



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

FOURTH SECTION

CASE OF FLUX v. MOLDOVA

(Application no. 28702/03)

JUDGMENT

STRASBOURG

20 November 2007

FINAL

20/02/2008

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 Flux v. Moldova,

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

Sir Nicolas BRATZA, *President*,

Mr J. CASADEVALL,

Mr K. TRAJA,

Mr S. PAVLOVSKI,

Mr L. GARLICKI,

Ms L. MIJOVIĆ,

Mrs P. HIRVELÄ, *judges*,

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

Having deliberated in private on 23 October 2007,

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

PROCEDURE

1. The case originated in an application (no. 28702/03) 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 a Moldovan newspaper, *Flux* ("the applicant newspaper"), on 10 July 2003.

2. The applicant newspaper was represented by Mr V. Gribincea from "Lawyers for Human Rights", a non-governmental organisation based in Chişinău. The Moldovan Government ("the Government") were represented by their Agent at the time, Mr V. Pârlog.

3. The applicant newspaper alleged, in particular, that its right to freedom of expression had been violated as a result of judicial decisions in defamation proceedings brought against it.

4. The application was allocated to the Fourth Section of the Court. On 13 February 2006 the President of the Section decided to communicate 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. The facts of the case, as submitted by the parties, may be summarised as follows.

6. On 19 July 2001 the Parliament of Moldova amended the 2001 Budget Act to allow the Customs Department to postpone by up to three months the levying of taxes on fuel imported into Moldova. In the evening of the same day, the leader of the communist majority in Parliament (Mr V. Stepaniuc) met with the deputy Speaker of Parliament (Mr V. Mişin) for a meal in the restaurant of a luxury hotel in Chişinău. According to the applicant newspaper, sources which preferred to remain anonymous confirmed that the meal had been paid for by “L.”, a major importer of fuel into Moldova.

7. On 24 July 2001 the applicant newspaper published an article entitled “On L.’s money, communists V. Stepaniuc and V. Mişin had a big-time party (*chiolhan*) at ‘Jolly Allon’”. The article, which included pictures of the two MPs next to the text, informed readers about the changes to the Budget Act and about the profits which those changes would bring to a few big fuel importers who had links with the Customs Department, thus allowing unfair competition. The article claimed that the postponement of tax payments constituted a form of credit by the State without interest or guarantees and rejected the explanation for the amendment given by a member of Parliament.

One paragraph in the article read:

“One needs to note that, in the evening of the same day, at the ‘Jolly Allon’ (...) hotel, the communists V. Stepaniuc and V. Mişin, putting aside all proletarian decency [*pudoare*], had a big-time party on the money of the sharks from ‘L.’. Could this party be a simple coincidence? We do not know.”

The article went on to expose the legislative plans of the communist party and the resulting benefits to big fuel importers at the expense of ordinary workers.

8. On 8 July 2002 Mr Stepaniuc, the leader of the Communist parliamentary faction which had, at the time, 71 votes out of a total of 101 in Parliament, lodged an action against the applicant newspaper, identifying the paragraph cited above as defamatory. He did not pay any court fee when lodging his complaint, nor did he appear in court at any stage of the proceedings or delegate any person to represent him.

9. On 1 August 2002 Judge I.M., the then President of the Buiucani District Court, found that the applicant had essentially stated that Mr Stepaniuc “had voted for laws in the interest of some private companies and then had a party on their money”. It denounced the use of pure rumour as a basis for journalism and found that the applicant newspaper had acted in bad faith. The court took note of the “vehement attack” on Mr Stepaniuc, the large readership of the newspaper and the “degree of moral and psychological suffering” caused. In addition, the court found that Mr Stepaniuc’s position as a member of Parliament and leader of a parliamentary faction “increased the degree of moral damage” which led to the imposition of maximum liability.

10. The court accepted Mr Stepaniuc's claim and ordered the applicant newspaper, pursuant to Articles 7 and 7 § 1 of the Civil Code, to publish an apology and to pay the plaintiff the maximum damages allowed by law and the court fees (a total of 3,690 Moldovan lei (MDL), equal to 278 euros (EUR) at the time). According to the applicant newspaper, the court had conducted one hearing which lasted less than 15 minutes and no questions had been put to the applicant newspaper.

11. In its appeal the applicant newspaper submitted that the impugned phrases had amounted to value-judgments which could not be proved and that these opinions had been based on facts, namely the party which had taken place at the hotel in question on the date mentioned in the article, which was not disputed, and the modifications to the law adopted by Parliament. Moreover, in view of the length of time that had passed after the publication of the article, it had been impossible for the applicant to prove that the persons had been seen at the hotel restaurant, where they had had a party, or verify the source of payment for it. The applicant newspaper also argued that Judge I.M. lacked independence and impartiality because he was a friend of Mr Stepaniuc and had been appointed President of the Buiucani District Court by the Communist Party parliamentary group. The majority of the defamation cases between *Flux* and Mr Stepaniuc had been examined by him personally and his decisions were stereotyped and did not give sufficient reasons. In other defamation cases between *Flux* and representatives of the Government, Judge I.M. had always ruled in favour of the latter and had awarded them the maximum amount provided for by law.

12. On 30 January 2003 the Chişinău Regional Court found that the applicant newspaper had missed the time-limit for lodging its appeal against that judgment but went on to examine the substance of the case. It upheld the lower court's judgment, finding that its decision had been lawful and reasoned. The court did not respond to the applicant's complaint about the alleged lack of impartiality of Judge I.M. The hearing lasted less than 10 minutes and the applicant newspaper was not asked any questions.

13. In an appeal in cassation the applicant newspaper relied on Article 10 of the Convention and on the distinction which the lower courts had failed to make between value-judgments and factual statements. Moreover, the courts had never heard evidence from the plaintiff, and had not taken into account his public-figure status, which should have limited the scope of interference with the applicant's freedom of expression, or the special role played by the press in a democratic society. Finally, the lower courts had failed to respond to most of the points raised by the applicant.

14. On 1 April 2003 the Court of Appeal upheld the judgments of the lower courts, finding that they had been lawful and corresponded to the evidence in the case. No comment was made about Judge I.M.'s alleged lack of impartiality.

II. RELEVANT DOMESTIC LAW

15. The relevant provisions of the domestic law have been set out in this Court's judgment in the case of *Busuioc v. Moldova* (no. 61513/00, §§ 39-40, 21 December 2004).

THE LAW

16. The applicant newspaper complained under Article 6 of the Convention that no reasons had been given for the judgments of the domestic courts and that Judge I.M. of the first-instance court lacked independence and impartiality. The relevant part of Article 6 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.”

17. The applicant newspaper 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.”

18. The applicant newspaper finally complained of a violation of its rights guaranteed by Article 13 of the Convention in conjunction with Article 10 of the Convention. Article 13 reads as follows:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

I. ADMISSIBILITY

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

19. In its initial application, the applicant newspaper submitted a complaint under Articles 6 and 13 of the Convention and under Article 1 of Protocol No. 1 to the Convention. However, in its observations on admissibility and merits it asked the Court not to proceed with the examination of these complaints. The Government asked the Court to reject this request as regards the Article 6 complaint and to find that there has been no violation of the Convention as regards the alleged lack of independence and impartiality of Judge I.M. In view of the clear and unequivocal terms of the applicant's request, the Court finds no reason to examine any of these complaints in the circumstances of the present case.

B. Complaints under Articles 10 and 6 of the Convention

20. The Court considers that the applicant's complaint under Article 10 of the Convention and the complaint under Article 6 concerning the insufficient reasons given for the domestic courts' judgments 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

21. The applicant newspaper complained of a violation of its right to freedom of expression. It relied on the Court's jurisprudence concerning the distinction between facts and value-judgments, the special role played by the press in a democratic society and the wider limits of acceptable criticism to which politicians knowingly subject themselves. It referred to the gravity of the penalty imposed by the courts, which was the highest possible under the law. It also noted that Mr Stepaniuc had lodged his complaint a year after the publication of the article and that Moldovan law did not provide for any time-limits in lodging such complaints, imposing a disproportionate

burden on the media to keep records and evidence of past events long after they had happened. It finally relied on its good faith in dealing with an issue of genuine public interest.

22. The Government submitted that the courts had adopted reasoned decisions in which they had taken account of the two competing values, of freedom of expression and the protection of reputation, and found that there had been a “pressing social need” for the award made against the applicant newspaper. The courts, acting within their margin of appreciation, had found that the applicant newspaper had overstepped the limits of admissible criticism by launching unwarranted attacks on Mr Stepaniuc. While they had conceded that the press played a special role in a democratic society, they had relied on the “special duties and responsibilities” attached to that role.

B. The Court's assessment

23. 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. Such interference will entail a violation of Article 10 unless it is “prescribed by law”, has an aim or aims that are legitimate under paragraph 2 of the Article and is “necessary in a democratic society” to achieve such aim or aims.

1. “Prescribed by law”

24. The Court notes that the interference complained of had a legal basis, namely Articles 7 and 7 § 1 of the Civil Code (see paragraph 10 above). In its judgment in *Busuioc v. Moldova* (no. 61513/00, § 52-54, 21 December 2004), the Court found that these provisions were accessible and foreseeable. Accordingly, the Court concludes that in this case too the interference was “prescribed by law” within the meaning of Article 10 § 2.

2. “Legitimate aim”

25. It is not disputed by the parties, and the Court agrees, that the interference served the legitimate aim of protecting the reputation of Mr Stepaniuc. It therefore remains to be examined whether the interference was “necessary in a democratic society”.

3. “Necessary in a democratic society”

(a) General principles

26. The relevant general principles have been summarised in *Busuioc* (cited above, §§ 56-62) and *Savitchi v. Moldova* (no. 11039/02, §§ 43-50, 11 October 2005).

27. 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.”

(b) Application of the above principles in the present case

28. In the present case the Court notes that the applicant newspaper was found liable in damages for being unable to prove the truth of several statements made in its publication dated 24 July 2001 (see paragraph 7 above). The applicant newspaper argued before the domestic courts that the statements represented value-judgments which could in principle not be proved. The domestic courts made no comment on those claims.

29. The Court considers that the paragraph singled out by the courts in their judgments consists of both statements of fact (“in the evening of the same day, in the 'Jolly Allon' (...) hotel, the communists V. Stepaniuc and V. Mişin ... had a ... party on the money of the sharks from 'L.'”) and value-judgments (the characterisation of the party as a “big-time” one, the statement “putting aside all proletarian decency” and the question “Could this party be a simple coincidence? We do not know”). It notes that the courts found that the entire paragraph was untrue, including the above mentioned value-judgments. 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, and *Busuioc*, cited above, § 61), although opinions insufficiently based on facts can also be excessive (*Oberschlick v. Austria* (no. 2), judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1276, § 33). It follows that the applicant could not have been expected to prove the “truth” of its own opinions about the published facts, given that the domestic courts did not find as incorrect factual statements such as that the party which had taken

place at the relevant hotel and that the law had been amended as described in the article.

30. On the other hand, the Court considers that the statement that a party had taken place “on the money of the sharks from L.” amounts to a statement of fact which is susceptible of proof and which, as the domestic court found, had not been proved by the applicant newspaper. The Court reiterates that:

“Article 10 of the Convention does not guarantee a wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern. Under the terms of paragraph 2 of the Article the exercise of this freedom carries with it “duties and responsibilities”, which also apply to the press. These “duties and responsibilities” are liable to assume significance when, as in the present case, there is a question of attacking the reputation of private individuals and undermining the “rights of others”. By reason of the “duties and responsibilities” inherent in the exercise of the freedom of expression, the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism” (see *Savitchi v. Moldova*, no. 11039/02, § 46, 11 October 2005).

31. It would appear from the case file that, in the present case, the applicant newspaper did not fully satisfy the requirements mentioned above in respect of some of the facts alleged in the article. However, the Court notes the applicant newspaper's contention that it had been impossible for it to prove, a year after the events, all the relevant facts (see paragraph 11 above), as well as the lack of any consideration by the domestic courts of that submission. It considers that, with the passage of time, not only does it become more difficult for the media to prove the facts on which they may have relied, but also the damage to the person allegedly defamed by the relevant material is bound to fade away (confer *Editions Plon v. France*, no. 58148/00, § 53, ECHR 2004-IV).

32. The Court notes that the article was written by a journalist and recalls 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). The Court also recalls that States enjoy a narrow margin of appreciation in cases concerning politicians (see paragraph 27 above) and notes that Mr Stepaniuc was a very high-ranking politician at the time of the events.

33. The Court further notes that the article as a whole raised issues of genuine public interest, namely the alleged use of the legislative powers to offer tax incentives promoting anti-competitive advantages to some businesses and plans for further amendments to the law leading to losses for ordinary workers. The article was, therefore, published within the framework of an ongoing public debate on the issue, which gives its content further protection under Article 10 of the Convention (see

Jersild v. Denmark, judgment of 23 September 1994, Series A no. 298, § 33). None of the other facts published in the article was found to be untrue, which gives the article as a whole a sufficient factual basis.

34. The Court finally reiterates that the gravity of the penalty is also a part of the criteria for verifying whether an interference with Article 10 was proportionate (see *Tolstoy Miloslavsky v. the United Kingdom*, judgment of 13 July 1995, Series A no. 316-B, § 51; *Karatas and Sari v. France*, no. 38396/97, § 53, 16 May 2002). It notes that the courts awarded Mr Stepaniuc the maximum amount possible under the law (see paragraph 10 above), despite the fact that they never heard evidence from him in order to assess the damage allegedly caused to him.

35. Bearing in mind the importance of the issues raised in the article published by the applicant newspaper and that most of it was not considered to be untrue or abusive, that the applicant newspaper faced particular difficulties in proving events which had happened long before the proceedings were initiated, that any damage caused to the plaintiff was substantially diminished with the passage of time, that some of the statements for which the applicant was held liable constituted value-judgments not susceptible of proof, and in view of the level of the award made by the domestic courts, 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

36. The applicant newspaper also alleged a violation of Article 6 § 1 of the Convention, arguing that the domestic courts had failed to give reasons for their decisions. 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

37. 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

38. The applicant newspaper claimed EUR 278 for pecuniary damage, corresponding to the amount of damages it had to pay.

39. The Government submitted that there was no causal link between the alleged violation and the claims made by the applicant newspaper.

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

B. Non-pecuniary damage

41. The applicant newspaper also claimed EUR 10,000 for non-pecuniary damage, referring to the Court's awards in previous Article 10 cases.

42. The Government disagreed and considered that no evidence of non-pecuniary damage had been submitted.

43. Having regard to its finding of a violation of Article 10 of the Convention, 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; *Ukrainian Media Group v. Ukraine*, no. 72713/01, § 75, 29 March 2005, and *Kommersant Moldovy v. Moldova*, no. 41827/02, §§ 49 and 52, 9 January 2007).

C. Costs and expenses

44. The applicant newspaper's lawyer claimed EUR 2,500 for the costs and expenses incurred before the Court. He submitted a detailed time-sheet according to which he had spent 41.67 hours working on the case at an hourly rate of EUR 60. The calculation in the time-sheet did not include the time spent on the complaints under Articles 6, 8 and 13 and Article 1 of Protocol No. 1 to the Convention which were subsequently withdrawn by the applicant newspaper.

45. The Government disagreed with the amount claimed for representation. They considered it excessive and argued that the amount claimed by the lawyer was not the amount actually paid to him by the applicant newspaper. They disputed the number of hours worked by the applicant's lawyer and the hourly rate he charged. They also argued that the rates recommended by the Moldovan Bar Association were too high in comparison to the average monthly salary in Moldova and referred to the non-profit nature of the organisation Lawyers for Human Rights.

46. In the present case, regard being had to the itemised list submitted and the complexity of the case, the Court awards the applicant newspaper's lawyer EUR 1,000 for costs and expenses.

C. Default interest

47. The Court considers it appropriate that the default interest 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* admissible the complaint under Article 10 of the Convention and Article 6 § 1 of the Convention in so far as it relates to the courts' failure to give sufficient reasons for their decisions;
2. *Holds* that there has been a violation of Article 10 of the Convention;
3. *Holds* that there is no need to examine separately the complaint under Article 6 § 1 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant newspaper, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 278 (two hundred and seventy eight euros) in respect of pecuniary damage, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, and EUR 1,000 (one thousand euros) for costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;

(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 20 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President