



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

FOURTH SECTION

CASE OF FLUX v. MOLDOVA (No. 4)

(Application no. 17294/04)

JUDGMENT

STRASBOURG

12 February 2008

FINAL

12/05/2008

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 (no. 4),

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

Nicolas Bratza, *President*,

Josep Casadevall,

Giovanni Bonello,

Kristaq Traja,

Stanislav Pavlovschi,

Ján Šikuta,

Päivi Hirvelä, *judges*,

and Fatoş Aracı, *Deputy Section Registrar*,

Having deliberated in private on 22 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 17294/04) 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 newspaper”), a newspaper based in Chişinău, on 5 April 2004.

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

4. On 27 March 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 6 December 2002 *Flux* published an article entitled “The Sabbath of the parvenus”. It reported the alleged overnight enrichment of the Speaker of Parliament, the President of the Parliamentary Communist

faction and the son of the President of Moldova. The idea of the article was that before becoming public figures they had all been simple citizens without any significant fortune; however, their fortunes had considerably increased after the Communist Party had won the elections and they had become public figures.

6. The summary reads as follows:

“The other day I was editing a news item concerning the two luxury cars used by the Speaker of Parliament, E. O., and I became more and more convinced that the term ‘parvenu’ had Moldovan origins. Our political scene is full of examples.

For example, the first thing done by E. O. after becoming Speaker of Parliament, was to solve her housing problem. By abusing her position she was able to lay her hands on a huge apartment in downtown Chişinău, paid for by public money. Who was E. O. before becoming Speaker? A modest baker with a modest work history. Who is she now? A big boss! She cannot fit into a BMW and so she also needs a Mercedes Benz. Let’s take another example.

Who was Victor Stepaniuc before becoming an MP? A simple schoolteacher in the village of Costeşti with a modest IQ and a little bit hysterical. Who is he now? He is not only a Sulla of the Parliament, namely a dictator without whose approval even the flies do not fly in the Parliament building, but also a prosperous businessman. He is an agent at the Chişinău tobacco factory, he has made enormous profits from the sale of cigarettes, he owns buses, he controls the Chişinău-Ialoveni bus route, and in general he looks like a genuine Moldovan dandy with a silk tie, Italian suits, German shoes and dirt under his nails.

Who was O. V. before his father Vladimir Voronin became the President of Moldova? A novice businessman specialised in the milking of profits from sugar plants in the north of the country. Who is he now? He is the most prosperous businessman in the country. He is the majority shareholder of bank F., the owner of construction company M, has contracts with the State worth millions and does business with Chişinău tobacco factory. He is a star and a VIP of the financial press and is held up as an example to young businessmen...”

7. On 12 December 2006 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. 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 anyone to represent him. He argued, *inter alia*, that:

“...the defendants disseminated false and defamatory information about me ...

... Both in the title and in the body of the article I am described as follows: ‘a dictator without whose approval even the flies do not fly in the Parliament building, but also a prosperous businessman. He is an agent at the Chişinău tobacco factory, he has made enormous profits from the sale of cigarettes, he owns buses, controls the Chişinău-Ialoveni bus-line, and in general he looks like a genuine Moldovan Dandy with a silk tie, Italian suits, German shoes and dirt under his nails.’

None of these accusations is true and they are nothing more than dirty slander.”

Mr Stepaniuc asked the court to declare the above statements defamatory, to make the defendants publish a retraction on the same page of the newspaper and pay him compensation in the amount of the maximum provided for by the Civil Code.

8. The case was put before Judge I.M., the President of the Buiucani District Court at the time for examination.

9. In its defence the applicant newspaper presented the court with copies of open letters addressed to the President of Moldova by a transport company in which Mr Stepaniuc was accused of appropriating several of its bus routes.

10. On 17 February 2003 the applicant newspaper informed the court that the information concerning Mr Stepaniuc's involvement in illegal activities in the tobacco business had been obtained from sources in the Moldovan secret service and submitted that the secret service had prepared a report about the alleged involvement of high-ranking officials in illegal activities at the Chişinău tobacco factory. The applicant newspaper informed the court that it had officially requested a copy of the report and asked that the case be adjourned until the secret service had provided the court with such a copy.

11. On 19 February 2003 Judge I. M. rejected the request to adjourn the case until after the secret service had provided the court with a copy of its report; however, he did order that the examination be postponed until 24 March 2003.

12. On 24 March 2003 the applicant newspaper informed the court that the secret service had failed to reply to its request and that consequently it had commenced a court action seeking an order to provide it with a copy of the report. The applicant newspaper requested that the defamation proceedings be adjourned pending the conclusion of those proceedings.

13. On 24 and 26 March and on 15 April 2003 Judge I. M. held hearings in the case and rejected the request for adjournment pending the conclusion of the other set of proceedings. He decided though to postpone the examination of the case until 30 April 2003.

14. On 30 April 2003 Judge I. M. examined the case in the absence of the parties and ruled in favour of Mr Stepaniuc. He found the statements complained of by the plaintiff (see paragraph 7 above) to be defamatory and ordered the newspaper and the author of the article to pay Mr Stepaniuc 3,600 Moldovan lei (MDL) (228 euros (EUR) at the time) and MDL 1,800 (EUR 114 at the time) respectively. He also ordered the newspaper to issue an apology within fifteen days. The defendants were also ordered to pay the court fees.

15. Judge I.M. gave the following reasons for his findings:

“In the court's view, the title, the text and the meaning of the published information should be qualified as defamatory of the plaintiff because the defendants made statements of facts without adducing any evidence. In particular they submitted that

V. Stepaniuc, contrary to the provisions of Article 70 of the Constitution, practises activities which are incompatible with his status of deputy and that he is an agent of the tobacco factory, makes enormous profits from trading cigarettes, and that he controls the Chişinău-Ialoveni bus route.

During the examination of the case, the court had given the defendants the opportunity to present evidence... however, neither the newspaper, nor the author brought any evidence to confirm the truthfulness of the published information. Nor in the article itself did the defendants adduce any evidence.

[a reproduction of Article 10 of the Convention follows]

In the present case the information disseminated by the defendants cannot be treated as a value judgment and accordingly it cannot be protected by the provisions of the Convention stated above. The court also takes into consideration the fact that Mr Stepaniuc is a public figure and that in respect of such persons a higher degree of tolerance is required when it comes to defamation. However, the information spread by the defendants clearly exceeds the limits of any reasonable criticism against public persons in a democratic society.”

16. The applicant newspaper appealed against this judgment, arguing, *inter alia*, that Judge I. M. had lacked independence and impartiality on the ground of his close ties with Mr Stepaniuc and the Communist Party and his behaviour in other defamation cases between Mr Stepaniuc and *Flux*. The applicant newspaper also argued that the first-instance court had totally disregarded its arguments, namely the letters addressed to the President of Moldova (see paragraph 9 above) and refused to give it a chance to bring evidence concerning Mr Stepaniuc’s involvement in the tobacco business, by refusing to adjourn the case until after the end of the proceedings between *Flux* and the secret service. The applicant newspaper also argued that its characterisation given to Mr Stepaniuc in the impugned article was a value judgment and that it could not be required to prove its truth.

17. On 26 June 2003 the Chişinău Court of Appeal dismissed the appeal and upheld the judgment of the first-instance court while repeating that the applicant newspaper had not adduced any evidence in support of its statements about Mr Stepaniuc. It did not refer to any of the arguments referred to in the applicant newspaper’s appeal.

18. The applicant newspaper lodged an appeal on points of law. It argued, *inter alia*, that Judge I.M. lacked independence and impartiality and that the lower courts had refused to adjourn the proceedings until after the end of the proceedings between *Flux* and the secret service, thus affecting the fairness of the proceedings. The applicant newspaper informed the Supreme Court that it had finally managed to obtain a copy of an annex to the report concerning illegal activities at the Chişinău tobacco factory from the secret service and had attached it to its appeal. The annex was entitled “scheme of the criminal interactions between the tobacco gangs” and presented by means of a chart, the alleged interactions between the administration of the Chişinău tobacco factory, two criminal gangs, several

companies and various high-ranking officials, including Mr Victor Stepaniuc.

19. On 5 November 2003 the Supreme Court of Justice reduced the compensation to be paid to Mr Stepaniuc by the newspaper and the author of the article to MDL 1,350 and MDL 180 respectively. It argued that Mr Stepaniuc was a public figure and therefore had to be more tolerant towards the press and, moreover, had failed to appear before the courts. The Supreme Court did not, however, depart from the findings of the first two instances in respect of the merits of the case and did not examine any of the applicant newspaper's arguments.

II. RELEVANT DOMESTIC LAW

20. 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) 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 months' minimum wages if the information has been circulated by a natural person.”

THE LAW

21. The applicant newspaper 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

22. In its initial application, the applicant newspaper also submitted a complaint under Article 6 of the Convention concerning the lack of independence and impartiality of Judge I. M. and about the lack of reasons given for the domestic courts' decisions. However, in its observations on admissibility and merits it asked the Court not to proceed with the examination of this complaint. The Court finds no reason to examine it.

23. In so far as the applicant newspaper's complaint under Article 10 of the Convention is concerned, the Court considers that it raises questions of fact and law which are sufficiently serious that its determination should depend on an examination of the merits, and that no grounds for declaring it inadmissible have been established. The Court therefore declares it 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 applicant newspaper

24. The applicant newspaper 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 the alleged illegal activities of 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.

25. As to the report of the secret service concerning the involvement of Mr Stepaniuc in illegal activities in the tobacco business, the applicant newspaper pointed out that the truthfulness of that document has not been disputed by either the domestic courts or the Government. However, the domestic courts did not make any assessment of the above evidence.

26. 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

27. 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.

28. 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 reasonably.

29. The Government further submitted that the reasons given to justify the interference were “relevant and sufficient”.

B. The Court’s assessment

30. 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 newspaper amounted to “interference by [a] public authority” with the applicant’s right to freedom of expression under the first paragraph of Article 10 of the Convention. 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”.

31. 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, 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).

32. In addition, 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.”

33. The Court notes that the article was written by a journalist and reiterates that the pre-eminent role of the press in a democratic society is 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 impugned article had a bearing

on issues such as the allegedly illegal conduct of high-ranking politicians and public figures and the alleged mismanagement of public funds. There is no doubt that these are very important matters in a democratic society which the public has a legitimate interest in being informed about and which fall within the scope of political debate.

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

35. The applicant newspaper was found liable in damages on the grounds that it was unable to prove the truth of several statements concerning Mr Stepaniuc (see paragraph 7 and 14 above). In the Court's opinion the impugned statements could be divided into three groups: the statement concerning Mr Stepaniuc's involvement in the transport business, the statement concerning his alleged involvement in illegal activities in the tobacco business and the description given of Mr Stepaniuc's character at the beginning and at the end of the impugned passage.

36. In so far as the first statement is concerned, it is a clear statement of fact and thus the applicant newspaper could have been required to prove its truth. Indeed, the applicant newspaper presented the domestic courts with copies of open letters addressed to the President by a transport company accusing Mr Stepaniuc of abuse of power (see paragraph 9 above); however, the national courts did not pay any attention to these pieces of evidence and did not seek to assess them, apparently treating them as irrelevant.

37. As to the second statement, the Court also considers it to be a statement of fact and notes that the applicant newspaper requested an adjournment of the proceedings on several occasions in order to be able to produce a copy of the secret service report concerning Mr Stepaniuc's alleged involvement in illegal activities in the tobacco business (see paragraphs 10, 12 and 18 above). In spite of this, not only did the domestic courts reject the applicant's requests without giving any reasons (see paragraphs 11 and 14 above), but even after receiving a copy of the annex to the secret service' report (see paragraph 18 above), the Supreme Court of Justice failed to even mention it in its judgment or assess it or dismiss it on any ground.

38. The Court reiterates that, to require an applicant newspaper to prove the truth of his or her statements, while at the same time depriving him or her of an effective opportunity to adduce evidence or ignoring the evidence adduced, constitutes a disproportionate interference with the right to freedom of expression (see, for example, *Busuioc v. Moldova*, no. 61513/00, § 88, 21 December 2004, and *Savitchi v. Moldova*, no. 11039/02, § 59, 11 October 2005).

39. As regards the third impugned statement, the Court notes that the applicant newspaper was found liable in damages for the following

assertion: “[Mr Stepaniuc is] a dictator without whose approval even the flies do not fly in the Parliament building ...and in general he looks like a genuine Moldovan dandy with a silk tie, Italian suits, German shoes and dirt under his nails.” In the Court’s view this statement clearly amounts to a value judgment.

40. 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 the 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). Moreover, it has to be recalled that the journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see *Prager and Oberschlick v. Austria*, judgment of 26 April 1995, Series A no. 313, § 38).

41. Finally, the Court recalls that considerations concerning the fairness of proceedings can be taken into account in examining a case of interference with the exercise of Article 10 rights (see, *Stoll v. Switzerland* [GC], no. 69698/01, § 137, 10 December 2007). The Court cannot but observe the peculiarity of the manner in which the proceedings were conducted before the domestic courts. Indeed, the Court notes a series of elements which, examined cumulatively, leads it to such a conclusion. In particular, Mr Stepaniuc’s action was examined despite the fact that he had failed to pay court fees, which fact, by itself, should normally have rendered the action procedurally inadmissible. Moreover, not only did he fail to appear before the courts but he was not even represented. At the same time, the applicant’s requests for adjournment were rejected without any reasons being given while the evidence presented by it was entirely disregarded by the judges. The Court of Appeal and the Supreme Court of Justice failed even to examine the applicant’s submissions concerning Judge I. M.’s alleged lack of independence and impartiality.

42. Bearing in mind the above circumstances, the fact that the impugned statements were made by a journalist in a debate on an issue of public interest, and that the plaintiff in the domestic proceedings was a high-ranking politician, 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. APPLICATION OF ARTICLE 41 OF THE CONVENTION

43. 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

44. The applicant newspaper claimed EUR 100 for pecuniary damage, representing the damages paid by it to Mr Stepaniuc and the court fees which it had to pay for the examination of the appeals.

45. The Government disagreed with the amount claimed and argued that the applicant newspaper 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 newspaper’s claim in respect of pecuniary damage.

46. The Court considers the applicant’s claim in respect of pecuniary damage to be well-founded and awards it in full.

B. Non-pecuniary damage

47. The applicant newspaper claimed EUR 8,000 for non-pecuniary damage caused to it by the breach of its Convention rights. In substantiating its claim, the applicant newspaper argued that it had been obliged to publish a retraction of the impugned statements and relied on previous case-law.

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

49. 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.

C. Costs and expenses

50. The applicant newspaper’s lawyer claimed EUR 2,050 for the costs and expenses incurred before the Court. He submitted a detailed time-sheet. The calculation in the time sheet also included the time spent on the complaint under Article 6 of the Convention.

51. The Government disputed 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.

52. In the present case, regard being had to the itemised list submitted, the complexity of the case, and also to the fact that the complaint under

Article 6 has been withdrawn by the applicant, the Court awards the applicant newspaper newspaper's lawyer EUR 1,800 for costs and expenses.

D. Default interest

53. 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* 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 applicant newspaper, 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 100 (one hundred euros) in respect of pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage;
 - (iii) 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;
4. *Dismisses* the remainder of the applicant newspaper's claim for just satisfaction.

Done in English, and notified in writing on 12 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı
Deputy Registrar

Nicolas Bratza
President