

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

THIRD SECTION

# CASE OF PETROVA v. BULGARIA

*(Application no. 64543/17)*

JUDGMENT

STRASBOURG

10 December 2024

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



**In the case of Petrova 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. 64543/17) 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 26 August 2017 by a Bulgarian national, Ms Svetla Todorova Petrova ("the applicant"), who was born in 1965, lives in Elhovo and was represented by Ms A. Chobanova, a lawyer practising in Sofia;

the decision to give notice of the complaint under Article 10 of the Convention to the Bulgarian Government ("the Government"), represented by their Agent, Ms I. Stancheva-Chinova, from the Ministry of Justice, and to declare inadmissible the remainder of the application;

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 sanctioning of the applicant for having complained to the relevant public authorities about the conduct of a public official.

2. The applicant, an employee of a social services department, complained to the head of that department and to the director of the Agency for Social Assistance that her direct supervisor, X, had been harassing her which had negatively affected her health. Following several checks and inspections, the applicant's complaints were rejected. Instead, the relevant officials made recommendations encouraging the observance of rules and discipline at the work place by all staff. The applicant was informed that she had to abide by the law and that office hierarchy was necessary to ensure smooth functioning of the department.

3. Subsequently X successfully sued the applicant for defamation in private criminal proceedings. On 28 March 2016 the Topolovgrad District Court, sitting at first instance, found the applicant guilty as charged. It observed that she tended to react overly emotionally and to perceive any work-related recommendations by her superiors as psychological harassment aimed at hurting her personally. In a final judgment of 16 March 2017 the Yambol Regional Court upheld the lower-court's finding as to the applicant's guilt. It concluded that the applicant's complaints, made in two letters of

14 May 2014 and 9 July 2014 respectively, about being a victim of harassment by her superior had been false. It waived the applicant's criminal liability, imposed on her an administrative fine of 1,000 Bulgarian levs (BGN), equalling 511 euros (EUR) and ordered her to pay further BGN 1,000 in damages. Costs were also awarded.

## THE COURT'S ASSESSMENT

4. The Government submitted that the applicant's complaint under Article 10 of the Convention was inadmissible as being manifestly ill-founded. The Court finds that this objection is so closely connected to the substance of the complaint that it should be joined to the merits. The complaint is not inadmissible on any other grounds and must therefore be declared admissible.

5. The general principles concerning disparaging statements against public officials made in written complaints to the authorities have been summarised in a number of cases (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).

6. In cases where individuals have been found guilty of defamation 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).

7. In the present case, the applicant's statements, which were the subject of the private criminal proceedings brought against her by X (see paragraph 3 above), amounted to allegations that she had been discriminated against, harassed and verbally abused by X over several years. 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, *Bezymyannyy v. Russia*, no. 10941/03, § 38, 8 April 2010, and *Siryk*, cited above, § 41). 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).

8. However, while the applicant's allegations were quite serious, they were neither insulting nor derogatory. They were an expression of her grievances about her perceived experiences at work, but did not contain aggressive, denigrating or insulting comments towards X. She raised the issue of harassment in the workplace and limited her statements to X's actions in a professional context and their negative consequences for the applicant's well-being. The Court's case-law draws a clear distinction between criticism and insult in terms of whether sanctions may be justified for such statements (see *Skałka v. Poland*, no. 43425/98, § 34, 27 May 2003; *Uj*, cited above, § 20; and *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06, 28957/06, 28959/06 and 28964/06, § 67, ECHR 2011). The applicant complained of harassment; she did not attack the respectability of X by using grossly insulting or offensive expressions in the professional environment (contrast *Palomo Sánchez and Others*, cited above, § 76).

9. Admittedly, the applicant's allegations were capable of influencing the professional standing of X, of undermining her authority, of taking up time and resources and of leading to sanctions vis-à-vis X. Yet they were made by the applicant 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 (see *Marinova*, cited above, § 89, with further references). This possibility is one of the precepts of the rule of law (see *Zakharov*, § 26; *Kazakov*, § 28; and *Siryk*, § 42, all cited above), and serves to maintain confidence in the public administration. The fact that the applicant, as an official of a public agency, had complained to the hierarchical superiors of her direct supervisor, who she had felt had wronged her, does not affect this principle.

10. As regards the manner in which the applicant's statements were communicated to the relevant authorities, the following is of relevance. The applicant owed a duty of loyalty, reserve and discretion vis-à-vis her employer, particularly so in the context of civil service (see *Guja v. Moldova* [GC], no. 14277/04, § 70, ECHR 2008). However, it cannot be said that she breached her "special duties and responsibilities" in the exercise of her right to freedom of expression in the professional context, since she did not publicly disclose internal information, for instance verbally in front of members of the public (contrast *Janowski* cited above, § 33), or in letters addressed or made available to the media (contrast *Coutant v. France* (dec.), no. 17155/03, 24 January 2008). Disclosure should be made in the first place to the person's superior or other competent authority or body (see *Guja*, cited above, § 73); this is precisely what the applicant did.

11. As to the context in which the statements had been made, the Government submitted that the working atmosphere in the applicant's office had been constantly deteriorating, that there had been a continuous interpersonal conflict between X and the applicant, stemming from the

applicant's poor execution of her professional duties, and that the applicant had been perceiving any remarks made in respect of the quality of her work as personal attacks against her. The Topolovgrad District Court made similar observations (see paragraph 3 above). Therefore, the applicant made her complaints in the context of an on-going conflict at the workplace in which, according to both the domestic court and the Government, she genuinely perceived any remarks as targeting her in a gratuitous and arbitrary manner.

12. As to the extent to which they affected X, a number of checks and inspections were carried out following the applicant's complaints (see paragraph 2 above). However, the mere fact that the applicant's allegations led to inquiries cannot be seen as unduly impinging on X's reputation. It was precisely the purpose of those inquiries to confirm or lay to rest the applicant's allegations (compare *Marinova and Others*, cited above, § 89). There is no information that any measures were taken against X at the end of that process and that she experienced adverse professional consequences, apart from the emotional discomfort she felt as a result of being the subject of the complaints. Indeed, as the Government submitted, since X was neither a politician nor a public figure, she was not obliged to tolerate higher limits of acceptable criticism as applicable to those categories (contrast *Fedchenko v. Russia* (no. 5), no. 17229/13, § 49, 2 October 2018). However, the Government also stated that the complaints made against X concerned her professional performance and cast a shadow of doubt on her ability to manage her work; therefore, they were related to the exercise of X's work-place duties, and not to her actions as a private individual. The extent of acceptable criticism is narrower as regards private individuals than as regards civil servants acting in the exercise of their duties (see *Palomo Sánchez and Others*, cited above, § 71, and *Nikula v. Finland*, no. 31611/96, § 48, ECHR 2002-II). In any event, in the present case the requirements of protecting civil servants from offensive and abusive attacks when on duty do not have to be weighed in relation to the interests of freedom of the press or of open discussion of matters of public concern, since the applicant's statements were not made in such a context (compare, *mutatis mutandis*, *Nikula*, cited above, §§ 48 and 52). Decisively, as the applicant's letters were not made public, their potentially negative impact on X's reputation, if any, was quite limited (compare *Bezymyannyy*, cited above, § 42).

13. The applicant nevertheless had to bear relatively serious consequences for making those complaints. Although the domestic courts ultimately waived her criminal liability (see paragraph 3 above), she was still tried in fully-fledged criminal proceedings, was found guilty of a criminal offence and ordered to pay over EUR 1,500, which in view of her personal situation was not insignificant.

14. For the reasons examined above, the Court finds that no pressing social need was demonstrated for sanctioning the applicant for her complaints to the authorities.

15. The Court accordingly rejects the Government's inadmissibility objection previously joined to the merits and finds that there has been a violation of Article 10 of the Convention.

## APPLICATION OF ARTICLE 41 OF THE CONVENTION

16. The applicant claimed EUR 1,744 for pecuniary damage, namely the amounts ordered by the domestic court (see paragraph 3 above), including interest, plus EUR 517 she had paid in costs to the other party and EUR 51 to her own lawyer in the domestic proceedings. She also claimed EUR 5,000 for non-pecuniary damage. As to costs, the applicant claimed EUR 2,701.

17. The Government stated that if a Court's judgment found a violation in respect of the applicant, she might request reopening of the proceedings under Article 422 § 1(4) of the Code of Criminal Procedure. Were the domestic courts to quash the impugned judgement, she "would be entitled to a refund of all of her expenses".

18. The Court observes that it is the prosecutor general who could seek reopening of proceedings in such cases but not the applicant herself directly. In any event, as a rule, the requirement that domestic remedies be exhausted does not apply to just satisfaction claims under Article 41 of the Convention (see *Sakskoburggotski and Chrobok v. Bulgaria* (just satisfaction), nos. 38948/10 and 8954/17, § 34, 2 May 2023). There is evidence in the file that the applicant paid the damages and costs to X, whose repayment she claims, and that sums have been continually collected, on the basis of an attachment order of July 2017, from her monthly salary for the payment of the fine. The Court therefore awards the applicant EUR 1,693 for pecuniary damage, comprising EUR 665 (principal amount and interest) for damages she paid, EUR 517 paid in legal costs to the other party and EUR 511 for the fine imposed.

19. The applicant must have sustained non-pecuniary damage on account of the judgment against her. Ruling on an equitable basis, the Court awards her EUR 3,600, plus any tax that may be chargeable.

20. The Court awards the applicant EUR 705 for costs under all heads, plus any tax that may be chargeable to her.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits the Government's inadmissibility objection and *rejects* it;

2. *Declares* the application admissible;

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

4. *Holds*

(a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:

(i) EUR 1,693 (one thousand six hundred ninety-three euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 705 (seven hundred and five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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;

5. *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 | Darian Pavli |
| Deputy Registrar | President |