

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

FOURTH SECTION

# CASE OF SHAMMAT v. ROMANIA

*(Application no. 15807/14)*

JUDGMENT

STRASBOURG

4 July 2023

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



**In the case of Shammat v. Romania,**

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

Faris Vehabović*, President*,
Iulia Antoanella Motoc,
Branko Lubarda*, judges*,
and Crina Kaufman, *Acting Deputy Section Registrar,*

Having regard to:

the application (no. 15807/14) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 17 February 2014 by a Romanian national, Mr Abdalla-Khalid Shammat, born in 1981 and living in Graz ("the applicant"), who was represented by Ms C. Mara, a lawyer practising in Oradea;

the decision to give notice of the application to the Romanian Government ("the Government"), represented by their Agent, Ms O.F. Ezer, of the Ministry of Foreign Affairs;

the parties' observations;

Having deliberated in private on 13 June 2023,

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

## SUBJECT MATTER OF THE CASE

1. The application, lodged under Article 8 of the Convention, concerns the publication of the applicant's personal data (full name and home address) in a local newspaper in connection with his failure to fulfil his tax obligations, as well as the lack of appropriate redress thereto.

2. According to the applicant, in its editions of February, March and December 2010, a local newspaper, *Curierul de Ciumeghiu*, published a list of tax defaulters. Using titles such as "Huge Amounts of Money Owed to Local Tax Authorities", "The Full List of Local Tax Evaders" and "Local Tax Defaulters", the newspaper spelt out the full name and home address of each of the debtors, including the applicant and his mother, T.S., and stated the full amounts of tax arrears owed by them. The Government contended that, only the applicant's full name and the amount of his tax obligations of approximately EUR 30 had been mentioned and once, by the local newspaper.

3. On 12 October 2011 the applicant and T.S. brought an action in tort against Ciumeghiu Town Hall, asking the local authority to publish an apology in the *Curierul de Ciumeghiu* and to pay them 10,000 euros (EUR) as compensation for the non-pecuniary damage caused by the unlawful publication of their personal data in three editions of that newspaper.

4. The claimants argued that, because of financial difficulties, they had failed to pay some of their tax arrears in due time; the sanction for such an

omission, never contested by them, was that they had had to pay the amounts in arrears plus additional penalties for the delay. However, the local tax authorities had considered that there was need for further sanctions for the tax defaulters and had decided to publish their personal data in the local newspaper, on a recurrent basis. That practice was unlawful as it lacked the consent of those mentioned in the publication.

5. The claimants lastly argued that the "medieval" practice of placing tax defaulters in a virtual public space to be denigrated and shamed for not having paid their taxes in due time was not acceptable, and that it had harmed their reputation in the community.

6. The defendant argued that the publication of the full list of tax defaulters had been in the public interest; furthermore, the claimants had owed excessive amounts of tax arrears. From that perspective, their prior consent had not been necessary. No harm had been done because the published data had been accurate and, by publishing that information, full transparency concerning tax defaulters had been ensured.

7. On 16 May 2012 the Salonta First-Instance Court partly allowed the applicant and T.S.'s claim. It found that the publication of the two claimants' personal data (full name and home address) in three separate editions of the local newspaper had taken place without the claimants' consent and hence in breach of Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The publication of a list of tax defaulters was neither a measure in the public interest nor a prerogative of the public authorities; hence, the non-pecuniary harm suffered by the claimants on account of the publication of their names, addresses and amounts of tax arrears had been certain. Nevertheless, they had been unable to substantiate the fact that the public perception of them had been altered as a consequence of the publication in question.

8. The First-Instance Court referred to relevant case-law of the Court and applied equitable considerations to ensure that the amounts awarded were proportionate to the intensity and the gravity of the harmed interests, and concluded that the amount of EUR 1,000 for each claimant was sufficient to redress the harm sustained; it also held that the publication of public apologies was no longer appropriate, bearing in mind that the impugned measure had occurred two years earlier and that the payment of compensation constituted just and reasonable satisfaction.

9. The applicant and T.S. appealed. Their request had been justified by the fact that their personal data had been published in the local newspaper within incriminatory articles with harsh headlines in which they had been mentioned as "tax evaders whose actions had strongly affected the whole community". Appropriate compensation, including in the form of public apologies, was required.

10. On 9 September 2013 the Bihor County Court dismissed the claimants' appeal. While upholding the lower court's arguments that the

publication of the claimants' personal data had been contrary to the domestic law, and that therefore the certainty of the damage was unquestionable, the appellate court considered that the damages award for the harm produced should not have a punitive effect, being meant to redress harm, rather than to enrich the victim. Finding that the amount granted by the lower court had been disproportionately high, the appellate court concluded that the harm suffered by the claimants could be compensated by awarding EUR 50 to each of them. Furthermore, the publication of public apologies was not a viable measure, its effectiveness being hindered by the manifest delay, in so far as the matter would have been brought up again in public debate three years after the unlawful act.

# THE COURT'S ASSESSMENT

## ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

11. The Court has stated in a recent Grand Chamber case (see *L.B. v. Hungary* [GC], no. 36345/16, § 104, 9 March 2023) that data such as the applicant's name and home address, processed and published by the tax authorities in connection with the fact that he had failed to fulfil his tax payment obligations, clearly concerned information about his private life. This was found to be so notwithstanding the fact that, in that case, under domestic law, the data were considered information in the public interest.

12. In the present case, the domestic courts found that the decision taken by the Ciumeghiu Town Hall to publish the applicant's personal data in the local newspaper in connection with the applicant's failure to contribute to public revenue involved the publication of his name as well as of his home address (see paragraphs 7 and 10 above); such data attracts the protection of the right to private life (*ibid.*; and *Alkaya v. Turkey*, no. 42811/06, § 30, 9 October 2012).

13. Since the loss of victim status concerns a matter which goes to its jurisdiction, the Court is not prevented from examining it of its own motion (see *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 93, 27 June 2017). The Court is hence required to determine, firstly, whether there has been an acknowledgment by the national authorities, at least in substance, of the violation alleged by the applicant and, secondly, whether the applicant was afforded appropriate and sufficient redress (see *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 193, ECHR 2006-V); in assessing the latter aspect, regard must be had to the level of compensation awarded at domestic level or to the possibility of seeking and obtaining compensation for the damage sustained (see, *mutatis mutandis*, *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 262, ECHR 2012 (extracts)).

14. In the present case, the national authorities have acknowledged that the publication of the applicant's personal data in three separate editions of

the local newspaper had been contrary to the domestic law, which entitled the applicant to be compensated for the non-pecuniary harm suffered on account of the breach of his Article 8 rights.

15. On the basis of equitable considerations and relevant case-law of the Court, and after examining the particularities of the case, the first-instance court considered the amount of EUR 1,000 to be sufficient redress for the harm sustained by the applicant. However, the appellate court, while providing very limited – if any – justification for the decision to reduce the amount granted by the lower court other than stating that it had been "disproportionately high", found the amount of EUR 50 to be sufficient compensation in respect of non-pecuniary damage (see paragraphs 8 and 10 above). In this context, the Court indicates that in what could be considered similar cases, the Court has already awarded amounts ranging from EUR 6,000 to EUR 7,500 (see *Alkaya*, cited above, § 45; *Dupate v. Latvia*, no. 18068/11, § 80, 19 November 2020; and *Samoylova v. Russia*, no. 49108/11, § 108, 14 December 2021) or, alternatively, has not awarded any amount at all, the finding of a violation being regarded in itself as sufficient just satisfaction in the circumstances of the case (see *L.B. v. Hungary*, cited above, § 145).

16. Without calling into question the domestic courts' discretion in establishing the amount of compensation they considered proportionate to the damage sustained by the applicant, the Court reiterates that any limits imposed on such compensation must not be of such a nature as to deprive the individual of his or her privacy and thereby empty the right enshrined in Article 8 of the Convention of its effective content (see, *mutatis mutandis*, *Armonienė v. Lithuania*, no. 36919/02, § 46, 25 November 2008).

17. Having regard both to the minimal amount of compensation awarded in respect of non-pecuniary damage as well as to the lack of sufficient justification for such award (see *Scordino*, cited above, § 204), the Court considers that the redress was insufficient. It follows that the applicant can still claim to be a "victim" of a breach of his Article 8 rights.

18. Noting that the applicant's complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention, the Court declares it admissible.

19. As to the merits, the release by a public authority of information relating to the applicant's private life to third parties, which repeatedly published in the local newspaper data naming the applicant as a tax defaulter, detailing the precise amount of his tax arrears and his home address, constituted an interference with his private life within the meaning of Article 8 (see *L.B. v. Hungary*, cited above, § 106). Indeed, the above-mentioned interference was confirmed by the domestic courts (see paragraphs 7 and 10 above) and its existence has not been disputed by the parties.

20. The domestic courts also found that the impugned measure had been taken in breach of the domestic legal provisions relating to data protection (see paragraphs 7 and 10 above). The Court does not see any reasons to depart from that finding.

21. While considering it to be of special importance, in such a sensitive field as data protection, that domestic law provides appropriate safeguards to discourage any such disclosures and the further publication of personal data (see *Armonienė*, cited above, §44), the Court concludes that the publication of the applicant's personal data in the local newspaper was not "in accordance with the law".

22. Accordingly, there has been a violation of the applicant's right for respect of his private life, protected by Article 8 of the Convention.

## APPLICATION OF ARTICLE 41 OF THE CONVENTION

23. The applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage and 612 Romanian lei (RON, approximately EUR 135) for the costs and expenses incurred before the Court. This amount, supported by relevant documents, comprised the applicant's lawyer's fees and expenses for translation and postage.

24. The Government did not submit any comments on that claim.

25. Deciding on an equitable basis, the Court awards the applicant EUR 5,000 in respect of non-pecuniary damage, plus any tax that may be chargeable on that amount.

26. Having regard to the documents in its possession, the Court considers it reasonable to award 135 EUR in respect of costs in the proceedings before the Court, plus any tax that may be chargeable to the applicant.

## FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Holds* that there has been a violation of Article 8 of the Convention;

2. *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 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 135 (one hundred and thirty-five 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;

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

Done in English, and notified in writing on 4 July 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

| | |
|---|---|
| Crina Kaufman | Faris Vehabović |
| Acting Deputy Registrar | President |