

## Domestic court's lack of impartiality infringed rights of journalist convicted of defamation

The case of [Bosev v. Bulgaria](#) (application no. 62199/19) concerned the conviction of a journalist for defamation of a senior Government official and, more specifically, doubts as to the impartiality of one of the judges having ruled on the charges laid against him on appeal.

In today's **Chamber** judgment<sup>1</sup> in this case, the European Court of Human Rights held, unanimously, that there had been **two violations** of the European Convention on Human Rights, namely:

- a violation of Article 6 § 1 (right to a fair trial) of the Convention, and
- a violation of Article 10 (freedom of expression) of the Convention.

The Court observed that several years prior to the present case Mr Bosev, in his capacity as a journalist, had written and published articles in which he had questioned the professionalism and integrity of a judge who was a member of the bench that had subsequently ruled on his conviction on appeal. It took the view that Mr Bosev might accordingly have harboured objective and reasonable doubts as to the impartiality of the judge in question, whom he had asked to withdraw from the case. However, his request had been permanently dismissed by the bench of which the judge in question was a member and the decision had been dictated to the clerk by that judge herself during the hearing. The Court notes, lastly, that no appeal on points of law lay against a conviction handed down on appeal.

Consequently, the Court held that the appellate court had not constituted an "impartial tribunal" and that the manner in which the sanction had been imposed on Mr Bosev in the present case had fallen short of securing one of the essential guarantees of a fair trial. It further held that the restriction on the applicant's right to freedom of expression had not been accompanied by effective and adequate safeguards against arbitrariness.

### Principal facts

The applicant, Rosen Bosev, is a Bulgarian national who was born in 1983 and lives in Sofia.

At the relevant time, Mr Bosev, who is a journalist specialised in legal reporting, worked for the weekly newspaper *Capital*, which was owned by the publisher Ikonomedia.

In 2013 the *Dnevnik* news site, which was owned by Ikonomedia, reported that the then Director of the Financial Supervisory Commission ("FSC") had been summoned to appear as a witness in a money-laundering trial on the grounds that he had allegedly signed documents facilitating the transfer of proceeds from drug-trafficking.

Mr Bosev explained that, following the publication of that report, the FSC had on various dates from 2013 to 2015 imposed several fines on Ikonomedia's majority shareholder and on other companies it owned, which he claimed the Bulgarian courts had subsequently set aside. Then, in 2015, the FSC

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

had imposed two fines on Ikonomedia for publishing two articles in *Capital* which the FSC had seen as attempts to manipulate financial markets. The fines came to roughly 76,000 euros (EUR) in total.

It was in this context that Mr Bosev appeared on two television programmes on 15 and 16 January 2015, where he discussed the imposition of those fines and the FSC Director's potential involvement in the events in question. Several months later, the Director of the FSC lodged a criminal complaint for defamation against Mr Bosev with the Sofia District Court because of statements the latter had made about him on the two programmes.

In 2017 the Sofia District Court found Mr Bosev guilty of defamation on the basis of the statement "*Mr [S.]M. ... decided to use the institution he directs to punish Capital and Dnevnik*", which Mr Bosev had made during the 15 January 2015 broadcast. The court sentenced him to pay a fine of roughly EUR 511, plus costs and expenses in the amount of EUR 320.

Mr Bosev lodged an appeal. During the subsequent proceedings in the Sofia City Court, he filed two requests for the recusal of Ms P.K., who was the judge rapporteur and president of the bench. He argued that P.K. should be disqualified from taking part in the case because he had, in the past, published several articles in the press criticising her work and calling into question her integrity as a judge. Both recusal requests were dismissed.

In 2019 the Sofia City Court upheld Mr Bosev's defamation conviction, reiterating the reasons given by the Sofia District Court. It also found the applicant guilty on an additional count of defamation for another statement he had made during the same broadcast: "*Mr [S.]M. was connected to the money-laundering scheme of which E.B. was accused. Through his acts, he facilitated the laundering of proceeds from drug-trafficking*". As to the penalty to be imposed on Mr Bosev, the appellate court found that a more severe penalty than the minimum provided for by law would have seemed more appropriate, but in the absence of an express request to that effect on the part of S.M. it imposed the same fine on the applicant as at first instance. No appeal on points of law lay against that decision.

## Complaints, procedure and composition of the Court

Relying on Article 6 (right to a fair trial) of the Convention, Mr Bosev alleged that the judge rapporteur and president of the bench that had convicted him on appeal had lacked impartiality.

Relying on Article 10 (freedom of expression), Mr Bosev submitted that his conviction for defamation had infringed his right to freedom of expression.

The application was lodged with the European Court of Human Rights on 19 November 2019.

Judgment was given by a Chamber of seven judges, composed as follows:

Georgios A. **Serghides** (Cyprus), *President*,  
Pere Pastor **Vilanova** (Andorra),  
Peeter **Roosma** (Estonia),  
Ioannis **Ktistakis** (Greece),  
Andreas **Zünd** (Switzerland),  
Oddný Mjöll **Arnardóttir** (Iceland) and,  
Pavlina **Panova** (Bulgaria), *ad hoc Judge*,

and also Milan **Blaško**, *Section Registrar*.

## Decision of the Court

### Article 6

The Court observed that the applicant, in his capacity as a journalist specialised in legal reporting, had written and published articles about P.K. between 2012 and 2015, several years before the present case had been brought before the Sofia City Court. There had therefore not been a deliberate attempt on his part to disqualify Judge P.K. and thus to exclude her from the examination of his criminal case by means of a malicious media campaign.

It also noted that Judge P.K. had been expressly mentioned in those articles and that they strongly impugned her professionalism and integrity. Accordingly, the applicant could legitimately have harboured objective and reasonable doubts as to the impartiality with which P.K. would discharge her duties when examining the appeal he had lodged against his conviction at first instance.

The Court noted that Article 29 of the Bulgarian Code of Criminal Procedure provided that a judge was to withdraw from the examination of a criminal case where the circumstances were such that his or her impartiality might be called into question. Since the situation complained of by the applicant had potentially fallen within the scope of that provision, he had requested the recusal of Judge P.K.

Upon examination, as domestic law required, by the bench of which Judge P.K. was a member, the applicant's request had been permanently dismissed. The text of that decision indicated that it was Judge P.K. herself who had dictated it to the clerk during the hearing.

Clearly, the fact that P.K. had been both the judge and the person directly concerned could elicit objectively justified fears as to whether the proceedings adhered to the principle that no one should be a judge in their own cause and, in consequence, as to the court's impartiality.

It could be seen from the Court's case-law that domestic proceedings in which the judge personally decided on his or her own recusal – as had been the case here – would comply with Article 6 § 1 only in exceptional cases, in particular where the grounds relied on by the parties were frivolous or completely irrelevant. In the present case the applicant's argument had been neither frivolous nor completely irrelevant.

Admittedly, the case-law of the Bulgarian Supreme Court of Cassation provided an additional safeguard in that anyone who considered his or her case to have been decided by a biased court was entitled to raise that issue as part of an appeal on points of law and, where appropriate, have the conviction quashed and the case remitted to a different bench for re-examination. In the present case, however, such a remedy was not available to the applicant since the judgments delivered by a regional court (the level of jurisdiction to which the Sofia City Court belonged) in defamation cases were excluded from the scope of appeals on points of law. Thus, the shortcomings of the recusal proceedings conducted in the Sofia City Court could not have been remedied by a higher court.

Consequently, the Court found that the bench of the Sofia City Court had not constituted an "impartial tribunal" within the meaning of Article 6 § 1 of the Convention and that there had been a violation of that provision.

### Article 10

The Court took the view that, for the purposes of Article 10 of the Convention, the imposition of an administrative fine on the applicant had amounted to interference with his right to freedom of expression. That measure had been prescribed by law (Articles 148 and 78a of the Bulgarian Criminal Code), with a view to "the protection of the reputation or rights of others".

As to whether the sanction had been necessary in a democratic society, the Court took the view that while the statements for which the applicant had been convicted had concerned a general problem,

they had nevertheless contained factual allegations calling into question the professional integrity of the then Director of the FSC. It had therefore been reasonable to require of the applicant that he prove the truth of his allegations in defamation proceedings.

Moreover, the Court noted that the sanction imposed by the courts had been an administrative fine in the minimum amount provided for by law, plus a sum in respect of court fees and the costs and expenses incurred by the other party, and thus appeared relatively modest.

However, the Court referred to its finding above that the bench of the Sofia City Court which had examined and dismissed the applicant's appeal at last instance had not constituted an "impartial tribunal" as a result of Judge P.K.'s participation in that examination.

In the light of the considerations that had led it to find a violation of Article 6 § 1 of the Convention, the Court considered that the manner in which the sanction had been imposed on the applicant had fallen short of securing one of the essential guarantees of a fair trial. The restriction on the applicant's right to freedom of expression under Article 10 of the Convention had therefore not been accompanied by effective and adequate safeguards against arbitrariness. Even assuming the grounds adduced by the respondent State were relevant, they did not suffice to demonstrate that the interference at issue had been "necessary in a democratic society".

Consequently, there had been a violation of Article 10 of the Convention.

#### Just satisfaction (Article 41)

The Court held that Bulgaria was to pay the applicant 511.29 euros (EUR) in respect of pecuniary damage, EUR 3,000 in respect of non-pecuniary damage and EUR 3,013.55 in respect of costs and expenses.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.