



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

FOURTH SECTION

CASE OF TARA AND POIATA v. MOLDOVA

(Application no. 36305/03)

JUDGMENT

STRASBOURG

16 October 2007

FINAL

16/01/2008

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 Tara and Poiata v. Moldova,

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 S. PAVLOVSKI,

Mr L. GARLICKI,

Mr J. ŠIKUTA,

Mrs P. HIRVELÄ, *judges*,

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

Having deliberated in private on 25 September 2007,

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

PROCEDURE

1. The case originated in an application (no. 36305/03) 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 *Țara*, a newspaper based in Chișinău, and Petru Poiată (“the applicants”) on 15 September 2003.

2. The applicants were represented by Mr V. Gribincea and Mr V. Zamă, lawyers practising in Chișinău and members of the non-governmental organisation Lawyers for Human Rights. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Pârlog.

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

4. On 9 February 2006 the President of the Fourth Section of the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was 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 31 October 2002 *Țara* published an article entitled “While ignoring the legislation on fair competition, the Stepaniuc clan is taking away the property of others by blackmail”. It reported by partly citing and

partly summarising a letter addressed to the President of Moldova by a transport company, which used to operate several bus lines linking Chişinău with other towns. The article read, *inter alia*, as follows:

“The other day *Țara* received a document with a very interesting content. It is a letter addressed to President Vladimir Voronin by the managers of company F. located in Ialoveni. According to its authors, the company ... had been providing transport services and employing some 150 employees ... High-ranking individuals from the top of the power structure asked them to yield the Chişinău-Ialoveni route on the ground that “ours also need to work”. As a result, the company's revenues decreased and 32 people were left without employment. That is what the letter says.

We are not sure that things happened exactly like that; however, *Țara* and other newspapers have written about some strange goings-on with the Chişinău-Ialoveni route.

... the following passages from the letter are translated from Russian: 'The elections (of 25 February 2001) came. Knowing how we have been treated by the [former government], we supported the Communist Party, provided them on a daily basis with 3-4 transportation units and generated publicity in their favour using our own money. We were very glad that the truth had triumphed, and that from then on we would work only in accordance with the law, as they had promised in their election campaign. However, it appears that those were only empty words ...

At the end of June 2002, Victor Stepaniuc, the leader of the Communist Faction of Parliament, telephoned A.C., the Minister of Public Transport and Roads, and asked that F.'s bus lines be taken away from it and given to [two other companies], whose owners were Victor Stepaniuc's nephew and son-in-law.'

Due to lack of space we will limit the details of the letter and will summarise it: the minister complied. The ensuing complaints were fruitless ... and F.'s buses were replaced with [other buses]. Cover was also provided, according to the authors, by the Traffic Police. The whole thing was conducted by Victor Stepaniuc's son-in-law.

The authors' last hope lies with the President of the Country and they ask him to put an end to the abuses and punish the corrupt public officials. We wonder when somebody will write to the President about similar abuses within the distribution network of the Chişinău Tobacco Company, where Victor Stepaniuc is presently getting ahead by eliminating his competitors using Bolshevik methods.”

6. On 21 November 2002 *Țara* published another article entitled “Bolshevik habits. The Stepaniuc clan spreads its tentacles”. It stated, *inter alia*, the following:

“The article of 31 October 2002 ... has not provoked any reaction from any State authority. I wonder why the Communist authorities do not react to serious allegations made by the media ...

In that article I wrote about irregularities in the field of public transport caused by companies G. and T. headed by the son-in-law and nephew of Victor Stepaniuc, the leader of the Communist Faction from Parliament. ...

Our newspaper was visited recently by other drivers from Chişinău Bus Depot No. 1 with similar complaints. After failing to obtain satisfaction from the courts, the people come to our newspaper for help. However, we are not all-powerful. The only thing that we can do is to sound the alarm on illegalities in the hope that those in charge will put an end to them.

The drivers who visited us asked us to clarify how company T. had obtained licences for the same bus routes which they run... I cite from their letter: 'company T., with support from Parliament, something about which it sometimes expressly brags, can solve any problem. Its drivers work outside any timetable and their buses leave 10-15 minutes ahead of us on purpose. Any protests on our part are useless due to the support in employs from Parliament.'

Their statements are confirmed by an official report by a local transport authority, confirming the abuses of company T. ... [and stating that] the activity of company T. seriously perturbs the normal circulation of buses on the Chişinău – Malcoci and Chişinău – Condrita routes.

What timetables are we talking about when the father-in-law and the uncle occupy such high positions? While writing this article I contacted I.G., the chief engineer from Chişinău Bus Depot No. 1, to ask him whether the situation has improved. He told me that on the contrary it is becoming worse and worse.

Thus, the Stepaniuc clan spreads its tentacles. How far? For how long?"

7. On an unspecified date Victor Stepaniuc brought civil defamation proceedings against the newspaper and against the author of the article. He argued, *inter alia*, that the article of 31 October 2002 contained the following statements which were untrue and defamatory of him:

"... At the end of June 2002, Victor Stepaniuc, the leader of the Communist Faction of Parliament, telephoned A.C., the Minister of Public Transport and Roads, and asked that F.'s bus lines be taken away from it and given to [two other companies], whose owners were Victor Stepaniuc's nephew and son-in-law. ... the minister complied... We wonder when somebody will write to the President about similar abuses within the distribution network of the Chişinău Tobacco Company, where Victor Stepaniuc is presently getting ahead by eliminating his competitors using Bolshevik methods.

8. According to him, the meaning and wording of the article of 21 November 2002 contained the following defamatory statements implying that:

" in my capacity as an MP and leader of the Communist Faction of Parliament, I offer cover for the illegal actions of third parties in respect of the circulation of buses between Chişinău and some villages in Ialoveni county. 'Thus, the Stepaniuc clan spreads its tentacles. How far? For how long?'"

9. On 24 January 2003 the Buiucani District Court found in favour of Victor Stepaniuc, finding that he could not be held responsible for the activity of the companies owned by his nephew and his son-in-law, particularly since the State authorities had not found any illegalities in their activity and had not withdrawn their licences. No link between the activity

of Victor Stepaniuc in his capacity as an MP and leader of a parliamentary group and the activity of those companies had been established. The court found the passages complained of by the plaintiff to be defamatory and ordered the newspaper and the author to pay Victor Stepaniuc 3,600 Moldovan Lei (MDL) (the equivalent of 238 euros (EUR) at the time) and MDL 1,440 (the equivalent of EUR 93 at the time) respectively. It also ordered the newspaper to issue an apology within fifteen days. The defendants were also ordered to pay the court fees.

10. The applicants appealed against this judgment, arguing, *inter alia*, that the first-instance court had totally disregarded their arguments. The articles had reported in fact on letters and statements of third parties, while the final conclusions had been mere value judgments. They had acted in good faith and verified the information contained in the statements of the third parties. One of the sentences found to be defamatory by the first-instance court had not even been included in the articles.

11. On 3 April 2004 the Chişinău Regional Court dismissed the appeal. The applicants lodged an appeal on points of law; however, that appeal was also dismissed by the Court of Appeal on 11 June 2003.

II. RELEVANT DOMESTIC LAW

12. 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) Where 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 non-pecuniary damage

“(1) The non-pecuniary damage caused to a person as a result of circulation through the 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 month's minimum wages if the information has been circulated by a natural person.”

THE LAW

13. The applicants complained under Article 10 of the Convention that the domestic courts' decisions had entailed interference with their 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

A. The complaints under Article 6, Article 1 of Protocol No. 1 and Article 13 of the Convention

14. In its initial application, the applicant newspaper also submitted complaints under Article 6, Article 1 of Protocol No. 1 and Article 13 of the Convention. However, in its observations on admissibility and merits it asked the Court not to proceed with the examination of these complaints. The Court finds no reason to examine them.

B. Complaint under Article 10 of the Convention

15. The Court considers that the applicants' complaint under Article 10 of the Convention raises 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 this complaint.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

A. The arguments of the parties

1. The applicants

16. The applicants agreed that the interference was prescribed by law and had pursued a legitimate aim. However, it was not necessary in a democratic society because the impugned articles had merely disseminated statements made by third parties and had been part of a debate on an issue of distinct public importance, namely the management of public transport and alleged illegalities committed by public officials. The applicants had acted in good faith when publishing the article and verified the statements made by the third parties. They had considered the source to be reliable, since it was a letter addressed to the President of the country, contained many details, and official reports emanating from State transport authorities were attached to it. Of course it had been impossible for them to verify the statement according to which Mr Stepaniuc had telephoned the Minister of Public Transport.

17. Referring to the statement concerning the involvement of Mr Stepaniuc in the distribution of the Chişinău Tobacco Company, the applicants argued that that involvement had been confirmed by an official report of the Moldovan Intelligence Service, a copy of which had been attached to the domestic case file.

18. The domestic courts had also ignored the fact that Mr Stepaniuc was a high-ranking politician and that therefore the limits of criticism in his respect were wide.

2. The Government

19. The Government agreed that the facts of the case disclosed an interference with the applicants' right to freedom of expression. The interference was nevertheless justified under Article 10 § 2 of the Convention. The applicants 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 had thus been "prescribed by law" and the law was accessible and foreseeable. It had served the legitimate aim of protecting the dignity of Mr Stepaniuc; furthermore, the measure had been necessary in a democratic society.

20. 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 that domestic law. They contended that in the present case the domestic authorities had not overstepped their margin of appreciation and had made use of it in good faith, carefully and in a reasonable way.

21. The Government further submitted that the reasons given to justify the interference were "relevant and sufficient".

B. The Court's assessment

22. 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 applicants amounted to "interference by [a] public authority" with the applicants' 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".

23. 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; and *Murphy v. Ireland*, no. 44179/98, §§ 65-69, ECHR 2003-IX (extracts), with further references).

24. In addition to that, 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."

25. The Court notes that the articles were written by a journalist and reiterates the pre-eminent role of the press in a democratic society to impart ideas and opinions on political matters and on other matters of public interest (see *Sunday Times v. the United Kingdom (no. 1)*, judgment of 26 April 1979, Series A no. 30, § 65). It is not disputed in the present case that the subject matter of the impugned articles was of significant public interest.

26. The Court reiterates that “punishment of a journalist for assisting in the dissemination of statements made by another person ... would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so” (see *Jersild v. Denmark*, judgment of 23 September 1994, Series A no. 298, § 35).

27. The Court notes that the impugned statements for which the applicants were sanctioned could be divided into two groups: the statements concerning and related to the alleged abuses by Mr Stepaniuc and his relatives within the transport business, and the statement concerning the alleged abuses committed by Mr Stepaniuc within the distribution network of the Chisinau Tobacco Company.

28. Insofar as the first category of statements is concerned, it appears that the majority of those statements were citations from a letter written by the management of company F. to the President of the country and from a letter written to the newspaper by employees of another company who had read the first article. The author of the articles took the precaution of mentioning that he was citing or summarising third parties' statements. It also appears that the information contained certain accurate statements of fact, such as the family ties between Mr Stepaniuc and the managers of the companies who had allegedly committed abuses. It also relied on some official reports of transport authorities. In such circumstances, the information could have reasonably appeared to the author of the articles to be reliable (see, *mutatis mutandis*, *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 68, ECHR 1999-III).

29. Moreover, the Court notes that some of the impugned statements were pure value judgments, such as the conclusion in the second article: “Thus, the Stepaniuc clan spreads its tentacles. How far? For how long?”

30. In this context the Court reiterates that the existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 (see *Jerusalem v. Austria*, no. 26958/95, § 42, ECHR 2001-II).

31. Bearing in mind the language used by the applicants, the fact that Mr Stepaniuc was a high-ranking politician at the time of the events, the fact that the applicants were a newspaper and a journalist reporting on issues of

public interest and the fact that the domestic courts did not distinguish between statements of fact and value judgments, the Court takes the view that there were no relevant and sufficient reasons for finding that the applicants had defamed Mr Stepaniuc and obliging them to pay compensation for disseminating the information contained in the above statements.

32. As far as the statement concerning Mr Stepaniuc's alleged abuses within the distribution network of the Chişinău Tobacco Company is concerned, the Court has a different view. That statement, in the Court's opinion, constitutes a statement of fact which does not appear to have been supported by any evidence and which appears to be totally unrelated to the facts presented in the rest of the article and the letters from the transport companies. The statement could, in the Court's view, be considered as offensive and damaging to the reputation of Mr Stepaniuc. Having examined the materials of the case file from the domestic proceedings, the Court has not found any copy of a report by the Moldovan Intelligence Service concerning the matter. Therefore the contention made by the applicants in paragraph 17 above cannot be upheld and the Court concludes that the applicants did not adduce before the domestic courts any arguments in support of that allegation against Mr Stepaniuc. Neither does it appear from the materials submitted by the parties that they sought to persuade the courts in some way that they had made any reasonable attempt to verify that information before publication. Accordingly, the finding of the Moldovan courts that that statement was defamatory could, in the Court's opinion, be justified as necessary in a democratic society.

C. Conclusion

33. Having regard to the above, the Court concludes:

(1) that there has been no violation of Article 10 of the Convention as regards the applicants' statement concerning the alleged abuses committed by Mr Stepaniuc within the distribution network of the Chişinău Tobacco Company;

(2) that there has been a violation of Article 10 of the Convention as regards the rest of the impugned statements.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

34. 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

35. The applicants claimed 251 euros (EUR) and EUR 93 respectively for pecuniary damage, representing the damages paid by them to Mr Stepaniuc and the court fees which they had to pay for the examination of the appeals.

36. The Government disputed the amount claimed and argued that the applicants 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 applicants' claim for pecuniary damage.

37. Having regard to the fact that the Court has found no breach of Article 10 of the Convention in respect of one of the impugned statements, it considers that the applicants' claim for pecuniary damage should be reduced to EUR 200 and EUR 70 respectively.

B. Non-pecuniary damage

38. The applicants claimed EUR 5,000 each for non-pecuniary damage caused to them by the breach of their Convention rights. In substantiating their claims, the applicants argued that they had been obliged to publish a retraction of the impugned statements and relied on previous case-law in Moldovan cases. In particular, they relied on the cases of *Busuioc* (*Busuioc v. Moldova*, no. 61513/00, 21 December 2004) and *Savitchi* (*Savitchi v. Moldova*, no. 11039/02, 11 October 2005) in which four and three thousand euros, respectively, had been awarded to the applicants.

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

40. 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 each applicant EUR 2,500.

C. Costs and expenses

41. The applicants' representatives claimed EUR 3,089 for the costs and expenses incurred before the Court. They submitted a detailed time-sheet and a contract according to which the hourly rate was EUR 60 for Mr Gribincea and EUR 50 for Mr Zamă and according to which they had spent 41.08 and 12.5 hours on the case respectively.

42. They argued that the number of hours spent by them 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.

43. As to the hourly fees, the representatives argued that they were within the limits of the hourly rates recommended by the Moldovan Bar

Association, which were EUR 40-150. They also pointed to the high cost of living in Chişinău, giving as examples the prices of accommodation and petrol.

44. The Government disputed the amount claimed for representation. They argued that it was excessive and that the amount claimed by the lawyers was not the amount actually paid to them by the applicants. They disputed the number of hours spent by the applicants' representatives and the hourly rate charged by them. They also argued that the rates recommended by the Moldovan Bar Association were too high in comparison with the average monthly salary in Moldova and pointed to the not-for-profit nature of the organisation Lawyers for Human Rights.

45. 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 are reasonable as to quantum (see, for example, *Amihalachioaie v. Moldova*, no. 60115/00, § 47, ECHR 2004-III).

46. 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, and also to the fact that the Court did not find a violation of Article 10 in respect of all of the impugned statements, the Court awards the applicants EUR 1,800 for costs and expenses.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;
2. *Holds* that there has been no violation of Article 10 of the Convention in respect of the statement concerning the alleged abuses by Mr Stepaniuc within the distribution network of the Chisinau Tobacco Company;
3. *Holds* that there has been a violation of Article 10 of the Convention in respect of the rest of the impugned statements;

4. *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 270 (two hundred and seventy euros) in respect of pecuniary damage;

(ii) EUR 2,500 (two thousand five hundred euros) each in respect of non-pecuniary damage;

(iii) a global sum of EUR 1,800 (one thousand eight hundred euros) in respect of costs and expenses;

(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* unanimously the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 16 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President