



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

1959 · 50 · 2009

THIRD SECTION

CASE OF IEREMEIOV v. ROMANIA (No. 2)

(Application no. 4637/02)

JUDGMENT

STRASBOURG

24 November 2009

FINAL

24/02/2010

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 Ieremeiov v. Romania (No. 2),

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

Josep Casadevall, *President*,

Elisabet Fura,

Corneliu Bîrsan,

Boštjan M. Zupančič,

Egbert Myjer,

Luis López Guerra,

Ann Power, *judges*,

and Stanley Naismith, *Deputy Section Registrar*,

Having deliberated in private on 3 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 4637/02) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Mr Laurian Ieremeiov (“the applicant”), on 19 October 2001.

2. The applicant was represented by Ms Monica Macovei and Ms Alexandra Răzvan-Mihalcea, lawyers practising in Bucharest and Timișoara respectively and acting on behalf of the Association for the Defense of Human Rights in Romania – the Helsinki Committee (APADOR). On 12 January 2005, Ms Monica Macovei withdrew from the case following her appointment as Minister of Justice. The Romanian Government (“the Government”) were represented by their Agent, Mr Răzvan-Horațiu Radu, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the criminal proceedings for defamation brought against him had not been fair and that the imposition of a fine and the obligation to pay compensation for non-pecuniary damage had breached his right to freedom of expression.

4. On 15 May 2007 the President of the Third Section decided to communicate this complaint to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1967 and lives in Timișoara.

6. At the material time he was a journalist at the newspaper *Ziua de Vest* in Timișoara.

7. On 23 June 2000, following the local elections, the newspaper *Ziua de Vest* published an article by the applicant accusing A.V.I., the newly elected mayor of Buziaș, of having collaborated with the *Securitate* (the intelligence service during the communist period). The article, featured on the third page of the newspaper, was announced on the front page by the headline: “Mayor with file” (*Primar cu dosar*).

8. The relevant parts of the article read as follows:

“Citizens' safety above State security

The Scandal of the files in Buziaș

The newly elected mayor, [A.V.I.], is suspected of having collaborated with the *Securitate*

The first scandal concerning the *Securitate* files is about to burst in the town of Buziaș. The elected mayor, [A.V.I.] is suspected by some citizens – whose names will not be made public for obvious reasons – of having collaborated with the *Securitate*. Based on information from inside the Romanian Secret Service, our sources said that [A.V.I.] was under surveillance until 1989 as an irredentist chauvinist, which made it impossible for him to obtain a history teaching post in Buziaș... During the same period [A.V.I.] was allegedly persuaded to collaborate with the *Securitate*, and a file allegedly exists on this matter...

Before the local elections, [A.V.I.] lodged a written statement with the Electoral Bureau... declaring that he had not been part of the former *Securitate*. He informed us yesterday that what he had written in that statement was true and that he had never collaborated in any way with the secret police before 1990.”

9. On 21 August 2000 A.V.I. lodged a criminal complaint for insult and defamation against the applicant with Timișoara District Court. His complaint also included the company which published the newspaper.

10. The District Court heard testimonies from two witnesses who confirmed that they had told the applicant about the rumours concerning the victim's collaboration with the *Securitate*.

11. On 31 October 2000 the applicant gave a statement to the court. He pleaded not guilty and relied in his defence on the right to freedom of expression and the right to provide information about public figures.

12. On 20 February 2001 the District Court gave judgment in the case. It considered that the applicant had not committed defamation, as he had not

referred to any specific offences allegedly committed by the victim. It found that the expressions used by the applicant, including the headline on the front page, were manifestly insulting to the victim. However, the District Court noted that the applicant had not described any of the rumours as fact and that he had also presented the victim's point of view in the article.

It further considered that a certain degree of aggressiveness was common in journalism and that therefore, although the facts met the legal criteria to constitute the criminal offence of insult, in the circumstances of the case the acts perpetrated and their consequences were not severe enough to come within the sphere of criminal law.

The District Court acquitted the applicant of both defamation and insult and imposed an administrative fine of 500,000 Romanian lei (ROL). The court also found that the conditions had been met for the applicant's civil liability and that of the company publishing the newspaper, in respect of the prejudice caused to the victim. It thus ordered the applicant and the company to pay ROL 3,000,000 to A.V.I. as compensation for non-pecuniary damage. Lastly, the applicant was ordered to pay ROL 350,000 to the State in court fees.

13. All parties appealed. The victim contested the acquittal and sought to have the amount of damages increased. The company publishing the newspaper argued that the prejudice had not been proven by the victim. The applicant claimed that the legal requirements had not been fulfilled either for the existence of the offence of defamation or for the existence of insult.

14. On 27 April 2001 the parties' representatives presented the grounds for appeal orally before Timiș County Court. The applicant was invited to speak only before the end of the hearing (*ultimul cuvânt al inculpatului*). In his address he requested that A.V.I.'s appeal be dismissed.

15. The final decision was adopted on the same day. The County Court allowed the appeal lodged by A.V.I. It acquiesced in the statement of facts established by the District Court but considered that the first-instance court had failed to interpret them correctly. It found that the expressions used by the applicant, in particular, "the mayor is suspected of having collaborated with the *Securitate*", "was allegedly persuaded to collaborate with the *Securitate*, and a file allegedly exists on this matter" and "was under surveillance as an irredentist chauvinist", were manifestly defamatory and, if true, would expose the victim to public opprobrium at the least. It considered that the applicant's intention to denigrate was proved and that he was not therefore covered by the Constitution and the Convention, which guaranteed the right to freedom of expression only when it was exercised in good faith. However, for the same reasons as the District Court, it considered that in the circumstances of the case the acts perpetrated and their consequences were not severe enough to come within the sphere of criminal law. It therefore acquitted the applicant on both accounts and imposed on him an administrative fine of ROL 1,000,000.

16. The court also considered that the prejudice incurred by the victim had not been correctly evaluated by the District Court and increased the amount to be paid by the applicant and the newspaper company to ROL 20,000,000. It awarded A.V.I. ROL 5,000,000 for costs, to be paid jointly by the applicant and the company. Lastly, the court ordered the applicant to pay ROL 500,000 to the State for court fees.

17. On 3 October 2001 the applicant paid the administrative fine.

II. RELEVANT DOMESTIC LAW

18. The relevant provisions of the Civil and Criminal Codes concerning insult and defamation and liability for paying damages in force at the material time are described in *Barb v. Romania*, no. 5945/03, §§ 19-20, 7 October 2008.

19. The Criminal Code has been amended repeatedly and in 2006 the Articles on insult and defamation were repealed (for details, see *Cuc Pascu v. Romania*, no. 36157/02, §§ 12-14, 16 September 2008).

20. However, in decision no. 62 of 18 January 2007 the Constitutional Court declared unconstitutional the removal from the Criminal Code of the Articles concerning insult and defamation.

21. Law no. 356/2006 amended the Criminal Code and made it mandatory for an appeal court to hear the accused where the first-instance court had acquitted him or her. Currently, where an appeal court quashes a judgment given by a first-instance court, it must decide on the evidence to be adduced and set a date on which it will take statements from the accused if the latter was not heard or if he or she was acquitted by the first-instance court (Articles 385¹⁴ § 1¹ and 385¹⁶, as amended).

THE LAW

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

22. The applicant complained that the County Court had not secured a fair trial, as it had re-examined the case and worsened his situation without hearing him or allowing him to adduce evidence in his defence. He relied on Article 6 § 1 of the Convention, which provides:

“In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

A. Admissibility

23. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

24. The Government argued that the applicant had been heard by the first-instance court and had had the possibility to put forward evidence in his defence. The appeal court had not been called upon to establish the facts of the case but rather to reassess the evidence. In particular, there had been no need for the court to hear a statement from the applicant in order to establish whether he had intended to denigrate A.V.I. In any event, he had exercised his right to address the court before the end of the hearing (*ultimul cuvânt al inculpatului*). Lastly, the Government pointed out that the applicant had been acquitted and the administrative fine imposed on him could not be described as a criminal conviction.

25. The applicant contested the Government's arguments and considered that there had been no reason for the County Court to deprive him of his right to be heard by the court and, if necessary, to put forward evidence.

2. *The Court's assessment*

26. In order to establish whether a person has been criminally convicted within the autonomous meaning of the Convention the Court applies the so-called “*Engel* criteria”, most recently reaffirmed in *Jussila v. Finland* ([GC], no. 73053/01, §§ 30-31, ECHR 2006-XIV) and *Sergey Zolotukhin v. Russia* ([GC], no. 14939/03, § 53, 10 February 2009). The Court reiterates, in particular, that the lack of severity of the penalty imposed cannot divest an offence of its inherently criminal character.

27. Applying those principles to the facts of this case, the Court finds, from the outset, that the decision rendered by the County Court, imposing an administrative fine on the applicant, amounts to a “criminal conviction” within the autonomous meaning of the Convention. In particular, the Court notes that the offence committed by the applicant came under the domestic criminal law. As for the nature of the offence, the Court notes that the relevant provisions of the Criminal Code were directed towards all citizens rather than towards a group possessing special status and that the offence in question made the perpetrator liable to penalties intended to punish and deter (see *Ezeh and Connors v. the United Kingdom* [GC], nos. 39665/98

and 40086/98, § 104, ECHR 2003-X; *Öztürk v. Germany*, 21 February 1984, § 52, Series A no. 73; *Anghel v. Romania*, no. 28183/03, § 51, 4 October 2007; and *Zolotukhin*, cited above, § 55).

28. In similar circumstances to those of the present case, the Court has established that where an appellate court is called upon to examine a case as to the facts and the law and to make a full assessment of the question of the applicant's guilt or innocence, it cannot, as a matter of fair trial, properly determine those issues without a direct assessment of the evidence given in person by the accused (see *Constantinescu v. Romania*, no. 28871/95, § 55, ECHR 2000-VIII).

29. In the case at hand, the County Court re-examined the facts of the case. In doing so, it failed to hear evidence from the applicant or to allow him to prepare and present his defence. The fact that the accused addressed the court before the end of the hearing cannot be equated with his right to be heard by the court during the trial (see *Constantinescu*, cited above, § 58).

30. Moreover, the County Court only heard the parties on the admissibility of the appeals and did not inform the applicant of its intention to quash the District Court's judgment and to re-examine the merits of the accusation. The Court considers that, as a matter of fair trial, a court cannot quash a previous judgment and reassess evidence without properly informing the interested parties and allowing them the opportunity to present their case.

31. The failure to hear the accused in person is even more difficult to accommodate with the requirements of a fair trial in the specific circumstances of this case, where the County Court carried out an assessment of the subjective element of the alleged offence, that is, the applicant's intent to denigrate.

For all these reasons, the Court considers that the County Court did not give the applicant the opportunity to present his defence.

32. The Court acknowledges the changes in the domestic legislation which seem to bring the criminal procedure closer to the Convention requirements on this point (see paragraph 21 above). Nevertheless, those changes occurred in 2006 and thus remain without relevance for the instant case.

33. The foregoing considerations are sufficient to enable the Court to conclude that by quashing the first-instance judgment and re-examining the merits of the accusation against the applicant without hearing evidence from him and without allowing him to present his defence, the County Court failed to comply with the requirements of a fair trial.

There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

34. The applicant complained that by concluding that he had committed defamation and by imposing an administrative fine and non-pecuniary damages on him, the County Court had infringed his right to freedom of expression. He also claimed that in order to present his defence and bring proof of the validity of his statements (*proba verității*), he was constrained to reveal his sources, that is, the two witnesses who were heard by the first-instance court, which amounted to an additional interference with his freedom of expression. He relied on Article 10 of the Convention, which provides:

“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.”

A. Admissibility

35. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. *The parties' submissions*

36. The Government averred that the interference with the applicant's freedom of expression was prescribed by law and pursued a legitimate aim, to which it was proportionate. In particular, they pointed out that the applicant had been acquitted and that there was no evidence that he had paid the damages or court fees imposed (they referred to *Stângu v. Romania* (dec.), no. 57551/00, 9 November 2004; and *Stângu and Scutelnicu v. Romania*, no. 53899/00, 31 January 2006). Moreover, the amounts imposed by the court had been moderate.

As for the applicant's allegation that he had been forced to reveal his sources, they pointed out that the relevant article of the Criminal Code did not preclude the possibility of proving the absence of an intention to denigrate, but that the courts had concluded that the applicant had acted in bad faith.

37. The applicant argued, in particular, that the issue of collaboration with the former *Securitate* by persons who ran for public office had been a matter of general interest at the material time, and its importance had continued to increase over time. He considered that he had acted in good faith and in full accordance with a pressing social need; he had not exceeded the limits of the rules of conduct set for the press.

2. The Court's assessment

38. The Court refers to the general principles established in its case-law regarding freedom of expression, in particular the protection afforded to journalists who cover matters of public concern and that afforded to civil servants' reputations (see, among the more recent judgments, *Busuioc v. Moldova*, no. 61513/00, §§ 56-62, 21 December 2004; *Stângu and Scutelnicu*, cited above, §§ 40-42 and 52-53; and *July and Sarl Libération v. France*, no. 20893/03, §§ 60-64, ECHR 2008-... (extracts)).

39. It is not disputed between the parties that, in the case at hand, the County Court's decision of 27 April 2001 constituted an interference with the applicant's right to freedom of expression. The interference was "prescribed by law" (Article 206 of the Criminal Code and Articles 998-999 of the Civil Code) and served a legitimate aim, namely the protection of the rights and reputation of others. It remains to be ascertained whether the interference was "necessary in a democratic society".

40. The Court notes that the domestic court imposed an administrative fine on the applicant for having defamed A.V.I. and ordered him to pay compensation for non-pecuniary damage.

41. At the material time A.V.I. had just been elected mayor in his town and the article reported on rumours of his collaboration with the communist political police. The information was specifically related to A.V.I.'s public life and was a matter of public concern, in particular with regard to the relevance for society as a whole of collaboration with the former *Securitate*.

Accordingly, the Court finds that, given the context and the seriousness of the allegations, the article contributed to a debate of public interest.

42. The domestic courts criticised the applicant for using the expressions "the mayor is suspected of having collaborated with the *Securitate*", "was allegedly persuaded to collaborate with the *Securitate*, and a file allegedly exists on this matter" and "was under surveillance as an irredentist chauvinist".

Without denying the provocative value of these expressions, the Court reiterates that journalistic freedom also covers possible recourse to a degree

of exaggeration, or even provocation and cannot be regarded as overstepping the limits set by the Convention and the case-law on freedom of the press (see *Dalban v. Romania* [GC], no. 28114/95, § 49, ECHR 1999-VI).

43. The Court also notes that the two witnesses had admitted before the first-instance court to having provided the information to the applicant. Therefore, whether the applicant's statements were interpreted as statements of fact or value judgments, there existed a sufficient factual basis to support them (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 76, ECHR 2004-XI).

44. Furthermore, the Court cannot attach weight to the County Court's finding that the applicant had acted in bad faith, in so far as the criminal proceedings lacked the requirements of a fair trial (see paragraph 32 above; *Folea v. Romania*, no. 34434/02, § 42, 14 October 2008; and, *mutatis mutandis*, *Steel and Morris v. the United Kingdom*, no. 68416/01, § 95, ECHR 2005-II). On this point, the Court notes that the applicant used a dubitative style in presenting the information and also presented the victim's position in the same article.

Making its own assessment in the light of these findings, the Court considers that nothing in the file indicates that the applicant acted in bad faith, with intent to denigrate A.V.I. (see, *a contrario*, *Stângu and Scutelnicu*, cited above, § 51).

45. The Court therefore concludes that the interference with the applicant's right to freedom of expression was not proportionate to the legitimate aim served and that the authorities failed to give relevant and sufficient reasons to justify it.

For the same reasons, although the amounts imposed on the applicant by the domestic courts in respect of a fine, damages and costs were moderate, this fact cannot change the above conclusion.

46. It follows that the interference with the applicant's rights was not "necessary in a democratic society". There has accordingly been a violation of Article 10 of the Convention.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

47. Lastly, the applicant complained under Article 13 of the Convention that the domestic law did not provide for effective remedies for alleged violations of Articles 6 § 1 and 10 of the Convention.

48. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

49. 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. Damage

50. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage.

51. The Government considered that the finding of a violation constituted in itself sufficient just satisfaction for the non-pecuniary damage alleged by the applicant. In any case, they argued that the amount sought was excessive.

52. The Court awards the applicant EUR 3,000 in respect of non-pecuniary damage.

B. Costs and expenses

53. The applicant also claimed the following amounts for the costs and expenses incurred before the Court:

- EUR 2,875 in lawyer's fees for his first lawyer, Ms Monica Macovei;
- EUR 1,255 in lawyer's fees for his second lawyer, Ms Alexandra Răzvan-Mihalcea;
- EUR 300 for technical support from APADOR.

A detailed description of the lawyers' fee is annexed to his observations.

54. The Government considered that the applicant had not justified the correspondence costs and that the court fees sought by the representative were excessive.

55. Under the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,200 for the proceedings before the Court.

C. Default interest

56. 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 complaints concerning Articles 6 § 1 and 10 of the Convention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
3. *Holds* that there has been a violation of Article 10 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that the respondent State is to pay directly to the applicant's representatives, within the same three months, EUR 2,200 (two thousand two hundred euros) for costs and expenses;
 - (c) that the above amounts are to be converted into the respondent State's national currency at the rate applicable at the date of settlement;
 - (d) 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 24 November 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Deputy Registrar

Josep Casadevall
President