

#### *The case of Palfreeman against Bulgaria*

An Australian citizen born in 1986, who at the young age of only 21 was enlisted in the British army, had an unfortunate day that radically changed the course of his life. In 2007, while spending his free time at a restaurant in Bulgaria, he was involved in a conflict with several people, fatally stabbing one of the participants in the fight and injuring another. Although he claimed to have acted in self-defense, the court did not find the defendant's defense credible and Jock Anthony Palfreeman was sentenced to twenty years in prison in Sofia, the capital of Bulgaria.

All of the detainee's relatives, parents, siblings, uncles, aunts, grandparents and cousins lived in Australia and a visit to Bulgaria would have involved a major effort both financially and in terms of the time required for such a trip. For half a year after entering the penitentiary, he was not visited by anyone he knew. During the detention period, at the detainee's request, the Australian state requested the transfer of the incarcerated person to its own country, but the Bulgarian state refused this request, justifying the negative opinion by the need to pay the expenses representing moral damages to the victim's family.

Being dissatisfied with the decision of the Bulgarian authorities, invoking Article 8 of the European Convention on Human Rights, he appealed to the European Court of Human Rights in an attempt to receive a favorable response. He presented the fact that by the decision of the authorities of the state where he was serving his sentence not to approve his transfer to Australia, his right to family life was violated. The final decision<sup>7</sup>, came in 2017 with a majority of votes and was not in

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<sup>7</sup> Palfreeman against Bulgaria la ECHR, retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-174540%22%5D%7D>

favor of the petitioner, the Court took into account the justifications of the authorities regarding the refusal of the transfer and emphasized the fact that the choice of the place of execution of the sentence is not the attribute of persons deprived of liberty but of the state authorities.

#### **2.4. Complaints against Ukraine**

The second largest country in the European area after Russia, one of the largest grain exporters in the world, the semi-presidential unitary republic had around forty-five million inhabitants at the beginning of the current year. Shaken by an armed conflict that few people thought possible in the 21st century, it is currently estimated that only two thirds of the population are still on the country's territory. Although currently the problems in the penitentiary units are at the bottom of the list of priorities for the Ukrainian state, in the past Ukraine also had some complaints from those serving prison sentences on its territory, as a result of the sentencing decisions issued by the courts.

##### *The case of Vintman against Ukraine*

The detainee Yevgeniy Moiseyevich Vintman presented the fact that during his detention several rights were violated, such as the right to health, the right to correspondence and the right to private life. Although he had originally been sentenced to life imprisonment for committing several crimes such as murder and theft, during the period of incarceration he succeeded in reducing the custodial sentence to fifteen years. When he received his first sentence, the prisoner was deprived of his liberty at a distance of 700 kilometers from his home, in a penitentiary unit specially set up for those serving a life sentence. His mother presented to the authorities the fact that she cannot visit her son due to the great distance, her advanced age and medical problems and requested that the place of execution of the sentence be closer to home.

The department responsible for custodial sentences informed the applicant that her request cannot be approved because according to the legislation in force, prisoners must serve the entire sentence in the same detention unit. The mother of the incarcerated person was not satisfied with the answer she received and turned to several authorities, each time receiving a negative response but sometimes with a different motivation by which she was informed that there were no places closer to home for those sentenced life imprisonment. After almost five years from the start of the execution of the sentence, the prisoner was transferred to a penitentiary located at an even greater distance from



his home, the reason given being the multiple disciplinary violations committed by him during his incarceration.

Through his mother, the prisoner also complained that his correspondence with his mother was withheld by the prison administration without any justification. The applicant submitted that the violation of the right to privacy in his case<sup>8</sup> had no real justification and was not necessary in a democratic society.

After a struggle of almost a decade, although the authorities cited the non-granting of the transfer due to the legal framework that did not allow it, the Court ruled that the impossibility to grant him the transfer was equivalent to the violation of the right to family life and private life. The Court specified the fact that Article 8 of the European Convention on Human Rights had been breached; the petitioner's case won and ordered the payment to him of the sum of 12,000 euros for moral damages and other sums that will be imputed to him for the opening of the trial.

#### *The case of Rodzevillo against Ukraine*

Oleg Leonidovich Rodzevillo, a Ukrainian citizen born in 1967, was sentenced to life imprisonment for forming a criminal group and committing several crimes of murder and theft. Initially incarcerated in the Dnipropetrovsk detention center number 3, the detainee complained that he was incarcerated in inhumane conditions and that he was beaten by the prison employees, but the authorities' response did not confirm the aspects complained by the petitioner. In 2007, he was transferred to the Ladyzhynska detention colony number 39, where he complained about irregularities regarding the right to medical assistance, but, following the checks carried out, this statement was not confirmed either.

During his detention, the detainee constantly appealed to several higher courts and requested to be transferred to a penitentiary in the Crimean Peninsula, where he had his domicile. The purpose of the request was for the parents and son of the incarcerated person to be able to visit him. Simultaneously with the petitioner's request, his mother also asked for the transfer closer to home, presenting the difficulties encountered due to the very long distance, the health problems and the advanced age of the parents, as well as the disability that the prisoner's child had at that time. Despite the death of her husband in 2014, the detainee's mother did not stop and continued the attempt to

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<sup>8</sup>Vintman against Ukraine at ECHR, retrieved from <https://hudoc.echr.coe.int/eng#%7B%22appno%22:%5B%2228403/05%22%2C%22itemid%22:%5B%22001-147326%22%5D%7D>

bring her son that was serving a prison sentence, closer to home and family and at the beginning of 2016, the European Court of Human Rights ruled positively her request.

In the absence of strong arguments from the Ukrainian state regarding the refusal to transfer to a penitentiary institution closer to the prisoner's home, the Court found (*Rodzevillo Case, 2016*)<sup>9</sup> that there was a violation of the right to family life and ruled that that the petitioner is also entitled to the sums of 10,000 euros for moral damages and 8,000 euros for court costs.

## 2.5. Complaints against France

With a national motto focused on ideas such as freedom, equality, fraternity and leaders with resounding names like Napoleon Bonaparte, the French state has come to represent today one of the most developed countries, with a solid economy and a formidable army. Among the more than sixty million inhabitants, unfortunately, there are also criminals who, serving their sentence in one of the states that has paid more attention to the conditions of detention. However, there were still cases where France was sued in the higher court for various violations of rights.

### *The case of Labaca Larrea against France and other two requests*

During 2011, a citizen of Spanish origin imprisoned in France named Urko Labaca Larrea addressed the European Court of Human Rights complaining that he was sent to serve his prison sentence hundreds of kilometers away from his family and could not receive visits due to this fact. In a short time, two prisoners of the same nationality, named Ione Lozano Miranda and Alejandro Zoboran Arriola, joined him citing similar issues regarding the deprivation of liberty.

Initially, the three were incarcerated in the prison from the capital of the country, Paris, later they were transferred to a greater distance from their home, in Lyon, an aspect that greatly limited the possibilities of their family members to visit them. Although the right to family life was affected during the execution of the sentence, the Court took note of the fact that the petitioners did not ask the French authorities to transfer them closer to their home and declared the three requests inadmissible. The international court cited the fact that the plaintiffs had the opportunity to ask the

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<sup>9</sup> *Rodzevillo against Ukraine* at ECHR, retrieved from [https://hudoc.echr.coe.int/eng#%7B%22itemid%22:\[%22001-159791%22%7D](https://hudoc.echr.coe.int/eng#%7B%22itemid%22:[%22001-159791%22%7D)]

prison administration to carry out the sentence closer to home and they did not exercise this right and chose to go directly to the higher court.<sup>10</sup>

## 2.6. Complaints against Spain

Geographically located in the southwestern part of the European continent, Spain has access to both the Mediterranean Sea and the Atlantic Ocean. The parliamentary monarchy is a developed country and is part of the main world organizations.

### *The case of Fraile Iturralde against Spain*

Terrorism represents an atypical struggle, with acts of mass aggression, with the role of intimidation and with political goals. Individuals involved in such acts are convicted in many states after participating, collaborating or forming terrorist organizations. One such example was Jorge Fraile Iturralde, a Spanish citizen sentenced to 25 years in prison for possessing weapons, explosive substances and supporting terrorist activities.

After receiving the final decision regarding the conviction, he was incarcerated in the Badajoz Penitentiary, at a great distance from his home. Immediately after the beginning of the custodial sentence, the detainee presented the fact that his parents, his wife and the five-year-old child cannot visit him at the detention unit to which he was assigned due to the parents' advanced age, the very long distance and the financial costs generated by a long-distance travel. The convict requested to be transferred to the penitentiary in Durango, close to his family. The response of the authorities was a negative one that was fully justified on the basis of security needs, considering his criminal past corroborated with the nature and manner of committing the criminal act for which he was convicted.

Faced with an unfavorable response, the Spanish citizen submitted to the European Court of Human Rights that by executing the custodial sentence at a distance of approximately seven hundred kilometers from his home, his right to family life and private life is violated. The higher court, took into account the fact that the detainee was a member of the terrorist organization ETA, considered the fact that the authorities' justifications based on the need for security were well founded and rejected<sup>11</sup> unanimously the petitioner's request to be moved at the Durango Correctional Facility.

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<sup>10</sup> Labaca Larrea against France and other two ECHR requests, retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-171962%22%5D%7D>

<sup>11</sup> Fraile Iturralde against Spain at ECHR, retrieved from <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-193592%22%5D%7D>

## Conclusions

Following the analysis of the complaints submitted to the European Court of Human Rights for the conditions in which prison sentences were carried out, both positive and negative elements were found. Some cases highlighted the shortcomings of the penitentiary system and established a better way of working for the future and other cases presented indications that some complaints were started only for financial interest. Lawsuits against prison facilities can be started both by persons deprived of liberty, men or women, as well as by their families, and the issues that can be complained about extend to levels such as conditions of detentions, medical assistance, contact with the outside, diplomatic assistance, religion, personal safety or any other right indicated by law.

Contact with the outside during incarceration can have beneficial effects for both the inmates and the prison administration. If the people in custody manage to maintain an emotional balance, they commit disciplinary offences less often and the staff of the unit can manage the prison collective more effectively. After conducting interviews (Leaua, 2006, p. 46) with several inmates, it was concluded that the relationship with family and friends has a major impact on reducing crime.

The study of court decisions revealed that the transfer to a detention facility located at a great distance from the convicted person's residence is the most frequently used method of removing the subject from the family. Other forms of social isolation were highlighted by reducing the number of visits, limiting the number of visitors, reducing the number of phone calls, limiting packages or amounts of money that can be received from family.

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