FIFTH SECTION

CASE OF PEEV v. BULGARIA

(Application no. 64209/01)

JUDGMENT

STRASBOURG

26 July 2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Peev v. Bulgaria,

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

Mr P. LORENZEN, *President*,
Mrs S. BOTOUCHAROVA,
Mr V. BUTKEVYCH,
Mrs M. TSATSA-NIKOLOVSKA,
Mr R. MARUSTE,
Mr J. BORREGO BORREGO,
Mrs R. JAEGER, *judges*,
and Mrs C. WESTERDIEK, *Section Registrar*,

Having deliberated in private on 3 July 2007,

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

PROCEDURE

1. The case originated in an application (no. 64209/01) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Mr Peycho Ivanov Peev ("the applicant"), a Bulgarian national who was born in 1968 and lives in Sofia, on 10 November 2000.

2. The applicant was represented before the Court by Mr D. Kanchev, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Karadzhova, of the Ministry of Justice.

3. 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.

4. On 18 October 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. 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 (see paragraph 27 below). 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.

6. 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.

7. 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. According to the same rumours, the Chief Prosecutor was mentally ill and suffered from paranoia, for which he had undergone treatment in a psychiatric hospital. According to the applicant, all these rumours had to be verified by the Supreme Judicial Council. The applicant also alleged that the Chief Prosecutor had deliberately tried to wreck the Criminological Studies Council by harassing members of its staff. The applicant further averred that the Chief Prosecutor and his entourage, who had repeatedly uttered threats against the late Mr N.D., were responsible for the latter's death. According to the applicant, that event had to be investigated with a view to determining whether the Chief Prosecutor had incited Mr N.D.'s suicide, which was a criminal offence. 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.

8. The letter was published in the 13 May 2000 issue of *Trud* under the heading "[N.F.] finished [N.D.] off" and 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.

9. 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.

10. 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.

11. 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 (see paragraph 6 above) had been brought to the attention of the Chief Prosecutor and that the latter had accepted it.

12. 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 (see paragraph 28 below), 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.

13. 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.

14. On 23 May 2000 a commission consisting of the head of the administrative department of the Supreme Cassation Prosecutor's Office, the head of the Chief Prosecutor's administration and the Chief Prosecutor's secretary inspected the applicant's office. It drew up a very detailed inventory of the items that it found in his desk drawers and filing cabinets, which included medicines, compact discs with personal material, notes, notebooks, diplomas, personal photographs, books and personal documents, including medical ones. On 25 May 2000 the same commission inspected the contents of the hard disk of the applicant's computer and drew up an inventory of its findings.

15. On 25 May 2000 the applicant and his brother went to the applicant's office to collect his personal belongings. They found that all the cabinets and the applicant's desk had been sealed, that the cabinets and the desk drawers had been rummaged in, and that the draft resignation letters which the applicant had prepared (see paragraph 6 above) were missing, as were his letter of 11 May 2000 (see paragraph 7 above) and his office computer.

16. In an order of 15 June 2000 the Sofia Regional Military Prosecutor's Office, to which the applicant's complaint of 15 May 2000 (see paragraph 13 above) had been referred, refused to open criminal proceedings. It reasoned that in refusing to allow the applicant to enter the Courts of Justice building on 13 May 2000 the police officers at the entrance had acted lawfully.

17. The applicant appealed, arguing, *inter alia*, that the order was incomplete, because his complaint had included allegations of official misconduct by prosecutors of the Supreme Cassation Prosecutor's Office, who, according to the relevant rules of criminal procedure, could be investigated only by a specially appointed prosecutor from the same office. His complaint should therefore also have been brought to the attention of the Supreme Cassation Prosecutor's Office. In an order of 3 July 2000 the Military Appellate Prosecutor's Office upheld the refusal of the Sofia Regional Military Prosecutor's Office to open criminal proceedings against the police officers. However, it agreed that the remainder of the applicant's complaint fell within the competence of the Supreme Cassation Prosecutor's Office and referred it to it.

18. In a decision of 10 July 2000 a prosecutor from the Supreme Cassation Prosecutor's Office refused to open criminal proceedings. He briefly reasoned that in his complaint 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.

19. In the meantime, on 5 June 2000, the applicant had brought a civil action against the Prosecutor's Office. He alleged that the termination of his contract had been unlawful and sought reinstatement and compensation for loss of salary. He averred, *inter alia*, that the climate in the Supreme Cassation Prosecutor's Office had deteriorated as a result of the actions of the Chief Prosecutor. After the death of Mr N.D. he had decided to resign and had prepared a draft resignation letter, but had eventually decided not to and instead to make public his observations about the atmosphere in the Supreme Cassation Prosecutor's Office. In consequence, he had written a letter to *Trud*, *Capital* and the Supreme Judicial Council. Later, access to his office had been impeded and his employment had been terminated on the basis of a resignation which he had never in fact tendered.

20. In a judgment of 5 March 2002 the Sofia District Court declared the termination of the applicant's employment unlawful, ordered that he be reinstated in his position, and awarded him 2,419.20 Bulgarian levs, plus interest, for loss of salary for the six months following the termination of his employment, in line with Article 225 § 1 of the Labour Code (see paragraph 29 below). In the facts part of its judgment it described in detail the events set out in paragraphs 7, 9, 10 and 11 above. After analysing in detail the evidence, the court found that there was no indication that at any point in time the applicant had in fact tendered his resignation. On the contrary, it was evident from the facts that his draft resignation letter had been taken from his office by a person having access to it during the period from 12 to 15 May 2000 and had been submitted by that person to the Chief Prosecutor. This made the termination of the applicant's employment by ostensible mutual agreement unlawful, as Article 325 § 1 (1) of the Labour Code (see paragraph 28 below) required proof of both parties' actual intention to terminate the employment.

21. The Prosecutor's Office appealed to the Sofia City Court, arguing that the applicant had in fact tendered his resignation.

22. In a judgment of 7 July 2004 the Sofia City Court upheld the lower court's judgment. It likewise described in detail the events set out in paragraphs 7, 9, 10 and 11 above, and held, like the court below, that the available evidence did not indicate that the applicant had in fact tendered his resignation. Therefore, in the court's view, the termination of the applicant's employment had been unlawful.

23. The Prosecutor's Office appealed on points of law to the Supreme Court of Cassation. It argued that the lower court had erroneously assessed the evidence and established the facts.

24. In a final judgment of 25 September 2006 the Supreme Court of Cassation upheld the lower court's judgment. It fully agreed with its finding that, on the basis of the available evidence, there was no indication that the applicant had in fact tendered his resignation. Therefore, one of the key requirements of Article 325 § 1 (1) of the Labour Code (see paragraph 28 below) had not been complied with, which made the termination of the applicant's employment unlawful.

25. The applicant was not reinstated in his former position, as in 2003 the Criminological Studies Council at the Supreme Cassation Prosecutor's Office had been abolished. However, during the pendency of the proceedings, again in 2003, a similar body was established at the Ministry of Justice and on 1 April 2003 the applicant was appointed there, apparently independently of the court order for his reinstatement. He has been working there to this day.

II. RELEVANT DOMESTIC LAW

A. The prosecution authorities

26. Section 112 of the Judicial Power Act of 1994 („Закон за съдебната власт“) provides that the Prosecutor's Office is unified and centralised, that each prosecutor is subordinate to the relevant senior prosecutor, and that all prosecutors are subordinate to the Chief Prosecutor (the last-mentioned aspect is also provided by Article 126 § 2 of the Constitution of 1991). The Chief Prosecutor may issue directives and give instructions relating to the Prosecutor's Office's activities (sections 111(3) and 114 of the Judicial Power Act of 1994). The Chief Prosecutor oversees the work of all prosecutors, and the prosecutors of the appellate and regional prosecutor's offices oversee the work of their subordinate prosecutors (section 115(1) and (2) of the Judicial Power Act of 1994). Higher prosecutors may perform any acts which are within the competence of their subordinate prosecutors. They may also stay or revoke their decisions in the cases provided for by law (section 116(2) of the Judicial Power Act of 1994). The higher prosecutors' written orders are binding on their subordinate prosecutors (section 116(3) of the Judicial Power Act of 1994).

27. Until 2003 the Criminological Studies Council was an agency attached to the Supreme Cassation Prosecutor's Office (section 111(3) of the Judicial Power Act of 1994, as in force at the relevant time).

B. The Labour Code

28. Article 325 § 1 (1) of the Labour Code of 1986 provides that an employment contract may be terminated by the parties without notice by mutual agreement expressed in writing.

29. By Article 225 § 1 of that Code, an unlawfully dismissed employee is entitled to compensation amounting to his gross salary for the time during which he has remained unemployed, but not for a period exceeding six months.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

30. 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.

31. 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

32. 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* (cited above). 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.

33. 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

1. Admissibility

34. The Court considers that this complaint, which raises serious issues of fact and law, is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

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

35. 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 (see paragraphs 14 and 32 above), 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 (see paragraphs 9 and 20 above). 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 (see paragraph 20 above). 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.

36. 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?

37. 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, pp. 21-22, § 51; *Niemietz*, cited above, pp. 33-35, §§ 29-33; *Funke v. France*, judgment of 25 February 1993, Series A no. 256-A, p. 22, § 48; *Crémieux v. France*, judgment of 25 February 1993, Series A no. 256-B, p. 60, § 31; and *Miailhe v. France (no. 1)*, judgment of 25 February 1993, Series A no. 256-C, p. 87, § 28). 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.

38. 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, *Reports of Judgments and Decisions* 1997-III, p. 1016, §§ 44 and 45). 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, §§ 36-43, ECHR 2003-IX). 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, § 57, ECHR 2001-IX; *Peck v. the United Kingdom*, no. 44647/98, § 58, ECHR 2003-I; and *Von Hannover v. Germany*, no. 59320/00, § 51, ECHR 2004-VI).

39. 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 (see paragraph 14 above). 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 (see paragraph 5 above). Therefore, a search which extended to the applicant's desk and filing cabinets must be regarded as an interference with his private life.

40. 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"?

41. 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 (see paragraph 9 above). 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 (see paragraph 20 above). The material obtained during the search was later brought before the Chief Prosecutor and was used by him to terminate the applicant's employment (see paragraph 12 above). 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, § 46, ECHR 1999-VII). 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.

42. 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?

43. 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 (see, among many other authorities, *Khan v. the United Kingdom*, no. 35394/97, § 26, ECHR 2000-V).

44. 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.

45. 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.

46. There has therefore been a violation of Article 8 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

47. The applicant complained under Article 10 of the Convention about the alleged reprisals against him as a result of the publication of his letter. He submitted that the sealing off of his office, the search effected therein, the fact that he had been prevented from having access to his office, and the deceptive manner in which he had been discharged from his duties had all been in retaliation for the publication of his letter. In his view, these measures had been unlawful and unnecessary.

48. Article 10 provides, as relevant:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. The parties' submissions

49. The Government pointed out that the Sofia District Court, whose judgment had been upheld by the Sofia City Court, had set the applicant's dismissal aside. As a result of these judgments the applicant had had to be reinstated in his post. However, as in 2003 the Criminological Studies Council at the Supreme Cassation Prosecutor's Office had been abolished

and a new Criminological Studies Council had been established at the Ministry of Justice, the applicant had been offered employment there. Therefore, the applicant had lost his victim status under Article 34 of the Convention. Even if it could be admitted that his dismissal had been the result of the publication of his letter, his reinstatement and the damages which he had been awarded had adequately remedied it.

50. The applicant submitted that his judicial reinstatement in his position more than six years after his dismissal had not deprived him of his victim status. Nor had his appointment at the Criminological Studies Council at the Ministry of Justice on 1 April 2003. He had been left without a job for more than three years as a direct result of his exercise of his freedom of expression. The Government did not deny that. As regards the damages which he had been awarded under Article 225 § 1 of the Labour Code, they had not been intended as a vindication of his freedom of expression, but of his labour rights.

B. The Court's assessment

1. Admissibility

51. The Court must first determine whether the quashing of the applicant's dismissal, accompanied by an award of compensation, and his appointment to a position in the Criminological Studies Council at the Ministry of Justice (see paragraphs 20, 22, 24 and 25 above) deprived him of the status of victim within the meaning of Article 34 of the Convention.

52. Article 34 provides, as relevant:

> "The Court may receive applications from any person ... claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. ..."

53. According to the Court's settled case-law, decisions or measures favourable to applicants are not in principle sufficient to deprive them of their status as victims unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, among many other authorities, *Dalban v. Romania* [GC], no. 28114/95, § 44, ECHR 1999-VI; and *Constantinescu v. Romania*, no. 28871/95, § 40, ECHR 2000-VIII).

54. Concerning the quashing of the applicant's dismissal and the award of compensation, the Court notes that the termination of his employment was only part of the alleged interference with his freedom of expression. Furthermore, it does not seem that the courts having cognisance of his action against the Prosecutor's Office dealt with the freedom-of-expression question submitted to the Court, the salient issue in the domestic proceedings – and the sole concern of the courts in their opinions – being

whether the applicant had actually tendered his resignation, as was necessary for the termination of his employment to be valid under Article 325 § 1 (1) of the Labour Code (see paragraph 28 above). The purpose of these proceedings was thus to give effect to the applicant's labour rights, not to protect his freedom of expression as such (see, *mutatis mutandis*, *Harabin v. Slovakia* (dec.), no. 62584/00, ECHR 2004-VI). Therefore, even if the judgments in his favour provided some form of redress, in the form of an order for reinstatement and an award of compensation for loss of salary, they did not acknowledge expressly or in substance the alleged violation of Article 10 of the Convention.

55. The Court also notes that the applicant was appointed to a similar position about three years after the termination of his employment (see paragraph 25 above). However, while this no doubt mitigated the damage sustained by him on account of his dismissal, there is no indication in the file that this appointment was intended as an acknowledgment and redress for his grievance under Article 10 of the Convention. In this connection, it should be noted that the existence of a violation is conceivable even in the absence of detriment, the latter being relevant only for the purposes of Article 41 of the Convention (see, among many other authorities, *Prager and Oberschlick v. Austria*, judgment of 26 April 1995, Series A no. 313, p. 15, § 26).

56. The Court thus concludes that the applicant may, despite the measures favourable to him, still claim to be a victim within the meaning of Article 34 of the Convention.

57. The Court further considers that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, or inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) Has there been an interference with the applicant's freedom of expression?

58. The first issue which needs to be determined is whether the measures taken in respect of the applicant – the search of his office, the taking of his draft resignation letter and the termination of his employment contract – may be regarded as an interference – in the form of a "formality, condition, restriction or penalty" – with his freedom of expression.

59. The Court has in the past accepted that searches and seizures may amount to interferences with freedom of expression (see *Soini and Others v. Finland*, no. 36404/97, § 52, 17 January 2006; and *Goussev and Marenk v. Finland*, no. 35083/97, § 44, 17 January 2006). It has also considered that dismissals from work may constitute such interferences (see *Vogt v. Germany*, judgment of 26 September 1995, Series A no. 323, pp. 22-23, §§ 43-44; *Wille*, cited above, §§ 40-51; *Fuentes Bobo v. Spain*, no. 39293/98, § 38, 29 February 2000; *De Diego Nafría v. Spain*,

no. 46833/99, § 30, 14 March 2002; and *Otto v. Germany* (dec.), no. 27574/02, 24 November 2005).

60. In order to determine whether the measures taken against the applicant also constituted such an interference, the Court must determine their scope by putting them in the context of the facts of the case (see, *mutatis mutandis*, *Glasenapp v. Germany*, judgment of 28 August 1986, Series A no. 104, p. 26, § 49; as well as *Vogt*, pp. 22-23, § 43; *Wille*, § 41; and *Otto*, all cited above). On this point, the Court notes that the sealing off of the applicant's office took place outside the normal hours of business and within an extremely short time-span after the publication of his letter. The search took place either immediately before or shortly after the office had been sealed off. The applicant's dismissal, which was engineered on the basis of material obtained during the search, followed three days later, immediately after the weekend. During that time the applicant was not allowed access to his office (see paragraphs 9-12 above). This sequence of events appears significant to the Court, especially when weighed up against the contents of the applicant's published letter, in which he made grave accusations against the Chief Prosecutor and denounced certain workplace practices which the latter had established (see paragraph 7 above). Moreover, the Government did not exclude the possibility that the applicant's dismissal had been the result of the publication of his letter (see paragraph 49 above). The Court therefore concludes that the string of measures taken against the applicant was indeed a result of that publication and that these measures amounted to restrictions and penalties within the meaning of Article 10 § 2 of the Convention, that is, an interference with his freedom of expression.

61. Such interference gives rise to a breach of Article 10 unless it can be shown that it was "prescribed by law", pursued one or more legitimate aim or aims as defined in paragraph 2 and was "necessary in a democratic society" to attain them.

(b) Was the interference justified?

62. The Court notes that it has already found that the search in the applicant's office was unlawful (see paragraph 44 above). It further notes that the domestic courts found the applicant's dismissal unlawful (see paragraphs 20, 22 and 24 above). Against this background, the Court finds that the interference with the applicant's freedom of expression was not "prescribed by law", contrary to paragraph 2 of Article 10 of the Convention. Furthermore, the Government have not adduced any arguments showing what legitimate aim was pursued by these measures and why they are to be considered "necessary in a democratic society" for its attainment.

63. There has therefore been a violation of Article 10 of the Convention.

III. ALLEGED VIOLATIONS OF ARTICLE 13 OF THE CONVENTION

64. The applicant complained under Article 13 of the Convention that he had not had effective remedies in respect of the violations alleged above. In particular, he submitted that the authorities had not opened a criminal investigation further to his allegations.

65. Article 13 provides, as relevant:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

66. The Government submitted that no issue arose under Article 13 in relation to the applicant's complaint under Article 8, as there had been no interference with his private life. Nevertheless, he had had the opportunity, which he had used, to complain to the prosecution authorities about the alleged search. In so far as the applicant relied on Article 13 in relation to his complaint under Article 10, he had likewise made use of the available domestic remedies and had as a result been reinstated in his post.

67. The applicant submitted that in reality he had had no chance of a just resolution of his situation. Therefore, the criminal remedy which he had tried had not, in the particular circumstances, been effective. This was further proved by the fact that he had learned about the decision of the Supreme Cassation Prosecutor's Office of 10 July 2000 only when he had received a copy enclosed with the Government's observations.

B. The Court's assessment

1. Admissibility

68. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It does not find it inadmissible on any other grounds either. It must therefore be declared admissible.

2. Merits

69. According to the Court's settled case-law, the effect of Article 13 of the Convention is to require the provision of a remedy at national level allowing the competent domestic authority both to deal with the substance of a relevant Convention complaint and to grant appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision. However, such a

remedy is only required in respect of grievances which can be regarded as "arguable" in terms of the Convention (see, among many other authorities, *Halford*, cited above, p. 1020, § 64).

70. The Court observes that the applicant had an "arguable" claim that the search of his office amounted to a violation of Article 8 of the Convention. He was, then, entitled to an effective domestic remedy in that respect. The Court does not consider that in the circumstances the notion of effective remedy went as far as calling for the opening of criminal proceedings against the persons who had carried out the search. Therefore, the refusal of the prosecuting authorities to open such proceedings (see paragraphs 16, 17 and 18 above) did not in itself amount to a breach of Article 13. However, the Court notes that the Government did not point to any other avenue of redress which the applicant could have used to vindicate his right to respect for his private life, nor did they refer to any relevant domestic court judgments or decisions. They have thus failed to show that any remedies existed in respect of the unlawful search in issue (see, *mutatis mutandis*, *Vereinigung demokratischer Soldaten Österreichs and Gubi v. Austria*, judgment of 19 December 1994, Series A no. 302, p. 20, § 53; and *Yankov v. Bulgaria*, no. 39084/97, § 154, 11 December 2003). There has therefore been a violation of Article 13 of the Convention in conjunction with Article 8.

71. Similarly, the applicant had an arguable claim that the impugned events amounted to a breach of Article 10 of the Convention. He was therefore entitled to an effective domestic remedy in that respect as well. The Court does not consider that in the circumstances the notion of an effective remedy included the need to resort to criminal proceedings to vindicate the applicant's freedom of expression (see, *mutatis mutandis*, *Kuznetsov and Others v. Russia* (dec.), no. 184/02, 9 September 2004). The refusal of the prosecuting authorities to open criminal proceedings pursuant to the applicant's request did not therefore entail a breach of Article 13. However, as already noted above, the Government did not point to any other avenue of redress whereby the applicant could have aired his grievances resulting from the search of his office. Since that search amounted to an interference with his freedom of expression, the lack of remedies in respect of it runs counter to Article 13 of the Convention.

72. As regards the availability of remedies in respect of the applicant's dismissal, viewed as an interference with his freedom of expression, the Court notes that the applicant was able to challenge that dismissal and have it set aside (see paragraphs 19-24 above). However, the issue remains whether the proceedings in which he did so may be regarded as a remedy in respect of the alleged violation of Article 10 of the Convention. On this point, the Court notes that their subject matter was confined to determining whether the applicant had in fact tendered his draft resignation, as required for the termination of his employment to be valid under Article 325 § 1 (1)

of the Labour Code (see paragraphs 20, 22, 24 and 28 above). Accordingly, the courts at all levels concentrated on this issue and did not discuss the substance of the applicant's freedom-of-expression grievance. It is true that the applicant did not expressly plead that the termination of his employment had been a sanction for the publication of his letter, confining himself to a description of the context and the events leading up to his dismissal. However, he cannot be blamed for not doing so, as this was not part of the cause of action under Article 325 § 1 (1) of the Labour Code (see paragraph 28 above). On the other hand, it transpires from the description of the facts in his statement of claim that the impugned events were a result of his accusations against the Chief Prosecutor (see paragraph 19 above).

73. The Court thus finds that the proceedings in which the applicant challenged his dismissal did not amount to an avenue whereby he could vindicate his freedom of expression as such (see, *mutatis mutandis*, *Harabin*, cited above). No other remedy has been suggested by the Government (see *Vereinigung demokratischer Soldaten Österreichs and Gubi*, p. 20, § 53; and *Yankov*, § 154, both cited above). There has therefore been a violation of Article 13 of the Convention in conjunction with Article 10.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

74. The applicant complained under Article 6 § 1 of the Convention that the prosecution authorities had not opened criminal proceedings against the officials of the Supreme Cassation Prosecutor's Office who had allegedly abused their office in order to cause him harm. In his view, this had been a result of the prosecutors' hierarchical dependence on the Chief Public Prosecutor, who had reasons to be biased against the applicant after the publication of his article.

75. Article 6 § 1 provides, as relevant:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."

76. According to the Court's settled case-law, this provision does not guarantee the right to have third parties prosecuted for a criminal offence (see, among many other authorities, *Perez v. France* [GC], no. 47287/99, § 70, ECHR 2004-I).

77. It follows that this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

79. The applicant claimed 6,000 euros (EUR) in respect of non-pecuniary damage. He submitted that the events of May 2000, which had swiftly followed his attempt to voice his opinion about the vicious practices existing in the Supreme Cassation Prosecutor's Office at that time, had gravely disrupted his career. He had also been traumatised by the patently unlawful manner in which the officials of that office had interfered with his private life.

80. The Government did not express an opinion on the matter.

81. 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.

B. Costs and expenses

82. The applicant sought the reimbursement of EUR 3,520 in lawyers' fees for the proceedings before the Court and the prosecution authorities, as well as EUR 113.66 in translation expenses and postage. He submitted a fees agreement between him and his legal representative, a translation invoice and postage receipts. He requested that any amount awarded under this head be paid directly into his representative's bank account.

83. The Government did not express an opinion on the matter.

84. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award EUR 2,500 for lawyer's fees and EUR 113.66 for expenses, plus any value-added or other tax that may be chargeable. These amounts are to be paid into the bank account of the applicant's representative, Mr D. Kanchev.

C. Default interest

85. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaints concerning the alleged interferences with the applicant's private life and freedom of expression and the existence of effective remedies in these respects admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

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

4. *Holds* that there has been a violation of Article 13, in conjunction with Articles 8 and 10, of the Convention;

5. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable on the date of settlement:
      (i) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;
      (ii) EUR 2,613.66 (two thousand six hundred and thirteen euros and sixty-six cents) in respect of costs and expenses, to be paid into the bank account of the applicant's representative, Mr D. Kanchev;
      (iii) any tax that may be chargeable on the above amounts;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 July 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia WESTERDIEK Registrar	Peer LORENZEN President