

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

THIRD SECTION

DECISION

Application no. 10265/04
Gheorghe MOCUŢA
against Romania

The European Court of Human Rights (Third Section), sitting on 10 April 2012 as a Chamber composed of:

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

and Santiago Quesada, *Section Registrar*,

Having regard to the above application lodged on 28 December 2003,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Gheorghe Mocuţa, is a Romanian national who was born in 1953 and lives in Bucharest.

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

A. The circumstances of the case

3. At the relevant time, the applicant worked as a prosecutor at the Prosecutor's Office attached to the Supreme Court of Justice.

4. Prior to the publication of the impugned article, he took a leave of absence from office between 1998 and 2000 as he was appointed to political positions by the Government. In particular, he worked as the Secretary of State at the Ministry of Justice and then as an Under Secretary of State at the Government Audit Office. He was not affiliated to any political party. The party in power at that time went on to lose elections held in 2000, at which time the applicant returned to work as a prosecutor.

1. The impugned article

5. An article concerning the applicant written by C.I. was published in the 6–12 March 2001 issue of the satirical weekly magazine *Academia Caţavencu*, under the title "*In the balance of justice, Mocuţa plays on a seesaw*" (*În balanţa justiţiei, Mocuţa se dă huţa*).

The relevant parts of the article read as follows:

> "If before the Revolution Mocuţa took advantage of his name, which was identical to that of the county's chief secretary, after 1989 he had separated himself from the dreaded activist like one would separate [oneself] from the Devil. Whether he was related to Mefisto or not, Mocuţa was appointed straight after graduation to the Prosecutor's Office at the Bucharest District Court..., despite him not being [ranked] first in his class...
>
> No matter how much he would struggle to prove otherwise, Mocuţa appears on [Bank B.'s] list of shame, side by side with high-ranking officers from the Ministry of Internal Affairs and from the Protection and Guard Service. What sets the prosecutor apart from the others [on the list] is that, whilst the soldiers tormented themselves to pay back their debts, as far as Mocuţa is concerned, we do not yet know that he has reached the last payment of his loan. What we do know for sure is that he was fully dedicated to investigating the criminal file opened against [the former director of Bank B.]"

6. The article went on to set out details of the applicant's real estate acquisitions, which it stated had been made through allegedly suspicious business transactions involving a former director of the State Tourism Agency, an influential local politician and local prosecutors. It also insinuated corruption on the part of the applicant in his office as prosecutor in connection with some real estate deals.

7. Some four months after the publication of that article, a second article on the same matter featured in the magazine, credited to a different journalist, in which it was admitted that C.I. had been misinformed and had thus presented false information in his previous article.

2. Criminal proceedings against C.I.

8. On 30 April 2001 the applicant lodged a criminal complaint with the General Prosecutor's Office against C.I. for insult and defamation of an official in the course of his or her duties (*ultraj*; Article 279 § 2 of Criminal Code).

9. The prosecutor decided that the facts fell to be examined under Articles 205 and 206 of the Criminal Code and sent the case to the Bucharest District Court.

The applicant joined the proceedings as civil party, seeking damages from the journalist and the publisher of the magazine, which was a company.

10. On 9 December 2002 the court acquitted C.I., but ordered him, together with the publisher, to pay the applicant 250,000,000 Romanian lei in respect of non-pecuniary damage.

The court considered that the article had been insulting and defamatory and had thus damaged the applicant's reputation and violated his dignity. It nevertheless considered that the journalist had not acted with a clear intention to offend the applicant, his aim being to inform readers about the applicant's conduct as a prosecutor and high representative of the State, which was a matter of public interest. The court noted that C.I. had relied on previously published articles and on information delivered by protected sources, but considered that he should have been more diligent in checking the information before publishing it.

As regards the civil claim, the court considered that C.I. had acted unlawfully as he had failed to thoroughly check the information published or to prove its veracity at trial, and that his behaviour had been prejudicial to the victim.

11. Both C.I. and the public prosecutor appealed against the judgment of 9 December 2002. C.I. requested that the civil claim be dismissed, while the prosecutor sought to overturn the acquittal.

12. On 25 June 2003 the Bucharest County Court allowed the appeal lodged by C.I., quashed the judgment in so far as it concerned the civil action and dismissed the applicant's claim, on the grounds that there had been no causal link between the journalist's conduct and the detriment suffered by the applicant. It upheld the remainder of the judgment, accepting the reasoning of the lower court in doing so.

B. Relevant domestic law

13. 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 their subsequent amendments are described in *Timciuc v. Romania* (dec.), no. 28999/03, 12 October 2010).

COMPLAINTS

14. The applicant complained under Article 6 § 1 of the Convention that the proceedings in the case had been unfair. In particular, he complained about the manner in which the courts had established the facts, assessed the evidence and interpreted applicable law.

15. Under the same provision taken in conjunction with Article 14 of the Convention, he alleged that he had not had a fair trial as he had been discriminated against and politically persecuted. He pointed out that he had prosecuted several politicians belonging to the party that had come to power after the elections of 2000. In addition, he highlighted that he had worked in a political position at the Government Audit Office, belonging to the Ministry of Justice, and had been appointed by the Government which had been formed by the party that had lost the 2000 elections.

16. Under Article 8 § 1 of the Convention, the applicant alleged that the Romanian authorities had failed to respect his right to protect his dignity and reputation.

17. Under Article 10 § 2 of the Convention, he argued that positive measures should have been taken by the State and limitations or sanctions should have been imposed on the freedom of speech exercised by the journalist C.I., in order to protect morals, a person's reputation or the rights of others and to maintain the authority and impartiality of the judiciary.

THE LAW

A. Complaint under Article 6 § 1 of the Convention taken alone and in conjunction with Article 14 of the Convention

18. The applicant alleged that he had not had a fair trial. He complained, in particular, about the manner in which the courts had established the facts, assessed the evidence and interpreted applicable law and claimed that he had been discriminated against based on his political views or as a result of his work history. He relied on Articles 6 § 1 and 14 of the Convention, which read as follows in so far as relevant:

Article 6 § 1

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 14

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

19. The Court reiterates that the admissibility and assessment of evidence are primarily matters for regulation by national law and the national courts, and therefore it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed the rights and freedoms protected by the Convention (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). Moreover, the Court is not required to examine in the abstract the domestic legal order: its sole task is to consider whether in the case under examination the legal system offered adequate and effective protection of the applicant's rights (see, *mutatis mutandis*, *Ignaccolo-Zenide v. Romania*, no. 31679/96, § 108, ECHR 2000-I, and *Ruianu v. Romania*, no. 34647/97, § 66, 17 June 2003).

20. It further reiterates that although Article 6 § 1 obliges courts to give reasons for their decisions, it cannot be understood as requiring a detailed answer to every argument (see *Van de Hurk v. the Netherlands*, 19 April 1994, § 61, Series A no. 288). Nor is the Court called upon to examine whether arguments have been adequately met. Courts must reply to parties' essential arguments, but the extent to which that duty applies may vary in accordance with the nature of the decision and must therefore be assessed in the light of the circumstances of the case (see, among other authorities, *Hiro Balani v. Spain*, 9 December 1994, § 27, Series A no. 303-B).

21. Turning to the case under examination, the Court notes that the domestic courts gave reasoned decisions based on the evidence in the file. There is no appearance of arbitrariness in the manner in which the courts interpreted the evidence and applied the relevant law to the facts of the case.

22. It further notes that although the reasons given by the Bucharest County Court when dismissing the civil claim may be succinct, they are logically connected to the arguments developed by the court in the same decision for dismissing the criminal claim. The Court is therefore satisfied that the requirements of a fair trial have been met.

23. Lastly, the Court notes that the applicant failed to submit any concrete evidence that would allow the Court to discern whether his Article 14 complaint was well-founded.

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

B. Complaints under Articles 8 § 1 and 10 of the Convention

25. Under Articles 8 § 1 and 10 of the Convention, the applicant alleged that the authorities had failed to respect his right to protect his good reputation and had failed to impose limitations or sanctions on C.I.'s freedom of speech to that end. The invoked provisions read as follows:

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 10

"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."

26. The Court makes reference to the principles it has established in its recent case-law concerning the protection afforded by the right to a good reputation (see *Karakó v. Hungary*, no. 39311/05, §§ 17-26, 28 April 2009; *Petrina v. Romania*, no. 78060/01, §§ 27-29 and 34-36, 14 October 2008; and *A. v. Norway*, no. 28070/06, §§ 63-65, 9 April 2009). In particular, the Court reiterates that the applicant's right to "respect for his private life" under Article 8 has to be balanced against the public interest in freedom of expression under Article 10, an interest in which journalists play a critical role as public watchdog: they have a duty to report on matters of public interest (see, among many authorities, *Observer and Guardian v. the United Kingdom*, 26 November 1991, § 59, Series A no. 216, and *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 59, ECHR 1999-III).

27. Turning to the facts of the case, the Court notes that the article in question concerned a matter of public interest, that is, the activities of a prosecutor and former high-ranking representative of the State. In those

capacities, the applicant was a public figure, and was thus exposed to a wider limit of "acceptable criticism" of his activities (see *Janowski v. Poland* [GC], no. 25716/94, § 33, ECHR 1999-I, and *Mamère v. France*, no. 12697/03, § 27, ECHR 2006-XIII).

28. The Court notes that the article also made reference to the applicant's properties and that the allegations made in that regard were aimed at exposing the applicant's alleged corrupt behaviour in office. However, even assuming that the applicant felt offended by the insinuations made, journalistic freedom also covers possible recourse to a degree of exaggeration or even provocation, which does not seem to have been overstepped in the case under examination (see *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 56, ECHR 2007-XI). The Court also attaches significance to the fact that the magazine published a retraction when it came to light that part of the information published by C.I. had been false.

29. The Court further notes that the domestic courts, by means of proceedings that complied with the requirements of Article 6, examined in depth the content of the impugned article (see, *a contrario*, *Petrina*, cited above, § 8) and concluded by a reasoned decision that the journalist had written it with no intention to offend the applicant and that he had relied on previously published information and journalistic investigation, although admittedly he should have been more diligent in checking the information before publishing it. The Court has no reason to depart from the findings of the domestic courts on this matter.

30. In the light of the above, the Court considers that the domestic courts adduced "relevant and sufficient" reasons to justify their decisions and struck a fair balance between the journalist's freedom of expression under Article 10 and the applicant's right to have his dignity, reputation and privacy protected under Article 8.

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

For these reasons, the Court unanimously

Declares the application inadmissible.

Santiago Quesada
Registrar

Josep Casadevall
President