



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

FOURTH SECTION

CASE OF MANOLE AND OTHERS v. MOLDOVA

(Application no. 13936/02)

JUDGMENT
(just satisfaction)

STRASBOURG

13 July 2010

FINAL

13/10/2010

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Manole and Others v. Moldova,

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

Nicolas Bratza, *President*,

Josep Casadevall,

Giovanni Bonello,

Rait Maruste,

Lech Garlicki,

Ján Šikuta,

Mihai Poalelungi, *judges*

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 22 June 2010,

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

PROCEDURE

1. The case originated in an application (no. 13936/02) 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 nine Moldovan nationals (“the applicants”) on 19 March 2002. The applicants were all employees or former employees at Tele-Radio Moldova (“TRM”).

2. In a judgment delivered on 17 September 2009 (“the principal judgment”), the Court found that between February 2001 and September 2006 there had been a significant bias towards reporting on the activities of the President and Government in TRM's television news and other programming, with insufficient opportunity for representatives of the opposition parties to gain access to television to express their views and also a policy of restricting discussion or mention of certain topics because they were considered to be politically sensitive or to reflect badly in some way on the Government. The applicants, as journalists, editors and producers at TRM's television station, had been affected by these policies and had thereby experienced a continuing interference with their rights to freedom of expression (*ibid.*, §§ 9-17, 80 and 106). In the light of the virtual monopoly enjoyed by TRM over audio-visual broadcasting during the relevant period, the Court held that the State authorities had been under a positive obligation to put in place the conditions to ensure that TRM transmitted accurate and balanced news and information and that its programming reflected the full range of political opinion and debate in the country (*ibid.*, §§ 107-108). The Court found that State authorities had failed to comply with this positive obligation and that there had been a violation of Article 10 of the Convention because the legislative framework throughout the period in

question was flawed, in that it did not provide sufficient safeguards against the control of TRM's senior management, and thus its editorial policy, by the political organ of the Government (*ibid.*, §§ 109-111).

3. Since the question of the application of Article 41 of the Convention was not ready for decision the Court reserved it and invited the Government and the applicants to submit, within three months from the date on which the judgment became final in accordance with Article 44 § 2 of the Convention, their written observations on that issue and, in particular, to notify the Court of any agreement they might reach.

4. The applicants and the Government each filed observations.

THE LAW

5. 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

6. The applicants recalled that they had each worked at TRM for more than 10 years and had been exposed to censorship throughout this time. The censorship became acute from 2001 onwards. Two of them (Ms Manole and Mr Rusnac) had been sanctioned in 2002 for protesting against censorship. Both were removed from their previous posts and eventually Ms Manole had to leave TRM. Four applicants (Ms Fusu, Mr Rusnac, Ms Cucoreanu and Ms Arama) lost their jobs at TRM following the reorganisation in 2004. The applicants each claimed 10,000 euros (EUR) in respect of pecuniary and non-pecuniary damage. They submitted that their claims were consistent with the awards made by the Court in “whistle-blower” cases such as *Guja v. Moldova* [GC], no. 14277/04, ECHR 2008-... and *Kudeshkina v. Russia*, no. 29492/05, 26 February 2009.

7. The Government submitted that a finding of violation would be sufficient just satisfaction. They emphasised that the Court's finding of a violation of Article 10 had been based on the flawed legislative framework during the period February 2001 to September 2006. They pointed out that a number of legislative reforms had since taken effect. In particular, on 18 August 2006 the Audiovisual Code of the Republic of Moldova came into force (Law No. 260-XVI). The Code, which applied to private and public broadcasters, was intended to ensure that the public had access to a pluralistic and balanced audio-visual service and that the broadcasters were

guaranteed editorial independence. Chapter VII of the Code contained detailed provisions regarding TRM, including the setting up of a Supervisory Board to manage the company and a number of provisions to ensure TRM's editorial and financial independence. The Code was analysed in draft prior to adoption by experts on behalf of the Council of Europe, who found that the Code conformed to European standards. In addition, the Code was amended on 22 October 2009 by Law No. 42-XVIII, which simplified the procedures for the election of members to the Audiovisual Coordinating Council and TRM's Supervisory Board.

8. The Court takes as its starting point the nature of the violation found in this case, namely the failure of the State authorities to put in place a legislative framework to ensure that the public were provided with a balanced and pluralistic audio-visual service. The Court found that the applicants, as journalists and editors employed by TRM, were directly affected by this failure by the State to prevent censorship and political influence at TRM. On the basis that the applicants' complaints concerned principally the deficiencies in the legislative framework and the practice of censorship at TRM, it found that they were exempted from the requirement to exhaust domestic remedies (see the principal judgment, §§ 112-113). The Court did not, however, make any findings as regards the applicants' individual employment histories. Nor did it examine whether the applicants had exhausted domestic remedies in respect of the various disciplinary, reinstatement, dismissal and redundancy measures taken against them. It follows that the Court does not consider it appropriate in the present case to award compensation in respect of any pecuniary damage suffered by the applicants as a result of any such measure. Moreover, although the Court cannot in the present proceedings examine the new legislation to determine whether the situation which gave rise to the violation has been remedied, it notes with satisfaction that measures have been taken by the national authorities to reform the legal framework with a view to bringing to an end the administrative practice that gave rise to the violation. In all the circumstances, it awards each applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

9. The applicants jointly claimed EUR 8,940 in respect of legal costs and expenses. These represented total costs of EUR 9,405, less the sums already paid in legal aid by the Council of Europe.

10. The Government submitted that the costs claimed were excessive.

11. The Court recalls that the present case raised new and complex factual and legal issues and that the costs claimed included attendance at a hearing in Strasbourg. Against this background it does not consider the

costs claimed to be excessive and it awards them in full, together with any tax that may be payable by the applicants.

C. Default interest

12. 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. Holds

- (a) that the respondent State is to pay, within three months from the date on which the present judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 2,000 (two thousand euros) to each applicant in respect of non-pecuniary damage and EUR 8,940 (eight thousand nine hundred and forty euros) to the applicants jointly in respect of costs and expenses, plus any tax that may be chargeable, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

2. Dismisses the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 13 July 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President