APRIL 2023

The Price of FREE SPEECH

Analysis of lawsuits against public participation in Bulgaria exhibiting the characteristics of SLAPP litigation

ANTI CORRUPTION FUND

Kingdom of the Netherlands

Anti-Corruption Fund Foundation, April 2023

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This analysis was realized as part of the project **Press Freedom Research with a special focus on SLAPPs in Bulgaria**, implemented in partnership between the Association of European Journalists – Bulgaria and the Anti-Corruption Fund Foundation with the support of the Embassy of the Netherlands in Bulgaria.

CONTENTS

Abbreviations

ACF	Anti-Corruption Fund Foundation
ACt	Appellate Court – Sofia
AEF	Executive Agency Audit of European Funds at Ministry of Finance
AEJ	Association of European Journalists
APO	Appellate Prosecutor's Office
BCNRA	Bulgarian Copyright and Neighboring Rights Act
BDA	Bulgarian Drug Agency
BDB	Bulgarian Development Bank
BFSA	Bulgarian Food Safety Agency
BIRN	Balkan Investigative Reporting Network
BHC	Bulgarian Helsinki Committee
BJA	Bulgarian Judges Association
BNT	Bulgarian National Television
BSP	Bulgarian Socialist Party
CAFIAP	Commission for Anti-Corruption and the Forfeiture of Illegally Acquired Property
CC	Criminal Code
CCt	Constitutional Court
CPC	Criminal Procedure Code
CPDP	Commission for Personal Data Protection
CRB	Constitution of the Republic of Bulgaria
DCt	District Court
EC	European Commission
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EP	European Parliament
EU	European Union
EWRC	Energy and Water Regulatory Commission
FSC	Financial Supervision Commission
FSCA	Financial Supervision Commission Act
GDPR	General Data Protection Regulation or Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data
HRDC	Human Resource Development Centre
ICIJ	International Consortium of Investigative Journalists
MAFIA	Market Abuse of Financial Instruments Act
MEC	Municipal electoral committee
MoES	Ministry of Education and Science
MoF	Ministry of Finance
MoH	Ministry of Health
MoI	Ministry of Interior
MRF	Movement for Rights and Freedoms
NBBMI	National Bureau of Bulgarian Motor Insurers
NCPRMP	National Council on Prices and Reimbursement of Medicinal Products
NRA	National Revenue Agency
OCA	Obligations and Contracts Act
OCCRP	Organized Crime and Corruption Reporting Project
OSCE	Organization for Security and Co-operation in Europe
ONA	Ordinary National Assembly
PDPA	Personal Data Protection Act
RCt	Regional Court
SANS	State Agency for National Security
SLAPP	Strategic lawsuit against public participation
SCACt	Sofia City Administrative Court
SCCt	Sofia City Court
SPOC	Supreme Prosecutor's Office of Cassation
SCPO	Sofia City Prosecutor's Office
SCtC	Supreme Court of Cassation
SDI	Sofia Directorate of Interior
SJC	Supreme Judicial Council
SRCt	Sofia Regional Court
SS	State Security
TFEU	Treaty on the Functioning of the European Union
UN	United Nations

SUMMARY

The present analysis represents the **first attempt to systematically review and examine** the legal practice on SLAPP lawsuits in Bulgaria **over the period of 2000 to March 2023**. The analysis explains the term and provides details about its origin and impact. The report reviews SLAPP lawsuits in Bulgaria, presenting evidence that this dangerous global phenomenon has some specific local dimensions. The authors maintain that considering Bulgaria's vulnerable media environment, SLAPP lawsuits should be subject to special monitoring in the country. In addition, a host of legislative and other measures are called for in order to reduce reliance on unfounded and abusive litigation. Formally, SLAPP lawsuits claim to pursue legitimate goals: exercising the right to justice and defending claimants' violated rights. Their de-facto goals, however, are illegitimate: censorship, intimidation, financial and psychological pressure, all in a bid to silence a particular critical voice and to dissuade other critics from speaking up.

The **claimants in these types of proceedings** are typically politicians, businesspeople, influential individuals, corporations, and public institutions.

The **targets of SLAPP lawsuits** are most often journalists, civic activists, human rights activists, academics, independent media outlets, and non-governmental organizations. In their publications and journalistic investigations, these individuals and organizations criticize politicians, businesspeople, senior public officials, and other public figures or bring to light evidence of wrongdoing.

T**he effect** that SLAPP lawsuits seek to achieve is to silence public debate and to limit citizens' access to reliable information which could help them form their own opinions and come to their own conclusions.

On the **EU level,** the debate on SLAPP lawsuits was first initiated by civic activists, with institutions subsequently taking up the issue. An important step was made in 2022 when the European Commission adopted procedure 2022/0117 (COD), putting forward a proposal for a Directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings. The commission also issued Recommendation (EU) 2022/758 about protection from SLAPP lawsuits. The adoption of the directive proposal by the commission is the first EU-wide attempt to introduce common rules on dealing with SLAPP lawsuits. During the Swedish Presidency of the Council of the EU, a compromise draft proposal was put forward, representing a step back in the joint European effort to limit the negative effects of abusive and unfounded litigation on European democracies.

Conclusions:

The civil and criminal proceedings reviewed for this analysis show a **consistent trend of courts deciding in favor of journalists** targeted by SLAPP lawsuits, with the decisions to acquit journalists outnumbering the convictions. In most of the reviewed cases, courts properly applied the provisions defending the right to free expression set out in the *Constitution of the Republic of Bulgaria and the European Convention on Human Rights and Fundamental Freedoms*. In addition, the decisions were in line with the criteria for balancing Art. 8 and Art 10 of the Convention, as outlined in the case law of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU), as well as in the decisions of the Constitutional Court of Bulgaria (CCt). Still, there are examples of proceedings where courts had adopted superficial approaches, and their final decisions were not in line with the case law applying the Convention.

While **fewer journalists were convicted in SLAPP lawsuits** compared to those acquitted, the existence of convictions is a reason for concern, especially considering the vulnerable media environment in Bulgaria where, besides SLAPP lawsuits (Appendix I and II), additional mechanisms for pressure (Appendix III – VI) are applied against journalists. In this environment, guaranteeing the independence and freedom of the media continues to be a serious challenge[1].

1 In 2022, Bulgaria was ranked 91st in the World Press Freedom Index by Reporters Without Borders, https://rsf.org/en/country/bulgaria

From 2000 to March 2023, **almost as many civil cases (31) as criminal cases (28) were filed.** The civil cases contained claims for violations of the *Obligations and Contracts Act (OCA) and the Personal Data Protection Act* (PDPA).

A notable trend is a **gradual increase in the number of civil proceedings**, and the amounts of monetary compensation for damages claimed in these proceedings.

A total of **87.5% of all civil proceedings were decided in favor of journalists** and 12.5% – in favor of plaintiffs.

Of all criminal proceedings **86% were decided in favor of journalists**, and 14% ended with convictions of journalists.

The average duration of the proceedings was 2.8 years. Out of a total of 65 lawsuits, 20 continued for two years, 19 for three, years and six lawsuits lasted five or more years. For all of the reviewed cases, Bulgarian journalists, media representatives, and civic activists spent a cumulative 181 years in courtrooms.

Most of the SLAPP lawsuits were filed between 2015 and 2018. In total, **50 out of 65 proceedings were initiated in the period from 2015 to 2023.** Possible explanations for the rise since 2015 include an increase in the number of lawsuits and the availability of more data on lawsuits compared to the early 2000s. Another explanation could do with an increase in publicity about SLAPP litigation. This explanation could also be viewed as a signifier of changes in the Bulgarian media environment in the period after 2015, compared to the period from 2000 to 2014, when lawsuits against journalists did not generate much publicity.

Recommendations:

- Adopting the draft of the Proposal for an anti-SLAPP Directive dated 27 April 2022 and applying it to all SLAPP lawsuits (including cases with cross-border implications).
- Decriminalizing insult and defamation.
- Introducing mechanisms to facilitate early dismissal of criminal litigation judged to be unfounded.
- Limiting the applicability of interim measures to secure damage claims in civic proceedings.
- Limiting the liability of SLAPP targets with regard to the cost of the legal proceedings.
- Digitizing court archives in order to facilitate access to information for research purposes.
- Empowering the targets of SLAPP lawsuits to speak up in order to receive support from the community and to facilitate civic monitoring over abusive litigation.
- Raising the civic sector's awareness about the nature and negative effects of SLAPP lawsuits, about strategies to defend against SLAPP litigation and mechanisms for legal and financial assistance to SLAPP targets, Providing access to additional mechanisms for legal and financial aid.
- Conducting training sessions for lawyers, journalists, and activists to impart knowledge and increase their capabilities to prevent and counteract SLAPP lawsuits.
- Systematic and ongoing monitoring and analysis of SLAPP lawsuits by civic organizations and public institutions.

Topic 1:
GOAL, SCOPE, AND METHODOLOGY OF THE ANALYSIS

The main goal of this analysis is to review the term SLAPP and provide a general idea about this type of litigation, trace its origins, examine its effects and significance, and provide information about SLAPP lawsuits in Bulgaria. The authors have also gathered evidence to support their claim that SLAPP lawsuits are a dangerous global phenomenon which also has some specific Bulgarian dimensions. Considering the vulnerable media environment in the country, SLAPP lawsuits should be monitored continuously. In addition, a host of legislative and other measures are needed to inhibit the use of unfounded and abusive litigation.

In recent years, a number of lawsuits displaying the characteristics of strategic litigation to intimidate journalists and civic activists have been filed in Bulgarian courts. The present analysis represents the first attempt to systematically review and examine the legal practice pertaining to SLAPP lawsuits in Bulgaria.

For the purpose of this analysis, the authors studied all publicly known SLAPP lawsuits and summarized the information available to them. The goal was to provide a snapshot of this type of abusive litigation in Bulgaria by answering several questions:

- Are the cases typically filed in court criminal or civic?
- What strategies are claimants using to achieve their goal of silencing critical journalistic voices?
- What decisions do courts issue and how are the decisions typically motivated?
- Are SLAPP lawsuits successful in achieving their strategic goals?
- What measures do civic society and independent media have at their disposal to counteract strategic litigation that aims to intimidate?

Scope and Methodology:

The analysis contains the following parts:

- Definition of the issue
- Review of **measures taken at the European level** to counter the harmful effects of SLAPP lawsuits.
- Analysis and review of the available public information on the **legal practice of Bulgarian courts** with regards to civil, criminal, administrative-criminal and disciplinary proceedings, exhibiting features of SLAPP lawsuits, and initiated in the past two decades. Also discussed are three decisions issued by the ECtHR against Bulgaria on cases containing elements of SLAPP litigation. The reviewed decisions are divided depending on the nature of the proceedings, as follows:

  Appendix I – Civil Proceedings

  Appendix II – Criminal Proceedings Brought Forward by Private Claimants

  Appendix III – Administrative – Criminal Proceedings

  Appendix IV – Disciplinary Proceedings
- Analysis and commentary of some criminal proceedings where the pre-trial phase suggests characteristics of SLAPP litigation:

  Appendix V – Pre-Trial Criminal Proceedings
- Analysis and commentary of some known practices for **pressure and harassment against journalists and activists**, including hate speech and smear campaigns.

Appendix VI – Other Mechanisms for Applying Pressure Against Journalists and Activists

In each of the appendices, proceedings are listed in chronological order with some exceptions when several lawsuits have been initiated against a single journalist or activist. All proceedings against individuals are reviewed one after the other.

Limitations

This first attempt to collect information about the legal proceedings against journalists and civic activists in Bulgaria has come across a number of challenges:

- The cases were heard long ago, and only a few had received any publicity.
- There had been no monitoring of the proceedings by independent journalistic organizations.
- Defendants have not kept the documentation relevant to the proceedings.
- Due to a number of administrative hurdles, a significant share of the relevant documentation is either inaccessible or cannot be effectively reviewed for research purposes.
- For the whole period following the collapse of the communist regime, there have been no studies monitoring litigation against public participation in Bulgaria. There are only two exceptions: the publication *Targeted Journalists*"[2], which reviews 24 lawsuits against journalists during the first decade following the political changes, and the book *Matter of Fairness. Journalists on Trial in Bulgaria*"[3], containing interviews with 15 journalists subjected to litigation because of their work.

In a bid to deal with the data gaps, the authors consulted many public sources of information, such as databases of court decisions, both available online and in the physical archives of different courts. In addition, the authors interviewed lawyers who had defended journalists in SLAPP lawsuits as well as journalists targeted by such lawsuits.

As a result, the claim can be made that the present analysis has identified and reviewed most of the proceedings exhibiting features of SLAPP lawsuits from 2000 to 2023. The amount of data gathered allows for key trends to be identified and a number of hypotheses to be put forward.

Still, it should be noted that, due to the limitations listed above, this analysis does not claim to be fully exhaustive and to have reviewed all SLAPP lawsuits during the period considered.

The creation of an exhaustive database of all SLAPP lawsuits in the country is a future task whose completion will require the joint efforts of researchers and organizations working on the topic of abusive litigation.

2 *Zhurnalisti pod prizhel* (Targeted Journalists) – Tania Hairzanova, Vassil T. Vassilev, Bulgarian Lawyers for Human Rights Foundation, 2000.

3 *Vuprosut za spravedlivostta. Sudenite jurnalisti v Bulgaria* (Matter of Fairness. Journalists on Trial in Bulgaria) – Dr. Zhana Popova, Prof. Shezhana Popova, St. Kliment Ohridski University Press, 2022.

Topic 2:
REVIEW AND DEFINITIONS

The past three decades have given rise to a new and extremely dangerous global phenomenon: manifestly unfounded or abusive court proceedings targeting vocal and critical voices within communities – the so-called strategic litigation against public participation, also known as SLAPP lawsuits. The term was first introduced by US academics[4], and entered legal practice in the middle of the 1980s. In Europe, the issue gained prominence because of the work of the Maltese journalist, writer, and activist Daphne Caruana Galizia, becoming especially topical following her murder in 2017.

Definition of SLAPP lawsuits

SLAPP lawsuits are court proceedings that are manifestly unfounded or feature exaggerated claims. Formally, they claim to pursue legitimate goals: exercising the right to justice and defending claimants' violated rights. Their *de-facto* goals, however, are illegitimate: censorship, intimidation, financial and psychological pressure, all in a bid to silence a particular critical voice and to dissuade other critics from speaking up.

The **claimants in these proceedings** are typically politicians, businesspeople, influential individuals, corporations, and public institutions.

The **targets of SLAPP lawsuits** are typically journalists, civic activists, human rights activists, academics, independent media outlets, and non-governmental organizations who, in the course of their work, criticize politicians, businesspeople, and other public figures or expose them for violations and abuses.

The effects that SLAPP lawsuits seek to achieve include: applying psychological pressure against the targets of the litigation; disrupting their daily work because of the need to pool resources for legal defense in trials that often last for long periods; burdening the targets with (often prohibitive) expenses; securing large compensations for damages; siphoning off considerable financial resources from media outlets; increasing the reputational risk (which may cause audiences to pull away); the potential consequences of criminal proceedings and convictions in criminal proceedings; silencing public debate; limiting citizens' access to reliable information which could help them form their own opinions.

In lawsuits of this type, **the 'wronged parties' goal is not justice or compensation** for the material or immaterial damages sustained, nor the retraction of statements that had caused reputational damages. The main objective is to silence critics and deter other representatives of the journalistic community or civic society from speaking up. The goal of SLAPP lawsuits is to harass, threaten, and silence defendants as they face psychological and financial pressure, as well as the threat of criminal sanctions. A further contributing factor is the apparent imbalance of power between the two sides in most SLAPP lawsuits, with claimants/plaintiffs typically having more finances and political support at their disposal compared to defendants.

By abusing the available legal mechanisms, **SLAPP lawsuits help claimants achieve their goals despite the actual outcome of the legal proceedings.** Typically, such cases are heard at all levels of the court system, which means they take up considerable time. Most cases take up to nearly three years to be heard. During this period, the journalists and civic activists involved in the proceedings are forced to continue their work with the knowledge that they can be unjustly targeted again.

Oftentimes, claimants file **requests for monetary compensation for damages, demanding large sums of money, as well as making provisions to freeze defendants' assets.** This increases the psychological pressure faced by the targets of the litigation and creates a serious risk of

4 Pring, George W.; Canan, Penelope (1996). SLAPPs: Getting Sued for Speaking Out. Temple University Press. pp. 8–9. ISBN 978-0-375-75258-2.

censorship or self-censorship by the media. In addition, it may threaten the financial stability of media outlets. In many cases, the defendants are freelance journalists or civic activists who do not have the backing of large organizations or media outlets which could cover the financial burden should the courts decide against the defendant. In some cases, even large media outlets distance themselves from or even dismiss journalists who are the targets of litigation.

The harmful effects of SLAPP lawsuits are not limited to their immediate targets. The stress and pressure during the proceedings, as well as their outcomes, resonate with the whole journalistic community and the whole of society. Therefore, there is a serious risk of deterring and dissuasive effects over other potentially affected individuals who may decide not to pursue their right to criticize and investigate issues of public interest. SLAPP lawsuits may impose censorship or self-censorship on persons who are not directly targeted by the litigation. They have a negative impact on the wider community with their ability to stifle public debate.

In a full-fledged democracy based on the principle of rule of law, citizens should participate actively in the public debate. In order for individuals to be able to participate fully, they should have access to reliable information, allowing them to form their own opinions in a pluralistic society. This is the reason why freedom of speech is one of the founding principles of democratic societies, one of the main requirements for the progress of society and the development of individuals. Freedom of speech has two aspects. On the one hand, there is the right to free expression and on the other – the right of society to be informed. These aspects apply not only to information or ideas which are received favorably or are not considered offensive but also to ideas and information which could offend, shock, or disturb the state or any other part of the population. This idea is at the heart of values such as pluralism, tolerance and mutual respect which define democratic societies.

The danger of SLAPP lawsuits lies in the fact that they typically affect journalists and human rights activists, the very people who are called to channel diverse opinions, ideas, and information in society. Journalists and activists are tasked with protecting societal interests and championing important causes: human rights, environmental protection, social inclusion, and others. In addition, they play a key role in fighting corruption, mismanagement, extremism, and organized crime. This is why attacks on free speech are attacks against the well-being and freedom of society as a whole.

With SLAPP lawsuits increasingly used as a means to limit freedom of expression, many democratic societies are realizing the urgent need for legal instruments to counteract this type of abusive litigation. As early as the mid-1980s, the US, Australia and Canada realized the need to differentiate between lawsuits pursuing legitimate means and those seeking to limit free speech. While SLAPP lawsuits are not unknown in Europe, the EU still lacks common rules against this type of litigation. In addition, not one member state has provisions outlining special safeguards against SLAPP lawsuits in its national legislation.

In Europe, one of the most telling examples of the impact of SLAPP lawsuits on the public environment was set by the Maltese journalist, writer and activist, Daphne Caruana Galizia, who had been investigating corruption in her country's political and business circles. By 2017, when she was killed by a car bomb, Galizia had had more than 40 lawsuits filed against her. The journalist's death provoked an incredibly strong international reaction. In the EU, the tragedy brought forward the need to introduce legislation that protects journalists and activists from abusive litigation.

Topic 3:
LEGISLATIVE ACTION AT THE EU LEVEL

1. Citizens' Anti-SLAPP Initiative

In recent years, and especially following the murder of Daphne Caruana Galizia, SLAPP lawsuits have become a main consideration for many journalistic and civic organizations. Subsequently, the European Commission and the European Parliament (EP) have focused on the issue as well. A 2020 report by the Coalition Against SLAPPs in Europe (CASE) shows a growing trend with regard to the number of such proceedings. The increase is particularly sharp for the period of 2015 to 2020[5]. Recent issues of the commission's Rule of Law Report contain multiple examples of various forms of pressure and intimidation applied against journalists and activists as retaliation for published investigations. The reports, for 2020 and 2021, also make references to abusive litigation initiated against journalists and activists in EU member states. The EC and the EP have initiated and hosted many public discussions and high-level meetings to share knowledge and discuss the actual steps that should be taken in order to draft and adopt EU-wide legislative measures.

As a result, the European Democracy Action Plan[6], published by the EC in December 2020, set out a number of initiatives to strengthen media freedom. In September 2021, for the first time, the commission presented a *Recommendation on the protection, safety and empowerment of journalists and other media professionals in the European Union*[7]. The recommendation aims to ensure safer working conditions for journalists and other media professionals so they could work freely. The document points out a number of measures and concrete actions that member states could take to enhance the safety of media professionals.

Proposal for Directive and Recommendation of the EC

The advocacy work, by civic groups and institutions, urging the creation of legal mechanisms to protect journalists from abusive litigation achieved a major success. On 27 April 2022, the EC adopted a Proposal for a Directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings[8] and Recommendation (EU) 2022/758[9] on protection from SLAPP lawsuits. The proposal is the first official attempt to introduce anti-SLAPP legislation in the EU. The proposed directive is also consistent with *Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law* because the protection it provides is crucial to the role of media in a democratic society. Furthermore, the proposed directive provides courts and the victims of SLAPP lawsuits with instruments to deal with manifestly unfounded court proceedings. The proposed protective measures will be applied to civil **cases in all member states and will have cross-border implications.**

Key Elements of the Proposal for Directive 2022/0117 (COD):

- **Early dismissal of manifestly unfounded court proceedings:** Courts will be able to adopt decisions for early dismissal of court proceedings if the latter are manifestly unfounded. In cases when applications for early dismissal are filed, the main proceedings are suspended until the application for early dismissal is reviewed and a decision issued;

5 https://www.the-case.eu/slapps/

6 https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2250

7 https://ec.europa.eu/commission/presscorner/detail/en/ip_21_4632

8 https://eur-lex.europa.eu/legal-content/BG/TXT/PDF/?uri=CELEX:52022PC0177&from=EN

9 https://eur-lex.europa.eu/legal-content/BG/TXT/PDF/?uri=CELEX:32022H0758&from=BG

- **Special rule on the burden of proof:** when an application for early dismissal is filed on the grounds that the proceedings target public participation, the burden of proof lies with claimants who have to prove that the proceedings are not manifestly unfounded;
- **A requirement for claimants** to provide security for costs and damages if the proceedings are established to be abusive or unfounded;
- **Limiting possibilities for changing or withdrawing claims** which could deny defendants the opportunity to seek potential compensation for costs, expenses and damages at later stages of the trial;
- **Allowing the participation of non-governmental organizations in proceedings** so they could assist defendants or provide information;
- **Responsibility for the cost of litigation:** If a claim is found to be manifestly unfounded, claimants bear all the costs of the proceedings, including the cost of legal defense for the defendant;
- **Compensation for damages:** Targets of SLAPP lawsuits will have the right to full compensation for the material and immaterial damages sustained in the course of the trial;
- **Effective and proportionate dissuasive penalties deterring claimants from engaging in abusive and unfounded proceedings;**
- **Protection against third-country judgements:** EU member states refuse to recognize third-country judgements if the proceedings are defined as SLAPP as per their national legislation (contrary to 'ordre public').

Key Elements of Recommendation (EU) 2022/758

- Conducting training exercises for lawyers and potential targets of SLAPP lawsuits in order to impart knowledge and expand their capabilities to deal with abusive litigation effectively;
- Organizing awareness-raising campaigns among journalists and human rights activists so they could recognize the main attributes of SLAPP litigation if targeted;
- Providing the targets of SLAPP litigation with personalized and independent support, for example, legal services defending targets on a voluntary principle, without seeking remuneration;
- Yearly reports to the EC on the number of registered SLAPP lawsuits on the national level from 2023 onwards.

Revised Draft Presidency Compromise Proposal for Directive 2022/0117 (COD)

Following objections by several member states against some parts of the text of the proposed directive, in March 2023, the Swedish Presidency of the Council of the EU presented a compromise draft proposal with substantial changes to the text of the directive. Member states, which had participated in the creation of the original version of the directive, as well as many civic organizations, have expressed concerns that if all the proposed changes are accepted without taking into account the overarching goal of the directive, it is very likely that the document will be ineffective and will put forward weak criteria for the courts. Should this occur, the directive will not only fail to improve the current situation but may make matters worse. Critics are concerned that the proposed changes will likely affect the most effective instruments to protect targets of SLAPP lawsuits in three major aspects:

- Removing provisions for early dismissal of manifestly unfounded court proceedings;
- Removing provisions for compensation for damages;
- Removing texts on cross-border cases in which claimants and defendants are based in different countries.

At present, the procedure to adopt the directive is still ongoing. Adopting the directive is not among the stated priorities of the Swedish Presidency therefore it is not reasonable to expect rapid progress on the issue. Once the directive is adopted by the European Parliament and the Council, member states will have to transpose it in their national legislation within a decline stipulated in the text of the directive.

Topic 4:
THE LEGAL PRACTICE IN BULGARIA

Types of proceedings

The largest share of the SLAPP lawsuits in Bulgaria can be divided into two groups: civil cases claiming liability in tort/delict, as per Art. 45 and Art. 49 of the OCA[10] and criminal proceedings by private claimants claiming insult and defamation, as per Art. 146 – Art. 148 of the CC[11]. When proven to be manifestly unfounded, other types of proceedings could also be characterized as SLAPP, for example, administrative and administrative-criminal proceedings[12], disciplinary proceedings[13], and pre-trial criminal proceedings[14]. Proceedings filed with the Commission for Personal Data Protection (CPDA) on the basis of claims of abuse of personal data are a specific type of civil SLAPP litigation. This is so because the individuals who claim that their rights to privacy have been violated seek assistance from a public institution with significant sanctioning powers which issues decisions not always solely on the basis of the existence of legitimate grounds for punitive action. In some cases, proceedings, initiated by environmental and human rights organizations seeking to defend important causes, may contain an element of SLAPP as courts may decide on excessive costs of proceedings which these organizations are required to pay. One such example is a case heard at the ECtHR – *National Movement Ekoglastnost v. Bulgaria*[15].

Legal Basis

As mentioned already, EU member states lack national legislation providing safeguards against manifestly unfounded lawsuits against public participation. Such legislation is also lacking on the EU level.

When reviewing journalistic materials in order to decide if any violations or criminal acts have occurred, Bulgarian courts reference the *Constitution of the Republic of Bulgaria and the European Convention on Human Rights and Fundamental Freedoms*. Typically, judges explore the balance between freedom of expression, as per Art. 39 – Art. 41 of CRB and Art. 10 of ECHR, on the one hand, and the right to respect for private and family life, as per Art. 8 of ECHR, on the other. In criminal cases, judges also have to decide whether the actions of defendants constitute crimes, containing all the elements of 'insult' and/or 'defamation' as outlined in the criminal jurisprudence. Courts frequently reference the rich and consistent case law of the ECtHR with regard to applying Art. 8 and Art. 10 of the ECHR and establishing the right balance between the protection of free expression and the protection of personal rights. This approach is also adopted in the decisions of the Constitutional Court[16]. In many of the decisions, the term journalistic activity is analyzed thoroughly and the role of the media as a key actor in defending society's right to be informed is highlighted. The published decisions also rightfully recognize cases when the statements made by journalists were critical assessments permissible as part of their right to free speech, especially when made about public figures.

In some civil proceedings under the OCA[17], as well as in cases heard by CPDA[18], under the Personal Data Protection Act (PDPA) and the General Data Protection Regulation (GDPR), there are references to the application of Art. 25 (h) of the PDPA which allows the handling of per-

10 Examples in Appendix I

11 Examples in Appendix II

12 Examples in Appendix III

13 Examples in Appendix IV

14 Examples in Appendix V

15 Case 54

16 Decision 7 from 4 April 1996 re CCt Case 1 from 1996; Decision 15 from 28 September 1993 re CCt Case 17 from 1993.

17 For example, Case 18

18 Cases 45 – 47

sonal data by journalists working on topics of public interest. As far as proceedings concerning personal data protection require that a balance is established between competing personal and free expression rights, the case law of the ECtHR and the Court of Justice of the European Union is applied. The latter is referenced and analyzed in a decision of the Constitutional Court concerning Art.25 (h) of the PDPA[19].

Outcomes of the Proceedings

In most of the reviewed cases, courts properly applied the provisions of the Bulgarian Constitution and the ECHR that defend the right to free expression. The courts considered that the publicized information was of interest to society and was not strictly personal. It was also accepted that public figures (like most of the claimants in proceedings against journalists) should be subject to more severe criticism compared to private individuals. These arguments motivated many of the decisions in favor of the journalists/activists, reviewed for the purpose of this analysis. The decisions are very important as they help to establish robust case law on the issue. Another crucial point is the courts' awareness of the importance of journalistic work. This means parties carrying out journalistic work[20] not only have a right to free expression so they could inform society on important topics, but they also have a responsibility to do so. In addition, society has a right to reliable information, even if this information is occasionally inconvenient or shocking.

Still, there are cases in which courts had applied superficial approaches and their decisions contradicted the criteria for establishing a balance between the competing rights outlined in Art.8 and Art. 10 of the ECHR, introduced by the case law of the ECtHR and the CJEU. Another issue that is evident in court decisions on criminal proceedings brought forward by private claimants is that, occasionally, courts made very different decisions about almost identical statements made by journalists. Some courts decided that the journalists had committed insults and defamation. Others acquitted the journalists / civic activists on the basis that they had made assessments expressing their personal opinions, an integral part of their right to free expression.

The effects of SLAPP lawsuits

While, in most cases, the courts ruled in favor of defendants, SLAPP lawsuits did have a significant impact. Certainly, the parties most affected were the journalists / civic activists on trial. However, the negative impact on the targets' colleagues, who had witnessed the proceedings, was no less significant. In addition, SLAPP lawsuits have a significant negative effect on the overall media environment and, therefore, on the foundations of democratic society in as much as it is a society based upon pluralism and informed public debate.

The negative effects of SLAPP lawsuits are experienced globally (See Topic 2.), however, they are even more pronounced in countries like Bulgaria where there are still serious challenges[21] with establishing independent and free media. One indicator of the state of the Bulgarian media environment is the high number of administrative-criminal, disciplinary and pre-trial criminal proceedings, and other practices to apply pressure against journalists, examples of which are presented in this analysis.

Hearing Procedures

SLAPP lawsuits follow the common rules of procedure. This means that civil cases may be heard by all three instances of the court system, resulting in an average duration of nearly three years. In some cases, lawsuits may last five or more years. This is precisely one of the goals motivating complainants: a lengthy trial during which defendants are subjected to emotional, psychological, and financial pressure which most likely negatively affects their work,

19 Decision 7 from 4 April 1996 re CCt Case 1 from 1996

20 The ECtHR and the CJEU both define the term 'journalistic work' quite broadly: it is any type of activity which aims to publicize information, opinions, or ideas, regardless of the means used. According to the courts, such activities are not the exclusive domain of media outlets.

21 In 2022, Bulgaria was ranked 91st in the World Press Freedom Index by Reporters Without Borders, https://rsf.org/en/country/bulgaria

even when the case is eventually decided in favor of the defendant. The significant duration of SLAPP lawsuits, on its own, has a silencing effect not only on their immediate targets but also on the journalistic community as a whole. This is one of the reasons to fully support the mechanism for early dismissal of manifestly unfounded litigation, outlined in the proposal for an EU anti-SLAPP directive.

It should be noted that the CPC contains **provisions for early dismissal** of criminal proceedings when the actions described in the indictment are **found not to constitute crimes**. However, this provision is not widely applied by Bulgarian courts: of all the cases reviewed for the purpose of this analysis, only one had been dismissed on these grounds[22].

One cause for concern with regard to SLAPP lawsuits is the possibility to apply **interim measures to secure damage claims** as per the *Civil Procedure Code*. Arbitrary and unbalanced application of this provision can cause significant financial disruptions for targeted media outlets, or it could completely freeze their operations. For individual journalists, too, the outcome is excessive financial burdens. In one of the reviewed cases, BGN 300,000[23] were frozen to secure damage claims against three defendants.

The conclusion is that it is necessary to adopt **additional safeguards** for litigation exhibiting characteristics of SLAPP. Furthermore, all sides in such proceedings (judges, defense attorneys, defendants) should be educated to recognize and counteract such litigation. This is also one of the measures put forward by Recommendation (EU) 2022/758.

Civil v. Criminal Proceedings

One issue that deserves special attention is the possibility to use the Criminal Code as an instrument of applying additional pressure against journalists and civic activists. There are a number of reasons for this: the psychological effect of ongoing criminal proceedings; the opportunity to exert direct pressure against individual journalists as opposed to the media outlet (criminal proceedings are filed only against individuals); the possibility to file additional civil proceedings claiming compensation for damages; the potential consequences of a conviction.

Considering all these specifics of the criminal proceedings for insult and defamation, the issue of decriminalizing them has become topical, both in Bulgarian legal circles and abroad. In recent years, international organizations such as the Organization for Security and Co-operation in Europe (OSCE), the UN and others, have actively voiced their proposals to decriminalize insult and defamation and include them in the scope of civic and administrative proceedings. The European Commission has also issued recommendations to decriminalize insult and defamation[24]. The issue is important because insult and defamation are considered crimes in many European countries and, in some cases, convicted individuals may even face prison sentences. In Bulgaria, proceedings for insult and defamation are initiated by private claimants. This means that the affected individuals have the initiative to file a lawsuit, instead of prosecutors. In addition, under Bulgarian law prison sentences cannot be issued for insult and defamation. In many cases, courts absolve defendants of criminal responsibility and opt for administrative sanctions in the form of fines, citing Art. 78 (a) of the CC. Nonetheless, since civil proceedings have the capacity to sufficiently protect personal rights without the excessive effects of punitive repression, initiatives to decriminalize insult and defamation should be supported.

Two trends, one positive and one negative, emerge when the civil and criminal proceedings reviewed for the purposes of this analysis are compared. While the number of each is equal for the entire period of the review, in recent years, civil proceedings are taking precedence. This is a positive trend, considering the arguments for decriminalization outlined above. At the same time, the amounts claimed as compensation for damages have been increasing. During the last two years, two civil cases were filed, claiming damages of BGN 1 mln[25].

22 Case 32 Mavrodiev v. Nikolova

23 Case 11

24 Recommendation (EU) 2022/758 of the European Commission

25 Case 13 and Case 22

Additional Instruments for Pressure

Besides initiating civil and criminal proceedings against journalists, a number of other just as intimidating tactics are employed to limit freedom of expression in Bulgaria. Examples include initiating unfounded administrative or administrative-criminal proceedings against media outlets and civic organizations[26]; initiating disciplinary proceedings as a form of pressure[27];- physical violence against journalists[28];interrogation of journalists in pre-trial proceedings as a tactic to uncover journalistic sources[29]; charging journalists with crimes as a tool of applying institutional pressure[30]; hate speech[31]; threats and intimidation[32].

Witness accounts suggest that – like the reliance on SLAPP lawsuits – usage of these types of alternative pressure methods is also increasing. Court decisions ordering human rights or environmental organizations to pay excessive costs of proceedings in trials initiated to protect important public causes[33] may also be considered as an additional form of pressure. Appendices IV, V and VI of this analysis contain some examples of the above-mentioned pressure tactics used against journalists and civic activists.

26 Appendix III
27 Case 48
28 Case 55
29 Case 52 and Case 53
30 Case 49, Case 50 and Case 51
31 Case 57
32 Case 56
33 Case 54

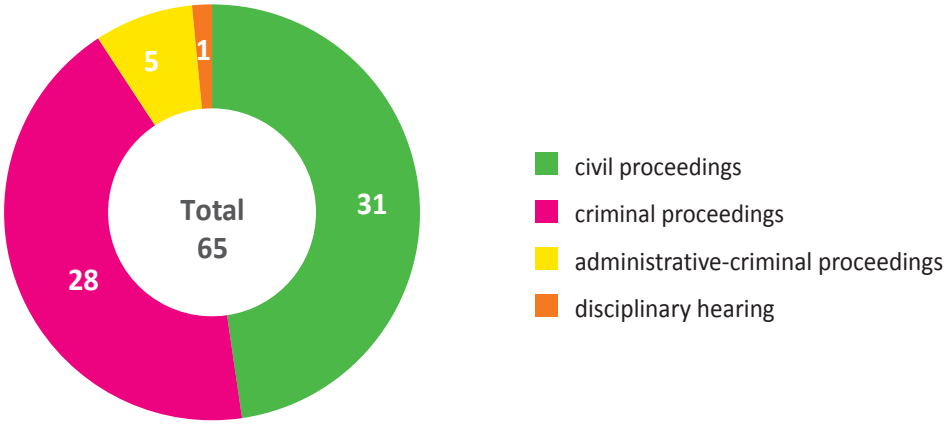
Topic 5:
ANALYTICAL DATA

Scope

The present analysis represents a review of court decisions and other court documentation pertaining to **65** civil, criminal, administrative-criminal and disciplinary proceedings as well as three decisions of the ECtHR. The trials were heard **from January 2000 to March 2023.**

Ratio of civil vs. criminal proceedings

Over the period of interest, almost as many **civil cases (31)** as **criminal cases (28)** were filed. Administrative proceedings with the Commission for Personal Data Protection have been classified as a specific type of civil proceedings. The number of administrative-criminal proceedings is **five**. There is also **one** reviewed disciplinary hearing.



Outcomes of the proceedings

Most of the decisions issued in the civil and criminal proceedings were in favor of the targeted journalists and civic activists.

Civil proceedings

There are **31** civil proceedings in total.

Of them, in a total of **16** proceedings, the court either dismissed the claims of the plaintiffs or decided the proceedings were inadmissible.

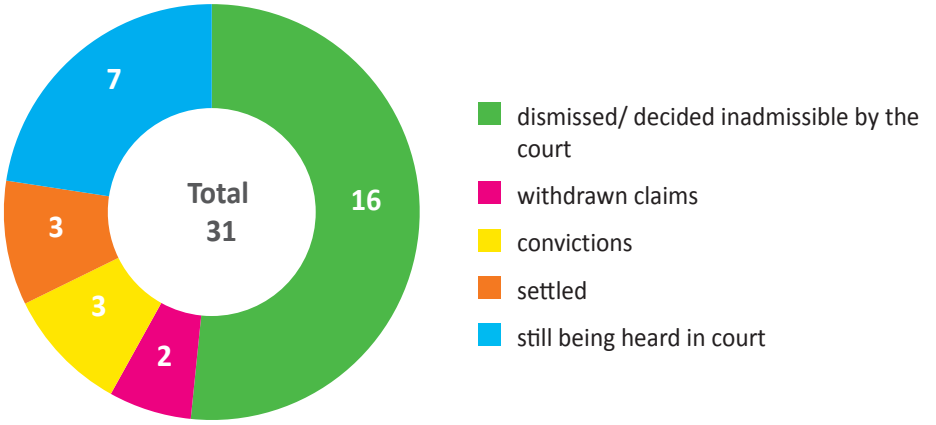
Two of the proceedings were dismissed after the plaintiffs had withdrawn their claims.

In **three** of the proceedings, the court **accepted the claims of the plaintiffs**, deciding against the targeted journalists/civic activists/media outlets.

Another **three** cases were settled, while **seven** are still being heard in court.

Of the **three cases filed with the CPDP**, two were decided in favor of the targeted journalists and media outlets and one is presently heard at the Supreme Administrative Court.

Thus, a total of 87.5% of proceedings, initiated to claim compensation for immaterial damages caused by critical media articles or other types of critical materials, were decided in favor of the journalists. In 12.5% of proceedings, courts decided that the journalists had committed violations, unlawfully interfering with the plaintiffs' personal lives.



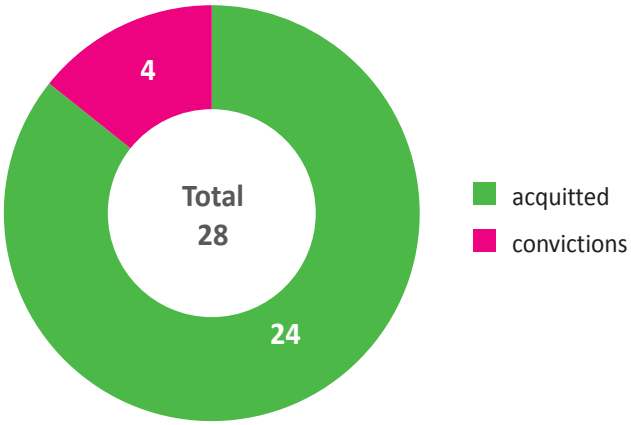
■ **Criminal proceedings:**

There are **28** criminal proceedings filed by private claimants alleging insult and/or defamation.

In **24** of the cases, courts either decided to **acquit** the targeted journalists / civic activists, or claimants withdrew their claims.

A total of **four** convictions have been issued.

Thus, in **86%** of the cases, the journalists / civic activists were **acquitted**. The remaining **14%** of cases ended with **convictions**.

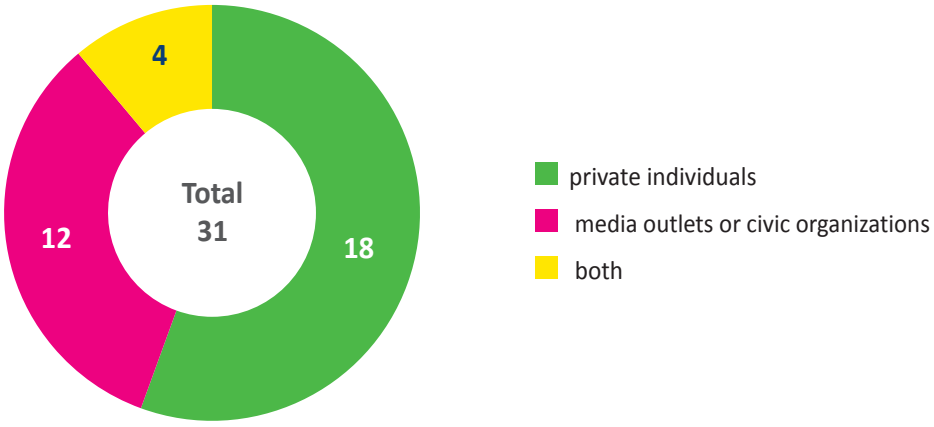


■ **Administrative – criminal proceedings**

The authors reviewed five proceedings initiated by media outlets contesting fines, worth a total of **BGN 260,000,** issued to them by the Financial Supervision Commission (FSC). All five proceedings were heard by the Sofia Regional Court (SRCt) and in all of them the court **annulled** the fines issued by the FSC. However, the decisions of the SRCt were **appealed** and, in three of the cases, the Administrative Court – Sofia **confirmed the fines** issued by the FSC. In the end, courts decided in favor of public participation on two occasions and in favor of the government institution imposing sanctions on three occasions.

Targets of the litigation

Out of **31 civil proceedings**, a total of **18 (or 58%)** were initiated against private individuals. **Nine (or 29%)** were initiated against media outlets or civic organizations. **Four** proceedings **(13%)** targeted both the authors of critical materials and the media outlets which had publicized them.



Out of the five administrative-criminal proceedings, three were initiated by media contesting decisions to fine them, and two were initiated by private individuals representing media outlets.

Since, as per the CC, all criminal proceedings are initiated against private individuals, all 28 criminal proceedings reviewed for the purposes of this analysis had been initiated against journalists or civic activists.

Average duration of the proceedings

For all of the reviewed **65 lawsuits**, Bulgarian journalists, media representatives and civic activists spent a cumulative **181 years** in courtrooms. The average duration of the trials was 2.8 years.[34]

In most cases, the proceedings lasted **two years (20 proceedings)**

A total of **19** lawsuits lasted **three years**.

Eleven lawsuits lasted **four years.**

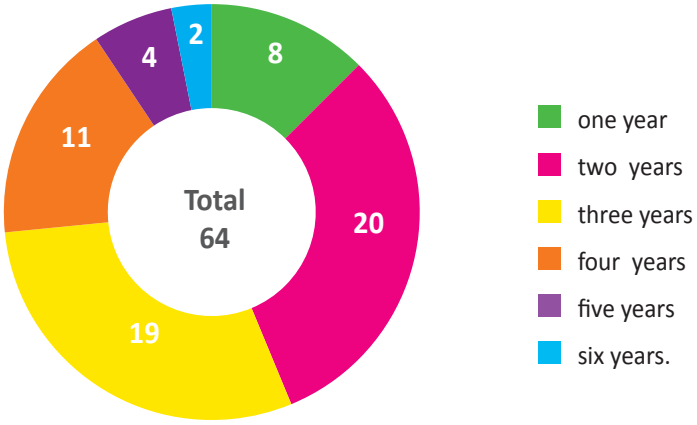
Eight lawsuits lasted **one year.**

Four lawsuits lasted **five years**.

Two lawsuits lasted **six years**.

While in most cases judges ruled in favor of SLAPP targets (journalists/media outlets/civic activists and organizations), the number of issued convictions is still significant and a cause for concern. In many cases, Bulgarian courts decided against the authors of critical media articles, undermining freedom of expression, one of the founding values of democratic societies.

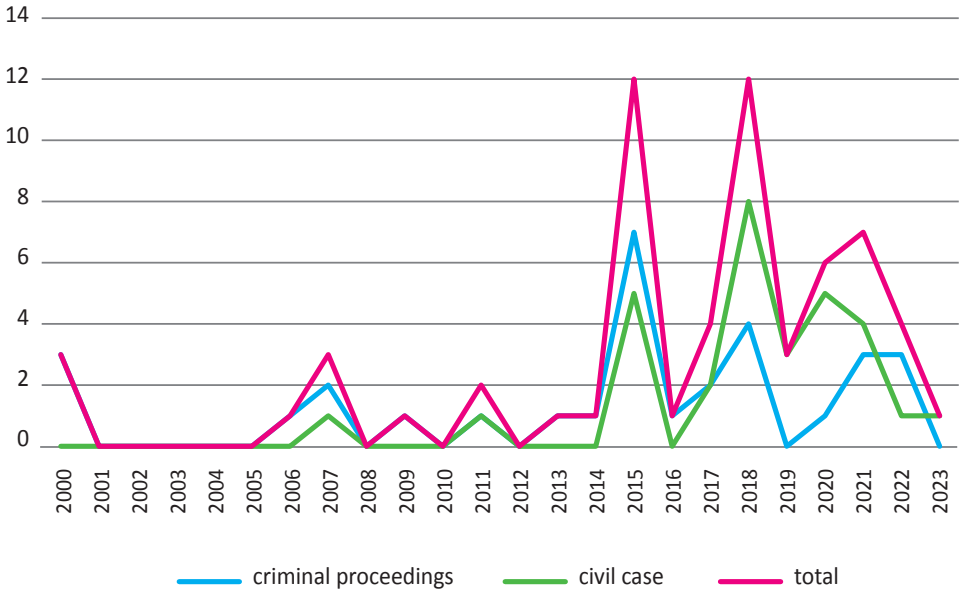
34 case 48 has not been included when calculating the average duration of the proceedings



Number of lawsuits initiated on a yearly basis

The analyzed data shows a growing trend in the number of lawsuits in recent years, suggesting an increased reliance on strategic litigation as a means of silencing critical voices.

- The largest number of lawsuits **(12)** were initiated in 2015 and in 2018. In 2015, there were **seven** criminal proceedings and **five** civil proceedings. In 2018, there were **eight** civil proceedings and **four** criminal proceedings against journalists / civic activists.
- The collected data suggests that for the period from 2000 to 2014, a total of 12 proceedings were initiated against journalists and activists.
- The largest share of all analyzed proceedings, a total of 50, were initiated in the period from 2015 to March 2023. Out of them, a total of 29 were civil proceedings and 21 were criminal proceedings.



Number of lawsuits per year for the period from 2000 to 2023:

- 2000 r. – three lawsuits (criminal proceedings)
- 2006 r. – one lawsuit (criminal proceedings)
- 2007 r. – three lawsuits (one civil case + two criminal proceedings)
- 2009 – one lawsuit (criminal proceedings)

- 2011 – two lawsuits (one civil case + one criminal case)
- 2013 – one lawsuit (criminal proceedings)
- 2014 – one lawsuit (criminal proceedings)
- 2015 – 12 lawsuits (five civil proceedings + seven criminal proceedings)
- 2016 – one lawsuit (criminal proceedings)
- 2017 – four lawsuits (two civil proceedings + two criminal proceedings)
- 2018 – 12 lawsuits (eight civil proceedings + four criminal proceedings)
- 2019 – three lawsuits (civil proceedings)
- 2020 – six lawsuits (five civil proceedings + one criminal case)
- 2021 – seven lawsuits (four civil proceedings + three criminal proceedings)
- 2022 – four lawsuits (1 civil case + three criminal proceedings)
- 2023. – one lawsuit (civil proceedings)

A partial explanation for the rise in the number of proceedings in the last eight years (since 2015), is the availability of more data on lawsuits in more recent years. Another possible explanation is the increase in awareness about SLAPP lawsuits. The journalists and media outlets targeted by this type of litigation are more willing to publicize the fact they are being pursued because of their work, seeking moral support from the civic community. In a broad sense, this could also be viewed as a positive development, showing the evolution of the Bulgarian media environment as well as journalists' increasing willingness to defend their right to free expression.

At what levels of the judicial system are proceedings handled?

The duration of SLAPP lawsuits is one of the main reasons they are so stressful for targets. Typically, proceedings last for large amounts of time as cases are heard at many different levels of the judicial system. In almost all cases, both sides (plaintiffs/complainants and journalists or activists targeted by SLAPP litigation) rely on all available courts with jurisdiction over the particular type of proceedings.

- Out of **53** completed proceedings reviewed for the purpose of this analysis, a total of **34 (64%)** were heard at **all possible levels of the judicial system.**
- In all cases **(100%),** when first-instance courts had ruled against them, journalists appealed those decisions.
- When first-instance courts had decided against them, a total of **19%** of plaintiffs/complainants did not appeal those decisions.
- In nine cases **(17%),** claimants either withdrew their claims in the course of hearings in front of courts of first instance, or the courts themselves dismissed the proceedings.

Topic 6: RECOMMENDATIONS

- Adopting the draft of the Proposal for an anti-SLAPP Directive as it was presented on 27 April 2022 and integrating the mechanisms outlined in the proposal into the national legislative framework will help limit the negative effect of SLAPP lawsuits on freedom of expression;
- Decriminalization of insult and slander and eliminating the possibility to initiate criminal proceedings for insult and slander;
- Introducing mechanisms to facilitate early dismissal of manifestly unfounded litigation. Examples include training judges to recognize SLAPP lawsuits and issuing decisions on the presence/lack of conditions to allow early dismissal when requested by defendants;
- Limiting the applicability of interim measures to secure damage claims in civic proceedings. This could be achieved by the introduction of compulsory security deposit owed by the plaintiffs; by suspending interim measures in lawsuits against journalists/activists when the proof is submitted that the deposit required of them is prohibitively high; by suspending the interim measures when defendants can prove that the litigation aims to limit their public participation; by exercising judicial control over the amounts of security deposits required, etc.
- Limiting the liability of SLAPP targets with regard to the cost of the legal proceedings
- Digitizing court archives in order to facilitate access to information for research purposes;
- Empowering the targets of SLAPP lawsuits to speak up in order to receive support from the community and to facilitate civic monitoring of abusive litigation;
- Raising the civic sector's awareness about the nature and negative effects of SLAPP lawsuits and about strategies to defend against SLAPP litigation and mechanisms for legal and financial assistance to SLAPP targets;
- Providing access to additional mechanisms for legal and financial aid;
- Conducting training sessions for law professionals (judges, attorneys, legal advisors), journalists and civic activists in order to impart knowledge and increase their capabilities to prevent and counteract SLAPP lawsuits;
- Systematic and ongoing monitoring and analysis of SLAPP lawsuits by independent journalistic and other non-governmental organizations (civic monitoring) and by public institutions (institutional monitoring).

APPENDIXES

APPENDIX I
CIVIL CASES

CONTENTS

Case 1: Ivan Ivanov and Radostina Bratovanova vs Emiliya Dimitrova

Emiliya Dimitrova-Dankova operates her news website covering Sevlievo and the region. She has worked as editor-in-chief at the newspaper *Sevlievo dnes*, a journalist at the newspaper Rositsa and a managing editors for news at the Kivi-TV cable television channel in Sevlievo. Since 2015, she has acted as the local coordinator of the Access to Information Programme. In 2018, the journalist was awarded the Golden Key award by the Access to Information Programme.

In 2015, the journalist published an article in *Sevlievo Dnes* about the Sevlievo Municipality planning to sell a municipal housing unit. One of the members of the family inhabiting the property was a disabled person. Mayor Ivanov filed a civil case at the Regional Court – Sevlievo, claiming BGN 1,000 in compensation for immaterial damages sustained because of the publication of the article. The court rejected his claim, and the case was dismissed.

In 2018, Radostina Bratovanova, former director of the Gabrovo branch of the Department of Social Assistance, filed a civil lawsuit against Emiliya Dimitrova-Dankova, claiming defamation and damage to her reputation. Bratovanova was objecting to an article published by the regional investigative journalism website *Za istinata*[35], The article had identified Bratovanova, then a public servant, as the de-facto owner of a private care facility for the elderly. Located in a village near the town of Gabrovo, the care home was owned by Bratanova's daughter and the public servant was shown to have used her position to refer people to the private facility. Besides Dankova who had authored the article, the civil lawsuit also targeted journalist Spas Spasov, the publisher of the website. The value of the claim was BGN 10,000 with Bratovanova seeking compensation for pain and suffering sustained as well as for immaterial damages caused by the harming of her reputation and dignity.

The Regional Court – Sevlievo rejected the legal action deeming it unjustified and unproven. Furthermore, the court stated that freedom of speech is a fundamental and crucial precondition for the development of a democratic society.

Bratovanova appealed before the District Court – Gabrovo which upheld the decision of the first-instance court. She appealed again before the Supreme Court of Cassation. Subsequently, she failed to pay the required fee and thus the judgment of the District Court – Gabrovo entered into force.

Comment:

In the specific examples above, judges in both courts rightfully distinguished between the freedom of the press and mass media, the right to an opinion and to search for and disseminate information (as outlined in Art. 40(1), Art. 39(1) and Art. 41(1) of the Constitution of the Republic of Bulgaria) and the rights guaranteed by Art. 32(1) which states: "Everyone is entitled to protection against unlawful interferences with their private and family life and against infringements upon their honour, dignity and good name". Art. 32 also covers civil liability for damages caused by insult or defamation. Judges accepted that the article had been the result of a well-conducted journalistic investigation and that Dimitrova had been guided by the need to perform a thorough exploration of the subject and to publish the facts.

35 https://zaistinata.com/%d0%bd%d0%b0%d1%87%d0%b0%d0%bb%d0%bd%d0%b8%d0%ba%d1%8a%d1%82-%d0%bd%d0%b0-%d0%b4%d0%b8%d1%80%d0%b5%d0%ba%d1%86%d0%b8%d1%8f-%d1%81%d0%be%d1%86%d0%b8%d0%b0%d0%bb%d0%bd%d0%be-%d0%bf%d0%be%d0%b4/

Case 2: Atanas Kambitov and Anton Todorov vs Marieta Dimitrova

Marieta Dimitrova is an investigating journalist, owner, and editor-in-chief of the information agency Blagoevgrad News. Her investigations cast light on corruption practices and abuses of power. She is a member of the Association of European Journalists.

Because of her publications, Dimitrova has been the subject of legal action twice.

In 2015, several months before the local elections, the journalist published an article about the discrepancy between the official income of the then-mayor, Atanas Kambitov, and his luxury lifestyle. Although the information in the article had been obtained from official documentation and public registers and could have been verified easily, the mayor initiated a civil lawsuit against Dimitrova, claiming BGN 100,000 in compensation for the suffering he had sustained. Kambotov did not attend the first court session. He withdrew his claim before the second session and the case was dismissed.

The second case against Marieta Dimitrova was filed in 2018 because of an article[36] about the voting behaviour of some members of the opposition in the Blagoevgrad Municipal Council. The article revealed their inconsistent voting patterns on identical issues in different council sessions and possible links with the town's mayor. One of the persons mentioned in the article was Andon Todorov, leader of the Party of the GREENS in Blagoevgrad. He found the article insulting and defamatory and filed a civil lawsuit with the Regional Court – Blagoevgrad, claiming BGN 50,000 in immaterial damages because of the psychological pain and stress suffered. Todorov's request to the court was that he be granted 10 per cent of the claim or BGN 5,000, a frequent practice which allows claimants to pay lower court fees.

In July 2018, the Regional Court – Blagoevgrad rejected the action brought by Todorov and ordered him to pay the legal costs incurred by the journalist in the case. According to the court, for an allegation to be qualified defamatory, it must be proven to be untrue. This did not happen in the course of the trial. On the contrary, the information in the article was shown to be truthful. The court pointed out that since the disclosed circumstance was objectively not defamatory, whether or not the claimant felt offended was irrelevant. The court further noted that a person's feelings are part of their subjective experience, a reflection of their values and views of life which exists only in the person's mind.

Andon Todorov appealed the decision in front of the District Court – Blagoevgrad which resolved the dispute in January 2019.

The court of higher instance upheld most of the judgment of the Regional Court – Blagoevgrad. However, it found that by connecting the claimant's support for the mayor's proposals and the subsequent possibility for the claimant to receive certain benefits, the journalist had not shared a personal opinion but a fact that qualified her behaviour, in this specific example, as unlawful.

Marieta Dimitrova was ordered to pay Andon Todorov BGN 1,000 as compensation for immaterial damages. Andon Todorov was ordered to pay Marieta Dimitrova BGN 320 for incurred legal costs.

36 https://blagoevgrad-news.com/%d0%bf%d0%be-%d0%bf%d0%be%d0%bb%d0%b5%d0%ba%d0%b0-%d0%be%d0%bf%d0%be%d0%b7%d0%b8%d1%86%d0%b8%d0%be%d0%bd%d0%b5%d1%80%d0%b8-%d0%bd%d0%b0%d0%b4%d0%b8%d0%b3%d0%b0%d1%82%d0%b5-%d0%b3%d0%bb%d0%b0%d1%81/

Comment:

Both cases above are additional examples of defamation lawsuits initiated against a journalist for expressing an opinion which is fully supported by publicly accessible documentation.

In the first place, the value of the compensation claim lodged by Mayor Kambitov (BGN 100,000) is excessive. It remains unclear why the supposed victim of slander withdrew his claim, considering that he had first evaluated so highly the immaterial damages suffered, seeking the court's assistance in obtaining redress. This circumstance in itself points to the conclusion that the claimant's main objective was to pressure the journalist.

The second case developed along a similar pattern. In subsequent interviews, Dimitrova revealed that, for a long time, she had struggled to gain access to Todorov so she could pay him the court-awarded sum. Todorov kept on saying that he did not want the money. Finally, Dimitrova was able to hand him the payment and the accompanying documentation in front of witnesses. A logical question is why would the claimant bring an action for immaterial damages and then refuse to accept the awarded amount. Just like in the first case, it can be assumed that the claimant's real objective was not to obtain compensation for his suffering but to punish a journalist's critical voice.

Case 3: Monica Stanisheva vs Bivol (БиволЪ)

The website Bivol is an investigative journalism platform created in 2010 by Asen Yordanov and Atanas Chobanov. Since March 2011, Bivol is a partner for Wikileaks in Bulgaria and the Balkans. It has also partnered with the Organized Crime and Corruption Reporting Project and the International Consortium of Investigative Journalists, the group behind the Offshore Leaks, the Panama Papers and other global investigations.

In November and December 2013, Bivol published two articles[37], about the fact that a company owned by Monika Stanisheva had received EUR 60,000 in funding from the European Union to run a public information campaign about the upcoming European Parliament elections. The articles claimed that the website created by Stanisheva's company relied on an old version of a software product available free of charge, that the website had technical bugs and relied on stock graphics worth USD 60. During the implementation of the project, Stanisheva was in factual cohabitation with Sergey Stanishev, President of the Party of European Socialists (PES). The articles discussed the presence of a possible conflict of interest. Subsequently, in February of that year, Stanisheva put an end to the project and returned the received funding.

More than a year later, Stanisheva initiated legal action against Bivol, claiming BGN 56,000 in compensation for sustained immaterial damages resulting from her being discredited, both in a personal and public capacity. The Sofia City Court (SCCt) decided that Stanisheva's claim was unfounded and dismissed the case. The judgment was not appealed.

Comment:

The SCCt established that the articles published by Bivol did not aim to harm the claimant's reputation and good name. Instead, the articles discussed the mechanisms through which European funding is spent and projects are financed. In that particular case, the issue was a suspected conflict of interests and the possibility of unlawful spending of funds on a product with questionable technical quality.

The court decided unequivocally that the articles discussed issues of public interest. Furthermore, the publication observed the known best practices for collecting and presenting information, seeking comments from the claimant and relevant public institutions.

37 https://bivol.bg/p-monica-yosiffova-3.html, https://bivol.bg/ep-monica-yosiffova-trolls.html

Case 4: Todor Kostadinov vs Economedia AD and Rosen Bosev

Economedia AD is the largest publisher of business titles in Bulgaria and one of the leading online publishing groups in the country. It was founded in 1993. Its portfolio includes the business weekly *Capital* (Капитал) and the news website *Dnevnik* (Дневник).

Rosen Bosev has been a journalist at Capital since 2005, covering the judiciary and investigating public funds spending and human rights violations. He has won many awards for his works, including the Valya Krushkina – Journalism for the People award in 2015, in the category of printed media.

In 2015 and 2017, Capital published two articles[38] by different authors on the then widely discussed topic of the court proceedings against Vladimira Yaneva, the former chairperson of the Sofia City Court, on charges of improper use of special surveillance means, and Todor Kostadinov, the former chief of the Internal Security Department at the Ministry of Interior who was found guilty of committing a computer crime.

Kostadinov considered the texts defamatory and initiated legal action. He filed two civil cases against Economedia AD, in 2015 and 2017, and a criminal case against Rosen Bosev, author of one of the articles[39], in 2015.

The civil case filed in 2015 against Economedia AD was found to be unjustified by both court instances, the Regional Court – Sofia and the Sofia City Court. The outcome of the proceedings from 2017 was identical, except for the fact that after the Regional Court – Sofia ruled that the action was unjustified, the court of second instance found that the sub-heading of the article from 2017 was culpable. In the rest of its judgment, the second-instance court upheld the judgement of the Regional Court – Sofia. In 2017, the Regional Court – Sofia terminated the criminal proceedings against Bosev.

Comment:

It is perplexing that the court had allowed the criminal proceedings from 2015 to be initiated at all because litigation of this kind is generally inadmissible. Initially, Economedia AD and Galya Prokopieva were the targets of the criminal proceedings. After the court instructed the claimant to specifically name a person against whom the complaint was filed, Kostadinov identified as the perpetrator of the alleged offence a different person than the one mentioned in the private complaint, namely Rosen Bosev. In 2017, the Regional Court – Sofia terminated the criminal proceedings on the basis that it was not admissible to conduct criminal proceedings against a legal entity such as Economedia AD. At the same time, once a criminal case has been initiated it is not possible to substitute the accused party and this exempted Bosev from liability.

The civil claims against the publisher were for immaterial damages worth BGN 30,000 for causing "annoyance, anger and inconvenience to the plaintiff as he communicated with his family and colleagues". It should be noted that the topic of whether Yaneva and Kostadinov had used special surveillance means illegally was being discussed in the media since the beginning of 2015.

The first-instance court motivated its decision to reject Kostadinov's claims on the basis that the facts outlined in the articles in Capital had been established as a result of a dutifully carried out journalistic investigation and the contents of the articles were a journalistic comment of the facts.

In turn, Economedia AD pointed out, that the main purpose of the articles had been to follow up on the proceedings against Yaneva and Kostadinov and to inform readers of the results of efforts by the Ministry of Interior and the court to combat crime, a topic of particular importance when the suspected perpetrators of criminal activity hold public posts.

38 https://www.capital.bg/politika_i_ikonomika/bulgaria/2016/01/15/2686724_edna_godina_uslovno_za_vladimira_ianeva_po_deloto/

39 https://www.capital.bg/politika_i_ikonomika/bulgaria/2015/02/10/2469893_chervei_ili_koi_iztochi_informacionnite_fondove_na_mvr/

Case 5: Valeri Simeonov vs Sega and Theodora Peeva

Sega is an independent national weekly newspaper established in 1997. Its publisher is Sega EAD, and Theodora Peeva is the editor-in-chief.

In 2017, a photograph appeared in the Facebook account of the then-Deputy Minister of Regional Development, Pavel Tenev. He appeared to be making a Nazi salute. The photograph caused a scandal and was the reason why the opposition requested Tanev's resignation from the coalition government in which he had been serving under the quota allocated to the United Patriots party. The editorial team of Sega published an article[40] with comments about Tenev, made by politicians from the governing coalition and the opposition. Among the featured politicians was Valeri Simeonov, one of the leaders of the United Patriots party and a member of the governing coalition. After two phone conversations with Simeonov, the newspaper published several articles, in which it cited his statements defending Tanev.

Simeonov was not satisfied with the public response to the articles and brought an action before the Sofia City Court, jointly and severally against Sega and the editor-in-chief Theodora Peeva for causing immaterial damages. In his statement of claim, Simeonov denied making the statements quoted in the articles and claimed damages of BGN 35,000.

The Sofia City Court decided the case in Simeonov's favour, pointing out that the facts established during the trial were evidence of tort as per the provision of Art. 45 (1) of the Obligations and Contracts Act. The court found that the articles defamed the plaintiff, stating that the right to free opinion and expression should not be used for violating another person's rights and harming their good name. Simeonov was awarded BGN 5,000 in compensation which was less than the amount he had claimed.

Both parties appealed the judgment of the Sofia City Court before the Sofia Court of Appeal (SCAp). Simeonov appealed against the amount of the indemnification, claiming it was too low. The newspaper Sega and Peeva argued against the judgment of the Sofia City Court.

SCAp dismissed the decision of the Sofia City Court, stating that the articles were not insulting or defamatory but rather a negative evaluation of what Simeonov had said in a telephone call, and did not amount to unlawful behaviour.

Simeonov appealed before the Supreme Court of Cassation (SCCas) which did not find grounds to initiate proceedings and upheld SCAp's decision.

Comment:

One of the main red flags in the case Valeri Simeonov vs Sega and Theodora Peeva is the excessive value of the claim (BGN 35,000). Such a high amount, which is uncommon in Bulgarian case law, is a main feature of the litigation which aims to apply pressure on critical media.

Bulgarian courts still have relatively limited case law on insult, defamation and tort, precisely the types of cases comprising the largest share of strategic cases against public participation. The result is extremely inconsistent case law which in turn facilitates further attempts to use the judicial system to silence inconvenient media outlets.

The specific example shows how two court instances can take up two radically different positions on the same issue. The Sofia City Court found that the publications were defamatory to Simeonov in terms of the modern public understanding of morality and decency.

40 https://old.segabg.com/article.php?id=854735
https://old.segabg.com/article.php?id=854903
https://old.segabg.com/article.php?id=854769
https://old.segabg.com/article.php?id=854842

The court accepted as proven the publication's negative impact on the personal life of the claimant and the immaterial damages suffered by him. Furthermore, the court accepted that the testimonies of interrogated witnesses, all detailed in its judgement, proved the alleged immaterial damages and their causal link to the publication of the articles. However, there was no comment on the relativity of the alleged damages while the claimant's statements were accepted as facts.

The Sofia Court of Appeal, in turn, highlighted that politicians, due to their social standing, should be subject to a much higher degree of criticism for their public actions and statements compared to ordinary citizens. According to the court of appeal, the articles merely expressed a journalist's negative opinion of Simeonov and did not contain proof of unlawful behaviour as decided by the Sofia City Court. In the end, the approaches of the Sofia City Court and the Sofia Court of Appeal were opposed with the latter deciding that the articles did not contain insulting or defamatory allegations about the plaintiff.

This example shows the need to introduce a clear and specific legal framework which takes into account the possibilities for abuse of the available court instruments and which protects the critical voices of media outlets and journalists.

Case 6: Delyan Dobrev vs. Elena Yoncheva

Elena Yoncheva is a Bulgarian journalist, politician and an MP in the 44th National Assembly. In 2019, she was elected as a member of the European Parliament representing the Bulgarian Socialist Party (BSP).

In 2017, Delyan Dobrev, an MP from the GERB political party gained notoriety because of the appointments of several of his family members, friends and other related parties to municipal posts in the town of Haskovo. The person who made and publicised the revelations about what became known as the Kumgate scandal (kum is Bulgarian for best man) is Elena Yoncheva. An MP representing the BSP, Yoncheva disclosed the facts of the case in many media appearances. She also discussed the issue in official statements in parliament.

According to Dobrev, 16 of Yoncheva's statements were defamatory. Thus, he filed a case against his political opponent at the Regional Court – Sofia, making a claim for compensation for immaterial damages (emotional and psychological stress) worth BGN 50,400. The court decided that seven of Yoncheva's statements contained defamatory content, whereas the other nine statements contested by Dobrev did not. Yoncheva was ordered to pay BGN 1,000 for each of the seven statements deemed defamatory. The rest of the compensation claim which was worth BGN 43,400 was dismissed.

Yoncheva disputed parts of the decision, filing an appeal with the Sofia City Court. In December 2022, the decision of the court of first instance was dismissed and the legal dispute was closed.

Comment:

What stands out in the decision of the Regional Court – Sofia was the fact that some of Yoncheva's statements were deemed to be defamatory and insulting the claimant's dignity while others were found to represent Yoncheva's personal opinion and were thus not considered violations as per Art. 45 of the *Obligations and Contracts Act*. In contrast, the Sofia City Court applied the case law of the Supreme Administrative Court and the ECtHR, deciding that public persons should be more tolerant of criticism against them, especially regarding issues (such as the one raised by Yoncheva) of considerable public interest. The court further motivated its decision with the importance of protecting freedom of speech.

Case 7: Metodiy Vladimirov vs Rosen Tsvetkov

Rosen Tsvetkov is an investigative journalist whose career started in the Bulgarian National Radio in 2006. A year later, he started working for private broadcaster bTV. Since 2014 he has been part of the team behind the channel's program Novinite. In 2013, he won the Rising Star award of the European Association of Regional Television (CIRCOM), as well as the award for a young investigating journalist in South-Eastern Europe. In 2016, his investigative report "Channels" won a prize from the film forum Detective FEST. He is a TEDx lecturer and winner of the Valya Krushkina – Journalism for the People award.

In the period between July and December 2017, bTV broadcast nine reports[41], by Rosen Tsvetkov who had investigated violations in public prisons, in particular the prison in the city of Burgas. The reports featured interviews with prisoners and former prisoners and their relatives describing the existence and ways of operation of channels for the import and distribution of drugs and mobile phones in the prison. Also discussed was the provision of "leaves" to prisoners and other violations. According to the interviewees, the schemes were operated under the protection of prison management. One specific name was mentioned on many occasions.

The person in question, part of the management of the prison, considered the contents of the reports to be slanderous and sought compensation for immaterial damages to the amount of BGN 100,000. The person brought a partial claim for BGN 30,000 before the Sofia City Court jointly and severally against Tsvetkov and bTV Media Group EAD.

The journalist and the TV station disputed the claim, pointing out that the issues raised in the reports were of high public interest and that they represented the points of view of the interviewed persons rather than of Tsvetkov or the broadcaster.

The Sofia City Court referred to the Constitution of the Republic of Bulgaria and the Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantee the freedom of speech, press and other mass media, protecting them from censorship.

The court pointed out that the nine reports did not claim that what was presented in them was true but put forward information obtained by the journalist through his interviews. The Sofia City Court dismissed the claim. The judgment was appealed but the Sofia Court of Appeal agreed with the motives of the court of first instance and upheld its judgment. The case reached the last possible instance, the Supreme Court of Cassation where the appeal was not admitted to a hearing and the case was dismissed.

Comment:

In this case, we see different SLAPP techniques aimed at exerting pressure: high value of the actions brought by the claimant; the bringing thereof both against the author of the reports and against the distributing media; the use of all possible court instances thereby guaranteeing length of the process and — hence — a longer period of pressure on the journalist.

Each of the panels of judges concluded that the topics covered in the reports were of considerable public interest and the plaintiff was a public personality who, as shown by the case law of the European Court of Human Rights, was expected to be more tolerant of public criticism. In the course of the litigation, it was proven without a doubt that the journalist had acted ethically and professionally. The reports presented the opinions of the interviewed persons rather than those of the journalist; multiple attempts were made to contact the claimant so he could present his point of view; the information in the reports was confirmed by several independent sources.

41 https://www.youtube.com/watch?v=teHkpzL9SrE
https://btvnovinite.bg/videos/emisii/btv-novinite-centralna-emisija-31-07-2017.html
https://btvnovinite.bg/bulgaria/sled-razkritijata-na-btv-za-narkotrafik-zad-reshetkite-prokuraturata-zapochna-razsledvane.html
https://btvnovinite.bg/kriminalno/v-burgaskija-zatvor-ne-samo-droga-no-i-smart.html
https://btvnovinite.bg/videos/emisii/btv-novinite-centralna-emisija-02-08-2017.html
https://btvnovinite.bg/videos/emisii/btv-novinite-centralna-emisija-17-11-2017.html
https://btvplus.bg/produkt/novini/7109/btv-novinite-centralna-emisija-20-11-2017
https://btvnovinite.bg/bulgaria/btv-reporterite-tajni-zad-reshetkite.html

Case 8: Petroceltic Bulgaria EOOD vs Spas Spasov

In 2012, the Bulgarian Helsinki Committee awarded its Human of the Year award to Spas Spasov. Four years later, the journalist was presented with the Golden Key award of the Access to Information Programme. Spasov is a member of the Association of European Journalists – Bulgaria. Currently, he writes for the news website *Dnevnik* and the newspaper *Capital*. He is also the founder of *Za Istinata*, a regional journalism network and website.

On 4 July 2018, Spas Spasov published an article titled "Дълбоките тайни около един инцидент на морското дъно" (The deep secrets of an accident on the sea bottom),[42] about an incident involving the underwater installation of the Galata gas extraction platform in the Black Sea. Spasov pointed out that, in January of the same year, there had been leakage of hydraulic liquid in the sea and violations of environmental protection procedures had been committed. The company, Petroceltic Bulgaria EOOD, party to a contract for the development and extraction of natural gas from the Galata field, found that the journalist's text was defamatory and contained false and misleading information. The company alleged that the article had made a client doubt its services and omit a contractual payment. Petroceltic Bulgaria EOOD initiated proceedings with the Sofia City Court, claiming BGN 66,758.40 in damages from the author of the article and the publisher.

Spasov and his publisher countered that the article presented the facts about the incident as well as official comments from relevant institutions. The trial lasted almost two years. In February 2020, the parties entered into a settlement agreement. The company gave up its compensation claim and Economedia AD agreed to publish a text provided by Petroceltic Bulgaria EOOD in which the company commented on the circumstances surrounding the incident.

Comment:

The case exhibits several characteristics of SLAPP litigation. First, the journalist's text qualified by the company as defamatory informed the public of the facts of the incident and referred to the official positions of various public institutions. Second, the targets of the litigation were both the author and the publishing company. Thus, the pressure of litigation is amplified. The unusually high value of the claim is another red flag and one of the characteristics of strategic litigation against public participation.

Case 9: Veselin Mareshki vs Valya Ahchieva

Valya Ahchieva is a journalist and TV host. She joined the Bulgarian National Television (BNT) in 1992 and, two years later, had her investigative program "Otkrito". She has also served as editor-in-chief and programme director at BNT.

In the period from April 2017 to March 2018, several episodes of "Otkrito"[43] presented the findings of Ahchieva's investigation into illegal practices of pharmaceutical companies related to Veselin Mareshki. According to the reports, Mareshki, a member of his family and two com-

42 https://www.dnevnik.bg/bulgaria/2018/07/04/3207157_dulbokite_taini_okolo_edin_incident_na_morskoto_duno/

43 27.04.2017/ 18.05.2017/ 8.06.2017/ 21.09.2017/ 26.10.2017/ 14.12.2017/ 01.03.2018

panies managed by them purchased the expensive medicine Humira[44] from the USA and replaced the contents of the packaging with another, much cheaper medication smuggled from Turkey. In this way, Bulgarian patients were given cheaper Turkish medicines while the original medications were exported abroad by another company controlled by Mareshki's family. The objective of the scheme was to generate significant profits for Mareshki's companies.

In May 2018, Veselin Mareshki and three other parties — persons and private companies mentioned in Ahchieva's investigation — initiated litigation with the Regional Court – Sofia. The natural persons claimed immaterial damages because of stress and mental discomfort they had suffered while the companies claimed material and possible immaterial damages resulting from reputation damages. The total value of the claims was BGN 20,000.

A year later, the regional court ruled in favour of the journalist, stating she had complied with good journalistic practices. The court also said that claimants had not been able to prove that the damages they alleged to have sustained were caused by Ahchieva's actions.

Mareshki appealed the decision. In September 2020, the Sofia City Court upheld the decision of the Sofia Regional Court. Another appeal was filed but the Supreme Court of Cassation did not admit the case for hearing.

Comment:

Although the decisions of the courts of first and second instance were unambiguous and with motives presented in exceptional detail, the claimants decided to appeal using the available legal mechanisms. As a result, the litigation was prolonged and the journalist was subjected to more emotional and physical pressure related to the risk of a decision against her and the possibility of being ordered to pay a large amount of money in damages.

For the entire duration of the trial, one of the claimants was an MP and deputy chairperson of the National Assembly. According to the case law of the European Court of Human Rights, the claimant's rank should have meant higher tolerance for public criticism. In addition, his position possibly enabled him to exert serious pressure on the journalist in addition to the litigation.

The judgments of the Regional Court – Sofia and the Sofia City Court, as well as the procedural order of the Supreme Court of Cassation, are valuable contributions to Bulgarian case law because of their detailed motives and their reliance on the case law of courts in Bulgaria and Europe.

Both the Regional Court – Sofia and the Sofia City Court published detailed motives why Ahchieva's investigation did not represent tort as outlined in the Obligations and Contracts Act. Both decisions highlight the fact that the opinions and evaluations in the shows represented commentary by the author concerning certain established facts. The journalist's statements were not defamatory and did not harm the claimants' honour but presented the journalist's point of view on a topic of high public interest. Last but not least, both courts concluded that it was not possible to find proof for the immaterial damages claimed, nor was it possible to connect the claimed damages to the journalistic investigation.

Case 10: Petar Mandzhukov vs Maria Theresheva

Maria Theresheva is a journalist with more than 15 years of experience in different Bulgarian and international media outlets: the Balkan Investigative Reporting Network (BIRN), ARTE, Deutsche Welle and BBC. Maria Theresheva is among the founders of the Association of European Journalists – Bulgaria.

On 9 May 2017, the news website *Dnevnik* published an article titled "The Coyote's trail: A machine gun's path from Serbia to Syria"[45]. The article was a collaboration between BIRN

44 prescribed to patients with arthritic diseases

45 https://www.dnevnik.bg/sviat/2017/05/09/2967739_po_sledite_na_koiota_putiat_na_edna_kartechnica_ot/#

and the Organized Crime and Corruption Reporting Project (OCCRP). It revealed details of a channel for the sale of weapons involving persons from Serbia, Bulgaria, Saudi Arabia, Turkey and the USA. One of the journalists working on the case was Maria Ceresheva. The investigation described how weapons were reaching destinations different that the initially stated ones and how licenses were being issued even when it was known that the destinations of shipments were different than the declared ones. It also highlighted the crucial role of arms traders. The article discussed the purchase of machine guns and other weapons, worth EUR 2.75 mln., which were intended for Saudi Arabia but ended up in Syria. One of the intermediaries involved in the deal was the company Bulgarian Industrial Engineering and Management (BIEM), owned by Petar Mandzhukov, a well-known arms trader, media magnate and property developer. A former co-owner of the football club CSAK – Sofia, Mandzhukov is a former executive of state-owned arms trader Kintex and a former agent of the security apparatus of the former communist regime.

In June 2018, Petar Mandzhukov and BIEM initiated litigation against Ceresheva, each seeking BGN 25,001 as compensation for immaterial damages. The claimants also demanded that Dnevnik issues a correction. According to the claimants, the article contained inaccuracies concerning BEIM's business activity and the personality of Petar Mandzhukov which then caused reputational damage.

In January 2020, the parties signed a settlement agreement obliging the journalist to publish a statement that Petar Mandzhukov and BEIM had not engaged in illegal behaviour.

Comment:

Ceresheva collaborated with several other journalists, collecting information and evidence about the Bulgarian track in the investigation. Nevertheless, she is the sole target of the litigation even though the article was clearly labelled as a collaborative project of OCCRP and BIRN. The article was originally published in English by *Balkan Insight*[45] and then translated and published in *Dnevnik* following an agreement between *Dnevnik*, OCCRP and BIRN. The original article also contained answers by BEIM. A version of the same text was also published by the OCCRP[46] and contained additional information about Mandzhukov's personality and his participation in the transaction. Despite all this, no legal action was initiated against Dnevnik, BIRN, OCCRP, Balkan Insight or any of the other co-authors except for Ceresheva. This suggests that litigation against the journalist was mostly aimed at intimidating her rather than obtaining redress for immaterial damages.

The article contains a large volume of information and outlines facts confirmed by official sources, such as Serbia's Ministry of Defense. According to the ministry, the Serbian state-owned factory Zastava had sold a "large number" of Coyote machine guns to BEIM, a Sofia-based arm dealer and intermediary, which was then supposed to export them to Saudi Arabia in 2015 and 2016. The article also referenced Zastava's financial reports where the specific amount (EUR 2.75 mln.) paid by BEIM in 2015 was mentioned. It referred to an official report by the United Nations where BEIM's participation in the diversion of weapons for Uganda in 2014 had been discussed. The information about Mandzhukov's past in the spy agency of the former communist regime had been obtained from the Dossier Commission, a public body. The Bulgarian Commercial Register had been consulted with respect to the ownership of BEIM. Furthermore, according to the consistent case law in Bulgaria, it is not possible for legal entities to claim moral damages and it was highly likely that the action filed by BEIM would be rejected. In this context, the liability sought from the journalist seemed to be deprived of legal ground.

The article did not allege that the claimants had engaged in unlawful acts, only that the actions of a chain of involved parties, none of them formally breaking the law, ended up producing an unlawful result. Nevertheless, anxiety about the outcome of the litigation, the length of trials and the related costs can sometimes make even those journalists who are certain about the quality of their work choose to settle even if they may be required to introduce changes to their texts. The fact that this case ended up with a settlement agreement is indicative of the fact that SLAPP litigation has an impact on journalists, regardless of the outcome of the litigation.

46 https://balkaninsight.com/2017/05/16/reaction-to-article-the-coyote-s-trail-a-machine-gun-s-path-from-serbia-to-syria-05-16-2017/

47 https://www.occrp.org/en/makingakilling/a-bulgarian-arms-broker-with-a-history-of-controversial-deals/

Case 11: Svetlin Mihaylov vs Boris Mitov and Mediapool

Boris Mitov is a journalist with Radio Free Europe/Radio Liberty. He has more than 15 years of experience as a court reporter. He has covered the work of the security services and the judiciary for different media, including BTA, Sega and *Mediapool* In 2021, the Anti-Corruption Fund Foundation presented him with its annual Red Line Award for Journalism Against Corruption.

Launched in 2000, *Mediapool* is the first Bulgarian website offering daily news and analyses. It was founded by a group of journalists with the mission to serve the public interest by providing quality content and adhering to the highest professional standards.

In 2019, Svetlin Mihaylov, then a judge at the Sofia City Court and later on at the Sofia Court of Appeal, filed a civil case for immaterial damages because of four articles published in Mediapool in February 2018.[48,49,50,51] The articles provided information about a competitive procedure to choose a chairperson of the Sofia City Court and contained critical comments about Mihaylov who had been refusing to answer questions in public despite being one of the candidates for the post. Critical comments were made about Mihaylov's track record and his extensive property portfolio. The articles mostly focused on facts from the claimant's professional biography that were already known to the public as well as on statements by third parties. The targets of the litigation were Boris Mitov, who had written the articles, and Stoyana Georgieva and the Infospace Foundation which owned Mediapool. The publishing company Mediapool OOD was subsequently also included among the litigation targets.

The claimant alleged that the articles contained defamatory and insulting expressions which had damaged his personal and professional standing, incurring considerable immaterial damages. Initially, Mihaylov filed a partial claim, demanding BGN 50,000 in compensation out of a total of damages worth BGN 100,000. Shortly afterwards, he increased his claim to BGN 100,000. More than a year later, the claim amount was decreased to BGN 60,000. The statement of claims also contained a request for the payment of interest as of 20 February 2018 (the date of the last one of the four articles). The indemnification was claimed jointly and severally from all respondents. To secure the claim the court allowed that distraints were imposed on the defendants' bank accounts.

At the end of 2021, Judge Daniela Popova from the Sofia City Court ordered Mediapool OOD, the editor-in-chief Stoyana Georgieva, the Infospace Foundation and Boris Mitov to pay jointly and severally judge Svetlin Mihaylov compensation of BGN 60,000 as well as the interest demanded by the claimant and all legal costs. The judgment was appealed before the Sofia Court of Appeal and, in December 2022, it was partially reversed. At present, the case is pending for hearing at the Supreme Court of Cassation.

48 https://www.mediapool.bg/gradskite-sadii-ne-podkrepyat-svetlin-mihailov-za-nov-upravlenski-mandat-news275452.html

49 https://www.mediapool.bg/gradskiyat-sad-poiska-za-shef-neopetnen-sadiya-a-ne-skandalen-milioner-na-hode-vss-news275648.html

50 https://news.lex.bg/pregled-na-pechata/%D1%81%D0%B0%D0%BC%D0%BE-%D1%84%D0%B0%D0%B2%D0%BE%D1%80%D0%B8%D1%82%D1%8A%D1%82-%D0%BD%D0%B0-%D1%81%D1%8A%D0%B4%D0%B8%D0%B8%D1%82%D0%B5-%D0%B7%D0%B0-%D1%88%D0%B5%D1%84-%D0%BD%D0%B0-%D1%81%D0%B3%D1%81/

51 https://www.mediapool.bg/svetlin-mihailov-vleze-po-speshnost-v-pravitelstvena-bolnitsa-i-otlozhi-vota-za-sgs-news275767.html

Comment:

The judgment of the Sofia City Court caused high levels of discontent among journalists in the country. At BGN 60,000, the compensation claim is the highest amount awarded so far in a defamation suit. This compensation amount is decided without the presentation of motives with only a reference to the fact that the law requires indemnification to be just and fair. According to the court, all of the published articles contained embarrassing allegations about the claimant and all expressions concerning him contained negative connotations expressed by the use of insulting phrases. In addition, the court said that the articles' headlines were provocative and aimed to attract readers' attention to embarrassing statements about a public personality. The decision did not discuss any of the defence's arguments and did not comment on whether the articles contained libellous and false information. The collected verbal evidence was interpreted fully in the claimant's favour, including the conclusion of a court-appointed expert according to whom health complications suffered by the claimant "could possibly" have resulted from the published articles. The judgment gives precedence to several extremely alarming trends:

- considerable increase in the amount of awarded compensation in cases against journalists: up until that point compensation amounts awarded in civil and criminal cases had been several times lower;
- the joint-and-several judgment against the journalist, the media outlet and its two owners: this is the first time a judgment is passed against the owners of a media outlet for causing damages by the publication of journalistic content;
- securing the claim by distraining at least BGN 300,000 from bank accounts (BGN 100,000 for each of the initial three defendants).
- Partial interpretation of the claims and evidence collected in the course of the trial which benefitted only one of the parties;
- Absence of an indisputably established causal link between the publications and the claimed damages amounting to BGN 60,000;
- Absence of any discussion on whether the facts outlined in the articles were true or not;
- No due consideration of the fact that the claimant was a public personality.

On 1 December 2022, the Sofia Court of Appeal issued a judgement which partially reversed the decision of the court of first instance:

- It decreased the awarded compensation amount from BGN 60,000 to BG 4,000;
- It said that the owners of a media outlet do not bear liability for the journalistic content, hence legal action was justifiable only concerning the author and the publisher;
- Took into account the plaintiff's status as a public personality and several other relevant criteria for the balance between respect for private life (Article 8 of the European Convention of Human Rights) and the freedom of speech (Article 10 of the European Convention of Human Rights), including the circumstance that journalists are bound to act in good faith, to provide verified and correct information, but the freedom of speech with respect to them may include a certain extent of exaggeration, presentation of shocking opinions, ideas and even provocations;
- Analyzed in specific detail each of the allegedly insulting phrases in the articles;
- Decided that two of the four articles did not contain insulting qualifications but only evaluative statements (e.g. "scandalous"). Decided that expressions alleged by the claimant to have unlawfully caused him damages had been taken out of context;
- Accepted that the word "scandalous" represented a negative evaluation but that the right to free speech allowed its use as far as people's honour and dignity were not being affected;
- The authorization of special surveillance means, the refusal to issue a registration for elections and the registration of the Grand Mufti's Office were all facts of the judge's professional duties. The same applied to his responsibility (as chairperson) to allocate cases to judges. Any negative evaluations of how these tasks had been carried out were protected by the right to free speech.
- Calling the plaintiff a "millionaire" and informing the public that he owned six real estate properties did not amount to defamation because the stated facts were not embarrassing, did not represent crimes, nor were they insults as they were not humiliating.

The decision of the Sofia Court of Appeal was motivated in detail and contained an objective analysis of the facts of the case. For the Sofia Court of Appeal, the only insulting allegations were those pointing to a close relationship between the claimant (in his capacity as a judge) and a political party (the Movement for Rights and Freedoms) and to the plaintiff seeking the support of senior political figures who were to influence voting in the Supreme Judicial Council for his benefit. Respectively, the court awarded compensation to the claimant because of these allegations only. Presently, the judgment of the Sofia Court of Appeal is being appealed before the Supreme Court of Cassation on the basis that there is available public information supporting the veracity of the above allegations.

Case 12: Hristo Kovachki vs Bivol

The website *Bivol* was established in 2010 by Asen Yordanov and Atanas Chobanov to serve as an investigative journalism platform. Since March 2011 *Bivol* is a Wikileaks partner for Bulgaria and the Balkan region. It has also entered partnerships with the OCCRP and the International Consortium of Investigative Journalists (ICIJ), the organization behind the Offshore Leaks, the Panama Papers and prominent investigations.

At the end of August 2019, Bivol posted an article[52] describing the links between a person under investigation for illegal trafficking of waste in Italy and Hristo Kovachki, a businessman with interests in the energy sector. The article presented information obtained from Italian journalists about deliveries and illegal storage of waste via a company owned by the person under investigation in Italy. The waste was then incinerated in thermal power plants linked to Hristo Kovachki.

The businessman filed a lawsuit with the Regional Court – Sofia. In his claim, he referred to specific excerpts from the article that he alleged were libellous and insulting, harming his honour, dignity and public standing. He further alleged that he had suffered negative mental and physical symptoms and asked to court to award him BGN 15,000 as compensation for the sustained immaterial damages.

The court decided that some of the language used in respect of the claimant was merely expressing the author's point of view, however, some phrases were insulting and libellous. The court, therefore, awarded Kovachki BGN 2,000 as compensation for damages.

After the ruling, the two parties reached a settlement agreement and the judgment was annulled.

Comment:

The judgment of the Regional Court – Sofia in the case Kovachki vs Bivol is an example of inconsistent case law on the issue of targeting journalists on account of their critical materials. The fact that judges found some of the article's content to be an expression of the journalist's right to expression, guaranteed by the Constitution of the Republic of Bulgaria and the European Convention of Human Rights, while other parts of the article were deemed insulting and libellous allegations is highly alarming. According to the court, the expressions "businessman from Samokov" and "the energy boss" represented evaluations by the journalist that could not be found to be untrue. However, the expression "energy mobster" was regarded differently and was found to be insulting. The court found that this and other phrases in the article focused attention on the claimant's personality and presented him as someone involved in illicit activity. It should be noted that when hearing cases against journalists, courts should review all relevant materials through the prism of the rights to seek, receive and disseminate information, guaranteed by the above-mentioned legal texts. This is particularly important when topics of high public interest, such as the issue of waste incineration, are concerned. The decision to qualify some excerpts of the text as insulting and libellous raises some questions, especially considering the defendant's statement that many of the excerpts that the claimant alleged to be offensive were not statements made personally by the author of the article but instead quoted texts from official documents and investigative pieces by foreign journalists. In other words, the media outlet was ordered to pay compensation to Hristo Kovachki for quoting others and including references to the findings outlined in official documents. The companies mentioned in the article were given the right to reply in another piece which followed immediately after the first one. This is a good journalism practice that the court should have taken into account when rendering its judgment.

52 https://bivol.bg/kovachki-trash.html

Case 13: Eurohold Bulgaria SA vs Bivol

The website Bivol was established in 2010 by Asen Yordanov and Atanas Chobanov to serve as an investigative journalism platform. Since March 2011 *Bivol* is a Wikileaks partner for Bulgaria and the Balkan region. It has also entered partnerships with the OCCRP and the International Consortium of Investigative Journalists (ICIJ), the organization behind the Offshore Leaks, the Panama Papers and prominent investigations.

In July 2021, *Bivol* published an article[53], кabout a deal to transfer the Bulgarian assets of the Czech energy company CEZ Group to Eurohold Bulgaria SA and about the raising of the prices of electricity and natural gas approved by the Energy and Water Regulatory Commission. The article claimed that Eurohold Bulgaria SA. had links to Atanas Tilev, a former agent of the secret services of the communist regime, known as Agent Rumyantzev from the secret services' First Main Department. The link between Tilev and Eurohold was the fund Expat Capital, managed by Nikolay Vasilev, former Minister of Transport in the government of the National Movement for Stability and Progress (NDSV) who was (unsuccessfully) nominated as Prime Minister by the There is Such a People party in July 2022. The article also claimed that there were ties between Eurohold and the Bulgarian branch of the Russian bank VTB Capital which was headed by Milen Velchev, former finance minister in the NDSV government. Bivol published excerpts from contracts and correspondence and referenced the Commercial Registry of Luxemburg to support its conclusion that Tilev and the Russian Bank were among the owners of Eurohold and that the company had been financed by secret funds of the former State Security.

Eurohold Bulgaria SA. regarded the claims that it was connected to the former secret services agent Tilev and VTB Capital as defamatory and harmful to its reputation. The company initiated legal action, filing a claim at the Sofia City Court, demanding partial compensation worth BGN 50,000. According to the company, the full amount of the alleged immaterial damages and losses of future earnings was BGN 1,000,000, a record-breaking amount for Bulgaria. The company claimed that, from the date of publication of the article until the day that the legal proceedings were initiated, the value of its stocks traded at the Bulgarian Stock Exchange had dropped by 20 per cent. At the same time, the price of its shares traded in Warsaw — where Bivol is not read — had increased by 60 per cent.

The case is being heard at the Sofia City Court and a decision is pending.

Comment:

The exceptionally high amount of compensation sought by the claimant is a clear sign of the strategic nature of the case[54]. Bulgarian case law on the issue of whether legal entities can sustain immaterial damages continues to be contradictory. Some courts adhere to the recently predominant view that legal entities cannot suffer such damages, while others decide that this is indeed possible. In this case, judges will have to consider this first issue before moving on to review the specifics of the case. If the court decides that legal entities cannot sustain immaterial damages, then the claim will be dismissed without any review of the contents of the article. If judges have to review the article, they will have to decide whether having connections with the former secret services and a Russian bank can truly damage an entity's reputation so as to incur immaterial damages, or whether the media outlet had revealed information about the ownership of the company, negatively commenting on this fact.

53 https://www.facebook.com/bivolnews/posts/4323017874416628/
https://www.facebook.com/bivolnews/posts/4359386047446477/
https://www.facebook.com/bivolnews/posts/4401716026546812/?locale=ar_AR
https://bivol.bg/vassilev-tilev-evrohold.html

54 Compared to Case 22 where the full amount of the alleged damages is sought by the claimant.

It will also be important to establish whether the facts outlined in the article are true or not and — if not — whether publicizing them could have caused such damages. The overall impression from the article is that the authors had expressed a negative opinion about the claimant based on reviewed documentation and the presence of indirect links hinting at the alleged connections. Therefore, the expression of the authors' negative opinion should fall within the remit of their right to free speech. Such an act is not very likely to cause the immaterial damages claimed, namely the drop in the share price of the company.

Case 14: Hristo Kovachki vs Economedia AD

Economedia AD is the biggest publisher of business titles in Bulgaria and one of the leading online publishing groups in the country. It was founded in 1993. Its portfolio includes the business weekly *Capital* (Капитал) and the news website *Dnevnik* (Дневник).

In July 2019, Capital published three articles[55], commenting on the crisis related to the shortages of electricity and its high price on the Independent Bulgarian Energy Exchange. The author, Ivaylo Stanchev, argued that the deficit of electricity on the Bulgarian market had been created artificially. According to Stanchev, one of the people responsible for this state of affairs was Hristo Kovachki, de-facto owner of the Bobov Dol Thermal Power Plant, Maritsa 3 Thermal Power Plant, Brikel Thermal Power Plant as well as the cogeneration district heating companies in Sliven, Pernik, Burgas, Vratsa, Pleven, Veliko Tarnovo, Gabrovo and Ruse. For Stanchev, the main reason for the electricity shortages was the concentration of a large share of electricity production in companies linked to Kovachki.

In the autumn of 2019, Kovachki initiated legal proceedings at the Regional Court – Sofia, complaining that the articles contained untrue and defamatory allegations of illegal trading of electricity, establishment of monopoly and others. As a result of the allegedly libellous allegations, he claimed to have suffered immaterial damages: reputational damage, negative emotional states, physical symptoms such as headache and high blood pressure, and many others. Kovachki asked the court to order the publisher of Capital and Economedia AD to pay him BGN 15,000 in compensation for damages.

The Regional Court – Sofia accepted as proven some of the alleged sustained immaterial damages and held that the allegations in the articles were untrue as they could not be proven in the course of the trial. In January 2021, the court ordered Economedia AD to pay BGN 5,000 in compensation for some of the claimed damages. The court did not find indisputable proof for the causal link between the publication of the articles and the health problems that Kovachki claimed to have experienced as a result.

Economedia AD firmly opposed the decision and filed an appeal with the Sofia City Court which is yet to issue a judgement.

Comment:

The judgment of the Regional Court – Sofia is extremely alarming for several reasons. First, the court had not taken into account the legal arguments stated in the answer to the statement of claim, pointing out that this answer had been filed after the official deadline. This is a significant violation of procedural law and violates the right to a fair trial. No consideration had been given to the evidence provided by the respondent establishing the presence of connections between the claimant and the energy companies mentioned in the articles.

55 https://www.capital.bg/politika_i_ikonomika/bulgaria/2019/07/12/3936951_kude_e_schupen_pazarut_na_tok_za_biznesa/
https://www.capital.bg/politika_i_ikonomika/bulgaria/2019/07/12/3936958_chestita_nova_energiina_godina/
https://www.capital.bg/politika_i_ikonomika/bulgaria/2019/07/12/3936954_i_oshte_neshto_v_smetkata_za_tok/

The court had not considered the fact, highlighted by the respondent, that the public prosecution had conducted checks at the companies in question on the grounds of suspected violations, largely overlapping with the violations referred to in the articles.

The second substantial violation was, initially, a different journalist and media outlet had been mentioned as authors of the articles in the statement of claim filed by the claimant's legal team. A correction was made months later during one of the court sessions in 2020. Instead of returning the claim documents early, at the time they were being reviewed, the court accepted the correction, stating a "technical error" had occurred. Kovachki was confused because at the time he had also initiated litigation against a different journalist and media outlet, claiming compensation for immaterial damages sustained as a result of re-printing of Stanchev's articles. What the Regional Court – Sofia deemed to be a "technical error" actually changed the facts in the statement of claim: the actions which had prompted the legal action brought were carried out by a different party.

In addition, in its judgment, the Regional Court – Sofia quoted excerpts from the articles and reproduced the claimant's arguments without analysing and discussing in any way the defence's arguments. Furthermore, the court did not take into account, nor did it discuss the difference between alleged facts and evaluative statements by the author of the articles, which is a practice applied by the Constitutional Court, the Supreme Court of Cassation and the European Court of Human Rights. The Regional Court – Sofia completely neglected the fact that Hristo Kovachki was a public personality which, as per the established case law, means he should be more tolerant of public criticism. Another aspect that was not considered was the high level of public interest in the topics reviewed in the articles.

Case 15: Asya Pandzherova and Dimitar Krastev vs Kalin Baychev, Sega and Economedia AD

Sega is an independent national weekly newspaper established in 1997. Its publisher is Sega EAD.

Economedia AD is the biggest publisher of business titles in Bulgaria and one of the leading online publishing groups in the country. It was founded in 1993. Its portfolio includes the business weekly *Capital* (Капитал) and the news website *Dnevnik* (Дневник).

In September 2018, Kalin Baychev, an employee of the inspection department of the Human Resource Development Centre (HRDC) at the Ministry of Education and Science (MES), filed a report to the director of the centre and the ministry about irregularities in the evaluation of candidate projects under the Erasmus+ EU programme. Baychev filed the report together with several of its colleagues. The report voiced concerns about the presence of conflicts of interest in the evaluation of projects with examples given of cases where one person was responsible for evaluations, a family member was a partner, and a related third party was a direct beneficiary. Among the implicated persons was Asya Pandzherova, a lecturer at the University of National and World Economy, who was responsible for evaluating candidate projects. Pandzherova's future spouse, Dimitar Krastev, participated as an "international" partner in the projects, through his London-based companies, in the projects evaluated by her. Associations related to Krastev's parents were beneficiaries. According to the HRDC team which filed the report, projects related to Krastev's companies received financing worth more than EUR 1.6 mln. Following the submission of the report, Kalin Baychev and some of his colleagues were dismissed while others reported they had been subjected to pressure and harassment. The case became public after Baychev gave several interviews about the uncovered violations, speaking to various media outlets including Capital[56] and *Sega*[57].

56 https://www.capital.bg/politika_i_ikonomika/bulgaria/2019/07/30/3944948_ministerstvo_za_osvobojdavane_na_neudobnite/
https://www.capital.bg/politika_i_ikonomika/bulgaria/2019/02/08/3386932_ima_oshte_neshto_gnilo_na_grafa/

57 https://www.segabg.com/category-observer/kak-zatihva-edin-skandal-za-konflikt-na-interesi

The Inspectorate at the Ministry of Education and Science carried out its own inspection and also established the presence of conflicts of interest. As a result, the project's implementation was suspended and the financing was withdrawn. According to an audit by the Executive Agency Audit of European Union Funds at the Ministry of Finance, a conflict of interest was established in the projects evaluated by Asya Pandzherova and these projects should not be financed. Reports were sent to the Prosecutor's Office and the Commission for Anti-Corruption and the Forfeiture of Illegally Acquired Property (CAFIAP). However, the public prosecution refused to initiate pre-trial proceedings, while CAFIAP decided that Pandzherova did not hold a senior public position and was therefore outside the focus of its activity.

Immediately after the two refusals to initiate proceedings against Asya Pandzherova and Dimitar Krastev, the pair initiated legal action against Baychev and two media outlets. The case against Baychev was filed with the Sofia City Court and featured a compensation claim for immaterial damages worth BGN 32,171.70. The cases against Economedia and Sega were filed with the Regional Court – Sofia with the claimants alleging the publication of untrue and defamatory allegations.

The case against Kalin Baychev is still pending with the Sofia City Court.

The proceedings against Economedia ended in 2020 after the Regional Court – Sofia decided to reject the claim. There is no information on whether the judgment was appealed.

The case against Sega reached a second instance, the Sofia City Court, which returned it to the Regional Court – Sofia due to an unclear determination of the terms of the claim. The case is still pending with the Regional Court – Sofia.

As a result of the scandal, the European Commission demanded that Bulgaria pay back more than EUR 1.5 million to the Erasmus+ programme. At present, more than EUR 860,000 has been paid back. Out of this sum, EUR 160,000 were recovered voluntarily from the beneficiary companies. To recover the rest of the money, the HRDC has brought forward 17 legal cases, four of which have already been decided in its favour.

The last known details of the case are that Human Resource Development Centre has referred it to the Sofia City Prosecutor's Office based on findings established by an internal audit and audits by the Executive agency Audit of European Union Funds and by the European Anti-Fraud Office (OLAF).

Comment:

Kalin Baychev's case shows that besides journalists, public servants who act as whistleblowers (as defined by Directive (EU) 2019/1937 and the newly adopted *Act on the Protection of Persons Submitting Reports or Publicly Disclosing Information about Violations*) can be targeted by SLAPP litigation, too. The claimants initiated legal action against the former employee of the Human Resource Development Centre because he had publicly commented on the suspicions of wrongdoing described in his report. Those suspicions were subsequently confirmed by an inspection by the Ministry of Education and Science and an audit by Executive agency Audit of European Union Funds. The claimants demanded compensation both for immaterial damages related to suffering and reputational damage and for material damages (the cost of medical procedures which allegedly failed because of the stress that the claimants experienced once Baychev's report had become public). The court is yet to render a judgment on the case. Considering that Baychev had submitted the report in good faith and that his findings were later confirmed by several other public institutions, including OLAF, the litigation seems to be completely unjustified and an act of revenge on the part of the affected parties. The claimants' actions had caused damage to the budget of more than EUR 1.5 mln. In this regard, the public prosecution's to initiate criminal proceedings is inexplicable.

The motives outlined in the statements of claim filed against Sega and Economedia were identical: the claimants had sustained immaterial damages because of the untrue allegations which had harmed their professional reputation. Both panels of judges at the Regional Court – Sofia decided that the evidence of tort could not be found and thus rejected the claims. In addition, the court established that the findings of several reports, including an audit by OLAF, did contain proof that Asya Pandzherova's actions represented a conflict of interests. Furthermore, according to the court, the information presented by the two media outlets was correct.

https://www.segabg.com/node/31036
https://www.segabg.com/category-bulgaria/oshte-edin-bivsh-sluzhitel-po-programa-erazum-se-oplaka-natisk

The fact that the claimants took legal action once the checks by the public prosecution and CAFIAP were completed together with the manifestly unfounded claims upheld by them, are both clear indicators that the real goal behind the litigation was to pressurize the whistleblower and the media outlets rather than to seek redress.

Case 16: Delta Guard Ltd. vs Iliyan Vasilev

Iliyan Vasilev is a diplomat, energy expert and anti-corruption activist. He is the founder and chairperson of the Governing Council of the Alternatives and Analyzes Foundation and managing partner of Innovative Energy Solutions EOOD. From 1997 to 2000, Vasilev was chairperson of the InvestBulgaria Agency, and from 2000 to 2006 he served as Ambassador of the Republic of Bulgaria to the Russian Federation. He is a former chairperson of Deloitte Bulgaria. He has acted as an energy advisor to several Bulgarian governments. His opinions on energy security are published by many media outlets, including the *Financial Times* and Reuters.

In August 2020, Iliyan Vasilev posted a comment[58],about the activity of the security company Delta Guard Ltd on his personal Facebook page. His post was published by several media outlets. The company regarded the text as defamatory and harmful to its reputation. Delta Guard Ltd. initiated legal action against Vasilev, claiming BGN 5,000 in compensation for immaterial damages, namely the harming of its reputation and good name.

Vasilev's legal representatives disputed both the admissibility and the justifiability of the action brought by Delta Guard Ltd. On the one hand, the action was inadmissible because, legal entities cannot sustain immaterial damages as a result of an infringement on their good name, as per Bulgarian law. On the other hand, the action was also unjustified because, in his post, Vasilev had expressed his personal opinion on issues of public significance. In addition, his legal team claimed, he could not be held liable for the decisions of online media outlets to publish his opinion, nor could he be held liable for the headlines that the media outlets had added.

In its judgment, the Regional Court – Sofia thoroughly motivated its position that immaterial damages represented sustained pain and suffering resulting from an unlawful act and that such damages were related to personal feelings and perceptions that legal entities do not have. Therefore, the claimant, in its capacity as a legal entity, could not have possibly sustained immaterial damages. This was sufficient to deem the claim unjustifiable and it was, thus, rejected in full.

Delta Guard Ltd. filed an appeal at the Sofia City Court which agreed with the motives of the court of first instance and upheld its judgment in October 2022. The judgment of the Sofia City Court is final.

58 https://www.facebook.com/ilian.vassilev.9/posts/pfbid02tMPmbv8bVu9NZeyEt4vLWXwxcnmv9JV5FLsCTJuKCkQ8vzveTCUNt85GTZwy1BDBl
https://www.facebook.com/profile/722719429/search/?q=%D0%B8%D1%81%D1%82%D0%BE%D1%80%D0%B8%D1%8F%D1%82%D0%B0%20%D1%81%20%D1%87%D0%B0%D1%81%D1%82%D0%BD%D0%B8%D1%82%D0%B5%20%D0%B3%D0%B0%D1%80%D0%B4%D0%BE%D0%B2%D0%B5

Comment:

One crucial factor in the litigation involving Delta Guard Ltd. and Iliyan Vasilev is the timing. Delta Guard Ltd. came to the fore of public attention after being named in an investigation by the Anti-Corruption Fund Foundation (ACF). The investigation, titled "The Eight Dwarves", showed concrete examples of how unlawful mechanisms were used to interfere in legal disputes and how law enforcement bodies participated in attempts to take over a business. It also showed the public prosecution illegally handling tangible evidence of high monetary value. At the time when the claim against Iliyan Vasilev was filed, he was a member of the Board of Directors of ACF. This fact suggests that the litigation against Vasilev could well represent an attempt to retaliate against him and impose censorship.

The case law concerning whether a legal entity can sustain immaterial damages is inconsistent. Court decisions have been issued supporting both positions. Some Bulgarian courts and some European institutions have rejected claims for immaterial damages filed by legal entities on the grounds that a legal entity may sustain immaterial damages as a result of a breach of a specific right (the right to freedom of religion, the right to freedom of association, etc.). However, according to the case law of the European Court of Human Rights, the right to protection of reputation and good name is considered to be a part of the "identify and psychological integrity" of persons and is therefore in the scope of their private life. Legal entities do not possess psychological integrity and, therefore, cannot sustain immaterial damages as a result of interference with their private life. The motives in support of the opposite thesis are that it is not always possible for a legal entity to account precisely the financial value of immaterial damages sustained as a result of reputational harm so they could bring an action for compensation for future earnings. These are the reasons why courts continue to oscillate between the two arguments, producing inconsistent case law.

Case 17: Delyan Dobrev vs Iliyan Vasilev

Iliyan Vasilev is a diplomat, energy expert and anti-corruption activist. He is the founder and chairperson of the Governing Council of the Alternatives and Analyzes Foundation and managing partner of Innovative Energy Solutions EOOD. From 1997 to 2000, Vasilev was chairperson of the InvestBulgaria Agency, and from 2000 to 2006 he served as Ambassador of the Republic of Bulgaria to the Russian Federation. He is a former chairperson of Deloitte Bulgaria. He has acted as an energy advisor to several Bulgarian governments. His opinions on energy security are published by many media outlets, including the *Financial Times* and Reuters.

In May 2021, Delyan Dobrev (former energy minister and Member of Parliament from the GERB party) initiated legal action against Ilyan Vasilev because of two posts[59] that the lather had shared on his personal Facebook page. In the posts, which Dobrev claimed contained insulting and defamatory allegations, Vasilev commented on Dobrev's attitude about a project to construct a gas interconnector between Greece and Bulgaria. The former energy minister filed a civil suit against Vasilev, claiming compensation for sustained immaterial damages worth BGN 52,000 (BGN 26,000 for each of the two social media posts). Dobrev also requested that a distraint is imposed on Vasilev's receivables in order to secure the claim. The Sofia City Court approved Dobrev's request. Vasilev disputed the injunctive relief before the Sofia Court of Appeal but the court confirmed it.

According to Vasilev and his legal team, the posts discussed an issue of high public interest. In addition, as a famous politician, Dobrev should be more tolerant of criticism compared to ordinary people. The Sofia City Court decided that the social media posts expressed Vasilev's personal opinion and were thus not defamatory. Dobrev's claim was rejected.

59 https://www.facebook.com/ilian.vassilev.9/posts/pfbid0WEq9R1RYA3x7YPcNqnQcdbJ4Zx9wQYE7neReJ6abeAPbRCrNYQ2sBozV9ZUUM9TSl
https://www.facebook.com/ilian.vassilev.9/posts/pfbid02FMR2vjEGsnKFLoPn87TuSUpcCoJ5sdvz1a2Mg8mPkoa61DvQiD1YMpwu81P3uqrHl

Dobrev appealed the decision at the Sofia Court of Appeal. In November 2022, the Sofia Court of Appeal upheld the decision of the court of first instance. The distraint on Iliyan Vasilev's accounts was lifted in early 2023.

Comment:

In this case as in many others exhibiting features of SLAPP litigation, the imposition of distraint over the receivables of defendants is not intended to actually secure compensation claims. This legal mechanism set out to ensure the indemnification of persons who had sustained damages is increasingly used to make it impossible for the targets of SLAPP litigation to cover everyday expenses. Trials typically take up a lot of time which means that defendants are unable to access their funds over lengthy periods. In this particular case, Iliyan Vasilev's accounts were blocked for almost two years.

Case 18: Yane Yanev vs the Anti-Corruption Fund Foundation

The Anti-Corruption Fund Foundation (ACF) is a civil, expert organisation which supports public institutions in the efforts to counteract and investigate corruption, abuses of power, conflicts of interests and other violations within the public sector. ACF dedicates most of its time and efforts to conducting journalistic investigations on topics of high public interest, especially related to how public funds are spent. The foundation also actively exposes corruption schemes and illegal practices in all spheres of public life and especially within the judiciary. The findings of most investigations are presented via short documentaries which aim to reach out to the public, explaining major issues in the functioning of public authorities such as unauthorised influences which hamper the democratic and impartial functioning of institutions. ACF's main objective is to increase public awareness about the issue of endemic corruption and to support the adoption of good practices, standards and recommendations to fight corruption.

In October 2021, Yane Yanev, a municipal councillor who had previously served as an MP and anti-corruption advisor to former prime minister Boyko Borisov initiated legal action against the ACF. He claimed that he had sustained immaterial damages as a result of exposure of his private after he was recorded by a hidden camera and featured in an ACF documentary "List of Quick Control: The Story of Veselin Denkov and the Specialised Justice System"[60]. The claimant did not dispute the authenticity of the recordings. However, he stated that the recorded conversations between him and Ivayla Bakalova revealed special private relations between the pair. In addition, he alleged that the information he had revealed on the recording — about the manner of functioning of the specialised criminal justice, the existence of unauthorised ties and dependencies, the possibility to influence the system, as well as information about meetings that Yanev had held with high-ranking officials and magistrates — was completely false. The claimant alleged that in the recorded conversations he had intentionally manipulated Bakalova with untrue information to obtain a contract for the supply of beef to Veselin Denkov's restaurants. Yanev claimed that the damages sustained by him had resulted from two criminal offences: the illegal recording of the conversations with special technical means (hidden camera) and the use of intimidation and force to coerce him to confirm the information revealed in the conversations. In the same proceeding, Mr Yanev also brought an action for compensation under the Copyright and Neighbouring Rights Act. He claimed that, in practice, he had played the main part in the ACF documentary, as most of it featured his recording, and should have been awarded compensation as a performing artist. The two claims were brought as partial ones, each worth BGN 5,000.

60 https://acf.bg/bg/spisak-za-barz-kontrol-istoriyata-na-ve/

Two court instances rejected the action for immaterial damages on the following grounds: the excerpts of the recordings featured in the documentary were not from conversations with Bakalova, but from conversations with Tosheva, a third party; the documentary concerns a topic of significant public interest, namely the manner of functioning of certain units of the judiciary and the existence of improper mechanisms of influence over them; the recorded conversations do not reveal information about any personal relations of the concerned persons, including the claimant, therefore any interference in his private life is ruled out; the broadcast statements only contain information pertaining to the official functions and capacities of officials from the judiciary and the executive branch; Yanev is a public personality — a politician, municipal councillor, the chairperson of a political party, former MP with many public administration contacts; as far as public personalities are concerned, the protection of the right to private life is more restricted and it is justified that their actions and statements are the focus of public attention; there is no violation of the right to protection of personal data since the date was handled for the purposes of a journalistic investigation; good journalism practices have been complied with as the claimant was repeatedly given the opportunity to comment.

The court also rejected the action for compensation under the Copyright and Neighbouring Rights Act. It decided that the claimant did not have the legal capacity of a performer and therefore the inclusion of hidden camera recordings done without his consent did not result in the violation of neighbouring rights. The court held that: the documentaries reproduced actual events and did not rely on interpretation by performers; in documentary-making neighbouring rights are only granted to story-tellers (hosts), persons who produce voiceovers and actors who may be used to reproduce actual events; participants in real-life events are not regarded as performers; during the recorded conversations the claimant was being himself rather than interpreting a script and giving a performance; the claimant's allegations that his personal conversations had been recorded (the reason why he filed the action for damages from the interference with his private life) a priori rule out the possibility to consider these conversations as acting performances; whether the claimant told truths or untruths in the recorded conversations was irrelevant to the issue of whether the conversations could be legally defined as artistic performances.

The judgment of the Sofia Court of Appeal is final concerning the action for damages. The decision concerning the action for breached intellectual property rights can still be appealed at a cassation court.

Comment:

The investigation into Veselin Denkov's case is a continuation of ACF's investigation "The Eight Dwarves"[61] the organisation's most prominent investigation in 2020. But while "The Eight Dwarves" shows the consequences of receiving unauthorised assistance regarding criminal cases handled by the Specialised Court and Prosecutor's Office, the "List of Quick Control" shows what happens while cases are still at the preceding phase, namely how such "assistance" is sought and negotiated with the help of "intermediaries". Both court instances analysed the facts and reviewed in detail the two claims. Following an examination of the arguments of all parties and the collected evidence, the courts rendered judgments on the action for sustained immaterial damages while taking note of the principle of balance between personal and communication rights, as adopted in the case law of the Constitutional Court and the European Court of Human Rights. The decision to reject the claim for breached intellectual property rights is also motivated in detail with references to the applicable Bulgarian and international legal texts. In case a cassation court accepts the motion to appeal, it can be reasonably expected that the decision of the lower instance court will be upheld. However, a cassation hearing will considerably lengthen the trial which has already taken three years without any delays in the administration of the case or the issuing of the court decisions.

61 https://acf.bg/bg/osemte-dzhudzheta-novo-razsledvane-2/

Case 19: Lachezar Ivanov vs Dimitar Stoyanov and Angel Aleksiev

Dimitar Stoyanov is an investigative reporter. He has worked for Inforadio, the Bulgarian National Radio, NOVA TV, bTV and Bivol. He is presently working for BIRD *(Bureau for Investigative Reporting and Data).*

Angel Aleksiev is a doctor of pharmaceutical sciences. The topic of his dissertation is pharmaceutical technology and bio-pharmacy.

On 31 August 2021, BIRD published an article[62] about Assoc. Prof. Lachezar Ivanov, an MP from the political party GERB, and how he acquired and then sold shares of the US company Enzolytics (specializing in therapies for the medical treatment of infectious diseases). The article referred to an earlier article by Radio Free Europe/Radio Liberty[63], which claimed that Enzolytics, which has Bulgarian citizen Harry Zhabilov as a member of its management team, awarded Ivanov with company shares as payment for consultancy services. The shares were subsequently sold for huge profit amounting to more than USD 1.6 million. Because of the transaction, the State Agency for National Security, CAFIAP and the Prosecutor's Office started investigations against Ivanov on money laundering charges. In August 2021, the Specialised Prosecutor's Office initiated proceedings for money laundering[64]. Radio Free Europe/Radio Liberty had approached Ivanov for comment. In the article he did not dispute the above-mentioned facts, saying that he had not violated the law and was not worried about the outcome of the investigations.

Stoyanov's and Aleksiev's article also quoted Dimitar Savov, Harry Zhabilov's business partner. According to Savov, the shares given to Ivanov were a bribe so he would agree to use his influence and assist Enzolytics in a bid to take over the Bulgarian-American company Immunotech. The article went on to discuss the commercial disputes between Immunotech and Enzolytics about the ownership of patents for a medicine to treat HIV and several types of cancer. The patents had been claimed by one of the companies, which had declared them a part of its assets. The authors provided more details about the case and quoted a source according to whom Lachezar Ivanov had acquired his shares in Enzolytics unlawfully. The article also provided information from the register of the U.S. Securities and Exchange Commission (SEC), showing that Enzolyticss shares had also been acquired by Kameliya Tsoklinova, the mother of Ivanov's child (Tsoklinova had acquired her shares on the same date as Ivanov and she, too, had been awarded them under a consultancy agreement). Politician Volen Siderov and his partner Denitsa Siderova had also acquired shares, as well as Valentin Dimitrov, the last director of the now-bankrupt chemical plant Himko. The journalists presented two different accounts (by Savov and Zhabilov) of the relations between Enzolytics and Immunotech and the stage of development and licensing of the cited medicine.

BIRD's article was reprinted by the website Narod.bg[65], but with a different heading and containing stronger language.

According to Assoc. Prof. Ivanov, the two articles were defamatory and falsely attributed various criminal offences to him. He initiated proceedings against Stoyanov and Aleksiev, claiming compensation for sustained immaterial damages worth BGN 10,000. The action was filed with the Regional Court – Sofia and the compensation amount was claimed for sustained immaterial damages resulting from the publication of the two articles – in BIRD and Narod.bg. The case is expected to be scheduled for hearing at the Regional Court – Sofia.

62 https://bird.bg/zhabilov-ivanov-enzolytics/

63 https://www.svobodnaevropa.bg/a/31370625.html

64 https://www.mediapool.bg/lachezar-ivanov-ne-zhelae-da-se-otkazva-ot-imuniteta-si-za-delo-zaradi-prane-na-pari-news325330.html

65 https://narod.bg/2021/08/31/%D1%81%D1%8A%D0%B4-%D0%B8-%D0%B7%D0%B0%D1%82%D0%B2%D0%BE%D1%80-%D0%BB%D1%8A%D1%87%D0%BE-%D0%BC%D0%BE%D0%B7%D1%8A%D0%BA%D0%B0-%D0%BF-%D1%80%D0%B8%D0%B1%D1%80%D0%B0%D0%BB-%D0%BF%D0%BE%D0%B4%D0%BA%D1%83/

Comment:

Besides damages following the publication of the article in BIRD, the claimant was seeking redress for immaterial damages resulting from defamatory (in his opinion) allegations in a text published in Narod.bg website. He mentioned Stoyanov and Aleksiev as authors of the text published by Narod.bg too. At the beginning of that text, the publication had specified that the contents were based on an article by BIRD. In addition, the article's headline as well as some explicitly specified statements therein were different compared to the original article. Stoyanov and Aleksiev were mentioned at the end of the article in Narod.bg (as the publication had likely just copied that part of the text directly from BIRD) which the claimant used as an argument to seek liability from them for that article as well. In the filed statement of claim Assoc. Prof. Ivanov had quoted a decision of the Supreme Court of Cassation stating that publishers are liable for texts containing false information if they have failed to exercise due diligence in verifying the facts. Considering the above, it is unclear why the action was brought against the two authors rather than against the publishers of the websites. All the specific texts in the articles, deemed to be defamatory by the claimant, were either quoted statements of a clearly specified source or expressions of the authors' personal opinions admissible within their right to free speech. This is why there should be no grounds to grant the claimant's request for compensation.

Case 20: Menko Menkov vs Dimitar Stoyanov and Atanas Chobanov

Dimitar Stoyanov is an investigative reporter. He has worked for Inforadio, the Bulgarian National Radio, NOVA TV, bTV and Bivol. He is presently working for BIRD *(Bureau for Investigative Reporting and Data).*

Atanas Chobanov is an investigative journalist. He has served as editor-in-chief of *Bivol* (from 2010 to 2020) and a Member of the Board of OCCRP (from 2016 to 2018). Since 2020 he is a member of the investigative reporting network ICCIJ. Chobanov is currently a journalist at BIRD.

In 2021, BIRD won the Red Line Journalism Against Corruption Award from the ACF for its contribution to the global Pandora Papers investigation[66].

On 11 November 2021, Stoyanov and Chobanov published an article[67], about an offshore company which until 2017 had been the property of attorney Menko Menkov. Menkov is publicly known as the legal representative of former prime minister Boyko Borisov and other former ministers from GERB. The article described how the offshore company had changed ownership and mentioned the fact that the names of the company and of the attorney were being featured in the popular international investigation known as the Pandora Papers.

In February 2022, Menkov filed a claim for compensation of immaterial damages worth BGN 30,000 against the two authors at the Sofia City Court. The amount is a partial claim of the full amount of BGN 100,000. According to the statement of claim filed by Menkov, the article was defamatory and incited public reproach against him. The case is expected to be heard by the Sofia City Court.

66 https://bird.bg/pandora-papers-intro/

67 https://bird.bg/pandora-menkov/

Comment:

The most striking aspect of this case is the fact that, in the statement of claim, Menkov does not deny the facts in the article: that he had owned the offshore company and had subsequently transferred ownership to a foreign citizen. What the claimant pointed out as a violation was the manner in which the information was presented and commented on, namely that ownership of the company was something shameful and not appropriate for a respected attorney. On several occasions, the claimant made references to the journalists' right to free expression in his statement of claim. He also referenced texts from the Constitution of the Republic of Bulgarian and the European Convention of Human Rights which guarantee freedom of speech. However, he pointed out that these rights must not be used to discredit him publicly. The claim appears unjustifiable since the claimant has failed to point out specific defamatory statements. Instead, his allegations appear to be subjective assumptions, interpretations and associations. The excessively large amount of the claim should also be noted. Even the amount of the partial action (BGN 30,000) is exceptionally high and could hardly justify the immaterial damages allegedly sustained by the plaintiff.

Case 21: Razmig Chakaryan vs Dimitar Stoyanov

Dimitar Stoyanov is an investigative reporter. He has worked for Inforadio, the Bulgarian National Radio, NOVA TV, bTV and Bivol. He is presently working for BIRD *(Bureau for Investigative Reporting and Data).*

On 9 January 2023, BIRD published an article[68], presenting information about the Kapitan Andreevo Border Crossing. The topic has been the focus of public attention ever since 2013 when a journalist investigation revealed that services that should be performed by public agencies like the disinfection of vehicles and the collection of fees had been outsourced to a private company. Public attention was diverted after changes in the management of the Bulgarian Food Safety Agency. However, the activity of the company PFC EOOD continued (with some interruptions in 2014 and 2015). In 2019, ACF presented its own investigation into the issue and released the documentary "The Golden Puddle". It also filed reports to the public prosecution and the Public Financial Inspection Agency. In the summer of 2021, the corruption practices at the border crossing were discussed by a special parliamentary committee set up to review the GERB party's 12-year rule[69]. At one of the committee's sessions, it became publicly known that the issues highlighted by ACF were not the only questionable practices at the Kapitan Andreevo Border Crossing. In April 2022, the government took many measures to reinsert state control over disinfection, phytosanitary control, and other activities at the crossing. The affected private companies challenged the orders of the Director of the Bulgarian Food Safety Agency in court. ACF's documentary "The Gloden Puddle" [70] and news about the unlawful contracts awarded to the private laboratory Evrolab 2011 AD[71], generated significant public interest and raised suspicions about long-time severe corruption practices. The journalists from BIRD were among the most involved in the topic, publishing many articles and investigating the ownership of the small private companies performing various outsourced activities at the border crossing. The article from 9 January 2023 offered a recap of many of the investigative pieces already published on the website earlier.

68 https://bird.bg/customs-parking-ami-taki/

69 https://acf.bg/bg/zasedanie-na-komisiyata-po-reviziya-v-na/

70 https://acf.bg/bg/kazusyt-zlatnata-lokva/

71 https://acf.bg/bg/stanovishte-otnosno-izvarshvaneto-na-to/

Authored by Dimitar Stoyanov and Atanas Chobanov, the article[72], focused on how customs control was carried out at the Kapitan Andreevo Border Crossing. The article was published alongside a copy of a decision of the Svilengrad Municipal Council, which the authors said allowed for traffic to be redirected from the customs area to a nearby parking lot where vehicles must wait for customs control. The owner of the parking lot was Razmig Chakaryan. Several media outlets had mentioned links between Chakaryan and PFC OOD, the private company authorized by the Bulgarian Food Safety Agency to collect disinfection fees at the border crossings at Kaptian Andreevo and Lesovo,[73] and the private laboratory Evrolab 2011 AD which performs laboratory testing of samples for the purposes phytosanitary control at the border crossing and is also responsible for unloading cargoes for the purpose of phytosanitary control.

Chakaryan considered the article to be defamatory and filed a statement of claim with the Regional Court – Sofia, claiming compensation for sustained immaterial damages of BGN 10,000. The action was filed against Dimitar Stoyanov. The case is at the stage of exchange of documents.

Comment:

Curiously, Dimitar Stoyanov is the only respondent in the case initiated by Chakaryan, although, as the claimant himself had pointed out in his statement of claim, the article was written by two people. The selectivity in determining the respondent in the case is a strong indication of forethought and a personal attack on the part of the claimant. One of Chakaryan's objections is related to the statement *"The customs office is temporarily moved to a parking lot property of Razmig Chakaryan – Ami, a close associate of Taki*". To support the claim, the authors published a document showing that car traffic was being redirected to the specific parking lot. According to the claimant, the above-mentioned statement is false because the Svilengrad Municipal Council is not competent to decide where customs activity should be performed. It is hard to accept that the goal of the journalists was to suggest to the public that the actual building of the customs office was being moved. The very next sentence of the article states that due to the redirection of the traffic, heavy vehicles will have to wait for customs screening at the parking lot. In other words, what is being "moved" is the customs control activity rather than the actual building of the customs office. The only new piece of information in the article is precisely the part about the decision of the Svilengrad Municipal Council to redirect heavy vehicles to a specific parking lot where customs screening will be performed. The rest of the information in the piece — about the activities of private companies on the border, their ownership and connections to the claimant and to Christopher Amanatidis – Taki, as well as about the political protection enjoyed by these companies — has been published previously by the respondents with the article containing links to those earlier pieces. This information has been presented and commented on by other journalists, too. It is therefore hard to accept the claimant sustained considerable immaterial damages precisely because of the publication of the subject article. However, considering that this article and earlier articles looked at the activity of the companies operating at the border crossing and that BIRD had revealed a lot of information pointing to the high likelihood that the claimant was among the owners of these companies, the most likely objective of the litigation is stop further discussion of the topic.

72 https://bird.bg/customs-parking-ami-taki/

73 https://acf.bg/bg/akf-dogovorat-za-zlatnata-lokva-pr/

Case 22: Lev Ins vs Mediapool

Launched in 2000, *Mediapool* is the first Bulgarian website offering daily news and analyses. It was founded by a group of journalists with the mission to serve the public interest by providing quality content and adhering to the highest professional standards.

On 27 September 2022[74], *Mediapool* published an article about issues with payments to the EU Green Card insurance system. The article was based on a statement made by Rositsa Velkova, the caretaker Minister of Finance, during a session of the Council of Ministers on 21 September 2022. The transcript of the meeting contained a comment by the minister about the financial obligations of the insurance company Lev Ins AD to the National Bureau of Bulgarian Motor Insurers (NBBMI) and about ongoing negotiations to reduce the amount due to be paid by the company. According to the minister, in case of failure to resolve the case, there was a risk that NBBMI could be expelled from the Green Card system at the next General Assembly of the Council of Bureaux. This, in turn, would mean that Bulgarian insurers would be unable to issue green cards in the following year. The article also briefly explained what the Green Card system was and recounted the recent problems as a result of the failure of three insurance companies to pay claims from abroad: Lev Ins and DallGogg: Zhivot i Zrave (in 2017) and Lev Ins and Olympic (in 2019). The authors had also included an outline of a statement by Lev Ins on the reasons why it had been refusing to pay green card claims. The article contained many references to earlier articles by *Mediapool* and other media outlets published since 2017.

On 29 September 2022[75], Borislav Bogoev, Chairperson of the Management Board of NBBMI, and the organization's secretary general, Stefan Sofiyanski, issued a statement claiming that the article from 27 September had misrepresented the financial minister's statement. *Mediapool* published the statement on the same day.

In January 2023, Lev Ins brought a civil action against Mediapool at the Sofia City Court, claiming immaterial (reputational) damages to the amount of BGN 1,000,000, together with interest starting from the date of publication. As proof of the sustained damage, the company filed letters from insurance brokers, written with identical font type and containing identical phrases, informing the company about their clients' anxiety because of the article and suggesting that legal action is pursued. The case is pending with the parties currently exchanging documentation.

Comment:

The article is in line with the standards of good journalism practice: the minister's statements are quoted without any editorial interference; Lev Ins was approached for a comment but failed to provide it; the issue is presented objectively with references to previous articles on the topic and official statements by representatives of Bulgarian and supranational institutions, as well as statements by the insurer; two days later, NBBMI was given the right to reply and its statement was published in full. The action filed for sustained reputational damages is not supported with strong enough arguments, its main points being a lack of understanding of the market and a wrong interpretation of the minister's words. It also alleges violations in the choice of headline for the article and in the presentation of certain facts such as checks on the part of the Financial Supervision Commission and the State Agency for National Security. The company claims that the citing of facts concerning systematic problems with the settlements of claims from abroad under the green card scheme has been done to discredit it. The amount of the action brought is a precedent and is the highest indemnification for damages claimed in an action against a media outlet in Bulgaria's history. The initiation of tort-based action for an article based on a statement of a minister and on publicly known facts — with the different affected parties quoted, without any insulting epithets, embarrassing facts or negative evaluative statements — is completely unjustifiable and is a gross infringement upon freedom of speech. The amount of the action has a deterring effect that indisputably impacts not only the targeted media outlet and its employees but also the media environment as a whole.

74 https://www.mediapool.bg/bulgaria-pak-e-zaplashena-da-bade-izklyuchena-ot-sistemata-zelena-karta-news340209.html

75 https://www.mediapool.bg/natsionalnoto-byuro-bulgaria-nyama-da-bade-izklyuchena-ot-sistemata-zelena-karta-news340290.html

APPENDIX II
CRIMINAL CASES BROUGHT FORWARD BY PRIVATE CLAIMANTS

CONTENTS

Case 23: Lyuben Berov v. Yavor Dachkov

Yavor Dachkov is a radio and TV journalist for Darik Radio, 7 Days Radio, the Bulgarian National Radio, BNT, Nova TV and TV Evropa. He was the creator and presenter of the programme *Glasove* (Voices).

In an episode of *Glasove*, aired by Channel 1 of BNT on February 2000[76], Dachkov was making comments about reforms in the cultural sphere. He shared the opinion that Bulgarian intellectuals should not complain about the state ignoring them since they had participated in governing it since 1989. Dachkov mentioned specific persons, including the former Prime Minister of Bulgaria Lyuben Berov whom he called "the patron of Bulgaria's pillaging".

Berov took offense and filed a criminal case for insult and defamation with the Sofia Regional Court (SRCt), demanding that the defendant be fined BGN 750. The court decided that the journalist had not committed slander but had just expressed his personal opinion, deciding in his favor. Berov appealed the decision in front of the Sofia City Court (SCCt) which overruled the acquittal and returned the proceedings to the first-instance court. Once again, Dachkov was pronounced not guilty. The former prime minister appealed once again but in 2003 the SCCt issued a final acquittal.

Comment:

Each of the four court decisions supports freedom of speech and democratic standards in Bulgaria by stipulating that public figures could be subjected to greater criticism, compared to ordinary citizens.

The two courts decided that the phrase "patron of Bulgaria's pillaging" did not constitute a statement of facts but was a subjective view expressed within the journalist's commentary. Therefore, the journalist was not guilty of any crimes.

Case 24: MoES Experts v. Katia Kasabova and Bozhidar Bozhkov

Katia Kasabova is a journalist for the newspapers *Faktor* and *Desant* and the website Besove.bg. She is also deputy editor-in-chief of the newspapers Black Sea South and Black Sea Lighthouse and founder of the website Flagman.bg.

Bozhidar Bozhkov is a freelance journalist who had his works published by Bulgarian and foreign media outlets.

In 2003 Katia Kasabova was found guilty in defamation proceedings initiated by four experts from the Ministry of Education and Science (MoES), following one of her journalistic investigations. In 2011 the European Court of Human Rights issued a decision against Bulgaria for violating Kasabova's right to a fair trial in the legal proceedings against her.

Before the start of the 2000/2001 school year, a group of parents arrived in the newsroom of Kasabova's newspaper. They shared information about an inspection that MoES had started at the Regional Inspectorate of Education – Burgas. The inspection had been initiated because of a tip-off concerning violations of rules for admission of children with certain medical con-

76 *Voices*, aired on 20 February 2000 by Channel 1.

ditions into top secondary schools[77]. In 2001 Kasabova published several articles[78] about the case. She named the members of a committee, consisting of a doctor and four experts from the Regional Inspectorate, which was responsible for checking the documents of children applying for admission under the special procedure. The articles voiced suspicions that the children of senior officials in different municipal agencies who were perfectly healthy had been admitted under the special procedure. As a result, many children with medical conditions had been unable to join their preferred schools. The reports also stated that while the inspection initiated by the Ministry had concluded two days before the start of the school year, no steps had been made to remove the unfairly admitted children from the schools, nor to start any procedure against the experts from the evaluation committee.

Katia Kasabova worked on this investigation together with Bochidar Bochkov, a correspondent for the Sega newspaper who also published several articles[79] about the case.

The experts from the Regional Inspectorate of Education – Burgas initiated defamation proceedings against Kasabova and against Bozhkov with the Regional Court – Burgas. The two cases were filed on the same day.

The court ruled in the claimants' favor and the journalists were ordered to pay damages: BGN 7,500 for Kasabova and BGN 6,300 for Bozhkov. The two journalists appealed the decision, however, in 2002 and 2003, the District Court – Burgas, the second and last instance, confirmed the regional court's decisions.

The journalists lodged an application with the ECtHR. In 2011, the court's judges decided that the damages that the journalists had been ordered to pay were disproportionately large compared to the damages sustained by claimants. Bulgaria was ordered to pay BGN 11,800 to Kasabova and BGN 27,000 to Bozhkov as a way of compensating them for damages and the costs of their legal representation.

Comment:

The proceedings against Katia Kasabova and Bozhidar Bozhkov in the regional and the district court are typical examples of SLAPP suits in Bulgaria. The published journalistic articles, which were the reason for the litigation and, subsequently, for the convictions, were based on information from clearly identified sources. Furthermore, they presented some of the findings of an official inspection of the MoES. Quoted in the articles were parents explaining exactly how much money was required for a child to be able to skip the compulsory entrance exam. All four court decisions were justified in the same manner: the journalists had acted intentionally. The defendants had been fully aware of the nature of their acts, they had envisioned the harmful consequences of their actions and they had pursued those outcomes. They had known that, by attributing the wrongdoings to the experts, they would harm their reputation. The judges outright refused to consider the fact that the journalists' investigation concerned a topic of significant public interest, nor did they consider the effect that the judgements would have on media outlets. The sums which Kasabova and Bozhkov were ordered to pay were very high compared to their earnings and were disproportionate to the damages caused to the claimants.

The convictions of the two journalists caused an uproar. Because of her articles on the topic, Katia Kasabova was awarded the Civil Courage Panitza Award by the Free and Democratic Bulgaria Foundation. She became the first journalist based outside of the capital to receive the most prestigious journalism award at that time.

Kasabova had been fired shortly before the start of the trial against her and did not receive any support from her previous employer during the proceedings. Bozhkov, however, did receive the support of his publisher who covered the cost of his legal defense.

The decisions of the Regional Court – Burgas and the District Court – Burgas set a precedent which threatens journalists as they attempt to carry out their professional duties, namely, informing society on topics of considerable public interest. To support the democratic environment in Bulgaria, when deciding cases against journalists and media outlets, magistrates should not only consider the specific case at hand but also the impact that their verdict will have on the journalistic community and the media environment as a whole.

77 The procedure made allowances for children with certain medical conditions to be enrolled without holding entrance exams. This procedure is no longer in force.

78 newspaper Compass – „Corruption in Bulgarian education! - Four experts and a doctor fired for bribe?" 12.09.2000

79 https://old.segabg.com/article.php?id=227091

Case 25: Dimitar Vergiev v. Bozhidar Bozhkov

Bozhidar Bozhkov is a freelance journalist who had his works published by Bulgarian and foreign media outlets.

On 18 August 2015, Bozhkov shared a post on his Facebook profile in which he referred to one of his old articles. The piece had been published in 2002 when Bozhkov was writing for the newspaper Sega. The article was about an incident involving Dimitar Vergiev, an academic at the Sofia-based Technical University who was formerly known as a leader of the protection racket SIC in Burgas. Also mentioned in the article was an academic from University Prof. Dr. Asen Zlatarev whose class Vergiev had been attending at the university. Vergiev beat and threatened the academic because she had given him a poor appraisal after an exam. After the incident which happened in 2000, Vergiev was found guilty of intentionally causing grave injury and issuing threats.

In August 2015, an acquaintance of the journalist got in touch, requesting on Vergiev's behalf that the text be removed from the website of the newspaper. Bozhkov declined and mentioned the conversation in his Facebook post. He also published a screenshot with excerpts from the messages exchanged with his acquaintance and retold the story of the incident at Burgas University back in 1999.

Bozhkov's Facebook post was published in several media outlets, including *Offnews.bg, Falgman.bg*[80]*, Mediapool, Dnevnik* and others. Vergiev initiated proceedings against Bozhidar Bozhkov with the Regional Court – Burgas, claiming that the text had publicized embarrassing facts about him. Subsequently, Vergiev also initiated a civil case against Bozhkov, claiming the journalist had incurred liability in tort/delict. The criminal case ended in 2016 with an acquittal. In 2017, Vergiev withdrew his civil claim and the case was closed.

Comment:

In his complaint to the Regional Court – Burgas Vergiev mentioned several specific references in Bozhkov's Facebook post that he considered to be humiliating and accusatory. The journalist had provided a recap of the incident with the academic from Burgas University, continuing with an account of how Vergiev threatened him with physical violence because of articles he had written about the incident (the articles appeared in *Sega* in 2002). Following the unsuccessful attempt to persuade Bozhkov to remove his 13-year-old text from the newspaper website, the journalist was 'punished' with the initiation of court proceedings. A separate legal complaint was filed under the *Obligations and Contracts Act*.

The Regional Court – Burgas decided that the journalist had not carried out acts of libel. In addition, the court pointed out that the specific parts of the Facebook post that the claimant considered to be accusatory, should not be analyzed separately but as part of the whole text and thus represented a personal opinion expressed by Bozhkov. The court further decided that the journalist was exercising his constitutionally protected right to free expression.

80 https://www.flagman.bg/article/85088

Case 26: Dragomir Alexandrov v. Boyko Stankushev and Milena Dimitrova

Boyko Stankushed has over 40 years of experience as a journalist and media executive. He has served as Program Director and Member of the Board of the Bulgarian National Television (BNT). He has worked as a foreign correspondent in more than 30 countries. He was author and presenter of the investigative program "Na Chisto" on Nova TV and "Saturday Night with Boyko Stankushev" on Eurocom. In early 2018, he joined BNR as a Member of the Board, also heading the polling and analyses department. In March 2019, he stepped in as director of the ACF.

Milena Dimitorva is a long-serving journalist, author of more than ten books and recipient of many Bulgarian and international journalistic awards. She is an expert with Transparency International and a Member of the Board of the South East Europe Media Organization. A former diplomat, she has served as an advisor in the European Parliament. Since June 2022 she is a member of the Public Authorities Board of BNR which she currently chairs.

In 2006, Dragomir Alexandrov, a prosecutor from the Sofia Regional Prosecutor's Office, filed a lawsuit for defamation with the SRCt. The reason for the proceedings were critical statements made by Boyko Stankushev and Milena Dimitrova in the program "Na Chisto" which aired on Nova TV on 8 January 2006 and in an article titled "How the crook walks free" which was published in the magazine Legal World in March 2006. According to the claimant, the journalists had committed defamation when they had made allegations about corruption, abuse of office and other inappropriate actions committed by him while he had acted as a monitoring prosecutor on a particular criminal case. After the complaint was lodged in court Boyko Stankushev was released from Nova TV. The program "Na Chisto" continued to air for several more months but without a presenter, featuring just voice-overs. The SRCt. decided that the journalists had not committed defamation and the pair were acquitted. The case continued in a higher-instance court but the proceedings only concerned a dispute over monetary compensation that the claimant was to provide to Boyko Stankushev to cover the costs of his legal representation.

Comment:

The court analyzed carefully the witness evidence and the text of the published article in order to provide arguments for its decision to acquit the journalists. By the time the case was heard in court, a recording of the TV program was not available. The contents of the program and the nature of the statements made by Stankushev were determined with the help of witnesses put forward by the claimant. The court decided that, in both the TV program and the published article, the journalists had criticized the actions of the claimant by making a negative comment about an action that he had taken while acting in a professional capacity. However, there had been nothing to suggest that the journalists had made a defamatory claim or had blamed him for a crime. Even though the journalists were found not guilty, they did experience the negative effects that SLAPPlawsuits are intended to have. On the one hand, the litigation lasted more than two years. On the other – the affected journalist lost his job and was not able to work since the beginning of the trial. After his dismissal, the program aired without a presenter because none of the journalists that had been offered to take over accepted the job. Subsequently, the program was taken off the air. This means that the intended repressive and dissuasive effect was achieved not only concerning the targeted journalist but also with regard to other journalists and the media environment at that particular moment in time. Later, the program started airing again with a new staff member, Daniela Trencheva, as author and presenter. The program was on air until August 2009.

Case 27: Marinova and others v. Bulgaria

Five Bulgarian citizens who had been convicted of defamation in national courts lodged applications with the ECtHR. Their cases are very similar and concern defamation proceedings, initiated during the period 2007 – 2011, by public officials against citizens who had lodged complaints against them.

1. The first application concerns a criminal case filed by a private claimant against Mrs. Marinova from the town of Tervel. The proceedings against Marinova were initiated by her child's teacher after she complained to several institutions that the teacher had abused and humiliated the child. In 2006, the Regional Court – Tervel found Marinova guilty of libel against a public official as per Art. 147 and Art. 148, par. 1, clause 3 and par. 2 of the CC. Marinova was fined BGN 500 and also ordered to pay BGN 1,000 in damages (out of BGN 5,000 claimed), interests and legal cost.

   Marinova appealed the decision but it was confirmed by the District Court – Dobrich in 2007.

   Both courts decided that Marinova's claims about the teacher having abused her child were not true and were therefore defamatory. The courts also decided she had acted intentionally. Neither court has explained the grounds on which their conclusions were made.

2. The second application was lodged by Mr. Zlatanov following criminal proceedings that had been filed against him by a private claimant. In the summer of 2008, Zlatanov was pulled over by two traffic policemen for failure to stop at a stop sign. During the traffic stop, Zlatanov felt the smell of alcohol and noticed the aggressive and confused behavior of one of the two police officers. He filed a report with the Regional Police Office Shabla where the two police officers were based. However, the internal inspection that followed failed to identify any misconduct on the part of the police officer. In December of the same year, the police officer initiated proceedings against Zlatanov, claiming BGN 5,000 in damages.

   In 2009 the Regional Court – Kavarna found Zlatanov guilty of libel against a public official as per Art. 147 and Art. 148, par. 1, clause 2 and par. 2 of the CC. Zlatanov was fined BGN 500 and ordered to pay BGN 1,500 in damages, in addition to interest and legal costs.

   Zlatanov appealed the verdict in front of the District Court – Dobrich, however, the sentence was confirmed.

   The second-instance court decided that Zlatanov had acted intentionally to harm the reputation of the police officer so he could be dismissed because of the traffic offense stop.

3. The third application was filed by Mr. Findulov. In 2009, while he was driving his truck, he was stopped by two traffic policemen who, he claimed, had asked for a bribe. The driver promised to bring the required sum to the policemen, leaving his identification documents and the registration papers of the vehicle with them. He then filed a report about the bribe request with an officer on duty at the Regional Police Office Burgas. Findulov filed complaints about the bribe request and the withheld identification and registration documents with several different institutions. He received a reply from the District Directorate of Interior Burgas that his complaint was unfounded. Several weeks later he found his documents in his P.O. box. In 2009, the police officer whom Findulov had named in his complaint initiated criminal proceedings against him. The police officer also initiated a civic case, claiming damages worth BGN 10,000.

   The Regional Court Burgas found Findulov guilty of libel against a public official as per Art. 147 and Art. 148, par. 1, clause 2 and par. 2 of the CC. He was fined BGN 5,000 and issued a public reprimand. The court also ordered that he pay BGN 3,000 as compensation for damages, claimed in the civil proceedings.

   Findulov appealed but in 2010, the District Court Burgas confirmed the sentence.

   Without offering any justification, the courts decided that Findulov had acted intentionally, accusing the police officer of a crime in front of a third party. While the defendant never identified the police officer in his complaints, nor during the course of the trial, the court decided that the police officer could be identified.

4. The fourth application was filed by a family, based in the town of Lovech. The family had had a long-standing issue with some neighbors. As the tension escalated, they filed a complaint with the local police. Subsequently, they filed a complaint at the regional police office against the officers who had dealt with their case as they believed the officers had downplayed their case. After an internal investigation, the family were told their complaint was unfounded.

   In 2010, the police officers initiated criminal proceedings against the family, accusing them of libel. The Regional Court – Lovech fined the defendants BGN 5,000 and issued a public reprimand. In addition, they had to pay BGN 400 to each of the police officers as a way of compensation for the inflicted material damages.

   The defendants appealed the verdict, however, it was confirmed in 2011 by the District Court – Lovech. The court did reduce their fine to BGN 3,000.

   In 2013, the Supreme Court of Cassation (SCtC) reopened the proceedings, following a request by the Prosecutor General. The court annulled the decisions of the first and second-instance courts, declared the defendants not guilty and denied the claims for damages. SCtC decided that, by filing their complaints, the family had expressed their opinion of the work of the police officers, rather than committed a crime.

Comment:

Because of the similarities between the cases (citizens fined by the court and ordered to pay compensation for damages after filing complaints against public officials), the ECtHR unified all cases in a single file *Marinova and Others v. Bulgaria*, issuing a decision on 12 July 2016. The fourth application was removed from the file since the defendants had been acquitted.

In its decision, the EctHR highlighted provisions within Bulgaria's national legislation and especially Art. 108, par. 2 of the *Administrative Procedure Code* from 2006, which states that citizens should not be persecuted because they have alerted the authorities about unlawful or wrongful actions or lack thereof on behalf of public officials. The Bulgarian state claimed that interfering with the right of free expression of the citizens who had filed complaints had a sound legal basis as it aimed to defend the reputation and rights of affected parties. The citizens, however, were adamant that their goal had not been to intimidate public officials but to defend themselves and their right to free expression. The citizens had filed complaints against the officials based on suspicions about possible wrongdoing. In addition, the complaints had not been voiced publicly or in the media, therefore the possible negative impact on public officials had been limited.

The ECtHR decided that the convictions against Marinova, Zlatanov and Findulov represented punishments and violated their right to free expression as per Art. 10 of the Bulgarian Constitution. Furthermore, the fact that the citizens faced legal consequences because they had filed complaints against public officials pointed to the conclusion that Art. 10 of the Constitution was violated.

Therefore, the citizens were entitled to compensation for the fines they had paid, the legal costs incurred and other expenses related to the legal proceedings and subsequent convictions. The ECtHR awarded Marinova with EUR 4,000 in compensation for sustained immaterial damages and EUR 1,632.62 for legal expenses. Zlatanov was awarded EUR 1,284 in compensation for material damages, EUR 3,500 in compensation for immaterial damages and EUR 1,736 for legal costs. Findulov was awarded EUR 3,500 in compensation for immaterial damages and EUR 196.90 for legal costs.

Case 28: Volen Siderov v. Fani Chodzhumova

Fani Chodzhumova is a long-serving journalist with the newspaper Novinar.

In February and March 2007, Fani Chodzhumova published in *Novinar* articles[81] containing strong criticism of the behavior of Volen Siderov, MP and leader of the political party Ataka. The journalist described several incidents in which the politician had been involved, including an incident from 7 April 2006 when a vehicle performed a dangerous maneuver near the vehicle that Siderov had been riding in. The incident happened on Trakia Highway. Siderov's driver, assuming a deliberate attack, damaged the tires of the other vehicle and hit its driver in a bid to prevent him from fleeing the scene.

Siderov decided that the articles spread false and embarrassing details about him and lodged two proceedings against Fani Chodzhumova.

In both cases, the Sofia Regional Court acquitted the journalist. There is no information about Siderov having appealed the decisions.

Comment:

Despite the highly critical tone of her articles, the SRCt acquitted the journalist on the basis that her statements represented critical assessments of a public figure and were within the scope of her right to free expression. The court referred to the right to seek, receive and impart information, supported by the CRB and the *European Convention on Human Rights and Fundamental Freedoms*, and to the case law of the ECtHR which states that public figures, and especially politicians, should be subject to harsher public criticism – including criticism from journalists – in comparison to private persons.

Case 29: Gabrovnitza JSC v. Venelina Popova

Venelina Popova is a long-serving journalist at the BNR, having worked as a correspondent in Stara Zagora. Her work is also published in *Toest* and *Za istinata*. She is a recipient of the Civil Courage Panitza Award, an award for radio journalism by the Ombudsman of the Republic of Bulgaria, as well as the Red Line Journalism Against Corruption Award by the ACF.

Legal proceedings were initiated on two occasions against Popova because of articles she had written. In both cases, she was acquitted.

In June 2007, Popova and two other authors published in the newspaper Politika an investigation[82] into illegal logging and its harmful environmental effects. The logging activity had been carried out by a factory manufacturing wooden boards.

81 newspaper "Novinar" 16.02.2007 "Siderov – the professional liar"; newspaper "Novinar" 02.03.2007 "Siderov – the professional liar II"

82 Politika – (archive.org)

The company behind the factory initiated criminal proceedings against Venelina Popova with the District Court Stara Zagora. It also initiated a civil case, claiming immaterial damages worth BGN 30,000.

In July 2008, the court decided that the company's claims were unsubstantiated and unfounded.

There is no information on whether the district court's decision was appealed.

Comment:

The lawsuit and its potentially negative consequences, should the court have ruled in the claimant's favor, targeted one out of three co-authors. This shows that the claimant was selective when choosing the target of the proceedings. Popova herself has said in an interview that she believes the real reason she was targeted to be another article on the same topic published in a different media outlet. She also noted that the part of the article that was the subject of the litigation had been edited extensively which had changed it considerably.

In the course of the trial, the claimant tried to present as evidence statements on the same topic that the journalist had made in other articles but the court rightly did not take these into consideration. Another fact suggesting a SLAPP lawsuit was the exaggerated amount of the sought damages. After reviewing the facts of the case, the court decided that the article had presented the statements, assessments and opinions of persons different from the authors, therefore the authors' actions could not be classified as a violation.

Case 30: Ventzislav Draganov v. Venelina Popova

Venelina Popova is a long-serving journalist at the BNR, having worked as a correspondent in Stara Zagora. Her work is also published in *Toest* and *Za istinata*. She is a recipient of the Civil Courage Panitza Award, an award for radio journalism by the Ombudsman of the Republic of Bulgaria, as well as the Red Line Journalism Against Corruption Award by the ACF.

Legal proceedings were initiated on two occasions against Popova because of articles she had written. In both cases, she was acquitted.

On 18 September 2008, Ventzislav Draganov, a businessman based in Stara Zagora, initiated defamation proceedings against Venelina Popova, a BNR correspondent in the city. The proceedings were initiated because of statements made by Popova, in a live radio program called "From Friday to Friday", which aired on 4 September 2009. The businessman complained because, during the program, she had mentioned that he had been detained by police for issuing threats to Kamen Marinov, the director of the Regional Labor Inspectorate in Stara Zagora. The threats had been issued because of the construction works on the Social Services Center in the city.

In addition to the criminal proceedings, Ventzislav Draganov also initiated a civil case, claiming BGN 20 000 in damages.

On 19 October 2010, SRCt acquitted Popova of the defamation charges. Draganov's claim for damages was also denied.

The court's decision was appealed to the Sofia City Court (SCCt). After nearly two years, Venelina Popova received a full acquittal.

Comment:

According to Popova, the real reason behind the litigation was a joint investigation she had carried out in 2008 together with Antonela Poneva, a former MP from Democrats for a Strong Bulgaria. The investigation had uncovered a scheme to misappropriate public funds. It focused on a construction company with connections to Emilia Maslarova, then Minister of Labor and Social Policy. The Minister had ordered the renovation, worth nearly BGN 22.6 million, of a building to be used by the Regional Health Inspectorate – Stara Zagora. The contract was awarded to Stara Zagora – 2007, a company created three days after the public procurement procedure had been announced. The owner of Stara Zagora – 2007 was another company named Concordia Ltd. Draganov was the contact person for Concordia Ltd as his name had been mentioned in a contract, worth BGN 9 mln., for the delivery of fuel to the Maritza Iztok 2 thermal power plant. One more fact points to the connections between Draganov and the family of Minister Maslarova. Initially, Stara Zagora – 2007 was based in the Armira Hotel which was owned by Ventzislav Draganov. The businessman partnered with Elena Rimpopova in the company Tema Llc which owned the company Lena Llc. The managing director of Lena Llc was Anton Maslarov, the minister's husband. The investigation also pointed out the fact that shortly after Stara Zagora – 2007 won the renovation contract, Lena Llc was removed from the commercial registry.

The main owner of Stara Zagora – 2007 was Concordia Ltd which had links to Anton Maslarov. According to *Mediapool*, once the renovation contract was signed, Anton Maslarov was named as the point of contact for the company, replacing Ventzislav Draganov.

Following Popova and Poneva's investigation, the public prosecutor's office initiated proceedings. Emilia Maslarova was stripped of her immunity as an MP. Together with Ventzislav Draganov, she was charged with the appropriation of public funds to the value of BGN 19 mln. The litigation went on for seven years and the case was heard by different courts before it was dropped by prosecutors in 2017. In 2019, the ECtHR decided in Maslarova's favor and the Bulgarian state was ordered to pay her EUR 5,000 in compensation for immaterial damages.

The proceedings against Venelina Popova (initiated by Ventzislav Draganov) lasted for four years. The litigation and the interest it generated among journalists achieved its real goal: to intimidate and send a message not only to the defendant but also to the entire journalistic and civic community.

The claimant initiated litigation based on publicly-made statements which represented the truth. At the same time, he was aware that proving the veracity of the statements would not be difficult. As per Art. 147(2) of the CC, if statements considered defamatory by the claimant are proven to be true, the defendant is not criminally liable. Draganov's actions against Venelina Popova, initiated even though he had known that her statements represented the truth, had a different goal than the stated one. This tactic is fully in line with the rationale behind SLAPP lawsuits.

Case 31: Litigation against Genadii Marinov

Genadii Marinov is the founder and editor-in-chief of the newspaper *Troian 21*. He has worked as a journalist for 25 years. He has also cooperated with other regional media outlets.

Lawsuits against the journalist have been initiated on several occasions:

1. In 2011, Marinov came across pictures of a light vehicle, published on Facebook. What attracted his attention was the vehicle's registration number because its combination of letters and numbers could be read like the word "ovchar" (sheppard). Later on, Marinov himself took photos of the light vehicle, publishing the images in his newspaper together with a short article in which he discussed the issue in a joking manner.[83]

83 https://statii.troyan21.com/2011/04/ob-4444-ap_29.html

The owner of the vehicle took offense and initiated criminal proceedings with the Regional Court – Troian. He also initiated a civil case, claiming immaterial damages worth BGN 10,000.

The court decided that the journalists' actions had not been intentional, one of the requirements for someone's actions to be deemed defamatory. The journalist was acquitted. The case was appealed in front of the District Court Lovetch which confirmed the decision of the first-instance court.

2. In 2014, Genadii Marinov was contacted by citizens of Troian who had fallen prey to a Gabrovo-based company, claiming to act as an intermediary for Bulgarians searching for employment in the United Kingdom. Marinov was asked to publish an article[84] about the scam. A representative of the company, based in Troian, initiated proceedings against Marinov and one of the persons quoted in his article, claiming insult and defamation. The case was heard by the Regional Court – Karlovo after all judges, based in Troian, had abstained from taking on the case. The regional court ended the criminal proceedings as parties had failed to attend hearings. There is no information if any of the parties had appealed the court's decision.

3. In 2020, the owner of a cafe in Troian initiated criminal proceedings against Genadii Marinov, claiming defamation. The reason for the proceedings was an article in which Marinov had claimed that the cafe owner was responsible for the death and removal of a tree. Within a timespan of several years, Marinov published several articles[85] about the fact that, in violation of the law, the cafe owner had placed an inflatable castle on a piece of lawn which was municipal property. The castle had been placed under the above-mentioned tree. According to the journalist, the stream of hot air running continuously from the large inflatable object into the tree for a period of several years ended up damaging the tree. In February 2020, the tree was eventually removed.

   The Regional Court – Troian dismissed the charges on the basis that the claims against Marinov were unfounded and unsubstantiated. The decision was also confirmed by the District Court – Lovech. According to the journalist, the case did not reach the third and final instance.

Comment:

The lawsuit concerning the article about the unusual license plate can, without a doubt, be classified as a SLAPP suit because the claimant did not seek compensation for incurred suffering but rather – revenge against the author who had written a completely harmless text. Nowhere in the article can one find offensive or malicious remarks about the owner of the vehicle. On the contrary, Marinov had described him as a "successful businessman", using his initials, not his full name.

What attracts attention in the lawsuit concerning the article about the job placement scam is the fact that all judges in Troian asked to be dismissed. It is hard to believe that every one of them had relational or other types of close ties to the defendant or any other kinds of relationships that would have prevented them from working objectively on the case. It is not clear why the regional court completely abdicated its responsibility to resolve a case with a high level of public significance.

The third lawsuit is another example of a judicial farce. The claim that the article was defamatory is absurd, considering that the journalist had not mentioned the name, not even the initials, of the claimant. The article only mentioned the name of the cafe that was using the inflatable castle. In addition, in the course of the proceedings, it was proven that none of the articles on the topic contained any false facts about the private claimant.

Cases such as the one above take up additional public resources when they reach the second instance. Such cases firmly illustrate the need for a mechanism for the early dismissal of lawsuits which are motivated by goals other than the search for justice.

84 https://statii.troyan21.com/2014/04/blog-post_3814.html

85 https://statii.troyan21.com/2020/06/blog-post_24.html
https://statii.troyan21.com/2018/02/blog-post_11.html

Case 32: Tzenka Blagoeva v. Asia Pencheva

Asia Pencheva is a journalist with the newspaper *Utro* in Rousse. For more than a decade, she was a correspondent for the BNR in the town. She is also a blogger and photojournalist. In 2010, she became a recipient of the journalism award *Chernorizetz Hrabar,* in the category of regional journalism.

In July and August 2011, Pencheva published in the *Utro* newspaper two parts of an interview[86] with a social worker from a facility for children without parental care in the town of Rousse. The interviewee, Tzenka Blagoeva, made revelations about different problems in the institution and also talked about systemic abuse against the children in the care facility. The social worker gave specific examples of violations and named colleagues who had used violence against the children. The interview had been recorded. Before publishing the interview, the journalist contacted the care facility's director as well as the person accused of abuse against children, asking for their comments about the allegations. The care facility worker accused of violence took legal action against his colleague who was found guilty of libel. Blagoeva then initiated criminal proceedings, claiming defamation (about the first article) and another lawsuit, claiming insult (about the second article). According to the claimant, her words had been distorted by the journalist.

The Regional Court – Rousee acquitted Pencheva of the insult charges. However, the journalist was found guilty of defamation on the basis that she had quoted Blagoeva accusing her colleague of violence against children in the care facility. The journalist was fined BGN 5,000 and given a public reprimand. In addition, she was ordered to pay compensation for damages worth BGN 1,000 to the claimant.

The verdict was appealed in front of the District Court – Rousse on the basis that the proceedings had been initiated after the statute of limitations had expired. The district court returned the case to the first-instance court because of a mistake in the records, pointing to the wrong year of publishing of the newspaper articles.

The Regional Court – Rousse decided that the proceedings against Pencheva had been initiated after the statute of limitations of the crime she was accused of had expired. The case was dismissed.

The claimant appealed the decision in front of the District Court – Rousse which upheld the acquittal.

Comment:

The litigation against the journalist from the town of Rousse was initiated because of two articles. The first one was published on 12 July 2011. The complaint, filed on 13 January 2012, alleged that by publishing an interview with the social worker, the journalist had committed defamation. Here lies the first problem with the decision of the court of first instance. As per Art. 84(1) of the CC, there is a six-month period within which it is possible to initiate defamation proceedings. The deadline for filing the complaint in court was 12 January 2012.

The other major problem in the decision was the refusal of the Regional Court – Rousse to allow the interview recording to be presented as evidence, something which both sides in the litigation had insisted on. The court denied the requests as unlawful, claiming that accepting the recordings as evidence would violate Art. 109, Art. 125 and others of the CPC. It was impossible for the recording to comply with the provisions of the CPC because it had been created for the purposes of the newspaper article, not for the purposes of the proceedings. For a recording to comply with the requirements of the CPC, the person creating it should have been authorized to do so and to use specific equipment, following a strict protocol. None of this could have been executed by a journalist in the course of their work. The main point of contention during the proceedings was whether the facts mentioned in Pencheva's publication had been mentioned by the claimant or not.

86 *Utro*, 12 July 2011, "Child with Wounds and Swelling after a Beating at Nadezhda Care Home" and 17 August 2011, "Social Worker with Ambitions of Senior Position Behind the Scandals in Nadezhda Care Home".

The lawsuit generated a strong wave of civic support for the journalist[87]. The interview recording which was not allowed as evidence by the court was published on the website of *Utro*[88].

The recording made by Pencheva was finally admitted as evidence during the second hearing by the Regional Court – Rousse. The court then decided that the recording "represents an object which could help clarify facts about the case, especially key claims put forward in the complaint, namely did the claimant talk about the issues mentioned in the article of newspaper Utro from 12 July 2011." This is the first time when an audio recording, made outside of the framework of legal proceedings, is admitted as evidence in a criminal case.

In 2014, the Regional Court – Rousse issued an acquittal. The court decided that Pencheva's articles mirrored the words of the claimant, therefore there was no evidence she had committed defamation. The court found that Pencheva was not guilty of all the charges and dismissed the case.

The District Court – Rousse confirmed the acquittal issued by the regional court.

Case 33: Stoyan Mavrodiev v. Rosen Bossev, Desislava Nikolova, Galya Prokopieva

Rossen Bossev joined the team of the Capital Weekly newspaper in 2005. He has covered topics such as the legal system, the spending of public funds and human rights violations. He is the recipient of many awards. In 2015, Rossen Bossev was awarded the prestigious award Valya Krushkina – Journalism for the People in the category of print media.

Desislava Nikolova has been a journalist in Capital Weekly newspaper since 2003. Before that, she worked for the newspapers "Trud" and "Calendar" and the business program of Nova TV.

Galya Prokopieva is a long-time journalist and executive director of Economedia AD.

In 2013, the online media outlet *Dnevnik* (owned by the publisher of Capital) announced that Stoyan Mavrodiev, then Chairperson of the Financial Supervision Commission (FSC), had been called to testify in a lawsuit against Evelin Banev – Brendo (who has been convicted of drug trafficking by two European countries). In Bulgaria Banev was on trial for money laundering. Mavrodiev denied being called as a witness in the case, however, the media outlet proved he was connected to the proceedings, publishing its findings in a series of news articles. What followed was a series of fines, issued by the FSC, to the editors of *Dnevnik* and Capital, to the publisher Economedia JSC, to Alpha Finance Holding Jsc (in which Ivo Prokopiev, Economedia's co-owner is a majority shareholder) and to other companies connected to Prokopiev. In the following two years, the FSC issued more than a hundred fines, worth more than BGN 1 mln. In total and more than 25 decisions to impose additional punitive administrative measures. The Commission further issued the above entities with more than a hundred requests to provide additional information, imposing impossibly tight deadlines for the information to be supplied[89].

On 15 December 2014, the FSC issued two decisions imposing fines, worth a total of BGN 10,000, to the two directors of Economedia. The fines were imposed because the directors had refused to reveal the identity of journalistic sources, thus failing to cooperate with the FSC in the course of its official duties, the commission claimed. On 6 January 2015, the first

87 https://frognews.bg/novini/prisada-sreshtu-jurnalist-predizvika-skandal-ruse.html

88 https://utroruse.com/article/3408/

89 More information about the institutional pressure on behalf of FSC and other public institutions against Ivo Prokopiev, the Economedia publishing house and persons related to it is available through the project Pioneering anti – SLAPP Training for Freedom of Expression available on https://www.antislapp.eu/curriculum-hub/case-study-slapp-in-bulgaria and authored by Zlatka Stefanova, Attorney at Law.

working day of the new year, the FSC issued two more decisions, imposing fines worth a record BGN 150,000 to Economedia on charges of manipulating the financial market by spreading false and misleading information. The FSC fines attracted a lot of attention and caused strong reactions in Bulgaria and abroad. Journalists, employed by the media house, including Rossen Bossev, gave a series of interviews and participated in several TV programs, explaining the timeline of the issue and the reasons why the publisher had been fined. Appearances in two programs in January 2015.[90,91] were the reasons for Stoyan Mavrodiev to initiate legal proceedings for defamation and insult against reporters Bossev and Nikolova and journalist and executive director of Economedia, Galya Prokopieva. Mavrodiev claimed that, with the two TV appearances, the journalists had insulted him and committed slander as they had been doing for some time prior to the TV interviews. He also lodged a civil claim, seeking compensation for damages – BGN 20,000 from Bossev and BGN 10,000 from Prokopieva.

The proceedings against Nikolova were dismissed by the court on the basis that no crimes had been committed. The court decided that, by uttering the phrase: "Mr. Mavrodiev was called as a witness because he had been his financial consultant prior to taking this post", the journalist had not committed a crime. The litigation against Prokopieva continued for about 18 months. She was acquitted in 2017. The court decided that the phrase "he uses… this institution for repression" does not constitute an act of causing insult, or slander.

In 2017, the court of first instance found Bossev guilty of slander against a public official just because he had used the phrase "he decided to use the institution that he represents in order to exercise repression against *Capital* and *Dnevnik*". The court decided that other statements made by Bossev and contested by Mavrodiev were not defamatory. He was exempted from criminal liability, fined BGN 1,000 and ordered to pay BGN 630 to cover legal costs. There is no evidence of decisions on the civil proceedings seeking compensation for immaterial damages. The compensation claims may have been withdrawn in the course of the trial.

Both the claimant and defendant appealed the first-instance court decision in front of the Sofia City Court (SCCt). Two years later, in 2019, SCCt issued a decision that one more of the statements issued by Bossev was defamatory. The court found the journalist guilty of slander based on two statements he had made about Mavrodiev. First, that Mavrodiev used the institution he represented (FSC) to carry out acts of repression against *Capital* and *Dnevnik*. Second, that Mavrodiev had ties to the money-laundering scheme for which Evelin Banev was being prosecuted and that, through some of his actions, Mavrodiev had facilitated the laundering of a sum of money obtained through drug trafficking. The SCCt confirmed the position of the first-instance court about several other statements made by Bossev. According to the journalist, Mavrodiev had signed written authorizations for offshore companies through which the laundered drug money was channelled. Bossev had also made the claim that only a few media outlets had uncovered Mavrodiev's involvement as a legal consultant in the scheme to launder proceeds from drug trafficking. The court decided that the above statements were not offensive and were truthful, based on information obtained from court protocols, written statements and witness statements. Therefore, the journalist's statements did not represent insult or defamation. The court also accepted that since the job description of a legal consultant does not include unlawful acts, working as one does not point to criminal activity.

Following his conviction, Rossen Bossev lodged an application with the ECtHR, claiming that the Bulgarian courts had violated his rights to free expression and fair trial.

90 Interview aired on 15 January 2015 by Nova TV in the early morning program *Zdravei Bulgaria*, "A censorship attempt or just punishment? Capital fined BGN 150,000".

91 TV appearance on Slavi's Show from 16 January 2015. https://www.slavishow.com/%d0%b3%d0%b0%d0%bb%d1%8f-%d0%bf%d1%80%d0%be%d0%ba%d0%be%d0%bf%d0%b8%d0%b5%d0%b2%d0%b0-%d1%80%d0%be%d1%81%d0%b5%d0%bd-%d0%b1%d0%be%d1%81%d0%b5%d0%b2-%d0%b8-%d0%b4%d0%b5%d1%81%d0%b8%d1%81%d0%bb%d0%b0/

Comment:

The proceedings against Bossev, Nikolova and Prokopieva were provoked by statements made by the journalists while attempting to describe and put into context facts that had already been known publicly. The statements represented the journalists' attempts to offer commentary about known facts. In other words, the journalists' statements were not anything new to the claimant. Furthermore, the materials refer to documents, including legal documents from an ongoing criminal case, proving the veracity of the statements about a link between Mavrodiev and the criminal lawsuit against Evelin Banev – Brendo.

One issue that raises a number of questions is the manner in which Bossev was summoned to appear in front of the second-instance court. Judge Petia Krancheva, the chairperson of the chamber and judge-rapporteur, ordered that the journalist's whereabouts be established by armed officers of the Judicial Security Directorate. Paradoxically, the officers first visited the addresses of people close to Bossev. They also twice attempted to find him at Capital's newsroom, finally visiting his home address which was known to the court. The person of Judge Krancheva is another issue which raises doubts about whether all requirements for an impartial trial were met. During her tenure as deputy chairperson of the SCCt, Judge Krancheva had been the subject of several critical articles by Rossen Bossev. The journalist's defense asked that the judge withdraw from the case due to concerns over her impartiality. However, Judge Krancheva denied the request, pointing out that Bossev's publications had "in no way impacted the emotional, spiritual, psychological or personal balance of the chairperson of the chamber and judge-rapporteur".

Striking, too, is the superficial approach applied by the two courts in order to determine that the statement about Mavrodiev using the FSC for institutional repression was false. It was sufficient that the decisions to apply administrative measures against the publisher had been signed by the deputy chairperson of the FSC and not by Mavrodiev personally. The courts determined that the chairperson had no control over the actions of his deputy, therefore there was no evidence to suggest abuse of power. In the end, the SCCt convicted Rossen Bossev on the basis of two statements he had made, which, the court decided, had "caused embarrassment" and "attributed a crime" to Stoyan Mavrodiev. This decision was made despite substantial evidence, proving the veracity of the journalist's statements, and despite the fact that the statements represented criticism of a public official by a journalist, which should be acceptable in a democratic society as per Art. 10 of the ECHR and Art. 39 to Art. 41 of the CC. The ECHR and the Bulgarian constitution stipulate repeatedly that the right to free expression applies to all types of information, including information which may cause embarrassment and even shock. In addition, everybody has the right to communicate information and society has the right to be informed. In this regard, the media has an obligation to disseminate information of public interest.

In contrast, in the proceedings against Prokopieva, the court reached diametrically opposed conclusions. The court took into account that the phrase "he uses … this institution for repression" did not represent an offense to the dignity and self-respect of the claimant because it is not objectively insulting (it does not reflect negative qualities or features, it does not contain derogatory language) and does not carry a message capable of deeply insulting and humiliating the claimant, as per common ethical norms. The deliberations also focused on the semantics of the word 'repression' as in sanctions which constitute an integral part of the FSC's supervisory activities, therefore its usage does not necessarily aim to humiliate the commission's chairperson. The phrase did contain elements of assessment which, albeit being negative, had not resulted in publicizing an embarrassing fact, nor in attributing a crime to the claimant. Furthermore, as a high-ranking public official, Mavrodiev was to be more tolerant of criticism. The court had rightfully taken into account the fact that Prokopieva had made the negative remark in the context of a discussion about the right to free speech. Expressing her opinion was a manifestation of that right and should not be unduly restricted. Another issue that was discussed in detail was the hierarchical relationship between the claimant and his subordinate, the deputy chairperson of the FSC who had issued the decisions to fine the publisher. The court rightfully decided that the chairperson of the FSC has influence over the work of the deputy chairperson and the actions of the latter were determined by the hierarchical link between them.

In full accordance with the law, the court took the right course of action and immediately dismissed the case because none of the journalist's actions were criminal.

Case 34: Kalin Chankov v. Ivan Bakalov

Ivan Bakalov is a journalist and author of several books. He was an editor in the newspapers *1000 Dni, Express, 24 Chasa, Sega, Novinar* and contributor to *Trud*, *Galleria*, the magazine *Biograf* and others.

In April 2015, Ivan Bakalov published several articles[92] about a legal dispute between the company Mesokombinat Varna JSC, owned by Borislav Mandzhukov, and Invest Bank, owned by Petya Slavova. The litigation was initiated because, in 2010, more than USD$ 5 mln. had been withdrawn without Mandzhukov's knowledge from the company's accounts in the bank. In March 2014, soon after Mandzhukov's death, the Sofia City Court ordered Invest Bank to pay Mesokombinat Varna JSC nearly BGN 9 mln. in damages. The sum was to compensate for the funds that had been unlawfully withdrawn from the accounts of the company and to cover the cost of suit, interest and other damages.

The decision was appealed in front of the Appellate Court – Sofia. During the first hearing, an attorney called Kalin Chankov entered the courtroom. He presented documents, claiming that he was the new legal representative of Mesokombinat Varna JSC, instead of the company that had been representing Mandzhukov's company. Furthermore, Chankov presented a decision by the company's board of directors to give up on the claim against the bank. The lawyer that had been representing the company up to that moment objected, saying the documents presented by Chankov had been falsified. He asked that the hearing be temporarily put on hold until the situation is cleared. However, the court accepted the documents presented by Chankov as valid, dismissed the action against the bank and dismissed the case.

Chankov decided that the articles about the lawsuit contained libellous and offensive statements and lodged a complaint against Ivan Bakalov. In November 2017, the SRC decided that Bakalov was innocent. There is no information about the case being appealed.

Comment:

During the two-year trial, the main argument of the claimant's side was that Bakalov's articles contained several descriptions of Chankov: "fake", "false", "a phantom". The topic that the journalist had chosen was extremely important. His work showed that it was possible for funds to be stolen from the bank accounts of clients, including companies and private persons.

In its opinion, the SRCt stated that in his articles, Bakalov had presented his opinion of the described events and there was no ground for accepting that he had committed libel. As per the CC, a person's subjective interpretation of an offensive remark is not relevant when determining whether a crime has been committed.

In this case, the court considered the issue that the articles were focusing on and, with the decision to acquit Bakalov, safeguarded the journalist's right to free speech and free expression.

92 https://e-vestnik.bg/?s=%D0%90%D0%B4%D0%B2%D0%BE%D0%BA%D0%B0%D1%82%D1%8A%D1%82-%D0%A4%D0%B0%D0%BD%D1%82%D0%BE%D0%BC%D0%B0%D1%81&sa=%D0%A2%D0%AA%D0%A0%D0%A1%D0%95%D0%9D%D0%95

Case 35: Dyanko Markov v. Yuliana Metodieva

Yuliana Metodieva is one of the founders of the Bulgarian Helsinki Committee (BHC). She is the founder and editor of Marginalia, an online media for news on human rights issues. Metodieva has authored scientific publications and studies about media issues.

In October 2015, Metodieva published an article in *Marginalia*"[93],about the deportation of Bulgarian Jews from occupied Macedonia, Thrace and Pirot during World War II. The article further commented on the appearance in the European Parliament of Dyanko Markov. The former Bulgarian MP had been invited to the celebration commemorating 25 years since the fall of the Berlin Wall. Metodieva's article went on to inform readers about the five year-long litigation initiated by Markov against all eleven members of Marginalia on the claim that they had used language about him that had caused humiliation and harmed his reputation. What prompted Markov to initiate the proceedings was an open letter to a member of the European Parliament in which the Marginalia team had raised questions about Markov, reminding readers about a speech he had made in the 38th National Assembly of Bulgaria. In the speech, Markov had stated that the deportation of Bulgarian Jews from occupied Macedonia, Thrace and Pirot during World War II was not a war crime, nor a crime against humanity.

Despite the fact that the court had suspended Markov's defamation lawsuit against *Marginalia*, he decided to start a new round of litigation, this time personally against Yuliana Metodieva. That case was finally resolved in 2018 with the acquittal of the journalist.

Comment:

Despite the acquittal, the three year-long lawsuit against the journalist did achieve its strategic goal, namely to apply pressure against her. The article that prompted Markov to initiate the proceedings had presented publicly known facts. It had offered commentary on the first defamation lawsuit and reminded readers of statements he had made in parliament. The subject matter of the proceedings, as outlined by the claimant's side, suggests there is no legal basis to the claim that his rights had been violated. It creates the impression that the lawsuit was initiated with the clear goal of applying pressure against a journalist who had publicized uncomfortable facts about the claimant.

The Sofia Regional Court published a detailed opinion, referring to national and European legislation which protects the right to free expression, to motivate its conclusion that the journalist had made no defamatory statements in her article.

Case 36: Vladimir Karolev v. Borislav Sandov

Borislav Sandov is one of the founders of political party Zelenite (now the Green Movement party) and one of Bulgaria's most prominent environmental activists. In 2021, he was elected MP in the 45th and 46th National Assembly. He was Chairperson of the Environment and Water parliamentary committee and deputy chairperson of the Ad Hoc Committee on Detection of Abuses and Violations in the Spending by the Council of Ministers, the Ministries, the State Authorities, the State-Owned Enterprises and Companies with more than 50 Per Cent State Participation in the Last 10 Years. Between December 2021 and August 2022, he was Minister of Environment and Waters and Deputy Prime Minister for Climate Policy. Sandov is among the organizers of campaigns and protests to protect the environment, human rights, democracy and sustainable development.

93 https://www.marginalia.bg/analizi/vnimavajte-s-antisemitite-mogat-da-vi-osadyat/

n February 2016, Vladimir Karolev published on his Facebook profile a comment about the project to build a second ski lift in the winter skiing resort of Bansko. He also made negative comments about the Green party which was against the project. The text caused polemic between supporters of the ski lift and its opponents among whom was Borislav Sandov. The ecoactivist commented on Karolev's position with phrases such as "liar", "scoundrel" and "mafia lackey". Karolev decided that the comments were offensive and humiliating and filed a lawsuit against Sandov in front of the SRCt, claiming insult and libel. Karolev also lodged a civil claim, claiming immaterial damages worth BGN 10,000.

The court found Sandov not guilty on the basis that it was not proven without reasonable doubt that the offensive phrases were aimed specifically at the claimant. The court considered these phrases to be subjective assessments and determined that they did not represent evidence of a criminal act.

Karolev appealed the decision in front of the SCCt. The second instance court disagreed with the SRCt only in the part concerning whom the offensive phrases had been aimed at. They had been used to describe the claimant, the court decided. The SCCt agreed with the rest of the SRCt's findings and Sandov's acquittal was confirmed.

Comment:

Karolev's lawsuit against Sandov was a criminal case by a private claimant, initiated by a politician against an ecoactivist. In cases involving a criminal defamation lawsuit and a civil claim for damages, the defendant is threatened with the possibility of having to pay compensation for damages on top of possible criminal sanctions. The criminal litigation increases pressure on the journalists and activists on trial, firstly, because of the danger of being found guilty of having committed crimes and secondly, because of the possibility of being ordered to pay sums well beyond their financial means.

Both courts made a distinction between offensive statements against a person's dignity and the constitutionally-guaranteed right to free expression and opinion. Both courts made references to the case law of the ECtHR and decisions of the Constitutional Court which stipulated that it was acceptable for public figures, such as the claimant Karolev, to be subjected to greater public scrutiny and harsher criticism, compared to ordinary citizens.

Case 37: Ilian Todorov v. Ivo Indzhev

Ivo Indzhev is a Bulgarian journalist. From 1983 until 1987 he was the Beirut correspondent for the Bulgarian Telegraph Agency (BTA). Between 1990 and 1995, he served as editor-in-chief of the BTA as well as editor-in-chief of the newspapers Express and Demokratzia. He was the founder and presenter of the programs *Oshte* (More) and *V Desetkata* on bTV. In 1994 he was elected vice president of the Association of European Journalists at its congress in Helsinki. For his work in defense of human rights, he has been awarded twice by the Bulgarian Helsinki Committee. At present, he is a freelance journalist and publishes his own blog, ivo.bg, founded in March 2008.

Two almost identical criminal lawsuits were initiated against Indzhev.

In May 2017, the journalist wrote an article in his blog[94] criticizing the appointment of Ilian Todorov, former MP from the political party Ataka, as regional governor of Sofia District. The article claimed that the post had been given to Todorov by Prime Minister Boyko Borissov in exchange for Ataka's support in parliament. Indzhev pointed out that the newly appointed regional governor lacked any relevant experience for the post and reminded readers about certain facts of Todorov's biography.

94 https://ivo.bg/2017/05/12/%D0%B5%D1%80%D0%B5%D0%BA%D1%86%D0%B8%D1%8F%D1%82%D0%B0-%D0%BD%D0%B0-%D0%BF%D1%8A%D0%BB%D0%B7%D1%8F%D1%89%D0%B0%D1%82%D0%B0-%D1%80%D0%B0%D1%88%D0%B8%D0%B7%D0%B0%D1%86%D0%B8%D1%8F-%D0%BF%D0%BE%D0%B4/

Todorov initiated criminal proceedings with the SRCt, claiming the article contained defamatory statements about him. The court established that the statements made by the journalist in the article expressed his subjective opinion, therefore he was not guilty of any crimes. The decision was appealed in front of the SCCt which confirmed the decision of the court of first instance.

The first lawsuit was shortly followed by another one, also claiming defamation on Indzhev's part. The article that prompted the second lawsuit was a commentary, published on the blogpost, describing the course of the proceedings of the first trial. In 2018, Todorov offered an agreement and the court suspended the proceedings.

Comment:

As the trial unfolded, clear proof emerged that this was indeed a SLAPP lawsuit. Witnesses heard by the court said that the decision for Todorov to initiate proceedings against Indzhev was discussed and made in the headquarters of political party Ataka. This circumstance shows that the criminal proceedings against the journalist did not serve to defend the personal rights of the claimant but were initiated in order to stop the journalist from publishing more critical articles. This conclusion is further supported by the fact that Indzhev was far from the only journalist to criticize Todorov's appointment. Many other journalists reacted negatively to the news of the appointment since the claimant's public statements, expressing hostility towards minority groups and people of Jewish origin, were well-known and widely debated. The decisions of the SRCt and the SCCt reinforced robust case law with regards to SLAPP litigation in Bulgaria.

Case 38: Krasimira Selenova v. Zarko Marinov

Zarko Marinov is an investigative journalist, publisher and editor-in-chief of the newspaper *Otzvuk* in the town of Smolyan. He covers corruption and public procurement procedures and has published in the investigative journalism platform *Za Istinata* as well as in the *Black Book of Government Waste in Bulgaria*. He is a coordinator of the Access to Information Program and member of the National Governing Board of the Democratic Bulgaria political alliance. Marinov served as a member of parliament in the 47th National Assembly.

In June 2018, an article[95] was published in the 47th issue of *Otzvuk* about a filing to the Supreme Judicial Council (SJC) by the leader of the Bulgarian Socialist Party (BSP). The party leader had alerted the SJC about the unprofessional and unlawful manner in which a judge in the Administrative Court – Smolyan presided over proceedings concerning early local elections in a village in the district. The article outlined a public statement made by the BSP about the way elections were held in the village of Beden and about the subsequent trial heard by the Administrative Court – Smolyan.

The judge-rapporteur who had handled the case claimed that the newspaper article contained false and humiliating qualifications describing her work. She initiated criminal proceedings against Marinov as he was the publisher and editor-in-chief of the newspaper.

The case was heard in the Regional Court – Plovdiv after judges from the Regional Court – Smolyan withdrew from the case. The Regional Court – Plovdiv decided that there was no evidence of a crime and denied the request for compensation to the amount of BGN 5,000.

The decision was appealed in front of the District Court – Plovdiv which confirmed Zarko Dimitrov's acquittal.

95 https://otzvuk.bg/signal-do-vss-sreshtu-sadiya-ot-smolyan-vnese-ninova-zaradi-deloto-za-izborite-v-beden/

Comment:

The article that was the reason for Selenova to initiate the lawsuit was about early local elections in a village in the Smolyan district and the subsequent actions of the party which had lost. Citing concerns over possible electoral violations, the BSP filed a report with the office of the Prosecutor General and contested the decision of the Municipal Electoral Committee in front of the Administrative Court – Smolyan. The judge-rapporteur confirmed the decision of the Municipal Electoral Committee. The party lodged an appeal with the SJC, citing major violations of the legal procedures and arrogant behavior on the part of the judge-rapporteur. As a result, the SJC annulled the decision of the Administrative Court – Smolyan, citing major violations such as conducting proceedings without giving all sides the right to participate.

All of the above is described in the article published in Otzvuk. All the facts mentioned in the piece are supported by referrals to specific documents. In addition, the newspaper had sought comments from relevant persons and institutions such as the chairperson of Administrative Court – Smolyan and the District Prosecutor's Office – Smolyan. These facts were confirmed in the course of the defamation proceedings. The court was unequivocal that the journalists' actions were not criminal and the civil suit claiming damages – lacking sound legal basis.

Case 39: Danail Valov v. Hristo Geshov

Hristo Geshov is an investigative journalist based in Cherven Briag. He is a member of the team of Zov News and author of the popular program *Na Pricel*. In 2018 he received the award of the Union of Bulgarian Journalists in the category for regional media.

In 2018, Geshov took part in a late night program on bTV"[96] where he told viewers about pressure he had been subjected to because of his work. The investigations in question had uncovered that the mayor of Cherven Briag Municipality, Danail Valov, had misused public funds. Geshov's investigations had shown that the private homes of the chairperson of the municipal council, the secretary of the municipality and the director of the Civil Engineering and Architecture Directorate in Cherven Briag were renovated with public funds. In another uncovered scheme, the mayor's wife was using municipal water in violation of the regulations and owed nearly BGN 1 mln. in unpaid taxes. Yet another of Geshov's investigations had uncovered violations in the public procurement procedure to select contractors for a program delivering free lunch to low-income earners. The scheme had benefited companies connected to Danail Valov.

After the interview had been aired, Valov filed a defamation lawsuit with the SRCt, claiming the journalist had publicly spread false and defamatory statements about him, harming his reputation. In addition, the mayor also filed a claim for compensation for damages amounting to BGN 3,000.

In 2021, the SRCt decided in Geshov's favor with the argument that the journalist's statements represented subjective assessments rather than defamatory information.

The mayor appealed the decision in front of the SCCt which in 2022 confirmed the decision of the SRCt.

Comment:

The two courts did not accept the claims that the journalists' statements were defamatory because the statements were not found to contain any concrete facts that could have harmed the mayor's reputation or accused him of a crime.

96 *Slavi's Show*, broadcast by bTV on 2 April 2018.

The legal proceedings against Hrito Geshov were paired with other forms of institutional and other types of pressure against him. Many municipal employees filed complaints against Geshov with the police. According to the journalist, more than 130 complaints were filed against him. The complainants blamed Geshov of harassing them by "constantly asking questions" of mayor Valov's administration.

After another one of his investigations was published (on the topic of an illegal waterworks system in the town of Troyan), Geshov was held against his will by two unknown men. They insisted that he remove his article from the Zov News website and from the online platform YouTube. In March 2021, following another critical publication, the journalist's vehicle was set on fire. The car, which had been parked in a garage adjacent to the journalist's home, burned down completely.

Geshov's investigations and a report he had filed resulted in charges being put forward against Danail Valov by the Specialized Prosecutor's Office. The mayor was also removed from the post.

Persons affected by the journalist's investigations applied the full arsenal of pressure tactics against him. Threats, physical violence, constant complaints to the police authorities and lawsuits all with a single purpose, to silence a critic and send a strong message to other journalists.

Case 40: Hristomir Brunzov v. Veliana Hristova

Veliana Hristova is a journalist with more than 40 years of experience. She has worked for the newspapers *Rabotnichesko Delo* and *Duma*.

In mid-2018, Hristova published several articles[97], about discords within the National Institute of Meteorology and Hydrology (NIMH) , related to arguments over the allocation of funding provided by the MoES. According to the articles, NIMH's director, Hristomir Brunzov owned private companies which had the same area of expertise as the institute. The articles described that the director had been acting in a conflict of interests as his companies manufactured automatic metostations. Among the companies' clients was the institute which also used the private companies to service the equipment.

In August 2018, Brunzov initiated proceedings with the SRCt. He claimed that the articles were defamatory and requested compensation to the amount of BGN 19,000 for the harm caused to his reputation. The court decided that the claims had no legal basis because the journalist had not acted intentionally. Hristova was acquitted and the compensation request denied.

Brunzov appealed the decision with the SCCt which annulled it in September 2020. The case was referred back to the regional court. According to the SCCt, the decision of the court of first instance contained a number of errors. Most importantly, the SRCt should have answered one critical question: were the facts mentioned by the journalist in the articles on the topic true. Only then should the court have considered whether the journalistic investigation had been carried out conscientiously and whether any of Hristova's actions constituted crimes.

The first hearing of the case has been scheduled for February 2023.

97 https://duma.bg/dvama-shefove-v-ban-omesvat-naukata-s-chastnite-si-firmi-n168771
Nedelia 150 on BNR 24 June 2018.
https://duma.bg/nimh-izgoni-odita-na-ban-n172716
https://www.duma.bg/chastnite-firmi-v-nimh-ostavat-publichna-tayna-n173076?go=terms&p=cookies
https://duma.bg/skandalat-s-nimh-e-sazdaden-i-rezhisiran-ot-direktora-mu-n173478

Comment:

The court of first instance referenced extensively the case law in Bulgaria and in Europe with regards to the protection of freedom of expression and its importance in discussing topics of wide public interest. According to the court, the evidence gathered in the course of the trial showed that the journalistic investigation had been carried out in accordance with best practices, therefore it was accepted that the facts described in the articles were truthful. This led the court to conclude that the actions of the journalist had not been criminal.

The SCCt found deficiencies in the decision of the court of first instance. Those deficiencies were impossible to correct in the course of the appeal proceedings without violating the right to defense of one of the parties. According to the SCCt, the decision of the SRCt had been based on assumptions and not on solid evidence and had thus violated Art. 303, par. 1 of the CPC. This is why the SCCt ordered a retrial by the Sofia Regional Court.

Case 41: Dimitar Georgiev v. Ivaylo Dernev

Ivaylo Dernev is an editor-in-chief and one of the founders of the website Pod Tepeto. He is active in voicing his civic position on all sensitive topics about the city of Plovdiv and its development.

Ivaylo Dernev was held liable because of an article[98], published in January 2018, about the Plovdiv-based businessman, Dimitar Georgiev, and his plan for a large-scale, mixed-use development in the city, featuring hotel and office facilities as well as residential units. Paradoxically, the text that served as the reason for proceedings against Dernev was not even authored by him. The development plans had already been reviewed in several earlier articles which had generated a broad discussion with many citizens expressing their views on the issue. One of the reader comments attracted Dernev's attention and, after obtaining permission to do so, he published the comment as a stand-alone text, referencing the name of the author. The text was accompanied with the clear disclaimer that it represents the personal opinion of the author, who was clearly named, and a reaction to an article about the development plans which had been published at an earlier stage. Dernev had also mentioned clearly that the reader's opinion had been published in its entirety and had not been edited.

Georgiev claimed the material was defamatory and initiated proceedings against Ivaylo Dernev. The businessman also lodged a civil claim, demanding compensation for immaterial damages to the amount of BGN 10,000.

The Regional Court Plovdiv did not find evidence of a crime and acquitted the journalist. The claims for damages in the civil case were also denied. Georgiev appealed the decision in front of the District Court – Plovdiv which confirmed the findings of the court of first instance. With this, a final acquittal was issued.

Comment:

It is hard to imagine that the person claiming they had been the victim of libel, or their legal representative, truly believed they could win a case against a journalist who had not even written the supposedly defamatory text.

Initiating proceedings, which seem to completely lack legal basis, points to the conclusion that the desired goal is not to receive justice but to cause stress and to apply emotional pressure over a journalist who has criticized a public figure. While it was not difficult for the court to discern these legally unfounded motives on this particular occasion, in the past few years, unfortunately, such outcomes are the exception and not the rule.

98 https://podtepeto.com/aktualno/%D0%BA%D1%80%D0%B0%D1%81%D0%BE%D1%82%D0%B0%D1%82%D0%B0-%D1%89%D0%B5-%D1%81%D0%BF%D0%B0%D1%81%D0%B8-%D1%81%D0%B2%D0%B5%D1%82%D0%B0/

Case 42: Stoyan Mavrodiev v. Nikolay Stoyanov

Nikolay Stoyanov is an investigative and financial journalist in the weekly Capital. He started work there in 2006, initially covering financial markets. His beat then expanded to banking, insurance and pension funds. At present, he is an editor for the newspaper's section on finance. Some of his most popular investigations include articles about the now bankrupt KTB Bank, which he first started writing about in 2009, as well as a series of articles about large credits given out by the Bulgarian Development Bank (BDB) in the period 2015 – 2021. His 2015 investigation into the fraudulent cryptocurrency scheme OneCoin, founded by Ruja Ignatova, is referenced by the international press and has informed several films on the subject.

In February 2021, three defamation lawsuits were filed against Nikolay Stoyanov with the Sofia Regional Court. The private claimant in one of the cases was Michael Timvios from Cyprus. The claimant in the other two cases was Stoyan Mavrodiev, former MP (2009 – 2010) from the GERB political party, former chairperson of the Financial Supervision Commission (2010 – 2016), former chief executive office of BDB (2016 – 2020). In April 2020, Mavrodiev was dismissed from his post in the bank following an article by Nikolay Stoyanov which appeared in Capital on 6 April 2020. According to the article, BDB had issued credit to the amount of BGN 75 mln. to a debt collection agency, S. G. Group, with declared revenue of BGN 2,000.

What prompted the legal proceedings were a number of articles from August 2020[99,100,101] in which Nikolay Stoyanov had described a number of indirect connections between Timvios and Mavrodiev. In the complaints filed with the court, both Timvios and Mavrodiev claimed they were not related in any way. The proceedings were initiated on two consecutive days, more than six months after the first article had been published.

Stoyan Mavrodiev filed two complaints with the SRCt on the same day in February 2021. The first complaint was about an article claiming he had used an intermediary to acquire luxury properties in Greece. The second complaint was filed because of an article describing the activities of a publicly-traded company which had enabled a fake golden visa scheme. As per Stoyanov's findings, in both lines of activity, Timvios had acted as a front for Mavrodiev. The events described in the two articles coincided with time periods when Mavrodiev had been holding senior public posts: Chairperson of the FSC and Chief Executive Officer of BBD. According to Mavrodiev, Stoyanov had spread defamatory information about him, hurting "severely and irreversibly" his honor, dignity and good reputation. Along with the criminal proceedings, Mavrodiev also lodged two civil claims for immaterial damages, each claiming compensation of BGN 40,000.

In May 2022, after five delayed hearings, Mavrodiev withdrew one of his complaints and the lawsuit was suspended. What made the private claimant, who until recently had insisted Stoyanov's article was a heavy blow to his reputation, change his position so abruptly is not clear. In October 2022, after nine delayed hearings, the second complaint was also withdrawn. The case, however, has not been closed yet because the claimant is questioning the cost of Stoyanov's legal representation. This kind of behavior demonstrates that the claimant is looking for ways to continue the pressure against the journalist even in the absence of legal proceedings against him.

99 https://www.capital.bg/politika_i_ikonomika/bulgaria/2020/08/13/4102078_mavrodiev_edin_banker_dve_vili_i_cial_kup_ofshorki/

100 https://www.capital.bg/politika_i_ikonomika/bulgaria/2020/08/13/4102076_skritite_vladeniia_na_mavrodiev/

101 https://www.capital.bg/biznes/kompanii/2020/11/06/4135640_borsovata_mashina_za_pasporti/?fbclid=IwAR3I2xPliMMUeGjFzwBt-zY9D87Ibt5o9jsOYs1tyjjUOkjBrQPvCt0MNd8

Michael Timvios had initiated proceedings against Stoyanov a day before Mavrodiev's complaints were filed. The reason for Timvios' complaint was an article titled "Mavrodiev's Hidden Assets", published in August 2020. The article is one of several texts, based on statements by Dimitar Lambovski, a former MP, about the sale of two houses in Greece to an offshore company, controlled by Mabrodiev. The sale had happened at the time Mavrodiev had been in charge of FSC and BDB. Timvios was mentioned as a representative of the offshore company. In addition to Lambovski's statements, Stoyanov's article also contained claims that Mavrodiev was in control of the offshore company in question, in addition to other offshore companies, despite the fact that other people, including Timvios, had been officially nominated as the owners. Timvios claimed that the article presented him as an intermediary on Mavrodiev's behalf, thus harming his reputation as an investor. However, Stoyanov said that in the course of writing the article he had tried very hard, though without success, to find public information about Timvios and his professional life. In October 2022, after ten public hearings, the parties agreed to settle the case but without the publication running corrections in the article.

Comment:

The litigation against Nikolay Stoyanov is one of a series of repressive actions by Mavrodiev against *Capital* and some of its journalists. Two of the three lawsuits consisted of many hearings and continued for more than 18 months. The third case is in effect still ongoing more than two years after it was initiated.

APPENDIX III
ADMINISTRATIVE AND ADMINISTRATIVE-CRIMINAL CASES

CONTENTS

Case 43: Financial Supervision Commission vs Zov News

Maria Dimitrova is a journalist and editor-in-chief of the Vratsa-based news website Zov News.

On 27 June 2014, *Zov News* published an article titled "First Invest Bank going bankrupt?". It described the queues of people waiting in front of the branches of First Investment Bank in the town. The article, which had been edited by the manager and editor-in-chief Maria Dimitrova, stated that people were queuing because they had received text messages encouraging them to withdraw their savings on account of the unstable financial condition of the bank. The article ended with the official positions of the Bulgarian National Bank and the Ministry of Interior which denied the rumours, calling the event an "organised attack against Bulgarian banks". The article remained on the website for about two hours before it was removed.

On 6 January 2015, the Financial Supervision Commission (FSC) issued a penal provision (PP), whereby it imposed a monetary sanction of BGN 100,000 on Alpiko Publishing EOOD, the publisher of *Zov News*, citing market manipulation.

The media outlet appealed the penal provision at the Regional Court – Sofia which cancelled it in 2016.

The FSC appealed at the Sofia City Administrative Court, which, in July 2016, upheld the judgment of the court of first instance.

Comment:

The fine imposed by the FSC on *Zov News* is an emblematic example of SLAPP litigation in Bulgaria. To begin with, the commission imposed a sanction in the highest possible amount (BGN 100,000) on a small, regional media outlet. The fact that such a disproportionate fine would endanger the outlet's existence was never considered. It should also be noted that a substantial portion of the text of the article reproduces literally an article on the same topic published by the Pik Agency. In its penal provision, the FSC mentions how Pik had handled the topic of the queues in front of branches of the bank as an example. In other words, one outlet was given as an example, while another one was fined for a similar text.

The commission stated that *Zov News* had disseminated false claims as well as information which could have misled readers about certain financial instruments. It remains unclear why the commission ignored several main factors: Firstly, at the end of the article the official positions of the Bulgarian National Bank and the Ministry of Interior are quoted and both institutions refute the speculation about financial turmoil at the bank; Secondly, the article was removed less than two hours after it was posted and on the very same day a correction was posted; Thirdly, it is highly likely that the damages mentioned in the penal provision could have caused significant public harm.

A year after the publisher of *Zov News* was fined, the Regional Court – Sofia held that the penal provision was unjustified and had not taken into account mitigating factors, the seriousness of the violation, and — last but not least — the financial circumstances of the publisher. The court decided that it was not possible to assume that the bank could be compromised because of an article, especially since the article described personal observations of the author (the queues in front of the bank branch in the town of Vrartsa). In addition, the article was published after the bank had closed down for the day. It presented all of the available information objectively, it included official statements by public institutions and its title ended with a question mark (in other words, the article did not suggest that the bank had been struggling). Based on the above, the Regional Court – Sofia cancelled the penal provision of the Financial Supervision Commission. Several months later, the Sofia City Administrative Court fully shared the motives of the court of first instance and upheld the cancellation of the penal provision.

Notably, the Financial Supervision Commission imposed sanctions under the Act Against Market Abuses via Financial Instruments on two media outlets[102] known for their critical stance. Both were sanctioned for articles published on the same date (27 June 2014) and concerning the same topic: the financial condition of First Investment Bank. In both cases, courts decided that the law had not been violated. Within the same period, the Financial Supervision Commission initiated proceedings against two other media outlets, *Mediapool* and *Bivol*, for articles concerning First Investment Bank. In the case of *Mediapool*, the commission issued an act for an administrative offence, while the proceedings against Bivol were suspended at the stage of requisition of explanations[103].

Case 44: Financial Supervision Commission vs Economedia AD

Economedia AD is the largest publisher of business titles in Bulgaria and one of the leading online publishing groups in the country. It was founded in 1993. Its portfolio includes the business weekly Capital and the news website *Dnevnik*.

In late May 2014, the Financial Supervision Commission, then headed by chairperson Stoyan Mavrodiev, initiated three administrative-criminal proceedings against Economedia AD, the publisher of the weekly business title Capital. In July 2014, one more proceeding was started. As a result, the FSC issued a total of four penal provisions to the company and its directors for violations of the Financial Supervision Commission Act and the Act Against Market Abuses via Financial Instruments. Two of the provisions were issued on 15 December 2014 and two — on 06 January 2015. The total amount of the fines was BGN 160,000. The sanctions were issued on account of just two articles published in May and June 2014.

Първата статия[104] appeared at 17:46 on 13 May 2014 and discussed the invitation, announced a day earlier, for a forthcoming general shareholder meeting of Sopharma AD. An error was probably made in the headline of the article as initially, it read "Sopharma to Distribute More Than BGN 30 Million in Dividend" with the sub-heading: "Amount Per Share Equals BGN 0.07". Exactly how long the article was available online with this version of the headline is not clear. However, by 8:59 on the following day (14 May 2014) the title was edited to read: "Sopharma to Distribute More Than BGN 9 Million in Dividend. Amount Per Share Equals BGN 0.07". The article referred to an invitation to the shareholders that the company itself had issued on 12 May 2014. For this article, the FSC issued three penal provisions, imposing a BGN 50,000 fine on Economedia and fines of BGN 5,000 to each of the company's directors. Economedia was sanctioned for violating the Act Against Market Abuses via Financial Instruments. The charges against the publisher included market manipulation by the dissemination of information creating or capable of creating wrong impressions about financial instruments as well as dissemination of rumours and untrue or misleading news when the party disseminating the information knows or should have known that the information is untrue or misleading. The directors were sanctioned for obstructing a body of the Financial Supervision Commission in the exercising of its supervisory powers under the Financial Supervision Commission Act.

The Regional Court – Sofia cancelled three of the penal provisions. The court referenced journalists' right to protect sources; the need to strike a balance between protecting freedom of expression and protecting crucial public interests (FSC had failed to reference what kind of public interest it had been trying to protect); lack of clarity of the facts (whether or not the article was actually posted under a different title); lack of obligation for the person to know that information is misleading; lack of any actual negative effect on the market; the fact that the article was published after the stock exchange had closed down for the

102 also see case 44 below

103 https://www.capital.bg/politika_i_ikonomika/bulgaria/2015/01/19/2455241_stilut_mavrodiev/

104 https://www.capital.bg/biznes/kompanii/2014/05/13/2298822_sofarma_planira_da_razpredeli_nad_9_mln_lv_za_divident/#comments

day and that it had stayed online for a short period. One of the judgments looked into the context of the relations between the director of the media outlet and the FSC which had required that person to provide written explanations for an opinion she had expressed on her personal Facebook page. The court held that, in that particular case, the FSC should have explicitly pointed to the reasons (in terms of the specific kind of public interest at stake) why it was requesting written explanations. This was mandatory because, in the context of the relations between the two parties, the request for explanations could create an impression of partial treatment and unjustified use of the methods of state repression, leading the person to refuse to disclose her sources. The Sofia City Administrative Court cancelled the three judgments of the Regional Court – Sofia and upheld the penal provisions. It fully supported the FSC's arguments of endangering the stability of the financial market through the publishing of information creating or capable of creating untrue or misleading perceptions about financial instruments.

The second article[105] was published on 27 June 2014 and, because of it, the FSC imposed a fine of BGN 100,000 (the maximum stipulated by law). Again, the charges were market manipulation through the dissemination of information leading to untrue or misleading perceptions about financial instruments as well as dissemination of rumours and untrue or misleading news when the party disseminating the information knows or should have known that the information is untrue or misleading. According to the FSC, a claim in the article, that companies controlled by Delyan Peevski (Vodstroy 98, Promishleno Stroitelstvo-Holding and Technoexportstroy) had been "ordered" to urgently withdraw their funds from First Investment Bank, was market manipulation. The Regional Court – Sofia and the Sofia City Administrative Court cancelled the penal provision because the article did not represent a violation of Art. 11, & Art. 6 (1) of the Act Against Market Abuses via Financial Instruments. Namely, the published information could not have inspired untrue or misleading notions about financial instruments while the person who disseminated the information did not know and was not bound to know that the information was untrue or misleading. The court found that considering the lack of clear legal criteria (outlined in national legislation or documents by the FSC) defining what kind of information is capable of creating misleading notions about the state of the financial market, the commission should only impose sanctions in cases when information had been disseminated precisely to manipulate the market. Articles — such as the one published by Capital — which simply analyse the reasons for the bank crisis should not be sanctioned under the Act even if they contain unproven allegations. Furthermore, the court observed that the part of the article referenced in the penal provision had been taken out of context since the overall message of the article (also clearly communicated in the headline) was to calm down depositors by analysing all of the available information on the issue, rather than to destabilise the financial market. It was also noted that there was no information about how the article had impacted the financial market, especially considering that it was published after the bank and the stock exchange had closed down for the day.

It was agreed that the article could not be deemed untruthful as long as it referred only to possible intentions to withdraw money but not to concrete acts, especially since it provided information supplied by the bank stating that BGN 800 million had been withdrawn in a single day. The article also referred to statements by the Bulgarian National Bank, which had pledged support for the private bank, and the State Agency for National Security which had said it would investigate the malicious attack against FIB.

Comment:

During the period under review, and later on, Economedia published many critical articles about Stoyan Mavrodiev, the chairperson of the FSC. Mavrodiev initiated several defamation cases against different journalists from the publishing company and the FSC carried out inspections because of articles and comments posted on Facebook. Some of the inspections ended with the imposition of administrative sanctions. When the content of the issued penal provisions and the context of the relations between the parties is analysed it becomes apparent that the fines represent an attempt to apply institutional pressure on the publisher and its journalists and to silence their critical voices.

105 https://www.capital.bg/biznes/finansi/2014/06/27/2332732_panikata_e_po-goliama_ot_problema/

Regarding the article about Sopharma and the subsequent fine, the commission used as grounds for the sanction a minor inaccuracy which was largely due to the vagueness of the information provided by the company. The mistake was rectified in such a short period that it could not have affected the market. In the FIB case, it is clear that there was not even a reason to issue a fine, considering that the tone of the article aimed to calm down depositors rather than harm the financial stability of the bank sector. Regarding the first three court cases concerning the article about Sopharma, it is evident that the Regional Court – Sofia considered the essential prerequisites for liability for financial market manipulation, the balance between communication rights and the protection of significant public interests, the actual likelihood that such articles could manipulate the market and the specific protection of journalists as per Art. 6(5) of the Act Against Market Abuses via Financial Instruments and the case law of the European Court of Human Rights. The same can also be said about how the Regional Court – Sofia and the Sofia City Administrative Court handled the case concerning the article about FIB. In contrast, when hearing the three cases about the Sopharma article, the Sofia City Administrative Court adopted a formalistic approach, accepting all of the FSC's arguments without any questions and upholding the three penal provisions. No consideration was given to the fact that the official invitation to shareholders posted by Sopharma was quite vague and only a very careful reading and research in the Commercial Register to determine the exact number of shares and calculate the unit price per share would have yielded the precise amount of the profit subject to distribution. In other words, if there was misleading information, it was contained in the notice itself. On the other hand, the court did not comment on the circumstance that since the unit price per share had been published in the article, investors couldn't be reasonably "misled".

Case 45: Commission for Personal Data Protection vs. Otzvuk.bg

Otzvuk.bg is a news website focusing on the town of Smolyan and the surrounding region. The owner of the website also publishes a weekly newspaper covering political, cultural and economic issues and featuring journalistic investigations.

In April 2011, the weekly newspaper *Otzvuk* published an article[106], about the poor financial health of the local forestry cooperative. The article pointed to the actions of the cooperative's chairperson as the most likely reason for its poor performance. One example was given of a contract that the chairperson had signed with a company linked to him. Published alongside the article was a copy of the official document which contained the chairperson's data. The chairperson considered this a violation of the Personal Data Protection Act and filed a complaint with the Commission for Personal Data Protection (CPDP). On 27 October 2011, the commission issued a decision that the newspaper had violated Art. 2(2) of the Personal Data Protection Act, which required that processed personal data is relevant, related and not exceeding the purposes for which it is handled. Otzvuk Print OOD, the publisher of Otzvuk was fined BGN 11,000 for violating Art. 2(2) of the Personal Data Protection Act.

The publisher filed an appeal at the Sofia City Administrative Court (SCAC), which, in March 2013, upheld the decision of the Commission for Personal Data Protection. Otzvuk Print OOD also filed a cassation appeal at the Supreme Administrative Court. On 3 October 2014, that court repealed the fine and the judgment of the Sofia City Administrative Court and the file was sent back to the Commission for Personal Data Protection for reconsideration.

Comment:

Being a newspaper, *Otzvuk* falls within the scope of Art. 4 (2) of the Personal Data Protection Act which admits the processing of personal data for journalistic purposes without thereby disturbing the right to privacy of the holder of the processed data. The data of the person who filed a complaint with the Commission for Personal Data Protection is included in a notary deed, a publicly accessible document available with the Property Register of the Republic of Bulgaria.

106 Otzvuk, issue 41, 11 – 12 April, 2011

In addition, it should be noted that the data published in the article concerns abuses carried out by the appellant in his capacity as representative of the cooperative as well as other companies. By publishing the document, the journalist has adhered to the best practices in journalistic investigation. This and the fact that the topic is of significant public interest should have been taken into account.

It should be noted that the commission's decision did not outline specific reasons for the imposition of the fine. This is a violation of the law and provides grounds for the cancellation of the decision. The commission agreed that the Personal Data Protection Act had been violated and the complainant's private life — infringed upon. However, no arguments were presented to support these conclusions. Neither did the commission provide its arguments for the decision of exactly how large the fine imposed on *Otzvuk* Print OOD should be. When adopting its decision, the commission did not take into account the mechanisms for protecting the right to disseminate and receive information outlined in the Constitution of the Republic of Bulgaria and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The judgment of the Sofia City Administrative Court which fully sides with the Commission for Personal Data Protection contradicts the law, as noted in the subsequent judgment of the Supreme Administrative Court. Just as the Commission for Personal Data Protection had done, the Sofia City Administrative Court decided that the published document contained personal information which exceeded what is allowed as part of journalistic activity. Unlike the commission and the court of first instance, the Supreme Administrative Court took into account the guaranteed freedom of expression and the public significance of journalistic materials that disclose personal data.

This case serves as an example of the inconsistent case law concerning the balance between freedom of speech and the protection of personal data. It shows how different media outlets and journalists may be judged differently. What is also evident is that obtaining a fair judgement is oftentimes a lengthy process with trials heard at all court instances. As this happens, the targets of SLAPP litigation continuously feel under pressure — which is also the real goal of the parties initiating the legal action.

Case 46: Todor Melemov vs Zarko Marinov

Zarko Marinov is an investigative journalist, publisher and editor-in-chief of the newspaper *Otzvuk* in the town of Smolyan. He covers corruption and public procurement procedures and has published in the investigative journalism platform *Za Istinata* as well as in the Black Book of Government Waste in Bulgaria. He is a coordinator of the Access to Information Program and a member of the National Governing Board of the Democratic Bulgaria political alliance. Marinov served as a member of parliament in the 47th National Assembly.

On 18 July 2018, the online version of the Otzvuk newspaper published an article[107] about a new speed camera installed by the traffic police in the town of Smolyan. According to the article, data about the recorded violations was uploaded to the Administrative-Criminal Activity database of the Ministry of Interior. The article also mentioned a Facebook group created by Todor Melemov, director of the Union of Bulgarian Motorists – Smolyan, regional head of the political party GERB and son of the town's mayor. The Facebook group shared information about the locations of police patrol cars in the area as well as information about road accidents. Along with the article, a screenshot of the Facebook group, showing Melemov's photograph and two names, was also published.

According to Melemov, the posting of the photograph where he is pictured together with his young son as well as the publishing of his two names represented a violation of the Personal Data Protection Act and infringed upon his rights. He filed a complaint with the Commission for Personal Data Protection.

In April 2019, the commission issued a decision whereby it rejected Melemov's complaint, deeming it unjustified.

107 https://otzvuk.bg/trinogata-na-kat-zasyakla-mladezh-sas-119-km-chas-v-smolyan/

Comment:

The complaint against Zarko Marinov is an example of the many different kinds of pressure tactics (besides litigation) used against journalists. The act of seeking liability for the sharing of information that was already in the public domain (as is the case with the photograph posted online by the complainant himself) is unreasonable from a legal point of view. The Commission for Personal Data Protection established that the posting of the complainant's photograph and the disclosure of his name served journalistic purposes: discussing a topic important to the community. *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC*, known as the General Data Protection Regulation) defines how natural persons can protect their rights with respect to the processing of their personal data. Recital 4 of the regulation highlights that these rights are not absolute but apply proportionally to other fundamental rights, including the right to freedom of expression which is laid down in the Charter of Fundamental Rights of the European Union.

The resolution of the Commission for Personal Data Protection considers the allegations of the complainant, while a striking balance between the right to free expression and the right to protection of personal data. The Commission decided that it was impossible for any third parties, not acquainted with the complainant, to identify him or the child on the posted photograph.

Case 47: Emil Petrol vs ACF and *Sega*

The Anti-Corruption Fund Foundation (ACF) is a civil, expert organisation which supports public institutions in the efforts to counteract and investigate corruption, abuses of power, conflicts of interests and other violations within the public sector. ACF dedicates most of its time and efforts to conducting journalistic investigations on topics of high public interest, especially related to how public funds are spent. The foundation also exposes corruption schemes and illegal practices in all spheres of public life and especially within the judiciary. The findings of most investigations are presented via short documentaries which aim to reach out to the public, explaining major issues in the functioning of public authorities such as unauthorised influences which hamper the democratic and impartial functioning of institutions. ACF's main objective is to increase public awareness about the issue of endemic corruption and to support the adoption of good practices, standards and recommendations to fight corruption.

Sega is an independent national weekly newspaper established in 1997. Its publisher is Sega EAD. The newspaper's editor-in-chief is Theodora Peeva.

On 28 April 2021, Emil Petrov, in his capacity as a prosecutor at the Sofia Court of Appeal, issued a writ under prosecutor's file 974/2021 on an appeal by Lukáš Wagenknecht, a senator in the Parliament of the Czech Republic, and the Anti-Corruption Fund Foundation (ACF) against a writ issued by a prosecutor from the Sofia City Prosecutor's Office. Issued on 14 August 2020 under prosecutor's file No.21558/2019 in the docket of the Sofia City Prosecutor's Office, the writ contained a refusal to initiate criminal proceedings. After receipt of the writ, on 5 July 2021, ACF published on its website a facsimile of it along with an article titled "Following Appeal by ACF and Czech Senator Wagenknecht, the Appellate Prosecutor's Office Cancelled the Refusal of the Sofia City Prosecutor's Office to Investigate Sale of Varna TPP to Ahmed Dogan"[108]. The facsimile was also published by *Sega*.

On 13 July 2021, Emil Petrov filed a complaint to the Commission for Personal Data Protection, alleging the illegal publication of his signature under the writ. In a decision from 30 June 2022, the commission found that a violation of the „principle of data minimisation" had been com-

108 https://acf.bg/wp-content/uploads/2022/04/%D0%9F%D0%BE%D1%81%D1%82%D0%B0%D0%BD%D0%BE%D0%B2%D0%BB%D0%B5%D0%BD%D0%B8%D0%B5.pdf

mitted. An official warning was issued to ACF and *Sega* newspaper following the procedures of the GDPR. The decision was appealed at the Sofia City Administrative Court which upheld it in November 2022. A cassation appeal was filed with the Supreme Administrative Court and the case is scheduled to be heard in February 2024.

Comment:

In this case, there is no breach of personal data due to several factors. Petrov issued the writ in his official capacity, he was fulfilling his professional duties as a prosecutor rather than acting in a personal capacity. It is not possible to identify him based on the signature alone because the signature is illegible and does not contain his name. In addition, Petrov's identity is revealed via the publishing of his two names and position, something which the Commission for Personal Data Protection found to be in line with the law. As per Art. 199 of the Criminal Procedure Code, writs need to be signed to be considered valid. By publishing the writ in its entirety, in the way it was sent by the prosecutor's office and will all statutory requisites, ACF acted in the public interest and in support of the right of the public to be informed, as per Art. 41 of the Constitution of the Republic of Bulgaria. The processing of the data was carried out in the public interest, for journalistic purposes within the meaning of Art. 25(h) of the Personal Data Protection Act. Namely, the article aimed to inform the public that a prosecutor of higher rank had found Petrov's checks of the circumstances surrounding the acquisition of a strategic infrastructure facility (Varna TPP and Ezerovo TPP and Port) by high-ranking politicians and related parties had not been thorough enough.

APPENDIX IV
DISCIPLINARY PROCEEDINGS

CONTENTS

This appendix contains several publicly known disciplinary proceedings initiated by the Inspectorate at the Supreme Judicial Council against Judge Miroslava Todorova, a vocal proponent of the need for judicial reform, on the pretext of failure to meet the deadlines for the administration of court proceedings.

Case 48: Judge Miroslava Todorova

Miroslava Todorova has worked as a judge since 1999. As of 2011, she was a judge at the Criminal Department of the Sofia City Court. Until November 2012, she was the president of the Bulgarian Judges Association (BJA). Todorova continued performing governance functions even after the termination of her presidency.

In 2011, the Supreme Judicial Council (SJC) elected as president of the Sofia City Court a close friend of Tsvetan Tsvetanov, the then Minister of Interior. The election caused strong discontent. Several judges resigned in protest resignations and many made critical public statements. Among the critics was Miroslava Todorova, the then-president of the BJA. Subsequently, the Inspectorate of the Supreme Judicial Council initiated several checks of Todorova on the grounds of an alleged delay in the issuing of motives for the decisions in several cases she had heard. As a result, Todorova's remuneration was cut by 15 % and later on she was removed from office.

The proceedings against Todorova drew sharp criticism both domestically and at the European level. In 2013, Todorova filed an application with the European Court of Human Rights. She claimed that the disciplinary proceedings against her were retaliation for her criticism of the Supreme Judicial Council and the executive branch of government.

In a judgment from 19 October 2021, the European Court of Human Rights found that the disciplinary proceedings had indeed been conducted on account of Todorova's positions concerning the problems of Bulgaria's judicial system, expressed in her capacity as president of the Bulgarian Judges Association. The court established that Todorova's right to free expression (Art. 10 of the European Convention of Human Rights) had been breached, as well as Art. 18 of the convention which prohibits the use of legal procedures for the achievement of illegal purposes.

Comment:

The case involving Judge Todorova is an example of another method of exerting pressure on critical public voices. Criminal and civil litigation is not the only way to exert pressure on Bulgarian citizens involved in civic causes. The disciplinary proceedings and subsequent punishments outlined above represent a gross and inadmissible interference with freedom of expression in a democratic society. Judge Todorova had expressed her position on widely debated and significant topics. In addition, it had been supported by arguments and presented professionally, without crossing the line of admissible public criticism. The consequences that Todorova suffered were motivated by the desire for revenge and intimidating other magistrates sharing Todorova's views.

APPENDIX V
PRE-TRIAL CRIMINAL PROCEEDINGS

CONTENTS

This appendix presents several cases in which criminal proceedings have been initiated against journalists/civic activists themselves (Case 49 – Case 51). In other cases, the journalists were summoned for an interrogation as part of preliminary checks under the Ministry of Interior Act or were subjects of pre-trial proceedings concerning their work with the focus of the interrogations being the journalists' manner of work and the disclosure of sources (Case 52 and Case 53).

Case 49: Georgi Georgiev, BOEC

Georgi Georgiev is an economist by education and the chairperson of the civic movement BOEC. He has been awarded by the Bulgarian Helsinki Committee for his efforts to reveal violations by Plamen Georgiev, Ivan Geshev and Sotir Tsatsarov, top-level officials of the Prosecutor's Office and the Commission on the Forfeiture of Property Acquired from Criminal Activity.

On 20 April 2020, Georgiev shot a short video in which longtime BNR journalist Petar Mladenov shared how doctors at a hospital in the town of Vidin had refused to test him and his sister for COVID-19 after they had been in contact with an infected relative. In the video, Georgiev shared an opinion that the refusal to test persons who had been in contact with COVID-19 patients was the reason for the high number of sick people in town.

According to the Vidin Regional Prosecutor's Office, Georgiev's statement was misleading because "the investigation established that, contrary to the allegations, coronavirus testing of all medical staff at the Sv. Petka Multi-Profile Active Treatment Hospital – town of Vidin had started on 20 April 2020, a fact which had been clarified in detail to the accused. Nevertheless, G. presented misleading allegations in an electronic media outlet."

The public prosecution brought a charge against Georgiev under Art. 326 of the Criminal Code, which concerns transmitting "by radio, telephone or otherwise, of untrue calls or misleading signs for help, accident or alarm". However, the Vidin Regional Court found that Georgiev had exercised his constitutionally guaranteed right "to seek, obtain and disseminate information". Prosecutors appealed against the acquittal before Vidin's district court which acquitted Georgiev.

Comment:

In the first months of the pandemic, there were many cases against citizens, including politicians and social figures, who were charged by prosecutors from various prosecutor's offices (i.e. these were not isolated incidents, limited within a certain region, but a tendency at the national level). The proceedings were initiated because of critical positions, positions that aimed to warn society about serious problems in the way the state was handling the crisis, or negative forecasts perceived to be untrue. As evident from the text of Art. 326 of the Criminal Code, it does not apply to cases involving the dissemination of any type of untrue information. Rather, it deals with appeals for a response to potentially disastrous situations which are non-existent but would have required an immediate response had they been in existence. Examples include calls alleging the presence of explosive devices in buildings (the most frequent cases); false reports about fires or floods, etc.

In the video from April, Georgiev shows the personal experience of his interlocutor and shares a personal evaluation of the situation during the first weeks of the COVID-19 pandemic. The need to restrict the spreading of this information does not justify a criminal prosecution. Judges in both the regional and the district court of Vidin found that, through his statements, the chairperson of BOEC had exercised his right to free expression guaranteed by the Constitution of the Republic of Bulgaria and the *European Convention for the Protection of Human Rights and Fundamental Freedoms*. This right should not be infringed upon, even in an emergency.

Case 50: Dimitar Petsov

Dimitar Petsov is a freelance journalist and civic activist from the town of Silistra. He is the creator and administrator of the Civil Control Silistra Facebook group which covers the work of local authorities in the town. He has twice been awarded the Golden Key award of the Access to Information Programme.

In late April 2020, Dimitar Petsov filed an application for access to information from the Silistra Regional Directorate of the Ministry of Interior. He was curious about the identity of an anonymous donator who had provided food and beverages for policemen guarding checkpoints during a Covid lockdown in the town.

Several days after filing the request, Petsov was travelling in his car when he was stopped for a police inspection. The police officers then forced him to go to the District Police Department in Silistra with them. One of the officers was riding in the journalist's vehicle. Once they arrived in front of the police department building, the same officers started a search of Petsov's car and, almost immediately, found a package containing more than 40 grams of different types of drugs. The journalist was detained for 24 hours and a drugs possession charge was brought against him. When questioned by police, Petsov stated that he was seeing the drugs for the first time and did not know how the package had ended up in his vehicle.

After almost a year of interrogations, DNA analyses and internal inspections, in February 2021, the Silistra District Prosecutor's Office ended the criminal proceedings against Dimitar Petsov on account of a lack of evidence connecting him to the drugs. The criminal proceedings continue against an unknown perpetrator, charged with making false accusations[109].

Comment:

The case shows clearly that involving journalists in long court disputes that carry the risk of financial losses and convictions is far from the only method of exerting institutional pressure. The incident with Dimitar Petsov happened only five days after one of his numerous attempts to be granted access to public information which would have revealed connections between local representatives of political forces and the town's police. The search of Petsov's car involved several serious procedural violations. The presence of one of the uniformed officers in Petsov's car on his way to the police department is a violation both of the Ministry of Interior Act and the Criminal Procedure Code. No certifying witnesses had been called to observe the actions of the police officers while the car was being inspected. The main reasons why authorities dropped the charges against Petsov were the strong and poignant reactions of journalists and non-governmental organisations as well as the subsequent social pressure on the institutions.

109 https://acf.bg/bg/bitka-za-spravedlivost-dimitar-petso/

Case 51: Asena Stoimenova (Asena Serbezova)

Asena Stoimenova is a pharmacist with more than 20 years of experience in the medical sector. She is an auditor of European standards and good practices in the pharmaceutical sector. Between July 2014 and August 2018, she served as executive director of the Bulgarian Drug Agency. She is a former member of the management board of the European Medicines Agency and a member of the Health Technologies Evaluation Commission. From February 2020 to December 2021, she chaired the management board of the Bulgarian Pharmaceutical Union. On 13 December 2021, she was appointed as Minister of Health in the government of Kiril Petkov.

On 7 April 2020, in two interviews with Bulgarian National Radio[110] and Bulgarian National Television[111], Asena Stoimenova made comments about the shortage of certain medicinal products. She warned there was a likelihood of shortages of medicines used to treat COVID-19 patients and stressed the need for a flexible legislative approach so such medicines could be procured. The Sofia Regional Prosecutor's Office considered the statements made by the pharmacist a criminal offence under Art. 326(1) of the Criminal Code (making untrue calls or misleading signs for help, accident or alarm). On 9 April 2020, the prosecution issued a writ initiating criminal proceedings against the pharmacist. Her bail was set to the maximum amount of BGN 20,000. Persons charged under Art. 3269(1) of the Criminal Code can face up to two years in prison if found guilty. Simultaneously with the charge, the National Revenue Agency carried out two inspections, reviewing Stoimenova's finances and the books of the Bulgarian Pharmaceutical Union over five years.

In July 2020, the criminal charges against Stoimenova were lifted and she was instead fined.

Comment:

Like Georgi Georgiev's case, this one too is about a citizen charged by prosecutors because of expressing critical opinions, negative forecasts or warnings about problems in the manner in which public bodies were responding to the Covid crisis. As evident from the text of Art. 326 of the Criminal Code *(anyone who transmits by radio, telephone or otherwise untrue calls or misleading signs for help, accident or alarm shall be punished by deprivation of liberty of up to two years)*, it does not apply to cases involving the dissemination of any type of untrue information. Rather, it deals with appeals for a response to potentially disastrous situations which are non-existent but would have required an immediate response had they been in existence. Examples include calls alleging the presence of explosive devices in buildings (the most frequent cases); false reports about fires or floods, etc.

Stoimenova's statements were based on official data from Bulgarian, European and global institutions. A curious fact is that, according to information provided by Stoimenova, the same prosecutor's office had previously ordered the Bulgarian Drug Agency to investigate the reasons for the lack of some medicines on the Bulgarian market. In other words, the prosecution had known that there were medicine shortages but the fact that this information was shared publicly was qualified as "creating panic". The usual speed, by which the Sofia Regional Prosecutor's Office issued the writ against the pharmacist, as well as the large bail amount (BGN 20,000), imply intentional repression on the part of the prosecutor's office. Another issue that raises suspicions is the fact that Stoimenova was charged with 'creating panic' for a fact that was already known.

110 https://bnr.bg/horizont/post/101254158/prof-stoimenova-receptite-po-vaibar-ne-sa-elektronno-zdraveopazvane

111 https://bnt.bg/bg/a/prof-asena-stoimenova-v-debata-za-generichnata-zamyana-sa-nuzhni-argumenti

Case 52: Maria Tsantsarova

Maria Tsantsarova is a journalist and a TV host. She started her career at Nova TV and joined bTV News in 2013. She is the recipient of several journalism awards: from the Radostina Konstantinova Foundation (2013), the Valya Krushkina Fund (2014) and others.

In early 2022, Maria Tsantsarova carried out an investigation revealing that MPs from the political party Vazrazhdane had received vaccines against Covid-19 even though their party was actively campaigning against mass vaccination and other pandemic measures. In September of that year, it became known that the journalist had twice been summoned for interrogation by police. The purpose of the interrogations was to make Tsantsarova disclose the identity of her sources. For many journalists and civic organisations, how the journalist was treated represented an attempt to pressurise and censor Tsantsarova. This was also the view of the Association of European Journalists – Bulgarian which issued a statement about the prosecutor's office initiating pre-trial proceedings regarding the case. Along with the actions of the prosecution, one of the Vazrazhdane MPs mentioned in Tsantsarova's investigation filed a complaint for improper access to information and dissemination of personal data with the Commission for Personal Data Protection. The complaint was against the journalist and bTV Media Group.

According to the District Prosecutor's Office – Pazardzhik, on 14 July 2022, following an inspection by officers of the General Directorate Combating Organised Crime at the Ministry of Interior, it initiated pre-trial proceedings because, in the town of Velingrad, an attempt had been made to access the National Health Information System without proper authorisation. As a result, information about the vaccination status of private persons had been received. In February 2023, the pre-trial proceedings were terminated.

The Commission for Personal Data Protection decided that the complaint against Tsantsarova and the media outlet was unjustified because the issue under investigation was important to the public and the public interest prevailed over the right to privacy. However, the commission imposed a fine of BGN 500 on the medical practitioner, whose e-signature was found to have been used for accessing the health information of the complainant. The sanctioned person claimed that he had not been in possession of his electronic signature at the time when the complainant's health data was accessed. However, the commission found that he had been negligent and thus decided to impose the fine.

Comment:

In an opinion from May 2015, the Commission on Journalism Ethics[112] has stated that journalists *have not only the right but also the obligation to protect their confidential sources. In addition, the right to protect sources can be restricted in democratic societies only after an evaluation by an independent and impartial court, provided that requirements for lawfulness, proportionality and legitimate need have been met*. It is inadmissible to interrogate journalists to get them to reveal their sources.

The case law of the European Court of Human Rights on the issue of the protection of sources is unequivocal. The court maintains that *protection of journalistic sources is one of the basic conditions for press freedom*. In several of its judgements, the court has also pointed out that *without such protection, sources may be deterred from assisting the press in informing the public on matters of high public interest.* Moreover, the European Parliament and the Council of the European Union have taken into account the importance of protecting whistleblowers, qualifying them as important sources for investigative journalists in democratic societies. The protection of whistleblowers is regulated and guaranteed in Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019.

112 http://mediaethics-bg.org/wp-content/uploads/2015/03/Guidelines_protection_sources-final.pdf

Case 53: Desislava Nikolova and Aleksey Lazarov

Desislava Nikolova has worked as a journalist for the newspapers *Trud* and *Calendar* and *Nova TV*. Since 2003, she is a part of the team of *Dnevnik*.

Aleksey Lazarov is a long-serving member of the team of the weekly *Capital* newspaper. He has worked as a reporter and editor for the paper's Media and Advertising Industry section, a political editor and deputy editor-in-chief. At present, he is the paper's editor-in-chief.

On 11 November 2022, Desislava Nikolova published an article[113] about an analysis by the National Council of Prices and Reimbursement of Medicinal Products (NCPRMP) at the Ministry of Health. Nikolova's article told of instances when public hospitals had purchased expensive medicinal products that were not registered in Bulgaria from other EU member states. The prices that had been paid were two to five times higher than EU averages.

Nikolova's article also pointed out that shortly after the report had been submitted to the Ministry of Health, Prof. Ilko Getov, the chairperson of the council that carried out the inspection, was removed from office. The article contained quotes from industry experts who had said they suspected that the possible reason for Prof. Getov's removal from office was the information about abuses by hospitals and their suppliers revealed in the report.

Several weeks after the publication of the article, Desislava Nikolova, Aleksey Lazarov and Prof. Ilko Getov were summoned to the Capital Directorate of Interior for interrogation on the orders of the Varna Regional Prosecutor's Office. There is no public information on whether pre-trial proceedings have been.

Subsequently, it became known that the director of one of the hospitals implicated in the report and the article reported Nikolova to the prosecution and the Commission on Journalism Ethics.

Radio Free Europe/Radio Liberty sent multiple requests to the hospital and the speaker of the Varna Regional Prosecutor's Office about the nature of the criminal offence being investigated. However, no answers were provided. There was also no reply from the Ministry of Health to the question of whether the conclusions in Prof. Getov's report had anything to do with his removal from office.

Comment:

In this case, the prosecutor's office and the police clearly acted beyond their powers. They collected information, evaluated the standard of work of journalists and asked them to reveal the identity of sources without having the right to do so. Without a clear legal ground, a reporter and an editor were summoned to the Capital Directorate of Interior for interrogation about an article concerning a topic of exceptionally high public interest. In an interview with another media outlet, Lazarov said they had been *asked whether they fulfilled in good faith their obligations as journalists and how they verified their facts*[114]. Because of this, the authorities' actions can be considered harassment against journalists and infringement on freedom of speech in general.

The case provoked strong reactions from Bulgaria and the EU. In December 2022, the International Press Institute issued a statement about the interrogations, citing Capital's editor-in-chief that his and his colleague's summoning to the Capital Directorate of Interior was an "inadmissible form of pressure". The case has been reported in the Council of Europe Platform for the Safety of Journalists[115] where it is described as an example of exerting pressure on journalists.

113 https://www.capital.bg/politika_i_ikonomika/zdraveopazvane/2022/11/11/4413435_kak_se_krade_ot_lekarstvata_za_deca_i_tejko_bolni/

114 https://boulevardbulgaria.bg/articles/zhurnalisti-ot-kapital-sa-vikani-na-razpit-v-sdvr-zaradi-statiya-za-zloupotrebi-s-porachki-na-lekarstva

115 https://fom.coe.int/en/alerte/detail/107638335

APPENDIX VI
OTHER FORMS OF PRESSURE AGAINST JOURNALISTS AND ACTIVISTS

CONTENTS

Case 54: Excessive liability for court costs Ecoglasnost vs Bulgaria

The political party Ecoglasnost was founded in 1990 with a main focus on environmental protection. The party succeeded the Ruse Social Committee on Ecological Protection founded in 1988, the Ecoglasnost Movement (1989) and the Independent Association Ecoglasnost (1989).

In 2014, the then Minister of Environment and Water issued an order that it was not necessary to carry out an environmental impact assessment of an investment proposal to continue the operation of units V and VI of the Kozloduy Nuclear Power Plant. In 2016, Ecoglasnost filed a request to the Supreme Administrative Court, asking that a legally binding court decision that had upheld the ministerial order be reversed. In a judgment dated 24 October 2016, a panel of seven judges at the Supreme Administrative Court rejected the request and ordered Ecoglasnost to pay BGN 12,000 to the Kozloduy Nuclear Power Plant as compensation for legal fees.

In 2017, Ecoglasnost lodged a complaint to the European Court of Human Rights, contesting the excessive amount of money it had been ordered to pay. In a judgment from 15 December 2020, the court stated that Art. 1 of Protocol No.1 of the convention had been violated. The ECtHR awarded Ecoglasnost an indemnification for immaterial damages in the amount of EUR 3,000 as well as EUR 1,500 for costs and expenses.

Comment:

The case is of interest for the present analysis due to the unusually high amount awarded by the Supreme Administrative Court to the nuclear power plant to compensate for legal costs. The amount exceeded the minimum attorney's fee 24 times. As mentioned in the ECtHR judgment from December 2020, the dispute between the parties concerned procedural issues and lacked the kind of legal complexity that would have required the use of highly paid attorneys to represent the Kozloduy Nuclear Power Plant. It is within the competence of the court to determine the amount awarded as compensation for legal representation, decreasing the claimed indemnification if excessive. However, compensation amounts cannot be set below the statutory limit. The ECtHR also found that the Supreme Administrative Court had not provided sufficiently detailed arguments for its assessment of the costs. In addition, it was decided that the Bulgarian court's judgment did not strike a balance between the public interest and the rights of Ecoglasnost and, as a result, the latter sustained an excessive burden. The large compensation amount claimed by the Kozloduy Nuclear Power Plant could be considered a form of pressure, even punishment, against Ecoglasnost because it had dared to confront the nuclear power plant and publicise a highly significant topic.

Case 55: Police violence
Dimiter Kenarov

Dimiter Kenarov is a translator, poet and freelance journalist. He is the recipient of several awards such as the annual prize for nonfiction of the *Virginia Quarterly Review*.

On 2 September 2020, there were anti-corruption protests held in downtown Sofia. Dimiter Kenarov was among many protesters detained by police. He was held despite making attempts to prove he was a journalist covering the protests. After his detention, he was taken to the Fifth District Police Department where he spent several hours. Upon his release, the journalist announced that he had been beaten up by the police officers.

Kenarov filed a lawsuit because of the illegal arrest, submitting a medical certificate showing multiple injuries such as hematomas, bruises and contusions on various parts of the body. In February 2022, the Sofia Regional Court found that Kenarov's arrest had been illegal.

Despite Kenarov's allegations that he had been beaten by uniformed police officers, the Sofia City Prosecutor's Office refused to initiate pre-trial proceedings. Its decision was also upheld by the Appellate Prosecutor's Office on the grounds that there was no proof that the officers had used excessive force. However, the Supreme Prosecutor's Office of Cassation found evidence suggesting the contrary and returned the file for reconsideration. An identical scenario unfolded: the Sofia City Prosecutor's Office did not find sufficient evidence to initiate pre-trial proceedings and the Appellate Prosecutor's Office upheld the decision. The Supreme Cassation Prosecutor's Office set aside the refusal and again returned the file to the Sofia City Prosecutor's Office. The decision of the Sofia City Prosecutor's Office has still not been issued.

Comment:

Dimiter Kenarov's case concerns the use of physical violence and intimidation against a journalist doing their job. The issue is even more concerning considering the firm refusal of the prosecutor's office to acknowledge the breaches committed by the police officers. The Ministry of Interior has also stated officially that it has not established any wrongdoing on behalf of the officers. Only after top officials at the Ministry of Interior were replaced more than a year after the journalist had been detained, a new internal inspection was carried out which established that Dimiter Kenarov had been beaten up and illegally detained.

This a poignant example of how cases are given selective and biased treatment depending on the political situation.

The protests of the summer of 2020 were marked by many cases of police violence against protesters. Examples of protesters being insulted, humiliated and beaten became publicly known and many incidents were recorded by eyewitnesses. The response of the Ministry of Interior concerning the known cases of physical aggression against protesters remains inadequate. Such behaviour is a threat to fundamental civil rights such as freedom of expression and freedom of association which are guaranteed by the Constitution of the Republic of Bulgaria, the European Convention on Human Rights and many other instruments of international law.

Case 56: Intimidation and threats of physical violence Nikolay Staykov

Nikolay Staykov is an experienced economic journalist and co-founder of the Anti-Corruption Fund Foundation. From 1997 to 2007, he was consecutively reporter, editor and deputy editor-in-chief of the newspaper *Capital*. He is the author of more than 500 articles, analyses and comments in the sphere of economic policy, privatization and public procurement. He is the recipient of many professional awards, including the award for a journalistic investigation of the Radostina Konstantinova Foundation (2021) and the Anti-Corruption Champion Award of the US Department of State (2021).

In the summer of 2020, ACF released several videos outlining the findings of an investigation, "The Eight Dwarves" by Nikolay Staykov. The investigation revealed details of how legal conflicts were settled via unlawful influence. It showed the illegal takeover of a business and bodies of specialized criminal justice handling evidence unlawfully.

Nikolay Staykov asked one of the persons involved in the scheme for his comments. What followed was phone harassment with "funeral-themed calls" to Staykov. One night, his home was vandalised. The telephone harassment ended at once after a leading TV channel reported on the issue and other media outlets — Bulgarian and international followed up. Because of the threats, personal security guards were assigned to Staykov and the ACF office was guarded by police officers for several months.

Comment:

The harassment directed at ACF co-founder and member Nikolay Staykov just several days before the investigation "The Eight Dwarves" was released suggests an intimidation attempt designed to stop the disclosure of facts suggesting the possible participation of senior magistrates and parties related to them in the criminal takeover of a private business.

This case is an example of an attempt to silence journalists and active citizens outside the courtroom.

Nikolay Staykov's case is also an example of the exceptional potential that support from the journalistic community and citizens has in terms of deterring such attempts to pressure and silence journalists. The ACF and Nikolay Staykov issued a public statement in which they discussed in detail the intimidation attempts. This step placed Staykov's investigation in the focus of public attention and helped to intensify the pressure on public bodies to investigate the evidence of violations and criminal offences presented in "The Eight Dwarves".

Case 57: Public attacks against critical journalists and activists

Since 2020 there are several publicly known cases of journalists being forcibly prevented from accessing public events or being subjected to physical and verbal aggression. What is especially concerning is the fact that the acts of aggression have been politically motivated. In some cases, the aggressors were political party supporters while in others — the leaders of political parties. In certain cases, the police failed to intervene adequately. Described below are serval cases of this kind which have been reported by professional organisations to the Council of Europe Platform for the Safety of Journalists.[116] The increasing frequency of such incidents and the escalation of hate speech against journalists suggest that Bulgaria is experiencing serious challenges in protecting freedom of speech.

116 https://fom.coe.int/en/accueil

- On 5 August 2020[117], journalists Polina Paunova and Genka Shikerova were subjected to hostility and verbal aggression by participants in a conference of the then-ruling party GERB which both had been covering. A masked man approached Paunova, hit her, took her phone and threw it in the air. Another man with a conference sticker approached the journalist, called her "scum" and told her that she was not welcome there.
- On 5 August 2022[118], the political party Vazrazhdane announced it would be filing a report to the public prosecution because of irregularities in the activity of America for Bulgaria Foundation. According to its leader Kostadin Kostadinov, the party was concerned because of "media and political corruption affecting the national security". The report was published in its entirety on the party website while its leader and other senior members spoke to a large number of media outlets, making allegations of criminal offences. The 400-page report does not contain evidence of criminal offences. It contains publicly available information about grants provided by the foundation to non-profit organisations in the country as well as a large volume of data about different organizations. Personal data, for example, the ID numbers of journalists, civic activists and members of the management bodies of non-governmental organisations was also shared. Significant pressure was put on the civil society activists via allegations that they had been involved in "media and political corruption affecting national security". Furthermore, the publication of the report in its entirety involved large-scale misuse of personal data. Some of the affected civic activists filed a complaint with the Commission for Personal Data Protection and, as a result, the report was removed from the party's website.
- On 5 October 2022[119], at a press conference held at the headquarters of the Bulgarian Telegraph Agency (BTA) to discuss the results from the early parliamentary elections conducted three days prior, the leader of the political party Vazrazhdane sent away journalists from *Capital, Dnevnik, Club Z* and *Mediapool*. Kostadin Kostadinov called the journalists "foreign agents" and "yellow-brownish waste channels of the US embassy" which he "cannot communicate with or be in the same room with" because of his morals. Representatives of Vazrazhdane used the journalists' refusal to leave and that of BTA staff to remove them from the hall as reasons to leave the press conference and not answer even a single question.
- As Vazrazhdane continues to pressurize journalists and civic activists and to engage in hate speech about them it has also introduced a legislative amendment proposal concerning so-called "foreign agents"[120]. The proposal has been inspired by a similar Russian statute which aims to repress critical voices. The Bulgarian draft law is a cause for concern regarding the right to free speech and represents a serious threat to the country's media environment.
- On 7 February 2023[121], supporters of Vazrazhdane forced the Deutsche Welle journalist Emiliya Milcheva to delete photographs she had taken during its campaign to collect signatures in support of a referendum on joining the Eurozone. The people signing in support of the motion were photographed by Milcheva as a part of an assignment to cover the referendum. The persons helping to gather signatures in support of the referendum attacked the journalist verbally, alleging that she had been "bought off". They insisted that she should delete the photographs and called police which issued a warning to the journalist for breaching public order. Two days later, Deyan Nikolov, the party secretary said that the collection of signatures had been subject to provocations on the part of the journalist. He claimed that she participated in a conspiracy against the referendum, that she worked for a party with a Euro-Atlantic orientation and had been sent to steal personal data, to break the law and to write "all kinds of lies in the American media".

117 https://fom.coe.int/en/alerte/detail/71159200

118 https://bnr.bg/post/101686806/vazrajdane-dava-na-prokuraturata-signal-za-nerednosti-v-deinostta-na-amerika-za-balgaria

119 https://fom.coe.int/en/alerte/detail/107638084

120 https://fom.coe.int/en/alerte/detail/107638186

121 https://fom.coe.int/en/alerte/detail/107638788

- On 31 March 2023,[122] Tsveta Stratieva, a journalist from the Bulgarian National Television, was forcibly escorted out of a press conference of Vazrazhdane. Kostadinov had ordered her to leave with the argument that she "was not a journalist, did not work for BNT and was not wanted at party events". After she refused to leave, a party supporter forcibly escorted her out of the hall. In an attempt to explain his behaviour, Kostadinov stated that the journalist had done nothing wrong, however, his integrity prevented him from admitting liars and questionable characters to the party events. He further added that his attitude to journalists lacking in objectivity had not changed.

122 https://fom.coe.int/en/alerte/detail/107639099

About the authors:

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Sofiya Zheleva holds a Master of Law Degree from "St. Cyril and St. Methodius "University of Veliko Turnovo and has eight years of legal work. She has practiced civil, commercial, property, and labor law as a member of several law firms' teams. She joined the Anti-Corruption Fund Foundation's legal team in 2017, where she has been dealing with research and analysis of corruption practices in various fields, such as public procurements. She participates in projects focusing on civil society development and promoting transparency in the work of public institutions.

The Anti-Corruption Fund is an independent, expert-led non-governmental organization, which investigates cases of alleged corruption, misuse of public funds, and conflict of interest among public officials in Bulgaria. Our research adheres to the highest legal, professional, and ethical standards. We aim to assist public authorities and journalists in investigating and prosecuting corruption-related violations. The goal of our work is to help address systemic factors leading to high corruption levels, and to raise public awareness about the existing mechanisms to counteract corruption.

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