



## STATEMENT

on

**the defamation case against Atia Kassabova  
of *Compass* newspaper**

**ARTICLE 19  
Global Campaign for Free Expression**

**London  
June 2002**

### **I. Background Facts**

This Statement concerns the defamation case against Atia Kassabova, a journalist with the *Compass* newspaper, in which, on 11 May 2002, she was found guilty of libel against each of the four plaintiffs, Totka Dimitrova Kazakova, Antonia Ivanova Messerdjieva, Rumen Atanasov Evstatiev and Gencho Nenov Dalev. It provides an analysis of the case in comparison with international standards regarding defamation.

The case was based on articles published in *Compass* on 12 and 14 September 2000 alleging that there had been corruption in relation to the admission of children to elite schools in the Bourgas area. Specifically, it was claimed that parents had paid bribes to the admissions committee to have their children admitted pursuant to a regulation regarding access for children with medical conditions, even though these children did not suffer from the medical conditions covered. The four plaintiffs were specifically named in the article as those accused of corruption.

Mrs. Kassabova, the author of these articles, had received information about the bribes from Manuk Levon Manukian, member of the organisation 'Civil Society for Saving Bourgas'. When questioned, Mr. Manukian refused to specifically name individual parents who had allegedly confided to him that they had paid such bribes.

In the second article, Mrs. Kassabova provided an apology for any allegations she had made which might prove to be false.

The Court found Mrs. Kassabova guilty of libeling each of the four complainants but absolved her of criminal liability, imposing instead an administrative fine of 700 leva (approximately 350 Euro) for each libel, as well as requiring her to pay 1000 leva compensation to each plaintiff for moral damages for the anguish they had suffered.

The Court found that Mrs. Kassabova had failed to provide sufficient evidence to rebut the presumption under Bulgarian law that defamatory statements are false, in part based on the fact that neither she nor Mr. Manukian provided names of parents who had paid bribes. In assessing the case, the Court refused to take into account the apology Mrs. Kassabova had made.

## **II. Analysis of the Case**

A large number of defamation cases have been considered by international courts, including the European Court of Human Rights, as well as by national courts. These courts have had to balance the importance of respect for one's reputation against the fundamental right to freedom of expression. In July 2000, ARTICLE 19 published *Defining Defamation: Principles on Freedom of Expression and Protection of Reputation*, setting out the appropriate balance between these two important social values. The Principles are based on the cases noted above, as well as other authoritative statements of international standards in this area. *Defining Defamation* has been endorsed by, among others, the UN Special Rapporteur on Freedom of Opinion and Expression and the OSCE Representative on Freedom of the Media.

### **II.1 Criminal Defamation**

ARTICLE 19 is of the view that the criminal law is not a legitimate means to protect reputations. Principle 4(a) of *Defining Defamation* states:

All criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws. Steps should be taken, in those States which still have criminal defamation laws in place, to progressively implement this Principle.

Civil defamation laws are the only means used to protect reputations in many countries, either because criminal laws do not exist or because they have fallen into disuse. The experience in these countries shows that the criminal law is not necessary to provide effective protection to reputations. Since the criminal law exerts a greater chilling effect on freedom of expression, it cannot be justified as a means to protect reputations. The criminalisation of a particular activity implies a clear State interest in controlling the activity and imparts a certain social stigma to it. In recognition of this, international courts have stressed the need for governments to exercise restraint in applying criminal remedies when restricting fundamental rights. Furthermore, the experience in many countries shows that the powerful can abuse criminal defamation

laws to restrict criticism of their activities, contrary to the public interest in the free flow of information and ideas.

ARTICLE 19 notes that the court in this case did not impose a criminal penalty, but simply an administrative fine. However, the fact that a criminal penalty could have been imposed serves as a warning to other journalists and writers. Bulgarian law does not provide for prison sentences for those found guilty of defamation but does provide for public censure.

**Recommendation:**

- The criminal provisions on defamation should be replaced by appropriate civil laws.

## **II.2 The Issue of Truth**

In all defamation cases, a finding that an impugned statement of fact is true should absolve the defendant of all liability (see Principle 7(a) of *Defining Defamation*). Bulgarian law as reflected in this case appears to be consistent with this principle.

However, the ARTICLE 19 principles also deal with the question of the onus of proof in relation to truth. Principle 7(b) states:

In cases involving statements on matters of public concern, the plaintiff should bear the burden of proving the falsity of any statements or imputations of fact alleged to be defamatory.

It is beyond any question that in this case the statements were on a matter of public concern, namely corruption. However, the court relied on a presumption that defamatory allegations are false, a presumption which the court held was not rebutted by evidence introduced by the defendant, as a central part of its holding that the defendant was guilty. This presumption clearly contravenes the principle quoted above. Furthermore, it also contravenes a key principle of criminal law, based on the presumption of innocence, which requires the onus to be placed on those bringing the charges, normally the State, to prove all of the elements of the case.

A related issue is the reliance by the court on the failure of the defence to reveal the names of specific parents who had made bribes. Insofar as this relates to the defendant, a journalist, her right to protect the confidentiality of sources of information means that she should not have to provide such evidence. *Defining Defamation* states clearly that defendants in defamation cases should not suffer any detriment simply for failing to reveal confidential sources of information (see Principle 6(b)).

**Recommendations:**

- In cases involving matters of public concern, such as the case being considered here, the onus should be on the plaintiff to prove the falsity of any statements of fact, not on the defendant to prove the truth of his or her statements.

- In all criminal cases, the onus should be on those bringing the case to prove all elements of the charges, including the falsity of any statements of fact.
- Journalists accused of defamation should not be required to reveal confidential sources of information and should suffer no detriment for refusing to do so.

### **II.3 Public Officials**

The plaintiffs in this case were public officials – employees of the Ministry of Education and Science – and they were acting within the scope of their official duties. International law is very clear on the matter of public officials and defamation: they are required to tolerate more, not less, criticism, in part because of the public interest in open debate about public institutions. As Principle 8 of *Defining Defamation* states:

Under no circumstances should defamation law provide any special protection for public officials, whatever their rank or status. This Principle embraces the manner in which complaints are lodged and processed, the standards which are applied in determining whether a defendant is liable, and the penalties which may be imposed.

Article 148 of the Bulgarian Criminal Code, contrary to this principle, provides for higher penalties for defamation of public officials acting within the scope of their duties.

#### **Recommendation:**

- The provisions providing special protection to public officials against defamation should be repealed.

### **II.4 The Defence of Reasonable Publication**

It is now widely recognised that in certain circumstances even false, defamatory statements of fact should be protected against liability. A rule of strict liability for all false statements is particularly unfair for the media, which are under a duty to satisfy the public's right to know where matters of public concern are involved and often cannot wait until they are sure that every fact alleged is true before they publish or broadcast a story. Even the best journalists make honest mistakes and to leave them open to punishment for every false allegation would be to undermine the public interest in receiving timely information.

A more appropriate balance between the right to freedom of expression and reputations is to protect those who have acted reasonably in publishing a statement on a matter of public concern, while allowing plaintiffs to sue those who have not, what might be termed the defence of reasonable publication (see Principle 9 of *Defining Defamation*). For the media, acting in accordance with accepted professional standards should normally satisfy the reasonableness test. Bulgarian law does not appear to recognise this defence and it appears not to have been applied in this case.

#### **Recommendation:**

- Bulgarian law should incorporate a defence of reasonable publication, in line with the above standards.

## **II.5 Reports of Investigations**

The media and others should be free to report, accurately and in good faith, official findings or statements (see Principle 11 of *Defining Defamation*). This is based on the public interest in ensuring wide dissemination of official findings and the status of such findings.

To some extent, the articles in question in this case were based on the findings of an official investigation. Inasmuch as this is the case, the statements should not attract liability for defamation. It does not appear that Bulgarian law recognises this exemption from defamation liability and the information received by ARTICLE 19 suggests that this point was not considered by the court.

### **Recommendation:**

- Bulgarian law should recognise an exemption from liability for fair and accurate reports of official findings or statements.

## **II.6 Remedies**

It is clear that sanctions for defamation are covered by the guarantee of freedom of expression, so that unduly harsh sanctions, even for statements found to be defamatory, breach the guarantee of freedom of expression. This means that sanctions must be strictly proportionate to the harm done (see Principle 15(b) of *Defining Defamation*). ARTICLE 19 is not in a position to assess whether or not the sanctions in this case are proportionate.

One aspect of the requirement that sanctions be proportionate is that any remedies already provided, for example on a voluntary or self-regulatory basis, be taken into account in assessing court-awarded damages. To the extent that remedies already provided have mitigated the harm done, this should result in a corresponding lessening of any pecuniary damages. As Principle 15(b) of *Defining Defamation* states:

In assessing the quantum of pecuniary awards, the potential chilling effect of the award on freedom of expression should, among other things, be taken into account. Pecuniary awards should never be disproportionate to the harm done, and should take into account any non-pecuniary remedies and the level of compensation awarded for other civil wrongs.

The Bulgarian court specifically refused to consider the apology provided by Mrs. Kassabova, so to that extent failed to respect this principle.

### **Recommendation:**

- Sanctions in defamation cases should be strictly proportionate to the harm caused and, to ensure this, should take into account any remedies already provided, including voluntary and self-regulatory remedies.

