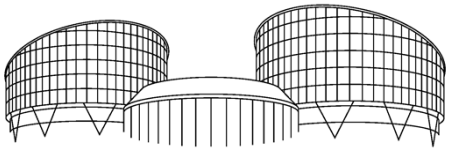

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF KOSTOVA AND APOSTOLOV v. NORTH MACEDONIA

(Application no. 38549/16)

JUDGMENT

STRASBOURG

5 April 2022

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

In the case of Kostova and Apostolov v. North Macedonia,

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

Egidijus Kūris, *President,*
Pauliine Koskelo,
Gilberto Felici, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar*,

Having regard to:

the application (no. 38549/16) against the Republic of North Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 28 April 2016 by two Macedonians/citizens of the Republic of North Macedonia, Ms Jadranka Kostova and Mr Vlado Apostolov ("the applicants"), born in 1960 and 1980, respectively, and living in Skopje, who were represented before the Court by Mr F. Medarski, a lawyer practising in Skopje;

the decision to give notice of the complaint under Article 10 of the Convention to the Government of North Macedonia ("the Government"), represented by their Agent, Ms D. Djonova, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 15 March 2022,

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

SUBJECT MATTER OF THE CASE

1. The case concerns the applicants' complaint under Article 10 of the Convention that the outcome of the civil proceedings for defamation against them violated their right to freedom of expression.

2. The applicants, an editor-in-chief and a journalist, on 3 and 4 January 2013 published two articles in a weekly newspaper about Mr S., who at the relevant time was a senior member of the then ruling political party and head of the Security and Counter-Intelligence Agency ("the Agency"). In the articles, published under the headlines "I am running away because of pressure from [Mr S.]" and "The Embassy in the Czech Republic under bomb threats – [the Ministry of Foreign Affairs] does not lift a finger", they quoted Mr I., a former ambassador of the respondent State to the Czech Republic who had told them, among other things, that Mr S. had abused his power by taking actions that had adversely affected Mr I.'s interests in a personal matter concerning the alleged abduction of his minor child by his former wife.

3. The articles quoted Mr I. or used reported speech to relate that Mr S. had exerted substantial verbal pressure on the President of the respondent State (G.I.) and the Minister of Foreign Affairs (N.P.) to refrain from

interfering with the resolution of Mr I.'s personal matter. In other words, Mr I. considered that the involvement of the President and the Minister of Foreign Affairs had been warranted for successful resolution of his personal matter as, at the relevant time, he had been an official representative of the respondent State in the Czech Republic. Mr I. sent the above information to the applicants *via* email and signed a written statement to that effect. The second article, apart from reiterating the above, in its last sentence stated that Mr S. "unofficially" owned a "business empire in the Czech Republic". Prior to the publication of the articles in question, the second applicant had unsuccessfully tried to obtain a reply from Mr S. by contacting the Agency's spokesperson.

4. In civil proceedings for defamation brought by Mr S., both the Skopje Court of First Instance and the Court of Appeal found that the applicants had tarnished Mr S.'s reputation in that they had published false facts, which they described as "rumours", without having previously tried to verify their veracity. The courts held that the information published had not served any public interest and that the private life of Mr I. had been unjustifiably linked with the public office held by Mr S. The first applicant was ordered to pay 5,000 euros (EUR) and the second applicant EUR 1,000 to Mr S. in respect of non-pecuniary damage. The applicants received EUR 9,300 from the solidarity fund of the Association of Journalists to cover the awards and to reimburse Mr S.'s costs and expenses incurred in the proceedings. In the same proceedings, Mr I. was ordered to pay EUR 10,570 to Mr S. in damages for having harmed his reputation. Subsequently, the Constitutional Court upheld those findings.

5. The applicants complained that the domestic courts' decisions against them had amounted to an unjustified interference in the exercise of their rights under Article 10 of the Convention.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

6. The Government did not raise any objection as to the admissibility of this complaint. The Court notes that 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.

7. The Court considers that the impugned decisions constituted an interference with the applicants' right to freedom of expression; the interference was based on the Civil Liability for Insult and Defamation Act and aimed to protect the rights and reputation of Mr S., this being the only "legitimate aim" advanced by the domestic courts.

8. Having regard to the general principles under Article 10 of the Convention (see *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 78-

-95, 7 February 2012, and *Björk Eiðsdóttir v. Iceland*, no. 46443/09, §§ 62--65, 10 July 2012), the Court notes the following. Notwithstanding the fact that the articles primarily discussed issues related to Mr I.'s personal life, they touched upon issues of public concern, namely the alleged unjust exercise of verbal pressure by Mr S., the head of the Agency, towards high ranking State officials such as the President of the respondent State and the Minister of Foreign Affairs (see paragraph 3 above). Contrary to the Government's submissions, the Court considers that the information about the alleged abuse of power by a senior State official to settle issues of a personal nature of Mr I. was capable of contributing to public debate.

9. The Court agrees with the Government that the articles at issue contained statements of fact susceptible of proof. While all the factual allegations consisted essentially of references to "stories" or "rumours", as found by the domestic courts, the courts failed to weigh the fact that these did not emanate from the applicants (see, *mutatis mutandis*, *Godlevskiy v. Russia*, no. 14888/03, § 45, 23 October 2008). In part, the applicants were only reporting what was being recounted by Mr I., who had approached them and provided them with his own written account of events based on his personal experience. In the articles, the applicants clearly identified the statements emanating from Mr I. (by quoting him or using reported speech). Moreover, it was not established in the impugned proceedings that the published content was altogether untrue or merely invented. In so far as there might have been a legitimate interest in protecting Mr S. against the allegedly defamatory statements made by Mr I., that interest was, in the Court's view, largely preserved by the possibility open to Mr S. under the domestic law of bringing defamation proceedings against Mr I., which he did (see, *mutatis mutandis, Björk Eiðsdóttir*, cited above, § 74). In addition and unrelated to the above, the statement regarding Mr S.'s "business empire in the Czech Republic" recounted in the last sentence of the second article was presented in a manner that clearly indicated that that information had been provided by an anonymous source. The Court finds that the statement was not, as argued by the Government, capable of misleading the readers regarding the veracity of Mr I.'s statements, but that its aim was to shed light on Mr S.'s business ties to the Czech Republic. The Court further observes that the second applicant tried to verify the story with the official spokesperson of the Agency. Lastly, the Government did not point to any aspect of Mr S.'s private life to show that his reputation and honour had been seriously affected.

10. As regards the amount of the awards of damages, in respect of the first applicant the Court notes that the award amounted to fifteen times the minimum monthly salary at the material time in the respondent State, as was submitted by the applicants and not contested by the Government. In respect of the second applicant, the award of damages amounted to three times the minimum monthly salary (see paragraph 4 above). Such amounts, notwithstanding the fact that the applicants did not pay them, could be seen

as having a chilling effect "of discouraging open discussion of matters of public concern" (see, *mutatis mutandis*, *Timpul Info-Magazin and Anghel v. Moldova*, no. 42864/05, § 39, 27 November 2007). Accordingly, the domestic courts failed to ensure that there was a reasonable relationship of proportionality to the injury to reputation allegedly suffered by Mr S. (see *Tolmachev v. Russia*, no. 42182/11, §§ 53-55, 2 June 2020).

11. It follows that the applicants acted with the diligence expected of responsible journalists reporting on a matter of public interest and cannot be criticised for having failed to ascertain the truth of the disputed allegations (see *Björk Eiðsdóttir*, cited above, § 81). Consequently, there has been a violation of Article 10 of the Convention.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

12. The applicants claimed 8,932 euros (EUR) in respect of pecuniary damage, EUR 10,000 in respect of non-pecuniary damage and EUR 1,440 in respect of costs and expenses incurred in the proceedings before the Court. Given the monetary assistance provided to the applicants through the solidarity fund (see paragraph 4 above), the Court finds no grounds to make any award in respect of the pecuniary damage claimed; it therefore rejects this claim. On the other hand, it awards the applicants jointly EUR 3,000 in respect of non-pecuniary damage, plus any tax that may be chargeable (see *Makraduli v. the former Yugoslav Republic of Macedonia*, nos. 64659/11 and 24133/13, § 90, 19 July 2018).

13. Having regard to the documents in its possession, the Court considers it reasonable to award the applicants jointly EUR 1,250 for costs and expenses in the proceedings before it, plus any tax that may be chargeable to them.

14. The Court further 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*

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

   (i) EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 1,250 (one thousand two hundred and fifty euros), plus any tax that may be chargeable to the applicants, 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;

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

Done in English, and notified in writing on 5 April 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Egidijus Kūris
Deputy Registrar	President