



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

FOURTH SECTION

CASE OF FLUX v. MOLDOVA (No. 3)

(Application no. 32558/03)

JUDGMENT

STRASBOURG

12 June 2007

FINAL

12/09/2007

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 Flux v. Moldova (no. 3),

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr G. BONELLO,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 22 May 2007,

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

PROCEDURE

1. The case originated in an application (no. 32558/03) 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 *Flux* (“the applicant”), a newspaper based in Chişinău, on 13 May 2003.

2. The applicant was represented by Mr V. Gribincea, a lawyer practising in Chişinău and a member of the non-governmental organisation Lawyers for Human Rights. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Pârlog.

3. The applicant alleged, in particular, a breach of its right to freedom of expression on account of its having been found guilty of defamation of a politician.

4. On 9 February 2006 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. On 27 March 1999, during a television broadcast, the head of the Department for Combating Organised Crime and Corruption, N. A., accused Valeriu Matei, the then Vice-President of Parliament and President of one of

the political parties represented in Parliament, of corruption and, together with a mafia gang, of protecting several companies allegedly involved in criminal activities. He stated, *inter alia*, that:

“...Mr Matei should have been arrested as he has committed both a criminal offence and a minor administrative offence... A criminal file concerning protecting criminals will be sent to the Prosecutor's Office and to the court... These companies [which were suspected of being involved in criminal activities] are being protected by the criminal gang headed by M. and by Mr Matei from Parliament...”

6. On 30 March 1999 *Flux* published an article entitled “The anti-corruption war: General N.A. versus President Matei. Nicolae Alexei claims that Valeriu Matei is providing political protection to a mafia clan.”

7. The article contained a word-by-word account of the televised broadcast of 27 March 1999 and the newspaper's commentary.

8. On 30 April 1999 Valeriu Matei brought a civil defamation action against *Flux* and argued that a large number of N.A.'s statements published by *Flux* were untrue and defamatory of him. The title of the article was not among those statements.

9. On 20 February 2003, by a final judgment, the Court of Appeal found that the statements complained of by Valeriu Matei were not defamatory of him, *inter alia*, because *Flux* had simply reproduced N.A.'s statements. However, it found that the following part of the article's title was defamatory of Valeriu Matei: “N.A. claims that Valeriu Matei is providing political protection to a mafia clan”. The court found that no such sentence had been pronounced by N.A. during the broadcast of 27 March 1999 and that the newspaper had not adduced evidence to prove that Valeriu Matei was a member of a mafia clan. The court ordered the newspaper to pay the plaintiff 3,600 Moldovan Lei (MDL) and to issue an apology within fifteen days. The newspaper was also ordered to pay the court fees.

II. RELEVANT DOMESTIC LAW

10. The relevant provisions of the Civil Code in force at the material time read:

Article 7 Protection of honour and dignity

“(1) Any natural or legal person shall be entitled to apply to the courts to seek the withdrawal of statements which are damaging to his or her honour and dignity and do not correspond to reality, as well as statements which are not damaging to honour and dignity, but do not correspond to reality.

(2) When the media body which circulated such statements is not capable of proving that these statements correspond to reality, the court shall compel the publishing office of the media body to publish, not later than 15 days after the entry into force of the judicial decision, a withdrawal of the statements in the same column, on the same page or in the same programme or series of broadcasts.”

Article 7 § 1 Compensation for moral damage

“(1) The moral damage caused to a person as a result of circulation through the mass media or by organisations or persons of statements which do not correspond to reality, as well as statements concerning his or her private or family life without his or her consent, shall be compensated by way of a pecuniary award. The amount of the award shall be determined by the court.

(2) The amount of the award shall be determined by the court in each case as an amount equal to between 75 and 200 months' minimum wages if the information has been circulated by a legal person and between 10 and 100 months' minimum wages if the information has been circulated by a natural person.”

THE LAW

11. The applicant complained under Article 6 of the Convention that the proceedings before the domestic courts had been unfair, that no reasons had been given for the judgments of the domestic courts and that the courts had lacked independence. Article 6, in so far as relevant, reads as follows:

“1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law.”

12. The applicant also complained under Article 10 of the Convention that the domestic courts' decisions had entailed interference with its right to freedom of expression that could not be regarded as necessary in a democratic society. Article 10 reads:

“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.”

I. ADMISSIBILITY OF THE CASE

13. In its initial application, the applicant newspaper submitted further complaints under Article 6 § 1 of the Convention alleging that the domestic courts had given insufficient reasons for their decisions and had lacked

independence. It also complained under Article 1 of Protocol No. 1 and Article 13 of the Convention. However, in its observations on the admissibility and merits, it asked the Court not to proceed with the examination of the complaints under Article 1 of Protocol No. 1 and Article 13. The Court finds no reason to examine them.

14. The Court considers that the applicant's complaint under Article 10 of the Convention and the complaint under Article 6 concerning the fairness of the proceedings raise questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits, and that no grounds for declaring them inadmissible have been established. The Court therefore declares the application admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of these complaints.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

A. The arguments of the parties

1. The applicant

15. The applicant argued that the title of the article, for which the newspaper had been penalised, was nothing more than a conclusion drawn by the author from the statements made by N.A. and was thus simply a value judgment supported by a sufficient factual basis.

16. The article had been written in the context of a debate on an issue of distinct public importance, namely the alleged involvement of a high ranking politician in illegal activities. The margin of appreciation enjoyed by the domestic courts had therefore been very narrow in this case.

2. The Government

17. The Government agreed that the facts of the case disclosed interference with the applicant's right to freedom of expression. The interference was nevertheless justified under Article 10 § 2 of the Convention. The applicant had been ordered to pay non-pecuniary damages for defamation on the basis of Articles 7 and 7 § 1 of the Civil Code. The interference was thus "prescribed by law" and the law was accessible and foreseeable. It served the legitimate aim of protecting the dignity of Valeriu Matei; furthermore, the measure was necessary in a democratic society.

18. The Government pointed to the national authorities' margin of appreciation in assessing the need for interference and submitted that where

the Convention referred to domestic law it was primarily the task of the national authorities to apply and interpret domestic law. They contended that in the present case the domestic authorities had not overstepped this margin of appreciation and had made use of it in good faith, carefully and in a reasonable way.

19. The Government submitted that the reasons given to justify the interference were “relevant and sufficient” and that the domestic courts had acted within the limits of the margin of appreciation enjoyed by them in this particular case.

B. The Court's assessment

20. It is common ground between the parties, and the Court agrees, that the decisions of the domestic courts and the award of damages made against the applicant amounted to “interference by [a] public authority” with the applicant's right to freedom of expression under the first paragraph of Article 10. It is also undisputed that the interference was “prescribed by law” and pursued a legitimate aim. The Court's task is to establish whether the interference was “necessary in a democratic society”.

21. The test of whether the interference complained of was “necessary in a democratic society” requires the Court to determine whether it corresponded to a “pressing social need”, whether it was proportionate to the legitimate aim pursued (the potential impact of the medium of expression concerned is an important factor in the consideration of the proportionality of an interference), and whether the reasons given by the national authorities to justify it are relevant and sufficient. In assessing whether such a “need” exists and what measures should be adopted to deal with it, the national authorities are left a certain margin of appreciation. This power of appreciation is not, however, unlimited but goes hand in hand with European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10 (for the recapitulation of the relevant principles in more detail, see *Giniewski v. France*, no. 64016/00, §§ 43-54, ECHR 2006-...; *Aydın Tatlav v. Turkey*, no. 50692/99, §§ 22-27, 2 May 2006; *Gündüz v. Turkey*, no. 35071/97, § 38, ECHR 2003-XI; *Murphy v. Ireland*, no. 44179/98, §§ 65-69, ECHR 2003-IX (extracts), with further references).

22. The Court recalls that in *Lingens v. Austria* (judgment of 8 July 1986, Series A no. 103, § 42) it held that:

“[the politician] inevitably and knowingly lays himself open to close scrutiny of his every word and deed by both journalists and the public at large, and he must consequently display a greater degree of tolerance. No doubt Article 10 para. 2 enables the reputation of others - that is to say, of all individuals - to be protected, and this protection extends to politicians too, even when they are not acting in their private capacity; but in such cases the requirements of such protection have to be weighed in relation to the interests of open discussion of political issues.”

23. The Court notes in the first place that the domestic courts found to be defamatory a statement about which even the plaintiff in the domestic proceedings had not complained. That in itself would be sufficient for the Court to find a violation in this case. However, even assuming that that was not the case, the impugned statement amounted to a statement of facts which appeared to be very accurate. Indeed N.A. accused Valeriu Matei of protecting a criminal gang and the parties did not dispute that such an accusation was made.

24. Bearing in mind the above circumstances, the fact that the impugned statement was made by a journalist within a debate on an issue of public interest, that the plaintiff in the domestic proceedings was a high-ranking politician and having regard to the language used, the Court concludes that the interference did not correspond to a pressing social need and thus that it was not necessary in a democratic society. Accordingly, there has been a violation of Article 10 of the Convention.

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

25. The applicant newspaper also alleged a violation of Article 6 § 1 of the Convention, arguing that the proceedings had been unfair because the domestic courts had found to be defamatory a statement about which the plaintiff in the domestic proceedings had not complained. As this complaint does not raise a separate issue from that examined under Article 10 above, the Court does not consider it necessary to examine it separately.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

26. 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. Pecuniary damage

27. The applicant claimed EUR 260 for pecuniary damage, representing the damages paid by it to Valeriu Matei and the court fees which it had had to pay for the examination of its appeals.

28. The Government disagreed with the amount claimed and argued that the applicant should not be entitled to recover it because the proceedings had been fair and ample reasons had been given for the judgments. They asked the Court to dismiss the applicant's claim for pecuniary damage.

29. The Court considers the applicant's claim for pecuniary damage to be well founded and awards it in full.

B. Non-pecuniary damage

30. The applicant claimed EUR 18,500 for non-pecuniary damage caused to it by the breach of its Convention rights. In substantiating its claims concerning the non-pecuniary damage related to the breach of Article 10, the applicant argued that it had been obliged to publish a retraction of the impugned statements and relied on previous case-law in Moldovan cases. In particular, it relied on the cases of *Busuioc v. Moldova* (no. 61513/00, § 104, 21 December 2004) and *Savitchi v. Moldova* (no. 11039/02, § 64, 11 October 2005) in which four and three thousand euros, respectively, were awarded.

31. The Government contested the claim and argued that it was ill-founded and excessive.

32. Having regard to the violation of Article 10 of the Convention found above, the Court considers that an award of compensation for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards the applicant newspaper EUR 3,000 (see *Savitchi*, cited above, § 64).

C. Costs and expenses

33. The applicant's lawyer claimed EUR 1,455 for the costs and expenses incurred before the Court. He submitted a detailed time-sheet and a contract according to which the lawyer's hourly rate was EUR 60. The calculation in the time-sheet did not include the time spent on the complaints under Articles 13 and 1 of Protocol No. 1 to the Convention which was subsequently withdrawn by the applicant.

34. He argued that the number of hours spent by him on the case was not excessive and was justified by its complexity and by the fact that the observations had to be written in English.

35. As to the hourly fee of EUR 60, the lawyer argued that it was within the limits of the rates recommended by the Moldovan Bar Association which were EUR 40-150. He also pointed to the high cost of living in Chişinău, giving as examples the prices of accommodation and petrol.

36. The Government disagreed with the amount claimed for representation. They said that it was excessive and argued that the amount claimed by the lawyer was not the amount actually paid to him by the applicant. They disputed the number of hours spent by the applicant's lawyer and the hourly rate charged by him. They also argued that the rates recommended by the Moldovan Bar Association were too high by

comparison with the average monthly salary in Moldova and pointed to the not-for-profit nature of the organisation Lawyers for Human Rights.

37. The Court reiterates that in order for costs and expenses to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Amihalachioaie v. Moldova*, no. 60115/00, § 47, ECHR 2004-...).

38. The reimbursement of fees cannot be limited only to those sums already paid by the applicant to his or her lawyer; indeed, such an interpretation would discourage many lawyers from representing less prosperous applicants before the Court. In any event, the Court has always awarded costs and expenses in situations where the fees were not paid by the applicants to their lawyers before the Court's judgment (see, among other authorities, *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 493, ECHR 2004-VII, and *Christian Democratic People's Party v. Moldova*, no. 28793/02, § 85, ECHR 2006-...).

In the present case, regard being had to the itemised list submitted and the complexity of the case, Court awards the applicant's lawyer EUR 1,200 for costs and expenses.

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* that there is no need to examine the complaint under Article 6 § 1 of the Convention about the failure of the domestic courts to give reasons in their decisions;
4. *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 the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 260 (two hundred and sixty euros) in respect of pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
 - (iii) EUR 1,200 (one thousand two hundred euros) in respect of costs and expenses, plus any tax that may be chargeable;

- (iv) 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;

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

Done in English, and notified in writing on 12 June 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President