

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

FOURTH SECTION

CASE OF GROZA v. ROMANIA

(Application no. 12889/19)

JUDGMENT

STRASBOURG

21 December 2021

This judgment is final but it may be subject to editorial revision.



In the case of Groza v. Romania,

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

Gabriele Kucsko-Stadlmayer, *President,*
Iulia Antoanella Motoc,
Pere Pastor Vilanova, *judges,*
and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to:

the application (no. 12889/19) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 19 February 2019 by a Romanian national, Ms Elena Groza, born in 1953 and living in Dumbrava Roșie ("the applicant") who was represented by Ms R.M. Ichim, a lawyer practising in Iași;

the decision to give notice of the complaints concerning the alleged breach of the applicant's rights to a fair hearing, to equality of arms, of defence and to respect for private and family life (Articles 6 and 8 of the Convention) to the Romanian Government ("the Government"), represented by their Agent, Ms O. Ezer, of the Ministry of Foreign Affairs, and to declare inadmissible the remainder of the application;

the parties' observations;

the decision to dismiss the Government's objection to examination of the application by a Committee;

Having deliberated in private on 30 November 2021,

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

SUBJECT-MATTER OF THE CASE

1. On 20 July 2015 the applicant brought civil proceedings against C.B. before the Neamţ County Court ("the County Court") claiming 50,000 euros (EUR) for damage to her honour and reputation because C.B. had allegedly opened a social media account on Facebook by using the applicant's private information and picture and posted messages on that account which had defamed the applicant within her circle of friends and work colleagues and affected her private and professional relationships.

2. Upon the applicant's request the court appointed an IT expert to prepare an expert report ("the report") in order to determine the identity of the person who had created the account. The expert concluded that he could not uncover all technical data about the account and investigate further who opened it because his requests for information to Facebook had remained unanswered.

3. During the proceedings the applicant asked the court to send an order compelling the company to provide the information required in case it refused to disclose confidential data to anyone other than a court. Her application was dismissed. The County Court held that a court order to Facebook was

unnecessary because the expert had already written to them without receiving a response and had stated that in his experience the company did not respond to such requests.

4. On 19 December 2017 the County Court dismissed the applicant's claim. It held that for anyone to be found liable for the statements on the account, the applicant had to prove the identity of the person who made them. Her requests to have the expert send his requests for information to the company were allowed and the proceedings were adjourned twice pending a response, but Facebook had remained silent. Thus, the evidence adduced had not succeeded in clearly indicating whether the account had been fake. Moreover, the creator's identity could not be established to prove beyond doubt that C.B. had posted the messages.

5. In an appeal to the Bacău Court of Appeal ("the Court of Appeal") the applicant argued that the dismissal of her request for a court order to be sent to Facebook unsupported by strong reasons had breached her rights of defence and to a fair hearing and had made proving her case impossible. The County Court had acknowledged that the clarifications requested by the expert had been necessary for the case. This information had been technical and confidential and she had asked for the County Court's assistance because the expert could not obtain a response. If Facebook had persisted in its silence, the court could have imposed sanctions on them for delaying the proceedings.

6. On 12 September 2018 the Court of Appeal dismissed a renewed request by the applicant for a court order to be sent to Facebook and her appeal. It held that the order was unnecessary for the examination of the appeal given the evidence adduced before the County Court, the arguments raised in the applicant's appeal and what she intended to prove with this evidence. The County Court's decision dismissing her request for the court order had been reasoned and well founded. That court had considered it unnecessary for the case. Its judgment dismissing the applicant's claim had likewise been well founded, given that the applicant had not succeeded in proving that C.B. was the person who had posted the messages on the account.

THE COURT'S ASSESSMENT

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

7. The applicant complained that the proceedings against C.B. had been unfair and had breached her rights of defence, to adduce evidence and to present arguments in support of her case. According to the applicant, the national courts had dismissed her claim, requests for testimonial evidence and for a court order to be sent to Facebook Romania and Ireland, as well as her counsel's application for an adjournment of the proceedings for him to be

able to attend the last hearing of the case by failing to provide reasons sufficiently justifying their conclusions in these regards.

8. These complaints are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. They must therefore be declared admissible.

9. The Court reiterates the general principles set out in its case-law for assessing the fairness of proceedings, including questions concerning the admissibility of evidence, the equality of arms and the courts' obligation to give reasons for their decisions (see *Perić v. Croatia*, no. 34499/06, §§ 19 and 24, 27 March 2008; *Andrejeva v. Latvia* [GC], no. 55707/00, § 98, ECHR 2009; *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, § 61, ECHR 2015; *Letinčić v. Croatia*, no. 7183/11, §§ 47 and 49, 3 May 2016; *Răchită v. Romania*, no. 15987/09, §§ 51 and 57, 17 May 2016; *Devinar v. Slovenia*, no. 28621/15, § 53, 22 May 2018; *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, §§ 149 and 150, 17 October 2019; and *Mihail Mihăilescu v. Romania*, no. 3795/15, §§ 74 and 76, 12 January 2021).

10. The Court notes that the burden of proving that the impugned account had been fake and created by C.B. was on the applicant. The only way she could reliably discharge this obligation was an IT expert report that required information only Facebook could provide.

11. By allowing the applicant's requests for the report and for the expert to send repeated requests to Facebook Romania and Ireland in order to try to obtain this information, the County Court accepted that the information required from Facebook was necessary for the examination of the case. The expert too viewed the information he had asked Facebook for to be necessary for the investigation of the circumstances surrounding the opening of the account. It was therefore indispensable and could influence the outcome of the proceedings. Moreover, the applicant's request for a court order compelling Facebook to disclose this information was prompted precisely by the company's failure to reply to the expert's requests and by the applicant's concern – which could only have been reinforced by the expert's experience – that Facebook would probably treat differently requests made by private individuals and judicial institutions in circumstances involving disclosure of confidential information.

12. Nevertheless, the County Court refused the request for a court order because it considered such an order unnecessary for the case given the company's lack of response to the expert's requests and his past experience of not receiving responses to requests sent to that company.

13. The applicant raised these arguments (paragraph 11 above) before the Court of Appeal. Moreover, she contended that her request for a court order had been justified by the fact that compared to a private individual the judicial authorities had means of enforcing the law in the event that Facebook were to persist in their silence and refusal to share the information.

14. This argument cannot be regarded as unfounded since the Code of Civil Procedure (Articles 187, 189 and 261) and Law no. 189/2003 regarding international legal assistance in civil matters (Articles 1-33) empowered the court examining the case to obtain evidence and information needed from outside its jurisdiction by means of rogatory commission and, if necessary, coercive sanctions. The Government did not argue or present evidence to suggest that the courts requiring the evidence or information in question would have been unable to resort to such measures if faced with a refusal from Facebook.

15. It is therefore difficult for the Court to see why the request for a court order compelling Facebook to disclose the information needed by the expert should not have been allowed.

16. The Court of Appeal dismissed the applicant's arguments (paragraphs 11 and 13 above) giving in essence reasons which were similar to those provided by the County Court and which did not specifically address the argument concerning the means of enforcing the law available to the judicial authorities which she had raised in her appeal.

17. Given the decisive implications of this latter argument for the case, the Court considers that the appellate court was required to give a specific and express response, irrespective of what would have been its final conclusion in this regard – possibly shedding light on why the experience of a single person, albeit a court-appointed expert, dispensed a court of law from attempting to secure evidence seemingly decisive for the outcome of the case, given the law-enforcement powers specific only to a judicial authority vested in it by the relevant legal framework. In the absence of such a response it is impossible to ascertain whether the court simply neglected to examine the argument or whether it intended to dismiss it and, if that was its intention, what its reasons were for so deciding (compare, *Răchită*, cited above, § 57).

18. Consequently, the outright rejection of the applicant's request for an official court order to be sent to Facebook coupled with the dismissal of her claim on the grounds that she had not succeeded in proving that C.B. had posted the messages on the account created in her name, put her at a substantial disadvantage *vis-à-vis* the defendant.

19. This is especially true given that the courts' reasons for rejecting the request for a court order appear to merely contradict the essence of the reasons behind their previous own decision to allow the expert to repeatedly request information from the company in the first place and to ignore points raised by the applicant with a decisive implication for the case.

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

21. The Court considers it unnecessary to examine the other complaints raised by the applicant under this provision (see, *mutatis mutandis*, *Perić*, cited above, § 26).

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

22. The applicant complained that by unfairly curtailing her right of defence and right to adduce evidence in her case and by failing to punish the individual responsible for unlawfully using her private information and intruding into her life, the courts had breached her right to respect for private and family life.

23. Given that the proceedings against C.B. concerned allegations of unlawful use of the applicant's personal data and image and of language capable of tarnishing her reputation and of affecting her professional and private environment, the Court considers that these actions attained the requisite level of seriousness to be capable of interfering and undermining the applicant's rights under Article 8 (see, *mutatis mutandis*, *Pihl v. Sweden* (dec.), no. 74742/14, § 25, 7 February 2017). It cannot therefore accept the Government's argument that this provision was not applicable in the case. The applicant's complaint is likewise neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

24. This complaint is nevertheless linked to the one examined under Article 6 of the Convention. Having regard to its finding above (see paragraph 20 above), the Court considers that it is not necessary to examine it separately.

APPLICATION OF ARTICLE 41 OF THE CONVENTION

25. The applicant claimed 50,000 euros (EUR) in respect of non-pecuniary damage for the suffering experienced by her because of the breach of her rights.

26. The Government argued that the mere finding of a violation would amount to sufficient just satisfaction.

27. The Court considers that the non-pecuniary damage suffered by the applicant as a result of the infringement of her rights under Article 6 of the Convention cannot be made good by the mere finding of a violation. It therefore awards the applicant EUR 6,000 in this regard, plus any tax that may be chargeable on that amount.

28. The Court further 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 6 of the Convention;

3. *Holds* that there is no need to examine the complaint under Article 8 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, 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;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 December 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Deputy Registrar	Gabriele Kucsko-Stadlmayer President