

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

FOURTH SECTION

CASE OF RUSU v. ROMANIA

(Application no. 68373/14)

JUDGMENT

STRASBOURG

1 March 2022

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



In the case of Rusu 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. 68373/14) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 2 October 2014 by a Romanian national, Ms Cristina Rusu, born in 1973 and living in Tîrlișua ("the applicant") who was represented by Ms M.C. Moldovan, a lawyer practising in Bistrița-Năsăud;

the decision to give notice of the complaint under Article 10 (right to freedom of expression) to the Romanian Government ("the Government"), represented by their Agents, most recently by 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 8 February 2022,

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

SUBJECT-MATTER OF THE CASE

1. The applicant alleged that by failing to provide relevant and sufficient reasons for their decisions the national courts had violated her right to freedom of expression.

2. On 14 July and 23 October 2011 and 6 March 2012 the applicant discussed issues connected to the activity of the local Inspector of Schools for geography ("the inspector") in her capacity as high school geography teacher, respectively, in two articles published on the websites of the local newspapers *Bistriţeanul.ro* and *Bistriţa24.ro* and on the local television talk-show "Bistriţa in reality".

3. The inspector brought civil proceedings against the applicant for damaging her reputation, seeking compensation and the publication of the judgment in a national newspaper.

4. On 18 June 2013 the Bistriţa-Năsăud District Court ("the District Court") allowed the claim in part. It awarded the inspector RON 2,000 (EUR 446) in respect of non-pecuniary damage by taking into account the applicant's attitude, the inspector's profession and the Court's case-law, but refused the judgment's publication because it could undermine the authority the two teachers had to enjoy in relation to students.

5. It held that on 14 July the applicant had concluded that the inspector should have taken responsibility for the disinformation concerning the May 2011 Geography Scientific Communications competition and its deficient organisation "because things had been much worse" than described. Her conclusion followed the statements that "the efficiency of the system of education was questioned" and that the teachers had been blamed that "they wallowed in the mud which wrapped up, in some ways, [the system of] education" and her opinion on organisational matters concerning the competition and the circuit of documents within the local inspectorate.

6. On 23 October the applicant had suggested that by handing out a certain diploma during a geography symposium the inspector had participated in "pilferage" and had aimed "to take advantage of someone's work". She also stated that "madam inspector considered that working on other diplomas was unnecessary" being "easier to take something that was ready, than making our mind work".

7. On 6 March the inspector's name was mentioned during a discussion about plagiarism concerning the test subjects for the geography Olympiad even though the local Deputy Inspector for Schools ("the DIP") specified during that discussion that the rules for the competition had been observed.

8. Concomitantly with her press statements the applicant had filed petitions with the local inspectorate blaming the inspector for irregularities in the organisation of the inspectorate or of the competitions. A former local DIP testified that these petitions had been mostly unfounded and the statement of a grader for the May 2011 competition had shown that the applicant's allegations about the organisation of this competition had been unfounded.

9. The allegations about the fraudulent printing of the diplomas given at the symposium had likewise been unfounded given that the previous year participants had received similar diplomas and the applicant had not proven that intellectual property legislation had been breached.

10. The applicant's statements had affected the inspector's image in the students' and the public's eyes and her career given that her work was used to illustrate the alleged "mud which wraps up ... [the system of] education".

11. Even assuming that her campaign had sought only to fix certain alleged irregularities, the applicant should have foreseen that the means used would affect the inspector's reputation. The penalty imposed could not breach Article 10 of the Convention given that the defamatory statements' subject – namely the rules for organising the communications session, the design of the diplomas and the test subjects for the Olympiad – could not be considered of general interest.

12. In her appeal against the judgment the applicant argued that her statements' subject had been of general interest and that the District Court had ignored the evidence and had failed to provide sufficient reasons for its judgment.

13. On 3 April 2014 the Bistriţa-Năsăud County Court dismissed the appeal and awarded the inspector RON 1,200 (EUR 267) in respect of costs and expenses. Reiterating the statements and actions noted by the District Court (paragraphs 5-8 above), the court considered that the applicant's actions had constituted a defamatory campaign against the inspector and that the District Court had assessed the evidence correctly. Each of the competitions' organisation, albeit not meeting the highest standards as per the applicant's wishes, had complied with the applicable rules and the replies to her petitions had had to follow a certain administrative path.

THE COURT'S ASSESSMENT

ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

14. The applicant complained that the courts had failed to provide relevant and sufficient reasons for their decisions and had therefore violated her right to freedom of expression.

15. The complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

16. The Court notes that the courts' sentence constituted an interference with the applicant's right to freedom of expression. The interference was lawful and served the protection of the rights and reputation of the inspector. The issue is, therefore, whether it had been "necessary in a democratic society".

17. The Court reiterates the general principles for assessing the necessity of an interference with the exercise of freedom of expression in the interest of the "protection of the reputation or rights of others" (see *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 78-95, 7 February 2012), including in circumstances involving civil servants or teachers in particular (*Mamère v. France*, no. 12697/03, § 27, ECHR 2006-XIII; *Ferihumer v. Austria*, no. 30547/03, § 24, 1 February 2007; *Fedchenko v. Russia (no. 2)*, no. 48195/06, § 35, 11 February 2010; *Mahi v. Belgium* (dec.), no. 57462/19, §§ 30-32, 7 July 2020; and *Balaskas v. Greece*, no. 73087/17, §§ 36-39, 42, 47-48, 56 and 61, 5 November 2020).

18. The applicant's statements in issue concerned matters connected to the organisation of public competitions for high-school students and the performance of a public official's duties. They ultimately sought to raise awareness about deficiencies in the education system and the conduct of the highest local public officials responsible for this field. These statements, albeit attaining the requisite level of seriousness capable of undermining the inspector's rights under Article 8 of the Convention, concerned therefore a subject of general interest (see *Fedchenko*, cited above, §§ 36 and 56). Nevertheless, the national courts construed the applicant's statements rather

narrowly and did not regard the issues raised by her as contributing to a subject of general interest.

19. It is true that the applicant was bound by special duties and responsibilities incumbent on teachers, applicable also to a certain extent to her activities outside of school, and that as a public servant the inspector enjoyed certain protection as far as the limits of acceptable criticism were concerned.

20. Nonetheless, the applicant's media actions were accompanied by or followed apparent unsuccessful attempts of bringing the aspects she considered deficient in the competitions' organisation to the inspector's or the inspectorate's attention and sought to criticise these deficiencies and to bring about some change. It is not in dispute between the parties that the inspector played an important role in the organisation of the competitions and that she had received media attention in connection with the performance of her duties before these events.

21. The Court reiterates that effective criticism is impossible without reference to specific persons and that having agreed to hold that office, the inspector must have been prepared to tolerate a significant amount of public criticism (see *Fedchenko*, cited above, § 59) and therefore show a correspondingly high degree of tolerance.

22. The courts did not explicitly address these points (see paragraphs 19-21 above) or consider the extent to which the protection which could be afforded to the applicant or the inspector was influenced by their capacity as public servants and their prior conduct.

23. Moreover, even though the courts considered the impugned statements unfounded given the available evidence, they failed to consider whether they were value judgments or statements of fact. Such an approach is incompatible in itself with the principles emerging from Article 10 (see *Gheorghe-Florin Popescu v. Romania*, no. 79671/13, § 32, 12 January 2021).

24. Even if viewed as a combination of value judgments and statements of fact, the Court notes that the statements were made in circumstances where some petitions filed by the applicant with the inspectorate were well-founded, the inspector had acknowledged using the design of the diplomas prepared by the applicant without any warning or acknowledgement given to her and that the test subject of the local Olympiad was identical to the one prepared by different examiners in another county.

25. The Court therefore cannot accept that the impugned statements were made frivolously or lacking a sufficient factual basis. Albeit perhaps polemical, in the absence of manifestly insulting language in the remarks made therein, the statements remained within the limits of admissible exaggeration or even provocations afforded to any individual who takes part in a public debate of general concern (see *Mamère*, cited above, § 25, and *Makraduli v. the former Yugoslav Republic of Macedonia*, nos. 64659/11 and 24133/13, § 79, 19 July 2018).

26. Absent of details provided by the courts in this connection, the Court cannot discern any specific negative impact or effects the applicant's media actions had for the inspector's professional life. Assuming that they had some effect, the Court seriously doubts that these effects were sufficiently serious to override the public's interest in receiving the information in question.

27. Given the chilling effect that a fear of sanction may have on the exercise of freedom of expression (see *Wille v. Liechtenstein* [GC], no. 28396/95, § 50, ECHR 1999-VII, and *Nikula v. Finland*, no. 31611/96, § 54, ECHR 2002-II), and that the applicant proved that the penalty imposed on her exceeded her monthly income, the Court is of the view that this penalty was capable of having a dissuasive effect on the exercise of her right to freedom of expression (see *Lombardo and Others v. Malta*, no. 7333/06, § 61, 24 April 2007, and *Ghiulfer Predescu v. Romania*, no. 29751/09, § 61, 27 June 2017).

28. In the light of the above considerations, in particular the fact that the domestic courts did not duly weigh the interests at stake in accordance with the criteria established in its case-law, the Court finds that the interference with the applicant's right to freedom of expression was not "necessary in a democratic society".

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

APPLICATION OF ARTICLE 41 OF THE CONVENTION

30. The applicant claimed RON 7,100 (EUR 1,492) in respect of pecuniary damage (amount she allegedly had to pay, directly or indirectly, following the judgment of 3 April 2014) and EUR 4,000 in respect of costs incurred before the Court. She left the amount in respect of non-pecuniary damage to the Court's discretion.

31. The Government argued that the amounts claimed by the applicant in respect of pecuniary damage and costs and expenses were unsubstantiated. In addition, the mere finding of a violation would constitute sufficient just satisfaction in respect of non-pecuniary damages.

32. The Court notes a clear link between the sentence imposed on the applicant and the amount claimed in respect of pecuniary damage. Having regard to the available evidence, finds it reasonable to award the applicant EUR 1,000, plus any tax that may be chargeable, in this respect. As to the claim in respect of non-pecuniary damage, the mere finding of a violation is insufficient to compensate for the frustration the applicant must have felt because of the sentence imposed on her. The Court therefore awards the applicant EUR 7,500, plus any tax that may be chargeable, in this respect. It also considers it reasonable to award her EUR 500 covering costs for the proceedings before the Court, plus any tax that may be chargeable.

33. 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 10 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 1,000 (one thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 500 (five hundred 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 1 March 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Deputy Registrar	Gabriele Kucsko-Stadlmayer President