

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

THIRD SECTION

# CASE OF PETKOV v. BULGARIA

*(Application no. 766/19)*

JUDGMENT

STRASBOURG

10 December 2024

*This judgment is final but it may be subject to editorial revision.*



**In the case of Petkov v. Bulgaria,**

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

Darian Pavli*, President*,
Oddný Mjöll Arnardóttir,
Diana Kovatcheva*, judges*,
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 766/19) 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") on 21 December 2018 by a Bulgarian national, Mr Valeri Nikolov Petkov ("the applicant"), who was born in 1978, lives in Isperih and was represented by Mr T.S. Mangarov, a lawyer practising in Sofia;

the decision to give notice of the application to the Bulgarian Government ("the Government"), represented by their Agent, Ms I. Stancheva-Chinova, of the Ministry of Justice;

the parties' observations;

Having deliberated in private on 19 November 2024,

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

## SUBJECT MATTER OF THE CASE

1. The application concerns a complaint under Article 10 of the Convention about the applicant's civil liability for having complained to the relevant public authorities about the conduct of a public official.

2. The applicant, who had contested a construction permit granted in 2015 to his neighbour, complained in 2016, in letters addressed to the Ministry of Public Works and a building control authority, about actions of M.Y., chief architect in the applicant's town, related to the said permit. The applicant stated in particular that, in the proceedings concerning the permit, M.Y. had been "providing deceitful observations and positions" as regards the applicant's property which was adjacent to the neighbour's property concerned by the permit. The construction permit was ultimately invalidated by the relevant authority on 3 October 2018.

3. In the meantime, M.Y. had brought a tort claim against the applicant in 2017, claiming that the above-mentioned letters of the applicant had negatively affected his integrity and professional standing. The first-instance court rejected the tort claim, finding that the applicant had been exercising his constitutional right to make complaints to relevant authorities. In a final judgment of 2 August 2018, the Razgrad Regional Court quashed the lower court's judgment, found that M.Y. had suffered prejudice as a result of the applicant's statements which had remained factually unproven, and ordered

the applicant to pay to M.Y. 1,500 Bulgarian levs (BGN), equivalent to 767 euros (EUR), in damages, plus interest, and BGN 315 (EUR 162) in costs.

4. Later, penal-administrative proceedings were opened against M.Y. in relation to construction works undertaken on the basis of the construction permit mentioned in paragraph 2 above; the outcome of those proceedings is unknown.

## THE COURT'S ASSESSMENT

5. The applicant complained under Articles 10 and 6 of the Convention of having been sanctioned for having made the above-mentioned complaints.

6. The Court, as master of the characterisation to be given in law to the facts of the case, finds that the complaint is to be examined solely under Article 10 of the Convention.

7. 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.

8. The general principles concerning disparaging statements against public officials made in written complaints to the authorities have been summarised in a number of Court's judgments (see, for example, *Zakharov v. Russia*, no. 14881/03, 5 October 2006; *Kazakov v. Russia*, no. 1758/02, 18 December 2008; *Sofranschi v. Moldova*, no. 34690/05, 21 December 2010; *Siryk v. Ukraine*, no. 6428/07, 31 March 2011, and *Marin Kostov v. Bulgaria*, no. 13801/07, 24 July 2012; see also, *mutatis mutandis, Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, §§ 82-83, 27 June 2017).

9. In cases where individuals have been found at fault for complaints they had made to the authorities about irregularities in the conduct of officials, the Court has examined the proportionality of the interference by considering the following main elements: the nature of the statements and the exact manner in which they were communicated; the context in which they were made; the extent to which they affected the officials concerned; and the severity of the sanctions imposed (see *Marinova and Others v. Bulgaria*, nos. 33502/07 and 3 others, § 86 with further references, 12 July 2016).

10. In the present case, the applicant's statements, which were the subject of the tort proceedings brought against him by M.Y. (see paragraph 2 above), amounted to allegations that the local chief architect had been making false statements in the context of a procedure for granting a building permit to a third party. Indeed, public servants 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). If the sole intent of any form of expression is to insult or denigrate, an appropriate punishment would not, in principle, constitute a violation of

Article 10 § 2 of the Convention (see *Uj v. Hungary*, no. 23954/10, § 20, 19 July 2011).

11. While the applicant's allegations were admittedly quite serious, they were not made with the intent of humiliating or denigrating M.Y. The applicant's statements represented allegations of misconduct on the part of the official (public servant) in the performance of his professional duties. They did not contain vexatious or injurious language, or attacks aimed at demeaning the official (contrast *Palomo Sánchez and Others* v. Spain [GC], nos. 28955/06 and 3 others, § 67, ECHR 2011), even though the language used was strong. Their content and the way they were formulated rather suggested the applicant's belief that the civil servant's related positions, expressed in the context of the permit-related proceedings, had been false as not corresponding to the truth concerning the applicant's adjacent property (of relevance for the lawful issuing of that building permit).

12. The applicant's statements were made in writing to the higher State authorities competent to provide him with the sought information and/or to pronounce on his grievances. They were not publicly disseminated either to the media (contrast *Coutant v. France* (dec.), no. 17155/03, 24 January 2008) or to third unrelated parties (contrast *Janowski*, cited above, § 33). The applicant was a private person affected by the acts of a civil servant whom he suspected, correctly or incorrectly, of wrongdoing. The statements were thus made in the exercise of the possibility in a democratic society governed by the rule of law for a private person to report an alleged irregularity in the conduct of a public official to an authority competent to deal with such an issue. This possibility is one of the precepts of the rule of law (see *Zakharov*, cited above, § 26) and serves to maintain confidence in public administration. Once an allegation or a complaint of such a type is made, it is then for the authority concerned to decide what procedural steps it may be necessary to undertake (see *Marinova and Others*, cited above, § 90).

13. In the applicant's case, the last-instance court in the tort proceedings against him held that, since the applicant's statements were "statements of fact" the veracity of which he had failed to demonstrate, it was justified to hold him liable to pay damages to M.Y. in the light of the psychological discomfort caused by those statements to M.Y. However, private citizens must in principle be able to complain about public officials to the latter's hierarchical superiors without the risk of sanctions, even where such complaints amount to allegations of a criminal offence and even if those allegations prove on examination to be groundless (see, *mutatis mutandis*, *Marinova and Others*, cited above, § 90). What is important is that disclosure be made in the first place to the competent authority or body (see *Guja v. Moldova* [GC], no. 14277/04, § 73, ECHR 2008); this is what the applicant did.

14. The applicant nevertheless had to bear serious consequences for making those complaints since he was ordered to pay a non-negligible sum

in damages (see paragraph 2 above). The Court finds that, even in the absence of criminal proceedings, the measure adopted in his regard could have the effect of stifling the very making of complaints against public officials proportionate (see, *mutatis mutandis*, *Marinova and Others*, cited above, § 93). For the above reasons, the Court is not satisfied that it was necessary in the present case.

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

## APPLICATION OF ARTICLE 41 OF THE CONVENTION

16. The applicant claimed EUR 10,000 for damages. He did not specify whether he sought that sum in respect of pecuniary or non-pecuniary damage. He also claimed costs and expenses, without specifying the amount or submitting any documents in this regard.

17. The Government contested the claim, considering it unsubstantiated.

18. Pursuant to Rule 60 §§ 1 and 2 of the Rules of Court, an applicant who wishes to obtain an award of just satisfaction in respect of pecuniary damage must make a specific claim to that effect, including itemised particulars and any relevant supporting documents. Since in the present case the applicant failed to specify the amount claimed, the Court makes no award under this head (Rule 60 § 3) (see, among others, *Carter v. Russia*, no. 20914/07, § 178, 21 September 2021).

19. The applicant must have sustained non-pecuniary damage as a result of the violation found. The Court, ruling in equity, awards the applicant EUR 3,600 in respect of non-pecuniary damage, plus any tax that may be chargeable.

20. The applicant's claim for costs and expenses must be rejected, regard being had to the terms of Rule 60 § 2.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Bulgarian levs at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a

rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 10 December 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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| Olga Chernishova<br>Deputy Registrar | Darian Pavli<br>President |