

CASE OF PEEV v. BULGARIA

(Application no. 64209/01)

26 July 2007

In the case of *Peev v. Bulgaria*, [t]he European Court of Human Rights (Fifth Section) . . . [d]elivers the following judgment:

PROCEDURE

The case originated in an application (no. 64209/01) against the Republic of Bulgaria lodged with the Court . . . by Mr Peycho Peev (“the applicant”), a Bulgarian national The applicant alleged, in particular, that the search of his office on the premises of the Supreme Cassation Prosecutor’s Office had been unlawful and unjustified, that this search and the termination of his employment had been reprisals for his having voiced his opinion about the Chief Prosecutor, and that he had not had effective remedies in respect of these measures.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

The applicant, who is a sociologist by training, was employed as an expert by the Criminological Studies Council at the Supreme Cassation Prosecutor’s Office. He was a close friend of Mr N.D., a prosecutor at the Supreme Administrative Prosecutor’s Office, who had become widely known for his public accusations against the Chief Prosecutor, Mr N.F., and for his assertions that the Chief Prosecutor and his entourage were harassing him and exerting improper pressure on him, and who committed suicide on 24 April 2000, leaving a note which said that the Chief Prosecutor should resign.

Following this event, the applicant was considering resigning from his position. For this purpose, he had prepared two draft resignation letters, which he kept in a drawer of his office desk. However, he eventually decided that he would not resign.

On 11 May 2000 the applicant sent a letter to the daily newspaper *Trud*, the weekly newspaper *Capital*, and the Supreme Judicial Council. In that letter he made a number of allegations against the Chief Prosecutor, Mr N.F. He averred that the latter had groundlessly discontinued criminal proceedings against high-ranking persons from the executive branch, and had exploited the Prosecutor’s Office for the purpose of reprisals against political opponents of the ruling party and his own opponents. The applicant also claimed that the Chief Prosecutor had created a fearful and morbid working atmosphere in the Prosecutor’s Office by acting rudely and insultingly towards his subordinates, even, as rumour had it, occasionally physically assaulting them. He further claimed that, according to certain rumours, the Chief Prosecutor had heavily beaten his former wife and a female judge. . . . Finally, the applicant submitted that he had intended to resign because of the bad atmosphere in the Supreme Cassation Prosecutor’s Office, but had eventually decided that the more proper thing to do was to continue performing his work and opposing the nuisance generated by the Chief Prosecutor from within.

The letter was published in the 13 May 2000 issue of *Trud* under the . . . subheading “Fear and evil reign in the Prosecutor’s Office”. The 13 May issue in fact came out during the evening of 12 May, in accordance with the practice of *Trud*’s publishers.

At approximately 9 p.m. on Friday 12 May 2000 S.D., a prosecutor from the Supreme Cassation Prosecutor’s Office, ordered the police officer who was on duty at the entrance of the Courts of Justice building in Sofia to let him enter in order to seal off the applicant’s office. A few minutes later he came back and handed the police officer a written order to not allow the applicant into the building on 13 and 14 May 2000, stating that the latter had been dismissed.

At approximately 10 a.m. on Saturday 13 May 2000 the applicant tried to enter the Courts of Justice building in order to go to his office, but was stopped by the police officer at the entrance.

At 8 a.m. on Monday 15 May 2000 the applicant went to the Courts of Justice building, accompanied by an editor from *Trud* and other journalists. He tried to enter his office, but could not, as the door was locked and his key did not fit in, the lock having apparently been changed. He then went to the office of a prosecutor from the Supreme Cassation Prosecutor’s Office, where he was informed that his resignation letter had been brought to the attention of the Chief Prosecutor and that the latter had accepted it.

At 3.10 p.m. on 15 May 2000 the applicant was handed an order for the termination of his employment on the basis of Article 325 § 1 (1) of the Labour Code, signed by the Chief Prosecutor and effective immediately. The applicant objected that he had never in fact tendered his resignation and that the termination was therefore contrary to that provision.

The same day the applicant requested the Sofia City Prosecutor to inquire into the events (in particular, an alleged search of his office) and, if justified, to open criminal proceedings for abuse of office against the officials who had committed the alleged acts.

[Ultimately, the government refused to prosecute the person’s responsible for blocking the applicant from his office and searching it. The applicant had not named particular persons and had not identified the specific provisions of the Criminal Code that had allegedly been breached by them. Having studied the file, the prosecutor had not found any evidence of a publicly prosecutable offence relating to the refusal to allow the applicant access to his workplace or relating to his resignation letter. The applicant was, however, successful in bringing a civil action against the Prosecutor’s Office, alleging that the termination of his contract had been unlawful and seeking reinstatement and compensation for loss of salary. The courts agreed and ordered that he be reinstated and be paid 2,419.20 Bulgarian leva, plus interest, for loss of salary for the six months following the termination of his employment.]

[The applicant brought this claim, alleging a violation of Article 8, in the European Court of Human Rights because the Bulgarian government had provided no effective remedy for the

intrusion itself. The applicant also brought an Article 10, freedom of expression claim, but I have edited it out.]

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THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

The applicant complained under Article 8 of the Convention that his office had been searched and his draft resignation letter seized. In his view, these measures had been unlawful and unnecessary.

Article 8 provides, as relevant:

“1. Everyone has the right to respect for his private ... life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

A. The parties' submissions

The Government submitted that there had been no interference with the applicant's private life. He had not been allowed access to his office on Saturday 13 May 2000, but this had happened because he had failed to comply with the relevant formalities for entering the building at weekends. His employment had been terminated on 15 May 2000 and it had thus been normal for him not to have access to the building thereafter. On 23 May 2000 a commission had formally inspected his workplace and had drawn up an inventory, on which the applicant had commented. The present case did not concern the applicant's private life or home, because the applicant was not exercising a liberal profession, as had been the case in *Niemietz v. Germany* (judgment of 16 December 1992, Series A no. 251-B). Furthermore, the applicant's workplace did not belong to him, contrary to the position in *Niemietz*. The persons from the Supreme Cassation Prosecutor's Office who had inspected his workplace had acted as representatives of his employer, not as public officials. They had carried out the inspection at a time when the applicant's employment had been terminated and in accordance with the internal rules of the institution.

The applicant disagreed with the Government's interpretation of the *Niemietz* judgment. In his view, he had a right to a personal sphere even in his office on the premises of a public institution. The applicant further noted that the Government had not, in their observations, discussed his allegation that a prosecutor from the Supreme Cassation Prosecutor's Office had searched his office on 12 May 2000 and had taken a personal document from there. Nor had the Government identified the legal provision authorising such a search. This was easily explainable,

because no such rule existed. The prosecutor who had searched the applicant's office had not acted as an employer. However, even if could be assumed that he had acted in that capacity, no rule existed under Bulgarian law that allowed employers to search employees' desks and seize their personal belongings.

B. The Court's assessment

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2. Merits

(a) Was there a search of the applicant's office and were items taken?

The Court must first determine whether the applicant's office was indeed searched between 12 and 15 May 2000, and whether his draft resignation letter was taken. It notes that the Government made no reference to these alleged facts in their observations, instead describing the subsequent inspection of the applicant's office on 23 May 2000, about which the applicant did not complain. The Court further notes that the court examining the applicant's civil action against the Prosecutor's Office found that on the evening of 12 May 2000 S.D., a prosecutor from the Supreme Cassation Prosecutor's Office, had gone to the applicant's office at the Courts of Justice building, had sealed it off and had advised the police officer on duty at the entrance not to let the applicant enter the building. The court further found that, as a result, the applicant had not had access to his office between 12 and 15 May 2000 and that his draft resignation letter could have been taken from his desk and submitted to the Chief Prosecutor only by another person who had had access to his office during that time. On the basis of these findings made by the national courts, the Court is satisfied that at some point between 12 and 15 May 2000, most probably on the evening of 12 May 2000, the applicant's office was searched by officials – either the prosecutor S.D. or others – of the Supreme Cassation Prosecutor's Office, who took the applicant's draft resignation letter from the drawer of his desk.

The Court must now determine whether this search interfered with the applicant's rights under Article 8 of the Convention and whether it was carried out "by a public authority".

(b) Did the search amount to an interference with a right protected by Article 8 of the Convention?

On this point, the Court notes that in the past it has found that searches carried out in business premises and the offices of persons exercising liberal professions amount to interferences with the right to respect for both the private lives and the homes of the persons concerned (see *Chappell v. the United Kingdom*, judgment of 30 March 1989, Series A no. 152-A; *Niemietz*, pp. 33-35, §§ 29-33; *Funke v. France*, judgment of 25 February 1993, Series A no. 256-A; *Crémieux v. France*, judgment of 25 February 1993, Series A no. 256-B; and *Miailhe v. France (no. 1)*, judgment of 25 February 1993, Series A no. 256-C). The issue in the present case is whether the search in the applicant's office, which was located on the premises of a public authority, also amounted to such interference.

The Court will first examine whether the search affected the applicant's private life. On this point, it notes that in the case of *Halford v. the United Kingdom* it held that telephone calls made by a police officer from police premises were covered by the notion of "private life" because the person concerned had had a "reasonable expectation of privacy" in respect of them (see *Halford v. the United Kingdom*, judgment of 25 June 1997). The Court has also used the "reasonable expectation of privacy" test to decide that the covert filming of a person on the premises of the police was an interference with his private life (see *Perry v. the United Kingdom*, no. 63737/00). It has made reference to this test in other cases as well (see *P.G. and J.H. v. the United Kingdom*, no. 44787/98; *Peck v. the United Kingdom*, no. 44647/98; and *Von Hannover v. Germany*, no. 59320/00).

The Court considers that, in view of its similarity to the cases cited above, the situation obtaining in the present case should also be assessed under the "reasonable expectation of privacy" test. In the Court's opinion, the applicant did have such an expectation, if not in respect of the entirety of his office, at least in respect of his desk and his filing cabinets. This is shown by the great number of personal belongings that he kept there. Moreover, such an arrangement is implicit in habitual employer-employee relations and there is nothing in the particular circumstances of the case – such as a regulation or stated policy of the applicant's employer discouraging employees from storing personal papers and effects in their desks or filing cabinets – to suggest that the applicant's expectation was unwarranted or unreasonable. The fact that he was employed by a public authority and that his office was located on government premises does not of itself alter this conclusion, especially considering that the applicant was not a prosecutor, but a criminology expert employed by the Prosecutor's Office. Therefore, a search which extended to the applicant's desk and filing cabinets must be regarded as an interference with his private life.

Having reached this conclusion, the Court finds it unnecessary to additionally determine whether the search amounted to an interference with the applicant's right to respect for his home.

(c) Was the search an "interference by a public authority"?

On this point, the Court notes that on the evening of 12 May 2000 the applicant's office was sealed off by the prosecutor S.D., who was evidently acting under the pretext of his authority and with the acquiescence of the police officer on duty, and who told the officer that the applicant had been dismissed. The national courts found that the person who had carried out the search, be it the same prosecutor S.D. or another person, had access to the Courts of Justice building, admittance to which was restricted, and was apparently connected to the Chief Prosecutor. The material obtained during the search was later brought before the Chief Prosecutor and was used by him to terminate the applicant's employment. In these circumstances, there is no reason to assume that the search was an act carried out by persons in their private capacity. It is immaterial whether the persons who carried out the search acted as public prosecutors or as representatives of the applicant's employer, the Prosecutor's Office, because in any event they were acting as agents of the State. In this connection, the Court reiterates that the responsibility of a State under the Convention may arise for the acts of all its organs, agents and servants. Acts accomplished by persons in an official capacity are imputed to the State in any case. In particular, the obligations of

a Contracting Party under the Convention can be violated by any person exercising an official function vested in him (see, *mutatis mutandis*, *Wille v. Liechtenstein* [GC], no. 28396/95). The Court thus concludes that the search amounted to an interference by a public authority with the applicant's right to respect for his private life.

Such interference gives rise to a breach of Article 8 unless it can be shown that it was "in accordance with the law", pursued one or more legitimate aim or aims as defined in paragraph 2 and was "necessary in a democratic society" to attain them.

(d) Was the interference justified under paragraph 2 of Article 8?

According to the Court's settled case-law, the phrase "in accordance with the law" requires, at a minimum, compliance with domestic law. It also relates to the quality of that law, requiring it to be compatible with the rule of law. That means that the law must provide protection against arbitrary interference with individuals' rights under Article 8 and be sufficiently clear in its terms to give them an adequate indication as to the circumstances in which and the conditions on which public authorities are entitled to resort to measures affecting these rights.

In the present case, the Government did not seek to argue that any provisions had existed at the relevant time, either in general domestic law or in the governing instruments of the Prosecutor's Office, regulating the circumstances in which that office could, in its capacity as employer or otherwise, carry out searches in the offices of its employees outside the context of a criminal investigation. The interference was therefore not "in accordance with the law", as required by Article 8 § 2.

Having arrived at this conclusion, the Court is not required to additionally determine whether the interference pursued a legitimate aim or was "necessary in a democratic society" for its attainment.

There has therefore been a violation of Article 8 of the Convention. [The Court also found a violation of Article 10].

[The Court awarded the applicant 5,000 euros in compensation for both claims]: The Court considers that the applicant must have experienced frustration in the face of the unlawful and unwarranted interferences with his private life and freedom of expression, for which no effective remedies existed. However, it also notes that the applicant's situation subsequently became more favourable, as he was reinstated and was awarded compensation for loss of salary. Having regard to all the relevant circumstances and ruling on an equitable basis, it awards him EUR 5,000, plus any value-added or other tax that may be chargeable. . . .