

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

THIRD SECTION

CASE OF COJOCARU v. ROMANIA

(Application no. 32104/06)

JUDGMENT

STRASBOURG

10 February 2015

FINAL

10/05/2015

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



In the case of Cojocaru v. Romania,

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

Josep Casadevall, *President,*
Luis López Guerra,
Ján Šikuta,
Dragoljub Popović,
Kristina Pardalos,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges,*
and Stephen Phillips, *Section Registrar,*

Having deliberated in private on 20 January 2015,

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

PROCEDURE

1. The case originated in an application (no. 32104/06) 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 Cătălin Petrică Cojocaru ("the applicant"), on 16 June 2006.

2. The applicant was represented by Mr D. Afloroaiei, a lawyer practising in Iaşi. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, of the Ministry of Foreign Affairs.

3. The applicant alleged that his right to freedom of expression had been infringed by the criminal courts, which had convicted him of defamation for an article he had written about the local mayor's activities.

4. On 21 May 2012 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1971 and lives in Paşcani.

6. The applicant is a journalist and chief editor of the local weekly magazine, *Orizontul*.

7. The applicant wrote an article about R.N., the mayor of Paşcani, which appeared in the 15-21 February 2005 edition of that magazine under

the headline "Resignation of honour", listing ten points advocating the mayor's resignation. The article contained references to the mayor's activities, with wording such as "Twenty years of local dictatorship"; "[R.N.] at the peak of the pyramid of evil"; "in Paşcani, only those who subscribe to [R.N.]'s mafia-like system can still do business"; "we have been ruled for over twenty years by a former communist who still has the reflexes of a county chief secretary"; and "[R.N.] does not represent the interests of the [local community]".

8. On the same page, the applicant wrote a news piece about an investigation into the mayor's activities. He quoted a statement by a politician about an ongoing investigation into some of the mayor's activities by the prefectural standards board. The article also contained a statement by another politician and the mayor's point of view on the investigation.

9. On 14 March 2005 R.N. lodged a criminal complaint with the Paşcani District Court, accusing the applicant of insult and defamation. He also sought civil damages.

10. On 19 December 2005 the court convicted the applicant of defamation and ordered him to pay a criminal fine of 10,000,000 Romanian lei (ROL) and to pay to R.N., together with the publishing company, ROL 30,000,000 in compensation for non-pecuniary damage. It acquitted him of the accusations of insult.

11. The court noted that the applicant had submitted official documents proving that there had been irregularities in the activities of the public administration, but considered that that proof alone was not sufficient to justify making those statements of fact. The court reiterated that a journalist had a general obligation to act in good faith:

> "Although irregularities have been found in the activity of the Paşcani Agency for the Administration of Markets, this fact alone did not entitle the applicant to write that the victim was a 'Mafioso who received bribes from businessmen' in order to create facilities for them, as there is no evidence to support these statements.
>
> According to the Code of Press Ethics the right to freedom of expression comes with duties and responsibilities, the journalists having an obligation to act in good faith, in order to provide accurate and credible information."

In establishing the sentence, the court took into account the applicant's criminal record, as he had previously been convicted of insult and defamation.

12. The applicant appealed on points of law, arguing, in particular, that the statement that had brought about his conviction was not an imputation of a crime, as required for the existence of calumny. Moreover, he pointed out that he had not written the sentence quoted by the District Court, namely that the mayor was a Mafioso who received bribes from local businessmen.

13. In a final decision of 27 April 2006 the Iaşi County Court upheld the previous decision. The court of appeal confirmed the lower court's finding and explained that the expression "subscribe to ... a mafia-like system" was

defamatory of the victim. It further reiterated the journalist's obligation to act in good faith, and took the view that in not limiting his assertions to what was necessary to inform the public, the applicant had made value judgments intended to defame the mayor. It also noted that the applicant had failed to abide by the warnings given to him by way of previous convictions for similar facts and had persisted in his criminal behaviour.

II. RELEVANT DOMESTIC LAW

14. The relevant provisions of the Civil and Criminal Codes concerning insult and defamation and liability for paying damages, in force at the material time, as well as the subsequent amendments to them, are described in *Cumpănă and Mazăre v. Romania* ([GC], no. 33348/96, §§ 55-56, ECHR 2004-XI) and *Timciuc v. Romania* ((dec.), no. 28999/03, 12 October 2010).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

15. The applicant complained that the criminal sentence imposed on him amounted to a breach of his freedom of expression guaranteed by 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

16. 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. The parties' position

17. The Government accepted that the court decisions rendered against the applicant constituted interference with his right to freedom of expression, but argued that the interference was provided for by law, notably Articles 206 of the Criminal Code and 998-999 of the Civil Code, and had pursued the legitimate aim of protecting the victim's reputation. They further contended that the courts had given sufficient reasons to justify the conviction. As for the applicant's conduct, they considered that he had acted in bad faith with the intention of denigrating the victim and had presented no evidence to justify the accusations made, thus failing to observe press ethics. They relied on *Flux v. Moldova (no. 6)* (no. 22824/04, 29 July 2008) and *Constantinescu v. Romania* (no. 28871/95, ECHR 2000-VIII).

Lastly, the Government considered that the penalty was proportionate.

18. The applicant submitted belated comments without providing any justification for his failure to observe the time-limits set by the Court. For those reasons, his observations were not admitted to the file.

2. The Court's assessment

19. The Court notes that the parties agree on the existence of an interference with the applicant's right to freedom of expression. It is satisfied that the interference pursued the legitimate aim of protection of the rights of others.

It remains to be ascertained whether the interference was necessary in a democratic society.

(a) General principles

20. The Court makes reference to the general principles established in its case-law concerning freedom of expression (see, among other authorities, *Cumpănă and Mazăre*, cited above, §§ 88-91), in particular the protection afforded to journalists who cover matters of public concern and that afforded to civil servants' reputations (see *Busuioc v. Moldova*, no. 61513/00, §§ 56-62, 21 December 2004; *Stângu and Scutelnicu*, no. 53899/00, §§ 40-42 and 52-53; and *July and Sarl Libération v. France*, no. 20893/03, §§ 60-64) or politicians (see *Lingens v. Austria*, 8 July 1986, § 42, Series A no. 103, and *Incal v. Turkey*, 9 June 1998, § 54, *Reports of Judgments and Decisions* 1998-IV).

21. The Court reiterates in particular that, in matters of freedom of expression, its task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of

appreciation. The Court will look at the interference complained of in the light of the case as a whole and determine whether the reasons adduced by the national authorities to justify it are "relevant and sufficient" and whether it was "proportionate to the legitimate aim pursued". In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts (see, among many other authorities, *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 45, ECHR 2007-IV).

22. The Court further emphasises that although the press must not overstep certain bounds, particularly as regards 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 all matters of public interest. Not only do the media have the task of imparting such information and ideas, but the public also has a right to receive them (see *Cumpănă and Mazăre*, cited above, § 93; and *Salumäki v. Finland*, no. 23605/09, § 46, 29 April 2014 with further references). Moreover, the Convention provisions securing this right apply not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of pluralism, tolerance and broadmindedness, without which there is no "democratic society" (see, notably, *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24, and, more recently, *Mouvement raëlien suisse v. Switzerland* [GC], no. 16354/06, § 48, ECHR 2012 (extracts)).

23. The safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they act in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism. In addition, the Court is mindful of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, § 65, ECHR 1999-III).

24. In *Von Hannover v. Germany (no. 2)* and *Axel Springer AG v. Germany*, the Court defined the Contracting States' margin of appreciation and its own role in balancing the right of freedom of expression against the right to respect for private life (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 104-07 and 109-13, ECHR 2012; and *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 85-88 and 89-95, 7 February 2012).

25. In addition, the Court reiterates that the limits of acceptable criticism are wider as regards a politician as such than as regards a private individual. Unlike the latter, the former 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 (see

Lindon, Otchakovsky-Laurens and July v. France [GC], nos. 21279/02 and 36448/02, § 46, ECHR 2007-IV).

(b) Application of those principles to the present case

26. The Court notes that in the case at hand the applicant reported on matters of public concern, namely the activities undertaken by the mayor, a public figure, and referred strictly to the acts performed in his official capacity and not to his private life (see, *mutatis mutandis, Cumpănă and Mazăre*, cited above, § 95).

27. The Court notes that the supposed defamatory allegation, which led to the applicant's conviction by the District Court (namely that the concerned person was a "Mafioso who received bribes from businessmen"), did not exist in the original article. Moreover, the domestic courts were not consistent on whether the defamatory allegations constituted statements of fact (first-instance court; see paragraph 11 above) or value judgments (appeal court; see paragraph 13 above). It reiterates that from the standpoint of Article 10, the main difference between statements of fact and value judgments lies in the degree of factual proof which has to be established (see *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 40, ECHR 2003-XI).

28. In the present case it notes that the applicant presented evidence to support his statements in the form of official reports revealing irregularities in the local administration, thus in the mayor's realm of activities. The first instance court admitted that there was evidence, but not sufficient to support the applicant's expression.

29. However, the degree of precision required for establishing the well-foundedness of a criminal charge by a competent court can hardly be compared to that which ought to be observed by a journalist when expressing his opinion on a matter of public concern (see *Ungváry and Irodalom Kft v. Hungary*, no. 64520/10, § 56, 3 December 2013). The latter should therefore not be bound by the same standards of accuracy and precision as a criminal investigator. Therefore, the evidence relied on by the applicant should not have been expected to prove the mayor's criminal guilt, in particular for a crime that the applicant himself did not mention expressly in his article (bribery), but to offer a reasonable fundament for his criticism.

30. The Court is therefore satisfied that the applicant, as a journalist dealing with a matter of general interest, offered sufficient evidence in support of his statements criticising the mayor of Paşcani, whether they were deemed to be of a factual nature or judgment values.

31. Furthermore, while it does not deny that some of the statements in the article were provocative, the Court notes that the language used was not particularly excessive (see *Dalban v. Romania* [GC], no. 28114/95, § 49, ECHR 1999-VI).

32. In examining the article closely, it is difficult to affirm that the applicant acted with the intention of defaming R.N. (see *Stângu and Scutelnicu*, cited above, § 51). The reasoning in the domestic court decisions does not offer sufficient guidance in establishing such an intention. The Court considers that the mere fact that the applicant had received similar convictions in the past is not an indicator of lack of good faith in the present case, in particular as the compatibility of those past convictions with the requirements of Article 10 cannot be assessed (see paragraphs 11 and 13 above). It notes that the applicant relied on official reports and presented the mayor's point of view on the matter in the same article (see paragraphs 8 and 11 above and, conversely, *Flux*, cited above, § 29). Those elements enable the Court to conclude that the applicant acted in good faith for the purpose of Article 10 of the Convention.

33. Lastly, as to the severity of the sentence, the Court notes that the applicant received a criminal conviction, which was entered in his criminal record. The amounts he had to pay for the fine and damages amounted to about EUR 1,200, representing four times the average monthly income in Romania.

34. Having regard to the lack of a convincing explanation as to why the official reports provided by the applicant were not sufficient to justify his having written the article and to the lack of a proper examination of the applicant's good faith, the Court considers that the domestic courts did not put forward relevant and sufficient arguments capable of justifying the interference suffered by the applicant (see paragraph 21 above and *Von Hannover v. Germany (no. 2)*, § 107, and *Axel Springer AG*, § 88, judgments cited above). The national authorities therefore failed to strike a fair balance between the relevant rights and related interests.

35. The interference complained of was thus 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

36. 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."

37. The applicant did not submit a claim for just satisfaction or costs and expenses within the prescribed time-limit (see paragraph 18 above). Accordingly, the Court considers that there is no call to award him any sum under Article 41 (see *Novović v. Montenegro and Serbia*, no. 13210/05, § 62, 23 October 2012).

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. *Dismisses* the applicant's claim for just satisfaction.

Done in English, and notified in writing on 10 February 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips Registrar	Josep Casadevall President