



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF PRUNEA v. ROMANIA

(Application no. 47881/11)

JUDGMENT

STRASBOURG

8 January 2019

FINAL

08/04/2019

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Prunea v. Romania,

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

Ganna Yudkivska, *President*,

Vincent A. De Gaetano,

Faris Vehabović,

Iulia Antoanella Motoc,

Carlo Ranzoni,

Georges Ravarani,

Marko Bošnjak, *judges*,

and Marialena Tsirli, *Section Registrar*,

Having deliberated in private on 13 November 2018,

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

PROCEDURE

1. The case originated in an application (no. 47881/11) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Mr Petru Prunea (“the applicant”), on 8 September 2010.

2. The Romanian Government (“the Government”) were represented by their Agent, Ms C. Brumar, from the Ministry of Foreign Affairs. On 2 October 2013 the President of the Section granted the applicant leave to represent himself, pursuant to Rule 36 § 2 of the Rules of Court.

3. The applicant alleged that his right to freedom of expression had been breached, in violation of Article 10 of the Convention.

4. On 18 October 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1945 and lives in Cluj-Napoca. He is a university professor and contributor to various magazines and newspapers, mainly of an economic and financial nature. At the time of the relevant events he had already published more than 180 articles in various local or national publications.

6. Prior to parliamentary elections held at the end of November 2008, the applicant wrote an article about M.I.-I., who was standing as a candidate for one of the national parties. The article, headlined “Attention! He also wants [to be] in Parliament”, was published on the front page of *F.*, a newspaper, on 6 November 2008. It read as follows:

“After five rounds of free parliamentary elections, ordinary people, who are politically active only when they vote, have come to an uncontroversial conclusion: there is something wrong with people who become candidates for various political functions. Without even knowing exactly what [is wrong], most people of good moral and professional character often choose not to vote any more. They make that choice especially when they learn that the person appearing on the electoral poster asking for votes has never done anything remarkable in his or her profession. ...

It is therefore no longer surprising that the Romanian Parliament is the institution that enjoys the least public confidence.

Time has consolidated the public’s belief that most candidates want to become parliamentarians so that they can for a couple of years take advantage of the privileges they grant themselves or of those informal benefits which come through the development of the system of relationships associated with their functions. There are candidates who do everything to become parliamentarians in order to shield their criminal record from the [criminal] acts they committed before becoming senators or deputies.

Among the many cases of that type, I today present you one. And if I do this it is not to help the voters, because imposture by an individual reveals itself without reserve to the perceptive masses, whereas one by a group or party does not, especially when one can use all the presidential and municipal logistical powers, impressive amounts of funds and an unsuspected power to persuade individuals with little training.

One such case is that of Mr M.I.-I. This gentleman is in good physical condition, especially after living a comfortable life as a manager at R. Cluj [a public company], and now wants to use his skills in Parliament. And he does not intend to reach such a position only based on his well-known lucidity, but also with the help of some financial support for the intellectual efforts he wishes to make for the benefit of the many. For that purpose, he borrowed 15 billion Romanian lei for a period of 12 months, namely until 31 October 2008 – to invest on the stock market and earn a bit more than the creditor would request as interest, based on perfectly legal documents.

It is just that at one point the moral profile of this representative of the Democratic Party of Cluj showed itself clearly. Not having made as much [profit] as he hoped, the candidate M.I.-I. decided not to repay the loan thus contracted, after imploring the creditor to have mercy, to postpone and not enforce the contract. Even though he knows that the contract weighs against him, he is relying on that defect of Romanian justice of postponing the adjudication of cases. In fact, Mr M.I.-I. brought a case before a court which had no jurisdiction to assess the case. But he hopes in the near future to be able to invoke his immunity as a member elected by the nation, just like his spiritual guardian, who left us without a maritime fleet.

That is why I say that we must be careful about what Mr M.I.-I. signs and promises! For the following day he might no longer admit to anything, he may switch to another political party, if he is given more, he may even sell part of the electoral district where

he ran and if nobody wants it, he can go to Smirnov because it is warmer in Tiraspol than in Huedin.”

7. On 9 April 2009 M.I.-I. brought a civil action against the applicant: he sought 25,000 euros (EUR) for non-pecuniary damage as the article had allegedly seriously affected his reputation and made him lose the election by approximately one hundred votes. M.I.-I. also complained about the publication by the applicant of another defamatory article on 21 January 2009, which was in a similar vein. He also complained about the distribution of leaflets before the election, which had reproduced the contents of the article of 6 November. He alleged that all the material had been meant to discredit him as a candidate.

8. The applicant confirmed that he was the author of the article in question and that everything he had written had been true, as proved by documents from the Arbitration Tribunal of the Cluj Chamber of Commerce, which would become available to the court. He further denied contributing in any way to the publication or distribution of other articles and leaflets concerning M.I.-I.

9. On 20 July 2009 the Cluj-Napoca Court of First Instance allowed the claims lodged by M.I.-I. and held that the article of 6 November 2008 had contained defamatory statements about him. It further held the applicant liable to pay EUR 20,000 for non-pecuniary damage and 3,291 Romanian lei (RON) in legal costs.

10. The court held that the applicant had not proved that his statements were true. The procedure before the Arbitration Tribunal, invoked by the applicant in his defence, had concerned a commercial dispute between M.I.-I. and the applicant’s brokerage company, in which the claims of M.I.-I. had been partially granted on 7 April 2009, as the repayment deadline had been set for 30 April 2010. The court considered that even if true, the applicant’s statements had been defamatory and should not have been made public in the media, especially since they concerned matters of a private, commercial nature.

11. The court further noted that the applicant’s statements had been reproduced in electoral leaflets, which had been distributed in several public places, in bus stations and private mailboxes. The court held that even if it was not the applicant who had produced or distributed the leaflets, there was a causal link between the publication of the article and the harm caused to M.I.-I.’s reputation because if he had not produced his article in the first place, there would have been no leaflets and no amplification of the negative effects on M.I.-I.’s image.

12. The court then focused on the terms used by the applicant in his article, in particular calling the defendant an impostor, which was found to be insulting and lacking factual justification as there existed no criminal complaints of fraud against M.I.-I. It concluded that the language used, conveying the idea that M.I.-I. would accept any compromise for money

and would therefore betray the electorate, his party and his country, had exceeded the limits of admissible criticism and had disparaged him.

13. The applicant appealed, arguing before the Cluj County Court that the publication of the article in question during a parliamentary election campaign had had the role of informing the public, in good faith, about a political figure. In such a situation, the limits of admissible criticism were wider. He argued that during election campaigns the press had the essential role of informing the public about future members of the Romanian Parliament. He argued that the amount of damages awarded by the first-instance court had been disproportionate and had had an obvious punitive purpose.

14. In a final judgment of 21 January 2010 the County Court essentially upheld the reasoning of the lower court. It considered that the manner in which the applicant had acted proved that he had not complied with the duties and responsibilities inherent in the exercise of the freedom of expression:

“The seriousness of his allegations and of the acts imputed to M.I.-I. hold him [the applicant] responsible for showing the highest rigour and a special caution, the lack of which would breach the rights of others.”

15. The County Court confirmed that the lower court had correctly estimated that it had been necessary to balance the right to private life on the one hand and freedom of expression which contributed to a debate of public interest on the other, holding that:

“To insult, to defame a person cannot be justified and legitimate when one party aims to unilaterally expose in the press private litigation of a commercial nature involving two private parties.

In assessing the existing conflict between the exercise of freedom of expression in the press and the necessity to protect the reputation and the rights of others, the court estimates that even though the applicant’s allegations made in a press article during an electoral campaign, concerned a potential member of the Romanian Parliament, thus were of public interest, there are limitations to freedom of expression, the applicant having been bound to act within the limits given by the public interest in protecting the reputation and the rights of another person, including his or her right to be presumed innocent.

Undoubtedly, when the article was published in the newspaper F., the applicant did not comply with the minimum requirements of diligence prescribed by Article 10 § 2 of the Convention, in the sense of acting in good faith and in accordance with the journalistic ethics so as [to ensure that] the provided information be trustworthy, notwithstanding the dose of exaggeration or provocation allowed in such situations.”

16. Nevertheless, the County Court allowed the applicant’s appeal in part and reduced the damages to EUR 5,000, considered to be more proportionate to the damage sustained by M.I.-I.

II. RELEVANT DOMESTIC LAW

17. The relevant provisions of the Romanian Civil Code in force at the time concerning tort liability are cited in *Ghiulfer Predescu v. Romania* (no. 29751/09, § 24, 27 June 2017).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

18. The applicant complained that the obligation imposed on him by the domestic courts to compensate M.I.-I. for non-pecuniary damage had amounted to a breach of his right to freedom of expression, guaranteed under Article 10 of the Convention. He relied in addition on Article 6 § 1 and Article 13 of the Convention.

19. The Court is of the view that it suffices to examine the complaint solely under Article 10, which reads as follows:

“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. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

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. Admissibility

20. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Arguments of the parties

21. The applicant submitted that his publication of the article for which he had been found liable had pursued the aim of informing the public about M.I.-I., a public person aspiring to become a parliament deputy. He argued

that the statements had not infringed any of the rights set down in the Convention, being purely a manifestation of his own right to freely impart public information.

22. He further stated that he was not challenging the proportionality of the measure, but rather the sanction itself, considering that the domestic courts had abused their powers after being influenced by the political nature of the case.

23. The Government submitted that the interference had been provided for by law, namely Articles 998-999 of the Civil Code in force at the time (see paragraph 17 above); it had been legitimate, aiming at protecting the rights of others; and, finally, it had been proportionate as a fair balance had been struck between the right to reputation of a third party, M.I.-I., and the applicant's rights.

24. In that respect, they argued that the statements had concerned facts of a serious nature, which, however, had been outside the limits of political debate. Moreover, the applicant had been unable to establish the truthfulness of what he had written, although he had been given the possibility to do so. Lastly, the sanction had not been excessive or unreasonable. In support of their arguments, the Government cited *Mihaiu v. Romania* (no. 42512/02, 4 November 2008) and *Ciuvică v. Romania* ((dec.), no. 29672/05, 15 January 2013).

2. The Court's assessment

25. The parties do not dispute the fact that the domestic courts' judgments amounted to an "interference" with the applicant's exercise of the right to freedom of expression.

26. The Court also finds that the interference complained of was prescribed by law, namely Articles 998-999 of the Civil Code in force at the time (see paragraph 17 above), and pursued the legitimate aim referred to in Article 10 § 2 of the Convention, namely the "protection of the reputation or rights of others".

27. What remains to be established is whether the interference was "necessary in a democratic society".

28. When examining the necessity of an interference in a democratic society in the interests of the "protection of the reputation or rights of others", the Court may be required to verify whether the domestic authorities struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely, on the one hand, freedom of expression protected by Article 10 and, on the other, the right to respect for private life enshrined in Article 8 (see *Hachette Filipacchi Associés v. France*, no. 71111/01, § 43, 14 June 2007, and *MGN Limited v. the United Kingdom*, no. 39401/04, § 142, 18 January 2011). The Court emphasises that, in order for Article 8 of the Convention to come into play, an attack on a person's reputation must

attain a certain level of seriousness and its manner must cause prejudice to personal enjoyment of the right to respect for private life (see *A. v. Norway*, no. 28070/06, § 64, 9 April 2009, and *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012).

29. Where the balancing exercise between those two rights has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see *MGN Limited*, cited above, §§ 150 and 155, and *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06 and 3 others, § 57, ECHR 2011). The relevant criteria in this regard are: (a) the contribution made by the article to a debate of general interest; (b) how well known is the person concerned and what is the subject of the report; (c) the conduct of the person concerned prior to publication of the article; (d) method of obtaining the information and its veracity; (e) content, form and consequences of the publication; and (f) severity of the sanction imposed (see *Axel Springer AG*, cited above, §§ 89-95).

30. The Court also reiterates that a distinction has to be made between private individuals and persons acting in a public context, as political figures or public figures. Accordingly, whilst a private individual unknown to the public may claim particular protection of his or her right to private life, the same is not true of public figures (see *Minelli v. Switzerland* (dec.), no. 14991/02, 14 June 2005, and *Petreenco v. Moldova*, no. 20928/05, § 55, 30 March 2010) in respect of whom limits of critical comment are wider, as they are inevitably and knowingly exposed to public scrutiny and must therefore display a particularly high degree of tolerance (see *Ayhan Erdoğan v. Turkey*, no. 39656/03, § 25, 13 January 2009, and *Kuliš v. Poland*, no. 15601/02, § 47, 18 March 2008; see also *Milisavljević v. Serbia*, no. 50123/06, §§ 32-34, 4 April 2017 and *Von Hannover v. Germany* (no. 2) [GC], nos. 40660/08 and 60641/08, §§ 108-113, ECHR 2012).

31. In the present case, the Court notes that the applicant's criticism was directed at M.I.-I., a candidate in parliamentary elections for a national political party. He was thus a politician in respect of whom the limits of acceptable criticism are wider than in the case of a private individual (see *Lingens v. Austria*, 8 July 1986, § 42, Series A no. 103, and *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 180, ECHR 2017 (extracts)). By standing in the parliamentary elections, M.I.-I. entered the political scene and inevitably and knowingly laid himself open to close scrutiny – scrutiny of his every word and deed by both journalists and the public at large. For these reasons, he was required to display a greater degree of tolerance (for similar reasoning, see, among the most recent authorities, *Genner v. Austria*, no. 55495/08, § 35, 12 January 2016).

32. Nevertheless, the Court also notes that the applicant was sanctioned for his statements, in particular his utterance of the idea that M.I.-I. was an "impostor", a person who was ready to accept any compromise and betray

his electors for financial advantage. According to the Cluj-Napoca Court of First Instance, those “insulting” expressions harmed M.I.-I.’s reputation and dignity and should not have been made public via the media, especially because they referred to private matters (see paragraph 10 above). Furthermore, the court took into consideration the harmful effect that the distribution by third parties of electoral leaflets, reproducing the content of the applicant’s article, had had on M.I.-I.’s reputation (see paragraph 11 above). It emphasised the necessity to balance the right to private life on the one hand and the freedom of expression on the other.

33. This reasoning was upheld by the County Court, which underlined “the seriousness of the [applicant’s] allegations and of the acts imputed to M.I.-I.” and considered that these statements had not been “trustworthy, notwithstanding the dose of exaggeration or provocation allowed in such situations” (see paragraph 14 above).

34. Moreover, in their assessment, the domestic courts took into account the context in which the impugned allegations had been made, namely during an electoral campaign, and confirmed the fact that they had been of public interest, in so far as they had concerned a public figure.

35. The Court considers it relevant that in reaching the conclusion to allow in part the claim in the defamation proceedings against the applicant, the domestic courts considered that the latter had not intended to criticise M.I.-I.’s activity as a public figure, but rather to publicly expose a unilateral view of private litigation of a commercial nature involving two private parties. In this respect, they also held that the applicant had not complied with the minimal requirements of diligence, in the sense of acting in good faith (see again paragraph 14 above).

36. In the light of the above, the Court agrees with the domestic judicial authorities that the impugned statements were an attack on M.I.-I.’s reputation reaching the requisite level of seriousness and causing prejudice to personal enjoyment of his right to respect for private life under Article 8. It also finds that the domestic courts did undertake a satisfactory balancing exercise between the rights at stake, in conformity with the criteria laid down in the Court’s case-law; furthermore, they convincingly established the need for placing the protection of the defendant’s right to protection of reputation above the applicant’s freedom of expression.

37. In this context, the Court recalls that it would require strong reasons to substitute the Court’s view for that of the domestic courts (see paragraph 29 above). Such strong reasons are lacking in the present case.

38. Lastly, the Court observes that the applicant was ordered to pay damages of EUR 5,000 (see paragraph 16 above) and takes note of the fact that the applicant has not shown what his financial situation was at the time and whether or not he struggled to pay that amount. Furthermore, it has not been argued, let alone shown, that the amount the applicant was obliged to pay had a disproportionate impact on his financial situation; in fact, the

applicant did not in any manner rely on the severity of the sanction, but rather contested the measure itself (see paragraph 22 above). The Court is therefore satisfied that in the particular circumstances of the present case, the imposed sanction cannot be found to have been disproportionately severe (see, *mutatis mutandis*, *Dorota Kania v. Poland (no. 2)*, no. 44436/13, § 83, 4 October 2016 and *Genner v. Austria*, no. 55495/08, § 49, 12 January 2016), and cannot be considered to have been capable of having a “chilling”, dissuasive effect on the applicant’s exercise of his right to freedom of expression.

39. Having regard to all the foregoing factors, and the margin of appreciation afforded to the State in this area, the Court concludes that the domestic courts struck a fair balance between the applicant’s freedom of expression under Article 10 and M.I.-I.’s right to have his reputation respected under Article 8 and that this assessment was made in conformity with the criteria laid down in the Court’s case-law.

40. There has, accordingly, been no violation of Article 10 of the Convention.

FOR THESE REASONS, THE COURT,

1. *Declares*, unanimously, the application admissible;
2. *Holds*, by five votes to two, that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 8 January 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Maridalena Tsirli
Registrar

Ganna Yudkivska
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges De Gaetano and Vehabović is annexed to this judgment.

G.Y.
M.T.

JOINT DISSENTING OPINION OF JUDGES DE GAETANO AND VEHA BOVIĆ

1. We regret that we cannot share the view of the majority in this case that there has been no violation of Article 10 of the Convention.

2. In the instant case the applicant's criticism was directed at M.I.-I., a candidate in parliamentary elections for a national political party. M.I.-I. was thus, to all intents and purposes, a politician in respect of whom the limits of acceptable criticism are wider than in the case of a private individual (see *Lingens v. Austria*, 8 July 1986, § 42, Series A no. 103, and *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 180, 27 June 2017). By standing in the parliamentary elections, M.I.-I. entered the political arena and inevitably and knowingly laid himself open to close scrutiny – scrutiny of his every word and deed by both journalists and the public at large. For these reasons, he was required to display a greater degree of tolerance (see, among the most recent authorities, *Genner v. Austria*, no. 55495/08, § 35, 12 January 2016).

3. The applicant was punished for his statements, in particular his utterance of the idea that M.I.-I. was an “impostor”, a person who was ready to accept any compromise and betray his electors for financial advantage. According to the Cluj-Napoca Court of First Instance, those statements had harmed M.I.-I.'s reputation and dignity and should not have been made public via the media, especially because they referred to private matters (see paragraph 10 of the judgment). Furthermore, the court took into consideration the harmful effect that the distribution by third parties of electoral leaflets, reproducing the content of the applicant's article, had had on M.I.-I.'s reputation (see paragraph 11). However – and this is crucial for our dissent – the domestic courts failed, in our view, to undertake a balancing exercise between M. I.-I.'s reputation and the applicant's freedom of expression in conformity with the criteria laid down in the Court's case-law. They also attached no particular relevance to the overall context of the text.

4. The general aim of the applicant's article was to draw voters' attention to the question of M.I.-I.'s suitability to be a candidate for national public office. The statements in the article therefore concerned a matter of public interest for the local community, even if some of them might appear harsh or far-fetched. As a general rule, the Court considers that opinions and information pertinent to elections which are disseminated during an electoral campaign should be considered as forming part of a debate on questions of public interest, unless proof to the contrary is offered. According to the Court's case-law, in respect of matters of public interest restrictions on freedom of expression should be interpreted narrowly (see, by way of example, *Kość v. Poland*, no. 34598/12, § 38, 1 June 2017).

5. Furthermore, we are of the view that the domestic courts did not clearly assess whether the contested statements were value judgments and, if they were, whether there was a sufficient “factual basis” for them (see, for example, *Morice v. France* [GC], no. 29369/10, §§ 155-157, ECHR 2015). While it is true that some of the applicant’s statements, such as those concerning M.I.-I.’s alleged imposture and propensity to make immoral compromises, could be considered statements which lacked a sufficient factual basis, the thrust of the applicant’s article was to cast doubt on the suitability of a local politician for public office. Admittedly, the applicant’s article and, in particular, the expressions used, could be considered as polemical, involving at least a certain degree of exaggeration. The Court, however, has stated that persons taking part in a public debate on a matter of general concern are allowed to have recourse to a degree of exaggeration or even provocation, or in other words to make somewhat immoderate statements (see, *mutatis mutandis*, *Do Carmo de Portugal e Castro Câmara v. Portugal*, no. 53139/11, § 43, 4 October 2016), and the instant case is about exactly that. We are of the view that the said expressions do not amount to a gratuitous personal attack because the author supported them with an objective explanation, namely the existence, at the time of the article, of an actual commercial dispute before the Arbitration Tribunal concerning M.I.-I.’s alleged refusal to repay a loan (see paragraph 10 of the judgment). Moreover, the Court has also held that in the field of political debate, political invective often spills over into the personal sphere; such are the hazards of politics and the free debate of ideas, which are the guarantees of a democratic society (see, among the most recent authorities, *Lykin v. Ukraine*, no. 19382/08, § 29, 12 January 2017).

6. In the light of all this, and in the absence of any pertinent reasoning provided by the domestic courts in line with the Court’s case-law, we cannot consider that the applicant acted in bad faith.

7. The applicant was, moreover, ordered to pay damages to the tune of EUR 5,000 (see paragraph 16 of the judgment). The Court has repeatedly noted the chilling effect that a fear of sanction has on the exercise of freedom of expression. Although the applicant has not shown what his financial situation was at the time and whether or not he struggled to pay that amount, we are of the view that, in the circumstances, the sanction imposed was capable of having a “chilling”, dissuasive effect on the applicant’s exercise of his right to freedom of expression (see, for instance, *Lombardo and Others v. Malta*, no. 7333/06, § 61, 24 April 2007, and *Ghiulfer Predescu v. Romania*, no. 29751/09, § 61, 27 June 2017).

8. To sum up, we are of the view that the domestic courts failed to strike a fair balance between the relevant interests and to establish a “pressing social need” for putting the protection of M.I.-I.’s reputation protected by Article 8 of the Convention above the applicant’s right to freedom of expression under Article 10 of the Convention, and this in the context of

political repartee. We therefore ineluctably conclude that the interference with the applicant's right to freedom of expression was not "necessary in a democratic society", and that there has accordingly been a violation of Article 10 of the Convention.