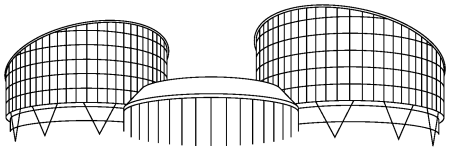

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KARZHEV v. BULGARIA

(Application no. 60607/08)

JUDGMENT

STRASBOURG

7 September 2017

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

In the case of Karzhev v. Bulgaria,

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

Erik Møse, *President,*
Yonko Grozev,
Gabriele Kucsko-Stadlmayer, *judges,*
and Anne-Marie Dougin, *Acting Deputy Section Registrar,*

Having deliberated in private on 11 July 2017,

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

PROCEDURE

1. The case originated in an application (no. 60607/08) 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 Slavcho Krastev Karzhev ("the applicant"), on 17 November 2008.

2. The applicant was represented by Mr I. Georgiev, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms I. Stancheva-Chinova, of the Ministry of Justice.

3. On 21 April 2016 the application was communicated to the Government.

4. The Government objected to the examination of the application by a Committee. After having considered the Government's objection, the Court rejected it.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1945 and lives in Sofia.

A. Background to the case

6. The applicant is a former prosecutor. For several years, until 2005 or 2006, he served as district prosecutor for Sofia, heading what has been described as the largest prosecution office in Bulgaria. While in that post, he got into a conflict with several of his subordinates, including B.K. and G.C.

7. After the applicant left his post, a commission was appointed with the task of looking into the prosecution office's work under his management.

B.K. and G.C. were among the commission's members. The revision carried out by the commission led subsequently to the opening of criminal proceedings against the applicant, as it was alleged that he had exerted pressure on one of his subordinates in relation to the outcome of a case.

B. The applicant's interview

8. On 12 October 2006 the national daily *Trud* published an interview with the applicant, where he stated:

> "All my life I have fought against crime. What is more, I have tried to defeat the mafia present in the prosecution services. I admit that I have failed. And now I am bearing the consequences of that. The commission which carried out the inquiry [at the district prosecutor's office] includes exactly those prosecutors, [B.K., G.C. and a third person], who staged a revolt at the time against the working methods I introduced. The aim of those methods was to eliminate any grounds for corrupt arrangements related to the cases. That did not suit those three prosecutors and the notorious [prosecutor N.N.]."

9. Warned by the journalist interviewing him that his words were strong, the applicant nevertheless continued:

> "I am saying things which will not surprise my colleagues. It is a public secret that one of the prosecutors I mentioned is known among barristers and "clients" of the prosecution not so much with his own name, but with another one."

The applicant then explained that the prosecutor at issue was known as "Prosecutor Rushvetchiyski" (*прокурора Рушветчийски*), meaning someone who takes bribes, derived from the colloquial word for bribe, *rushvet* (*рушвет*).

10. Asked by the journalist whether the Chief Public Prosecutor knew that, the applicant continued:

> "If he does not know, he may ask me. I am knowledgeable about corruption patterns. And because I respect his efforts to defeat these patterns, I will give him a well-meant advice: he should check the properties owned by the people accusing me of having committed an offence while doing my work."

11. Questioned about a finding by the commission that a "bad psychological atmosphere" existed at the Sofia district public prosecutor's office while it was headed by him, the applicant stated further:

> "The inspection might be right, if by 'bad psychological atmosphere' they mean my intolerance towards those prosecutors ..., who performed their duties in a sloppy manner, or attended meetings with the lawyers of criminals to decide on the outcome of cases. There were such prosecutors at the [Sofia district prosecutor's office]. They became an organised group when the prosecutor [N.N.] came to work with us. ... The animosity between me and [N.N.'s] circle, comprising the unhealthiest elements in the prosecution service, is well known. As are known from media publications [N.N.'s] palaces, the companies owned by his wife in association with criminals. ... It is ironic that exactly those prosecutors which we at the [district prosecutor's office] called "[N.N.'s] guardsmen" are in the group which is to check my work. Me being checked

by Prosecutor Rushvetchiyski! Shame! And have the case files of the checkers also been checked?"

12. Asked then about the working methods he had introduced, the applicant stated:

"Instead of commenting on whether the working methods introduced by me have been effective, I will give you simple statistics. I took over [the district prosecutor's office] in 1996. During the previous year the prosecutors in it had drawn up 782 acts of indictment. 39% of those were remitted by the courts, and the acquittals were 12%. This means that the failures were 51%. The persons convicted were 768.

Now pay attention to the statistics for 2004, after I introduced my working methods. Acts of indictment drawn up: 4,164. Only 8% of the cases remitted by the courts. Acquittals: 6%. Persons convicted: 3,594. I am not being smug about the obvious progress of the prosecution. On the contrary, I thought we could have improved even further. ..."

Concerning the working methods at issue, the applicants said further:

"The aim was to make the police officer and the prosecutor work side by side, exactly as European experts are recommending. And to reduce the possibilities for corruption deals made in private ... But I do not want to talk any further. My frustration is enormous. You understand why."

13. In response to a question by the journalist as to why he had not discussed the matter with the Chief Prosecutor, the applicant said:

"I don't know if there is any point. In fact, what [he] is doing now in [his office] is what I tried to do at the time at the [Sofia district prosecutor's office] – to sweep all the trash out of the house. I managed, to a certain extent, but at the end of the day many pieces of trash came to the surface. They are crushing me now. I hope sincerely that the same fate will not befall [the Chief Prosecutor]."

14. On 16 October 2006 *Trud* published B.K. and G.C.'s response to the applicant's allegations. That article has not been submitted by the parties.

C. Criminal proceedings against the applicant

15. On an unspecified date in 2007, B.K. and G.C. initiated a private prosecution of the applicant, alleging that he had insulted them and had committed the offence under Articles 146 and 148 § 1 of the Criminal Code (see paragraph 24 below). They found the following statements particularly offensive: "I have tried to defeat the mafia present in the prosecution services"; "the unhealthiest elements in the prosecution service"; "many pieces of trash came to the surface ...crushing me now"; as well as his allegedly calling one of them "Prosecutor Rushvetchiyski". They claimed that the offence was aggravated because the insult had been made through the media and concerned them in their capacity as "public officials".

16. In the context of the criminal proceedings, B.K. and G.C. also brought civil claims for damages against the applicant, each of them seeking 10,000 Bulgarian levs (BGN) in compensation.

17. The first-instance court, the Plovdiv District Court, heard a number of witnesses, who described the conflict between the applicant and B.K. and G.C. It also heard the applicant, who stated that when making the above statements he had not referred to either of the two complainants and pointed out that in the interview he had mentioned the names of two other prosecutors, in particular N.N.

18. In a judgment of 5 December 2007, the Plovdiv District Court acquitted the applicant and dismissed the civil claims against him. It considered that it had not been established that the expressions complained of had indeed referred to B.K. and G.C. It found further that the complainants had seen the statements as being aimed at them, and had felt their reputation and dignity as being harmed, "owing to their strained relations" with the applicant.

19. B.K. and G.C. lodged an appeal. In a final judgment of 22 May 2008 the Plovdiv Regional Court reversed the lower court's ruling and convicted the applicant, finding that he was guilty of insult in an aggravated form. It set aside his criminal liability but imposed an administrative penalty on him – a fine of BGN 1,000 (the equivalent of 510 euros (EUR)). Furthermore, it ordered him to pay each of the complainants BGN 5,000 (the equivalent of EUR 2,551) in damages, plus interest, and BGN 412 (the equivalent of EUR 210) for the costs and expenses incurred by the complainants.

20. The Regional Court reasoned as follows:

> "It is a fact that the accused uttered the expressions indicated in the private criminal prosecution – "mafia in the prosecution services", "Rushvetchiyski", "the unhealthiest elements in the prosecution service" and "many pieces of trash came to the surface ...crushing me now". It is also a fact that the expressions were uttered in an interview, which was published and disseminated through the mass media – the *Trud* newspaper ..., in its issue of 12 October 2006. It is a fact that the complainants ... were named in their capacity as public officials – being prosecutors at the Sofia district public prosecutor's office – and in relation to their official duties." ...
>
> "It has been established that the complainants were aware of those statements, on the basis of the testimony [of the witnesses], as well as on the basis of the article in *Trud* published on 16 October 2006, and presented in the case, which contained ... their response to the interview of 12 October 2006 ...."
>
> "It can be seen from the testimony [of the witnesses] that after reading the interview given by the accused ...the complainants felt that their honour and dignity had been harmed, which caused a feeling of humiliation ..."
>
> "The accused's explanations show that he was aware that the incriminatory expressions were offensive and humiliating to those to whom they were addressed [and] the manner in which he disseminated them [shows] that he aimed to make them public and that they reach the complainants ..."
>
> "The accused's claim in his defence, endorsed by the district court, that the incriminatory expressions were not directed specifically at the complainants ..., cannot be accepted by the appeal court.

> The fact that [the statements] may have been directed against two other [prosecutors whose names were mentioned in the interview], and that those people may have decided not to prosecute the accused for harming their honour and dignity, does not alter the fact that the accused's criminal liability in respect of the two complainants must be engaged."

21. The applicant paid in the amounts indicated in paragraph 19 above on 7 August 2008. The total amount paid, including interest and the fees charged by the enforcement official, was BGN 14,826 (the equivalent of about EUR 7,565).

22. On 5 January 2009 *Trud* published an interview with B.K. and G.C., where they discussed the applicant's conviction.

II. RELEVANT DOMESTIC LAW

23. The provisions of the 1991 Constitution proclaiming the right to private life and the right to freedom of expression have been cited in the Court's judgment in the case of *Bozhkov v. Bulgaria* (no. 3316/04, § 27, 19 April 2011).

24. Under the 1968 Criminal Code it is a criminal offence to insult someone (Article 146). That becomes an aggravated offence if it is committed through the mass media and/or in respect of public officials carrying out their duties (Article 148 § 1 (2) and (3) of the Code). In all cases it is an offence that is prosecuted privately.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

25. The applicant complained that the conviction related to his interview of 12 October 2006 amounted to a breach of Article 10 of the Convention. He relied in addition on Article 6 § 1 and Article 13 of the Convention.

26. The Court is of the view that it suffices to examine the complaint solely under Article 10, which reads as follows:

> "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. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 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. Arguments of the parties

27. The applicant reiterated his complaint. He pointed out that his impugned statements had represented value judgments and that his criticism had not been directed personally against B.K. and G.C., but against the "institution of the prosecution". While admitting that his words might have been "aggressive" and "unpleasant", he pointed out that they had been part of an important public debate, "which cannot be restricted, even less so with measures leading to criminal liability". Lastly, in relation to the Government's comment that his interview had reached a large audience, the applicant pointed out that the same newspaper, *Trud*, had published an article about his conviction.

28. The Government contested the complaint. They agreed that there had been an interference with the applicant's freedom of expression, but considered it in compliance with the terms of paragraph 2 of Article 10 of the Convention. In particular, as regards the "necessary in a democratic society" requirement, they pointed out that the applicant had not been held criminally responsible but had only had an administrative penalty imposed on him, that the fine he had to pay – EUR 510 – had not been significant and the damages to be paid to B.K. and G.C. – EUR 2,551 for each of them – had been "moderate", and that prosecutors such as the two complainants in the criminal proceedings had to be seen as enjoying a higher degree of protection against criticism "compared to other public officials". Moreover, in his interview the applicant had not presented any facts or evidence in support of his allegations, which meant that his statements had gone "far beyond the acceptable threshold of constructive criticism". The Government pointed out also that *Trud* was the leading daily newspaper in Bulgaria, which meant that the applicant's interview had reached "a particularly large audience". They contended that the applicant's impugned statements had clearly been directed against specific individuals, including B.K. and G.C., whom he had insulted, calling them in particular "trash", and did not amount to general criticism against the work of the Sofia district public prosecutor's office. This meant that the applicant's statements did not contribute towards any legitimate public debate related most notably to the work of the prosecution in Bulgaria.

B. The Court's assessment

1. Admissibility

29. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

30. It is not disputed between the parties that that the applicant's conviction and his liability to pay a fine and damages amounted to an interference with his right to freedom of expression. Moreover, it has not been disputed that the interference was "prescribed by law", as it was based on Articles 146 and 148 § 1 of the Criminal Code (see paragraph 24 above). The Court finds further that it pursued the legitimate aim of protecting of the reputation of others, namely of prosecutors B.K. and G.C.

31. The central issue which falls to be determined is thus whether the interference was "necessary in a democratic society", that is to say whether it corresponded to a pressing social need, whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities were relevant and sufficient (see, for example, *Janowski v. Poland* [GC], no. 25716/94, § 30, ECHR 1999-I).

32. The Court reiterates that, subject to paragraph 2 of Article 10 of the Convention, freedom of expression is applicable not only to information and ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb (see, for example, *Hertel v. Switzerland*, 25 August 1998, § 46, *Reports of Judgments and Decisions* 1998-VI).

33. As to the limits of acceptable criticism, they are wider with regard to public officials than in relation to a private individual. A public official is certainly entitled to have his reputation protected, but the requirements of that protection have to be weighed against the interests of open discussion of political and social issues, since exceptions to freedom of expression must be interpreted narrowly (see, for example, *Janowski*, cited above, § 33, and *Nikula v. Finland*, no. 31611/96, § 48, ECHR 2002-II).

34. In the present case, the applicant was punished for having uttered most notably the following: "I have tried to defeat the mafia present in the prosecution services"; "the unhealthiest elements in the prosecution service"; "many pieces of trash came to the surface ...crushing me now", "Prosecutor Rushvetchiyski". According to the Plovdiv Regional Court which convicted the applicant, those expressions had harmed B.K.'s and G.C.'s honour and dignity and had provoked in them "a feeling of humiliation" (see paragraph 20 above).

35. However, the Court notes that the Plovdiv Regional Court, focusing on the expressions at issue, appears to have lost sight of the overall content of the applicant's interview. Those expressions were uttered while the applicant discussed alleged corruption within the prosecution and what he saw as efforts on his part to combat it. The applicant also discussed the work of the prosecution office he had headed, the working methods he had

introduced and the office's increased productivity as a result, as well as the problems he had encountered and the revision of his work carried out by a commission which included prosecutors he had been in conflict with, such as B.K. and G.C. (see paragraphs 8-13 above). It is true that he used strong, in his own words "aggressive" and "unpleasant" language (see paragraph 27 above), and named and criticized some of his opponents. Nevertheless, the Court considers that, taken as a whole, his interview did form a part of a debate on issues of considerable public interest and did not amount, as claimed by the Government (see paragraph 28 above), to gratuitous insult against the complainants. Accordingly, the applicant's statements required, in principle, a high degree of protection under Article 10 of the Convention (see *Steel and Morris v. the United Kingdom*, no. 68416/01, § 88, ECHR 2005-II). The authorities were under an obligation to adduce particularly relevant and sufficient reasons to show that the interference with the applicant's rights was proportionate to the legitimate aims pursued.

36. The Court is not convinced that such reasons were put forward by the domestic courts. In its judgment convicting the applicant, the Plovdiv Regional Court, after satisfying itself that the applicant had uttered the statements at issue, which had been published in a national newspaper, and that the complainants, B.K. and G.C., had become aware of them and had felt "humiliation", concluded that the applicant had been guilty of an offence under Article 148 § 1 of the Criminal Code (see paragraph 20 above). It thus failed to weigh the alleged gravity of his conduct against his right to freedom of expression and to provide specific reasons showing the necessity of imposing a penalty, and made no attempt to account for the fact that the impugned statements were in the main aimed at contributing to a debate of considerable public interest. It also failed to take into account the fact, mentioned above, that in respect of public officials, including prosecutors, the limits of acceptable criticism should be wider than in respect of private citizens; instead of that it applied domestic law, which treats the official capacity of the victim of alleged insult as an automatic aggravating circumstance (see paragraph 24 above; on this question see also, for example, *Bozhkov*, cited above, § 44). Finally, the domestic courts did not assess whether the contested statements were value judgments and if they were, whether there was a sufficient "factual basis" for such value judgments (see, for example, *Morice v. France* [GC], no. 29369/10, §§ 155-157, ECHR 2015).The Court has on a number of occasions said that in determining whether an interference with the right to freedom of expression was justified, it has to satisfy itself, *inter alia*, that the national authorities applied standards which were in conformity with the principles embodied in Article 10 of the Convention (see, for example, *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298, and *Uj v. Hungary*, no. 23954/10, § 19, 19 July 2011); for the reasons above it does not consider

that this was the case here (see *Cholakov v. Bulgaria*, no. 20147/06, § 32, 1 October 2013).

37. The Court notes in addition that, several days after the applicant's impugned interview was published, the same newspaper published the position of B.K. and G.C., who exercised their right of response (see paragraph 14 above).

38. Lastly, the Court observes that the applicant was ordered to pay a fine of BGN 1,000, plus BGN 5,000 in damages to each of the complainants, the costs and expenses in the proceedings and interest. Thus, the total sum payable by him amounted to more than BGN 14,800, the equivalent of EUR 7,565 (see paragraphs 19 and 21 above). Even though the applicant has not shown what his financial situation was at the time and whether he struggled to pay that amount, the Court is of the view that, in the circumstances, it was excessive (see *Bozhkov*, cited above, § 55). As already noted, this disproportionate sanction was imposed on him without a sufficient justification or an appropriate analysis of the different interests at stake.

39. The foregoing considerations are sufficient to enable the Court to conclude that the interference with the applicant's right to freedom of expression was not proportionate to the legitimate aims pursued and thus not "necessary in a democratic society", as required by Article 10 of the Convention.

40. There has accordingly been a violation of that provision.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

41. 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

42. In respect of pecuniary damage, the applicant claimed the following: 1) the BGN 14,826.72 (equivalent of EUR 7,565) that he had paid as a result of his conviction (see paragraph 21 above), and 2) default interest on that amount, which, according to his calculations, amounted to BGN 13,267.50 (the equivalent of EUR 6,786) for the period from 7 August 2008 to 22 November 2016.

43. The applicant claimed another EUR 15,000 in respect of non-pecuniary damage.

44. The Government contested the claims.

45. The Court considers that, in view of the nature of the violation of Article 10 of the Convention, the applicant is entitled to recover the sums that he was ordered to pay in fines, damages and costs in the domestic proceedings (see *Lingens v. Austria*, 8 July 1986, § 50, Series A no. 103, and *Bozhkov*, cited above, § 61). It thus awards him the amount paid, totalling EUR 7,565.

46. On the other hand, there is no legal ground for ordering the respondent Government to pay default interest on that amount for the period preceding the Court's judgment.

47. Lastly, the Court considers that in the circumstances of the case the finding of a violation of Article 10 of the Convention constitutes in itself sufficient just satisfaction for any non-pecuniary damage which the applicant may have suffered.

B. Costs and expenses

48. The applicant also claimed EUR 2,240 for his legal representation in the proceedings before the Court. In support of this claim he presented a time-sheet and a contract with his lawyer. He requested that any award made by the Court be transferred directly into the bank account of his lawyer, Mr I. Georgiev.

49. The Government contested the claim.

50. Regard being had to the circumstances of the case, in particular the fact that it concerns well-established case-law, the Court considers it reasonable to award the sum of EUR 1,500 under the present head. As requested by the applicant, this amount is to be paid directly to his legal representative.

C. Default interest

51. 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 application admissible;

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

3. *Holds* that the finding of a violation constitutes in itself sufficient just satisfaction for any non-pecuniary damage sustained;

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 7,565 (seven thousand five hundred and sixty-five euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid directly to his legal representative;

(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 7 September 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Anne-Marie Dougin	Erik Møse
Acting Deputy Registrar	President