

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

THIRD SECTION

CASE OF BUGAN v. ROMANIA

(Application no. 13824/06)

JUDGMENT

STRASBOURG

12 February 2013

FINAL

12/05/2013

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



In the case of Bugan v. Romania,

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

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Luis López Guerra,
Nona Tsotsoria,
Kristina Pardalos,
Johannes Silvis, *judges,*

and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 22 January 2013,

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

PROCEDURE

1. The case originated in an application (no. 13824/06) 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 Sorin Bugan ("the applicant"), on 3 April 2006.

2. The applicant was represented by Mr Ciprian Panaitescu, a lawyer practising in Sinaia. The Romanian Government ("the Government") were represented by their Agent, Ms Irina Cambrea, from the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, a violation of his right to freedom of expression by the fact that he had been ordered to pay damages to the director of a public hospital because of an article he had written concerning mainly flaws in the management of that hospital.

4. On 15 June 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

5. As Mr Corneliu Bîrsan, the Judge elected in respect of Romania, had withdrawn from the case (Rule 28 of the Rules of Court), the President of the Chamber appointed Mrs Kristina Pardalos to sit as an *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1 of the Rules of Court).

THE FACTS

6. The applicant was born in 1968 and lives in Sinaia.

I. THE CIRCUMSTANCES OF THE CASE

7. In February and March 2005 the applicant, a journalist and editorial director of the weekly magazine *Ziar de Sinaia*, wrote four articles about the director of the town's public hospital, Dr C.P., complaining about his managerial technique, the alleged intimidation into silence of the hospital's doctors, the closure of the intensive care department – allegedly because he had harassed the doctor previously in charge of that department – and about his attempts to obtain social housing despite not meeting the requirements. Dr C.P.'s connections to the Social Democratic Party (*PSD*) were also a point of criticism, as the applicant wrote that politically favoured managers were "moulded from the same dough as Doctor Mengele" (*plămada din care era construit şi doctorul Mengele*).

8. Some of the terms employed by the applicant regarding Dr C.P., as noted by the domestic court, read as follows: "an arrogant person, sure of himself, who talks in a low voice with a superior smile"; "prone to intimate behaviour commonly considered strange"; someone who "pretended that he did not know how big his wife's fortune was"; "who pulled many strings to become director"; who "aspires to the title of the most dreadful social climber in Sinaia" ("*aspiră la titlul de cel mai incrâncenat parvenit din Sinaia*"); and who "started a campaign of terror against the former director, whom he verbally attacked for two years until he made her resign". The applicant also accused Dr C.P. of having instituted "a law of silence" by nominating himself as the hospital's spokesperson.

9. Dr. C.P. field a criminal complaint against the applicant, accusing him of defamation.

10. On 31 August 2005 the Sinaia District Court acquitted the applicant and dismissed the civil claims. It found that some of the applicant's statements were value judgments concerning the plaintiff's moral and professional standing. As for the statements of fact, the court considered that the applicant had proved their veracity. The court also considered that the applicant's statements had corresponded to a pressing social need and had been proportionate to the aim pursued. As for the civil action, the court noted that the applicant had not committed an unlawful act capable of triggering his civil liability. It held as follows:

> "The court considers that ... the applicant's deed was not unlawful, as he was merely exercising his freedom of expression, a subjective right guaranteed by Article 30 of the Constitution and one of the fundamental freedoms protected by the European Convention on Human Rights in its Article 10."

Lastly, the court considered that the applicant had acted with a view to informing the public on matters of public concern and had not had the intention to defame the victim.

11. On 11 November 2005 the Prahova County Court quashed the District Court's decision in part. It upheld the applicant's acquittal but

nevertheless ordered him, together with the newspaper, to pay 6,000 Romanian Lei (RON) in damages under Articles 998-999 of the Civil Code. He was also ordered to pay court fees of RON 60 to the State and RON 5,500 to the victim.

12. The court considered that the terms used by the applicant in his articles had infringed the victim's honour and reputation, noting that the victim was a public figure and had therefore suffered damage as a result of the articles. It based its decision on the evidence in the file and the oral submissions of counsel. The applicant was only allowed to address the court at the end of the hearing.

13. The County Court held as follows:

> "The first-instance court's reasoning was correct and adequate in finding that the defendant, through the published articles, exercised his freedom of expression and informed the public on a matter of public concern.
>
> ...
>
> However, he is accountable from a civil law point of view...
>
> It is important that journalists act with ... professionalism and [in an] educat[ed] [manner].
>
> Although the issues on which the defendant reported do not amount to an offence and he is thus not criminally responsible for what he wrote, the manner in which he wrote and the terms he employed aroused feelings of tension and disgust in the victim. While the defendant fully exercised his right [to freedom] of expression, the victim also has a right to his reputation."

14. On 10 January 2006 the damages and legal fees were paid mainly by the company which published the newspaper.

II. RELEVANT DOMESTIC LAW

15. Articles 998 and 999 of the former Civil Code, applicable at the date of the facts of the present case, provide that any person who has suffered damage can seek redress by bringing a civil action against the person who has intentionally or negligently caused it:

Article 998

> "Any act committed by a person which causes damage to another shall render the person through whose fault the damage was caused liable to make reparation for it."

Article 999

> "Everyone shall be liable for damage he has caused not only through his own act but also through his failure to act or his negligence."

In order for the action to be admitted, the interested party must prove in court that the defendant committed an illicit act with responsibility, according to the civil law, that the plaintiff incurred a prejudice and that there is a causal link between the illicit act and the damage sustained.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

16. The applicant complained under Articles 6 § 2 and 10 of the Convention that his right to freedom of expression had been infringed by the County Court in its decision of 11 November 2005, in so far as he had been ordered to pay damages to the director of the local public hospital because of an article the applicant had written about him.

17. The Court will examine the complaint solely under Article 10 of the Convention, which reads as follows:

> "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

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

B. Merits

1. Submissions by the parties

19. The applicant considered that the court of appeal had disregarded the degree of exaggeration permitted under Article 10 and that the amount he had been required to pay in damages and court fees had had a deterrent effect on his journalistic activity. He reiterated that Dr C.P. was a public figure, as he was the director of a public hospital and member of a political party, and that the articles had referred exclusively to his public life and not to his private affairs. He also pointed out that both courts had established that he had reported on matters of general interest, exercising his right to freedom of expression. He also brought to the Court's attention the fact that the same evidence had formed the basis of both court decisions and that in finding him liable in civil damages the court of appeal had given no indication of the evidence that had made it reach a different outcome than that of the lower court.

20. The Government alleged that the interference with the applicant's right to freedom of expression had been justified by the need to protect the victim's reputation. The applicant had abused his freedom. He had begun a campaign aimed at denigrating the victim and had used expressions that had overstepped the boundaries of permissible exaggeration and had constituted personal insults, with no relevance for the public interest. He had used aggressive language by comparing the applicant to the Nazi Josef Mengele. They considered that the domestic courts had provided relevant and sufficient reasons to justify the outcome of the case. They also pointed out that the award of non-pecuniary damages had been reasonable as to its quantum and that the applicant had not been ordered to satisfy it alone, but together with the newspaper. Moreover, there was no indication that the applicant had actually paid the money.

2. The Court's assessment

21. The Court makes reference to the principles established in its case-law concerning freedom of expression guaranteed by Article 10 of the Convention (see, among many others, *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, §§ 88-93, ECHR 2004-XI). It reiterates that the press performs a vital role of "public watchdog" in a democratic society. Although it must not overstep certain bounds, in particular in respect of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on political issues and on other matters of general interest (see *Cumpănă and Mazăre*, cited above, § 93).

22. The Court makes further reference to its established case-law concerning the protection afforded to journalists who cover matters of

public concern and the limits of acceptable criticism, which are wider with regard to a civil servant or a politician acting in his public capacity than in relation to a private individual (see *Cumpănă and Mazăre*, cited above, §§ 88-91, *Björk Eiðsdóttir v. Iceland*, no. 46443/09, §§ 62-65, 10 July 2012; *Oberschlick v. Austria (no. 2)*, 1 July 1997, § 29, *Reports of Judgments and Decisions* 1997-IV; and *Ieremeiov v. Romania (no. 1)*, no. 75300/01, § 38, 24 November 2009).

23. In particular, it reiterates that freedom of expression is also applicable to "information" or "ideas" that offend, shock or disturb (*Janowski v. Poland* [GC], no. 25716/94, § 30, ECHR 1999-I). Moreover, although the Court has established that the right to a good reputation is protected by Article 8 of the Convention, in order for that Article to come into play, an attack on a person's reputation must attain a certain level of seriousness and cause prejudice to the victim's personal enjoyment of the right to respect for private life (see *A. v. Norway*, no. 28070/06, § 64, 9 April 2009).

24. Turning to the facts of the present case, it is to be noted at the outset that the decision complained of constituted an interference with the applicant's right to freedom of expression. The interference was based on Articles 998-999 of the Civil Code and pursued the legitimate aim of protecting the reputation of others.

25. It thus remains to be ascertained whether it was necessary in a democratic society. In accordance with its case-law, the Court will examine whether the reasons adduced by the domestic courts were "relevant and sufficient" and whether the interference was proportionate to the legitimate aim pursued. In so doing, the Court will have regard to the domestic courts' margin of appreciation.

26. The Court concurs with the domestic courts' findings that the applicant reported on matters of public interest, proved the veracity of the factual statements and acted in good faith. The victim was the director of the town's public hospital and a local public figure. His actions as manager of that institution had a bearing on the local population's access to health services. It is therefore acceptable that he was subject to a more thorough scrutiny of his actions and behaviour in public life. While it is true that some of the applicant's comments referred to the victim's private life, the overall language remained within the acceptable limits of journalistic freedom.

27. The Court notes that, acting as a court of last resort, the County Court ordered the applicant to pay damages and court fees. The Court accepts that in doing so, the domestic court acknowledged in its reasoning, to a certain extent, that the victim incurred prejudice as a consequence of the words used by the applicant. However, it failed to give sufficient reasoning for establishing applicant's civil responsibility, as required by the general tort law (see paragraph 15 above).

Moreover, no new evidence was adduced before the County Court with respect to the civil responsibility and the parties did not give fresh statements before it. The Court reiterates that it is only by giving reasoned decisions that the domestic courts fulfil the requirements of the proper administration of justice (see, *mutatis mutandis*, *Suominen v. Finland*, no. 37801/97, § 34, 1 July 2003).

It therefore appears that the County Court failed to adduce relevant and sufficient reasons for its decision.

28. In the light of the conclusion reached above, the Court considers that it is not necessary to examine the severity of the awards of damages and costs imposed on the applicant (see *Busuioc v. Moldova*, no. 61513/00, § 96, 21 December 2004).

29. The foregoing considerations are sufficient to enable the Court to conclude that the domestic courts failed to give relevant and sufficient reasons for the interference with the applicant's right to freedom of expression in the present case, and that the interference at issue was disproportionate and therefore not "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention.

There has accordingly been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. 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

31. The applicant claimed, in respect of pecuniary damage, RON 11,560, representing the amount he had been ordered to pay to Dr C.P. and the State in non-pecuniary damages and court fees (see paragraph 11 above). He submitted invoices attesting the payment of RON 60 in court fees and argued that he had not requested an invoice that he could produce before the Court for the payment made to Dr C.P., as no such document was required by domestic law.

32. He also sought 5,000 euros (EUR) in respect of non-pecuniary damage.

33. The Government pointed out that the applicant had not demonstrated that he had paid the amount of RON 6,000 awarded as non-pecuniary damages to his victim. They considered that the finding of a violation would

constitute sufficient reparation for the non-pecuniary damage alleged in the case.

34. The Court notes that the applicant has not proven that he himself paid the amount sought before it in respect of pecuniary damages (see paragraphs 14 and 31 above). It therefore awards him EUR 16 under this head.

It also awards the applicant EUR 4,500 in respect of non-pecuniary damage.

B. Costs and expenses

35. The applicant also claimed RON 7,000 for costs and expenses incurred before the domestic courts and EUR 500 for those incurred before the Court. He produced invoices recording the payment of RON 7,000 to his lawyer in the domestic proceedings and RON 17.30 for postage in the current proceedings.

36. The Government contested the claim and pointed out that the applicant had failed to adduce all relevant documents to justify those expenses.

37. According to 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 are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 covering costs under all heads.

C. Default interest

38. The Court considers it appropriate that the default interest rate 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, 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 national currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 16 (sixteen euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(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's claim for just satisfaction.

Done in English, and notified in writing on 12 February 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada
Registrar

Josep Casadevall
President