



Media coverage of former secretary general of the Ministry of Finance's arrest resulted in multiple violations of the European Convention on Human Rights

The case [Popovi v. Bulgaria](#) (application no. 39651/11) concerned the arrest of Mr Popov, former secretary general of the Ministry of Finance, during a police operation that received extensive media coverage.

In today's **Chamber** judgment¹ in the case the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman or degrading treatment and lack of effective investigation) of the European Convention on Human Rights,

a violation of Article 6 § 2 (presumption of innocence) of the Convention regarding the statements by the Minister of the Interior on the day of Mr Popov's arrest;

no violation of Article 6 § 2 of the Convention regarding the statements by the Prime Minister and the prosecutor R.V. on the day of Mr Popov's arrest;

a violation of Article 8 (right to respect for private and family life) due to the media coverage of Mr Popov's arrest and the search and seizure carried out in Mrs Popova's offices; and

a violation of Article 13 (right to an effective remedy) taken in conjunction with Articles 3, 6 § 2 and 8

The Court found that Mr Popov had been subjected to degrading treatment by the police during his arrest and that the ensuing investigation had neither been sufficiently prompt nor carried out with the necessary diligence. It had neither enabled the facts to be established nor determined, where applicable, the responsibility of the police officers involved. As Mr Popov had subsequently been acquitted by the courts, the Court found that the statements by the Minister of the Interior on the actual day of the arrest had resulted in a violation of his right to be presumed innocent, but not the statements by the public prosecutor R.V. or the Prime Minister. The media coverage of the arrest and also the search and seizure carried out in the notary offices had infringed the applicants' right to respect for their private life. Lastly, the Court concluded that the applicants had not had any remedy under domestic law that would have allowed them to assert their respective rights.

Principal facts

The applicants, Tencho Nikolov Popov and Antonia Vasileva Popova, are Bulgarian nationals who were born in 1962 and 1969 respectively and live in Sofia. Mr Popov is the former secretary general of the Ministry of Finance and Ms Popova, a notary in Sofia, is his wife.

In 2009 the prosecuting authorities instituted criminal proceedings against a person or persons unknown for mismanagement of public funds within the Ministry of Defence. The investigator in charge of the case contacted the police to say that he had been approached by Mr Popov and his brother-in-law P.S., a judge at the Sofia City Court, who had allegedly offered him money to

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

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

influence the outcome of the investigation. The police set up a surveillance operation and prepared to make an arrest. Mr Popov was arrested at his wife's notary offices on 1 April 2010 together with two suspected accomplices. In a judgment of 29 October 2012 the court acquitted Mr Popov and his two co-defendants. The judgment was upheld by the Court of Appeal and subsequently by the Court of Cassation.

On the day of the arrest, on 1 April 2010, in an interview on national radio R.V., the prosecutor, commented on the arrest. On 2 April 2010 several daily newspapers quoted statements made by the Minister of the Interior the previous day: "This is quite clearly a plan designed to influence the outcome of criminal proceedings. The money offered by Tencho Popov was intended for the judge so that the criminal case would be decided in favour of the former minister Nikolay Tsonev". On 5 April 2010 a daily newspaper published a comment by the Prime Minister referring to the prosecutor's comments.

On 9 May 2011 the Sofia District Prosecutor's Office initiated a preliminary investigation into the events surrounding Mr Popov's arrest. On 6 July 2011 the same prosecutor's office refused to institute criminal proceedings against the police officers who had arrested Mr Popov, as the prosecutor had concluded that there was insufficient evidence that a criminal offence had been committed. He found in particular that the police officer who had caused Mr Popov a swelling and a scratch on his forehead while immobilising him had acted in self-defence to ward off an attack. Mr Popov appealed against the decision not to institute proceedings. The Sofia City Prosecutor's Office allowed his appeal and ordered the institution of criminal proceedings concerning the circumstances surrounding Mr Popov's arrest. In July 2013 the investigator sent the file to the District Prosecutor's Office, proposing that the proceedings be discontinued in the absence of any evidence that police officer V.S. had intentionally injured Mr Popov. In an order of 24 July 2013 the district prosecutor suspended the investigation on the ground that the perpetrator of the offence had not been identified. Mr Popov appealed against the order. The District Court referred the case back for additional investigative measures, and in an order of 21 March 2014 the Sofia district prosecutor discontinued the proceedings on the grounds that they were time-barred.

Following the institution of criminal proceedings against Mr Popov, the committee responsible for the application of the relevant legislation initiated a procedure for the confiscation of property belonging to Mr Popov and Ms Popova. Its request was examined and upheld by the Sofia City Court on 6 August 2010. Mr Popov and Ms Popova appealed against that decision, but their appeal was dismissed and their subsequent appeal on points of law was declared inadmissible.

Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of torture and inhuman or degrading treatment), Mr Popov alleged that he had been subjected to degrading treatment by the police officers. He complained that there had been no effective investigation into the events surrounding his arrest. Relying on Article 6 § 2 (presumption of innocence), he alleged that the comments made to the media by the prosecutor R.V., the Prime Minister and the Minister of the Interior in the context of the criminal proceedings against him had infringed his right to be presumed innocent. Under Article 6 § 1 (right to a fair hearing) and Article 8 (right to respect for private and family life), Mr Popov and Ms Popova submitted that the search of Ms Popova's offices and the seizure of their personal effects had amounted to an unjustified interference with their right to respect for their home and private life. Under Article 8, Mr Popov complained that his arrest had been filmed and the recording released to the media by the Ministry of the Interior's press service. Relying on Article 6 § 1 and Article 1 of Protocol No. 1 (protection of property), Mr Popov and Ms Popova submitted that the law used as the legal basis for the imposition of preventive measures to secure their property was insufficiently foreseeable as to its effects and did not afford sufficient guarantees against arbitrary action, and that the imposition of the measures in respect of their possessions had not pursued a legitimate aim and had had adverse effects on their

property. Lastly, relying on Article 13 (right to an effective remedy), they contended that they had had no effective domestic remedies by which to obtain redress for the alleged violations of their rights.

The application was lodged with the European Court of Human Rights on 13 June 2011.

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

Ganna **Yudkivska** (Ukraine), *President*,

Erik **Møse** (Norway),

André **Potocki** (France),

Yonko **Grozev** (Bulgaria),

Síofra **O’Leary** (Ireland),

Carlo **Ranzoni** (Liechtenstein),

Mārtiņš **Mits** (Latvia),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 3

With regard to the ill-treatment allegedly inflicted on Mr Popov, the Court observed that the parties did not dispute that the police operation had been planned in advance, carried out by a team of hooded and armed officers; that one of the police officers had used an immobilisation technique to overpower Mr Popov who had been running; that Mr Popov had banged his head against a door while the police officer had pinned him to the ground, as a result of which he had sustained a swelling and a scratch on his forehead. The Court noted that the facts were corroborated by the other documents in the file and in particular by the recording of the police operation by the video surveillance camera at Ms Popova’s offices.

The Court found that the means used by the police and the method of their intervention did not appear to have been necessary in the specific circumstances of the case. It considered that the immobilisation technique used by the police officer to overpower Mr Popov had not been appropriate to the situation. The force used by the officer appeared to have been disproportionate to the danger represented by Mr Popov’s conduct.

The Court found that Mr Popov had been subjected to degrading treatment by the police during his arrest and that there had therefore been a violation of Article 3.

Regarding the investigation, the Court noted that an official investigation into the events surrounding the arrest had been opened by the prosecutor’s office. That office and the criminal investigation authorities had carried out their investigation between 9 May 2011 and 21 March 2014. Having regard to the circumstances, that period appeared excessively long. The Court found that the case had not been particularly complex: it had involved identifying the officer who had immobilised Mr Popov, gathering medical evidence regarding the injuries caused, questioning eyewitnesses to the arrest and analysing the video recording of the police operation. The Court could not but observe that the investigation had been dropped because it had become time-barred. Accordingly, the investigation had neither enabled the facts to be established nor determined, where applicable, the responsibility of the police officers involved. The Court held that the investigation had not been sufficiently prompt and had not been carried out with the necessary diligence. There had therefore been a violation of Article 3.

Article 6 § 2

The Court observed that on 2 April 2010 the media had published a statement by the Minister of the Interior targeting Mr Popov: “This is quite clearly a plan designed to influence the outcome of

criminal proceedings. The money offered by Tencho Popov was intended for the judge so that the criminal case would be decided in favour of the former minister Nikolay Tsonev". That statement had been made on the day he had been arrested together with two accomplices and published the next day. The Court found that the statement had gone beyond the mere communication of information about the progress of the criminal investigation or a description of a suspicion. It had conveyed the idea that Mr Popov had acted as a go-between in a case of corruption, before the courts had even had the opportunity to rule on the merits of the charges brought against him. The Court noted that Mr Popov had subsequently been acquitted by the courts. There had therefore been a violation of Article 6 § 2.

With regard to the statements by the prosecutor R.V. and the Prime Minister, the Court noted that, as it was not easy to construe their meaning they had not infringed the presumption of innocence in favour of Mr Popov.

Article 8

With regard to the media coverage of the arrest, the Court observed that there was no dispute between the parties that both the filming of Mr Popov's arrest and the release of the recording had been done by the Ministry of the Interior's press service. The Court found that the arrest had been filmed and the recording released without Mr Popov's agreement and that this had amounted to an interference with the latter's right to his own image, which was an integral part of the concept of private life.

On the basis of the information in its possession, the Court considered that the practice consisting in filming certain operations was not governed by a law meeting the criteria of the Court's case-law, but was implemented during operations which could arouse major interest among the public and the media. The Court also noted that the Bulgarian Code of Criminal Procedure provided for the possibility of making video recordings in the context of criminal proceedings where evidence was being gathered. In the present case it was not the investigative measures carried out at the place of Mr Popov's arrest that were filmed and released but his arrest itself. Accordingly, it had not been shown before the Court that the interference in question had been in accordance with the law. There had therefore been a violation of Article 8 regarding the media coverage of Mr Popov's arrest.

The Court observed that the search and seizure carried out in the notary's office had been done pursuant to Articles 160 and 161 of the Code of Criminal Procedure, which required either the prior agreement or subsequent approval of those measures by a judge. The Court could not but observe that the Government had not produced any authorisation by a judge or judicial decision stating reasons approving a posteriori the investigative measures in question. The Court therefore considered that it had not been shown that the interference in question had been in accordance with the law. Accordingly, there had been a violation of Article 8 regarding the measures of search and seizure carried out in the notary's office.

Article 1 of Protocol No. 1

In its decision [Nedyalkov et autres c. Bulgarie](#) of 10 September 2013, the Court had already ruled on the question whether the combined provisions of the 2005 Act and the State Liability Act offered a domestic remedy capable of remedying the alleged violation of Article 1 of Protocol No. 1. The Court had acknowledged that those legislative provisions allowed persons injured by the imposition of preventive measures decided pursuant to the 2005 Act to claim pecuniary compensation for the loss suffered in the event that those measures were subsequently lifted. It observed that the recent case-law of the Bulgarian Supreme Court of Cassation contained similar findings. It considered that the same conclusion applied here in so far as Mr Popov and Ms Popova could have requested that the preventive measures be lifted after Mr Popov's acquittal. Furthermore, the Court observed that Mr Popov could seek compensation for "malicious prosecution" pursuant to the State Liability Act and that that compensation was capable of covering the loss caused by the preventive measures

ordered pursuant to the 2005 Act. Both those remedies had become available in 2015, after the conclusion of the criminal proceedings against Mr Popov. The Court observed that Mr Popov and Ms Popova did not appear to have been in any way prevented from using the possibilities available to them under the 2005 Act and the State Liability Act to claim compensation for the loss suffered as a result of the prolonged imposition of the preventive measures securing their property. That part of the application therefore had to be dismissed for failure to exhaust domestic remedies.

Article 13 taken in conjunction with Articles 3, 6 § 2 and 8

In its judgment [Gutsanovi c. Bulgarie](#) of 15 October 2013 the Court had concluded that the claim for compensation based on the provisions of the State Liability Act was not a sufficiently effective remedy to redress the alleged violations of Article 3.

The Court observed that the Government had not referred to any other remedy which would have enabled Mr Popov to assert his right not to be subjected to degrading treatment.

Examining Mr Popov's complaint under Article 6 § 2, the Court concluded that the claim for compensation was not an effective domestic remedy capable of redressing the alleged violation of the right to be presumed innocent.

The Court likewise observed that the Government had not supported their submission that a civil action brought pursuant to the State Liability Act amounted to a remedy sufficiently well established under domestic law to redress the alleged violations of the right to respect for one's home and Mr Popov's right to respect for his private life. Similarly, no provision of domestic law had allowed Ms Popova to dispute the lawfulness and necessity of the search of her offices.

The Court considered that the same reasons prevailed regarding the examination of the complaints under Article 13 and sufficed to conclude that the applicants had not had any domestic remedy that would have allowed them to assert their respective rights.

There had therefore been a violation of Article 13 taken in conjunction with Articles 3, 6 § 2 and 8 of the Convention.

Article 41 (just satisfaction)

The Court held that Bulgaria was to pay Mr Popov 10,000 euros (EUR) and Ms Popova EUR 4,000 in respect of non-pecuniary damage, and EUR 5,000 jointly in respect of costs and expenses.

The judgment is available only in French.

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