



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

FOURTH SECTION

CASE OF FLUX v. MOLDOVA (No. 5)

(Application no. 17343/04)

JUDGMENT

STRASBOURG

1 July 2008

FINAL

01/10/2008

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. 5),

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

Nicolas Bratza, *President*,
Lech Garlicki,
David Thór Björgvinsson,
Ján Šikuta,
Päivi Hirvelä,
Ledi Bianku,
Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 10 June 2008,

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

PROCEDURE

1. The case originated in an application (no. 17343/04) 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. Grosu.

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 former Deputy Prosecutor General.

4. On 14 September 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 15 November 2002 *Flux* published an article entitled “The criminal case file of Eugenia Duca, like five kilograms of waste paper”. It reported on the evolution of a high-profile criminal case against a business

woman, who was convicted at the time but was later acquitted and compensated for illegal prosecution and detention, and published in italicised script extracts from an open letter sent by her daughter to the President of the country, President of the Parliament, Prime Minister, Council of Europe, OSCE Mission in Moldova and other organisations. In the letter she complained of alleged abuses committed by the prosecution and by the judiciary against her mother. The letter contained, *inter alia*, the following sentence:

“On 10 July 2001, the Deputy Prosecutor General V.S. (subsequently dismissed for dubious affairs), signed the indictment in Eugenia Duca’s criminal case... and sent it to the Râșcani District Court without her even having seen it.”

6. On an unspecified date Mr V.S., who in the meantime was demoted, brought civil proceedings for defamation against the newspaper, arguing that the statement about his dismissal for dubious affairs was not true and that it was defamatory of him.

7. On 12 February 2003 the Buiucani District Court ruled in favour of Mr V.S., finding the statement that Mr V.S. had been dismissed for dubious affairs to be untrue and defamatory. It also found that V.S. was employed at the time at the Prosecutor’s Office attached to the Court of Appeal and ordered the newspaper to issue an apology within fifteen days and pay V.S. 2,700 Moldovan lei (178 euros (EUR)).

8. The applicant newspaper appealed against this judgment, arguing, *inter alia*, that the article was in fact a dissemination of statements made by Ms Duca’s daughter in her open letter. Relying on *Jersild v. Denmark*, judgment of 23 September 1994, Series A no. 298, the applicant newspaper argued that it could not be punished for disseminating statements made by third parties.

9. On 29 April 2003 the Chișinău Court of Appeal dismissed the appeal and upheld the judgment of the first-instance court. It did not examine the arguments advanced by the applicant newspaper concerning the dissemination of statements made by others. The applicant newspaper lodged an appeal on points of law and submitted that the expression “dubious affairs” had been a value judgment.

10. On 19 November 2003 the Supreme Court of Justice dismissed the appeal, finding that Mr V.S. had been dismissed from his position by a decision of the Parliament without any reasons being given. It did not examine the applicant newspaper’s arguments about the dissemination of statements made by a third person.

II. RELEVANT DOMESTIC LAW

11. 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 if the person who made such statements cannot prove that they are true.

(2) Where such information was made public by a media body, 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) Damage caused to a person as a result of circulation of statements which do not correspond to reality and are damaging to his or her honour or dignity shall be compensated by the responsible natural or legal person.

(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

12. The applicant newspaper complained under Article 6 of the Convention that the domestic courts had failed to give sufficient reasons in their judgments. The relevant part of Article 6 reads:

“1. In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ...”

13. 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

14. In its initial application, the applicant newspaper also submitted a complaint under Article 1 of Protocol No. 1 to the Convention and under Article 13 of the Convention. 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.

15. In so far as the applicant newspaper's other complaints are concerned, the Court considers that they 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 them 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 newspaper

16. 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 article had merely disseminated statements made by a third party and had been part of a debate on an issue of public interest. The impugned statement was a quote from an open letter sent to the President of the country, the Prime Minister, the Council of Europe, the OSCE Mission in Moldova, the Moldovan Centre for Human Rights and the United States Embassy in Chişinău. Beside Mr V.S., the letter referred to at least five other judges and prosecutors involved in the criminal case. Mr V.S. had never asked the newspaper for a retraction of the statement or for a right to retort. The article had been written on the basis of detailed research. The journalist had contacted the author of the open letter and interviewed her. The journalist had also obtained a legal opinion from a lawyer and studied the verbatim record of a debate in Parliament on the criminal proceedings against Ms Duca. Mr V.S. had indeed been dismissed from his position in June 2002 and appointed as a simple prosecutor. The reasons for the demotion had never been made public; however, the investigation conducted by the journalist and the fact of the demotion of Mr V.S. could have reasonably made the journalist believe that the information in the open letter was reliable.

2. *The Government*

17. The Government agreed that the facts of the case disclosed an interference with the applicant newspaper's right to freedom of expression. The interference was nevertheless justified under Article 10 § 2 of the Convention. The applicant newspaper 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 V.S.; furthermore, the measure had been 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 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.

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

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 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".

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, 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).

22. 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 allegedly abusive criminal proceedings and the role played therein by a senior law officer. There is no doubt that this is a very important matter in a democratic society which the public has a legitimate interest in being informed about.

23. The applicant newspaper was found liable in damages on the ground that it was unable to prove the truth of a statement concerning Mr V.S. The impugned statement was in fact a quote from an open letter written by the daughter of an alleged victim of abusive criminal proceedings to different high ranking politicians and international organisations.

24. 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; and *Thoma v. Luxembourg*, no. 38432/97, § 62, ECHR 2001-III).

25. The Court further notes that the complaints in the open letter about the abuses committed by the prosecuting and judicial authorities against Ms Duca were not baseless, since Ms Duca was later found by the domestic courts to be a victim of abuses committed by the investigating and prosecuting authorities resulting in charging her with a criminal offence and detention (see *Duca v. Moldova* (no. 1579/02), partial admissibility decision, 11 April 2006). It also notes that it was undisputed during the domestic proceedings that Mr V.S. was involved in the criminal proceedings against Ms Duca in his capacity as prosecutor and that subsequently he was demoted. In such circumstances, and in view of the language of the impugned statement, the Court is not convinced that there were particularly strong reasons to punish the applicant newspaper for assisting Ms Duca’s daughter in the dissemination of her open letter.

26. Accordingly, 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

27. 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

28. 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

29. The applicant newspaper claimed 185 euros (EUR) for pecuniary damage, representing the damages paid by it to Mr V.S. and the court fees which it had to pay for the examination of the appeals.

30. 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.

31. 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

32. The applicant newspaper claimed EUR 5,000 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.

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

34. 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

35. The applicant newspaper's lawyer claimed EUR 1,990 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.

36. 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.

37. 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's lawyer EUR 1,800 for costs and expenses.

D. Default interest

38. 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* 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, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
 - (i) EUR 185 (one hundred and eighty-five euros) in respect of pecuniary damage;
 - (ii) EUR 3,000 (three thousand euros) in respect of non-pecuniary damage plus any tax that may be chargeable;

(iii) EUR 1,800 (one thousand eight hundred euros) in respect of costs and expenses plus any tax that may be chargeable to the applicant;
(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 newspaper's claim for just satisfaction.

Done in English, and notified in writing on 1 July 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President