



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

SECOND SECTION

**CASE OF THE ASSOCIATION OF INVESTIGATIVE REPORTERS
AND EDITORIAL SECURITY OF MOLDOVA AND SANDUȚA
v. THE REPUBLIC OF MOLDOVA**

(Application no. 4358/19)

JUDGMENT

Art 10 • Freedom of expression • No compensation awarded by domestic court despite acknowledgment in substance of an Art 10 breach on account of defamation liability

STRASBOURG

12 October 2021

FINAL

12/01/2022

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

**In the case of The Association of Investigative Reporters and
Editorial Security of Moldova and SanduȚa v. the Republic of Moldova,**

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

Jon Fridrik Kjølbro, *President*,

Carlo Ranzoni,

Valeriu Grițco,

Egidijus Kūris,

Branko Lubarda,

Pauliine Koskelo,

Marko Bošnjak, *judges*,

and Stanley Naismith, *Section Registrar*,

Having regard to:

the application (no. 4358/19) against the Republic of Moldova lodged
with the Court under Article 34 of the Convention for the Protection of
Human Rights and Fundamental Freedoms (“the Convention”) by a
non-governmental organisation registered in Moldova, the Association of
Investigative Reporters and Editorial Security of Moldova and a Moldovan
national, Iurie SanduȚa (“the applicants”), on 9 January 2019;

the decision to give notice to the Moldovan Government (“the
Government”) of the complaint concerning Article 10 of the Convention;

the parties’ observations;

Having deliberated in private on 7 September 2021,

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

INTRODUCTION

1. The case concerns the finding of the applicants liable for defamation
in civil defamation proceedings as a result of a journalistic investigation
conducted by them which shed light on what was alleged to be the financing
of one of the main political parties by an offshore company with Russian
ties ahead of the Presidential elections of 2016.

THE FACTS

2. The first applicant is a non-governmental organisation registered in
the Republic of Moldova. The second applicant is a journalist who was born
in 1988 and lives in Chișinău. Both applicants were represented by Mr V.
Zama, a lawyer practising in Chișinău.

3. The Government were represented by their Agent, Mr O. Rotari.

4. The facts of the case, as submitted by the parties, may be summarised
as follows.

5. On 28 September 2016, i.e. one month ahead of the presidential
elections, in which one of the main candidates was Mr I. Dodon, who was

the leader of the Socialist Party and who eventually became President of Moldova, the first applicant published an article signed by the second applicant entitled “Dodon’s Bahamas money” (*Banii lui Dodon din Bahamas*).

6. In the article it was reported about a transfer of 1,5 million euros (EUR) from a Bahamas based offshore company to a Moldovan company, E.M. SRL, based on a loan agreement between the two companies. The offshore company in question appeared to have close links with the Russian Federation and the article presented copies of several arbitral decisions concerning large amounts of money passing between it and large Russian businesses. The article also presented extracts from the loan agreement between the Bahamas offshore company and E.M. SRL according to which Russian legislation was to be applicable in case of a dispute and a Russian based arbitral court was to be competent to decide on any disputes between the two.

7. In so far as E.M. SRL was concerned, the article mentioned that it was headed by C.F., a person from the same village as Mr I. Dodon and with close ties with the latter. C.F. was also a member of Mr Dodon’s political party and a Member of Parliament on its ticket. The article also mentioned that his company employed Mr Dodon’s wife and presented information about the salaries earned by her at the company.

8. The article further reported that the EUR 1.5 million had arrived in Moldova from the Bahamas several months before the presidential elections and had been deposited for a short time in a bank account of the E.M. company. Later two thirds of it had been withdrawn in cash by the E.M. administrator and given to different individuals close to the Socialist Party under the form of free loans of 300,000-500,000 Moldovan Lei (MDL) (approximately equivalent to EUR 15,000-25,000).

9. The article gave the names of seven of those individuals among whom were Members of Parliament on the ticket of the Socialist Party and other persons who, during the last three years, had donated to that party sums of money exceeding their yearly income. Some of those persons were asked to comment and they insisted that the money had been a loan which had later been repaid to E.M. SRL.

10. On an unspecified date the Socialist Party of Moldova initiated civil defamation proceedings against the applicants. It argued that in the impugned article it had been falsely claimed that the Socialist Party and Mr I. Dodon’s presidential campaign had been unlawfully funded from abroad. They insisted that those claims were false because no State body had found any illegalities in the financing of the Socialist Party and of its candidate in the presidential elections. Had it been otherwise, Mr Dodon would have been banned from participating in the elections and the Socialist Party would have suffered serious consequences. The plaintiff also argued that the

documents relied upon in the impugned article were not public and the author of the article had obtained them by illegal means.

11. The applicants opposed the action and argued *inter alia* that the plaintiff had not shown which passages of the article were false or untrue. They also argued that they had not stated that the Socialist Party had been financed from abroad but merely presented evidence that EUR 1.5 million had been transferred from an offshore company to the E.M. company from where they had ended up with different members and supporters of the Socialist Party. The conclusion that the Socialist Party had been financed from abroad belonged exclusively to the plaintiff and was not a part of the impugned article.

12. In a judgment of 21 December 2017, the Centru District Court found in favour of the Socialist Party. It considered that since no competent State body had found that the Socialist Party had received funds from abroad, the impugned article was defamatory of it. It ordered the applicants to publish a retraction in which they would admit that the impugned article about the alleged financing of the Socialist Party and of Mr Dodon's campaign from abroad had been untrue and to pay the plaintiff costs and expenses in an amount of MDL 200 (the equivalent of some EUR 10).

13. The above judgment was upheld on appeal and on appeal on points of law by the Chișinău Court of Appeal and by the Supreme Court of Justice on 18 April 2018 and 11 July 2018 respectively.

14. After the communication of the present application to the Moldovan Government, the Government Agent lodged with the Chișinău Court of Appeal an application to review its judgment of 18 April 2018. He asked the court to expressly find that there had been a violation of the applicants' right guaranteed by Article 10 of the Convention and to award them non-pecuniary damage in the limit of the awards made by the Court under Article 41 of the Convention. He also asked it to re-examine the defamation action of the Socialist Party against the applicant and to dismiss it as ill-founded.

15. On 4 March 2020 the Chișinău Court of Appeal partly upheld the Agent's revision request. It quashed its own judgment of 18 April 2018 and ordered the re-examination of the appeal against the judgment of 21 December 2017. The court rejected the Agent's request to expressly find a breach of Article 10 and to award the applicants damage on the ground that it had no such competence.

16. On 3 December 2020 the Chișinău Court of Appeal examined anew the applicants' appeal against the judgment of the Centru District Court of 21 December 2017. It quashed the above judgment and dismissed the defamation action of the Socialist Party against the applicant for being ill-founded. The judgment of the Court of Appeal became final as nobody appealed against it to the Supreme Court of Justice.

RELEVANT LEGAL FRAMEWORK

17. The relevant part of Article 16 of the Civil Code reads as follows:

“(1) Every person has the right to respect for his or her honour, dignity and professional reputation.

(2) Every person has the right to request the retraction of information that affects his or her honour, dignity and professional reputation if the person disseminating such information cannot prove that it corresponds to reality.

...

(4) Where information which affects a person’s honour, dignity and professional reputation is disseminated via a mass medium, the court shall order [that medium] to publish a disclaimer in the same column, page, programme or series of programmes, within a maximum of 15 days of the date of entry into force of the court judgment.

...

(7) A person whose rights and lawful interests have been violated by a [material published] in a mass medium has the right to publish a reply in the medium in question, at the latter’s expense.

(8) Every person about whom information has been published [which] violates his or her honour, dignity and professional reputation has the right to request compensation for pecuniary and non-pecuniary damage, in addition to the publication of a retraction.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

18. The applicants complained that their being held liable for defamation of the Socialist Party of Moldova breached their right to freedom of expression as provided in Article 10 of the Convention, 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

19. The Government submitted that the Court of Appeal had acknowledged a breach of the applicants' rights under Article 10 and then dismissed the defamation action against them. In their view, the above constituted sufficient just satisfaction for the applicants and thus the matter had been resolved. They asked the Court to strike the application out of its list of cases on the basis of Article 37 § 1 (b) of the Convention. At the same time, they asked the Court to consider that the applicants had lost their victim status and asked the Court to declare the case inadmissible on that ground.

20. The Court interprets the Government's argument as relating to an objection to admissibility based on loss of victim status. It reiterates that a decision or measure favourable to an applicant is not in principle sufficient to deprive him or her of victim status unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III).

21. In the instant case it is true that the Chișinău Court of Appeal upheld the Government Agent's request for review and quashed the judgment of 18 April 2018. After the re-examination of the case, the plaintiff's defamation action against the applicants was dismissed. While the Court of Appeal refused to expressly acknowledge a breach of Article 10 of the Convention, the Court is prepared to assume for the purposes of the present case that the outcome of the proceedings amounted to an acknowledgement of that breach in substance. However, the Court notes that neither the Court of Appeal nor the Government in the proceedings before it awarded any compensation to the applicants, unlike in many other cases (see among other authorities *Sorochin v. the Republic of Moldova* (dec.), 23708/12, 11 March 2021; *Tomai-Vinex S.A.* (dec.), 41719/13, 11 March 2021; and *Boguslavschi v. the Republic of Moldova* (dec.), 13225/04, 13 May 2008). The Court does not consider that the quashing of the judgment of 18 April 2018 and the dismissal of the defamation action constitute in themselves sufficient redress in the present case. The Government's objection must therefore be rejected.

22. The Court further notes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

23. The applicants submitted that their right to impart information had been breached as a result of their being found liable for defamation.

24. The Government maintained that the domestic courts had found a breach of the applicants' rights under Article 10 of the Convention and reiterated their objection to admissibility.

25. Although the Chișinău Court of Appeal expressly refused in its judgment of 4 March 2020 to acknowledge the breach of the applicants' right under Article 10 of the Convention, the Court is prepared to accept the Government's submission that the overall outcome of the revision proceedings and of the subsequently reopened proceedings on the merits amounted to an acknowledgement in substance of a breach of Article 10 of the Convention. In view of its own case-law (see, in particular, *Kommersant Moldovy v. Moldova*, no. 41827/02, § 36, 9 January 2007) and noting that the domestic courts in the initial proceedings did not conduct a proper balancing exercise, the Court sees no reason to depart from the above conclusion and it does not consider it necessary to re-examine the merits of this complaint.

26. Consequently, the Court finds that there has been a violation of Article 10 of the Convention, which arises from the finding of the applicants' liability for defaming the Socialist Party of Moldova.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

27. 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

28. The applicants claimed 2,300 euros (EUR) jointly in respect of non-pecuniary damage.

29. The Government contested the amount of non-pecuniary damage claimed by the applicants, alleging that it was excessive.

30. The Court considers that, in view of the violation found above, the applicants are entitled to compensation for non-pecuniary damage and awards them the entire amount claimed.

B. Costs and expenses

31. The applicants also claimed EUR 1,500 in respect of the costs and expenses incurred before the Court.

32. The Government considered this amount excessive.

33. Regard being had to the documents in its possession, the Court considers it reasonable to award the applicants the entire amount claimed.

C. Default interest

34. The Court considers it appropriate that the default interest rate 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 application admissible;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicants, 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 the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 2,300 (two thousand three hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
 - (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.

Done in English, and notified in writing on 12 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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Stanley Naismith
Registrar

Jon Fridrik Kjølbro
President