CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 11039/02
by Julieta SAVIŢCHI
against Moldova

The European Court of Human Rights (Fourth Section), sitting on 1 February 2005 as a Chamber composed of:

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having regard to the above application lodged on 17 April 2001,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Julieta Saviţchi, is a Moldovan national who was born in 1970 and lives in Chişinău. She is represented before the Court by Mr V. Gribincea, a lawyer practising in Chişinău with the organisation "Lawyers for Human Rights". The respondent Government are represented by Mr V. Pârlog, their Agent.

A. The circumstances of the case

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

The applicant is a journalist. On 2 October 1999 the newspaper “The New Order” published an article in entitled “Traffic police – my star” signed by the applicant. The article stated *inter alia* that:

> “...This is quite a banal story for us regular citizens, and a normal phenomenon for the traffic inspectors. In any event, it serves as a good example of the 'star syndrome' suffered by the traffic inspectors.
>
> A person was driving his Moskvitch on the Stefan cel Mare Street. Let us call him 'Victor'. When he approached the Stefan cel Mare and Tighina crossroads, the traffic lights turned red and, like any normal person, Victor pressed the brakes. But people who abide by the rules are not always lucky. A luxurious speeding Opel ran into the old Moskvitch. Both cars were damaged, but the Moskvitch was damaged more. Victor stayed at the place of the accident, as any man believing in the strictness of the law, awaiting the arrival of the police and their wise and fair verdict. The owner of the 'Opel' though, aware of his guilt, hit the gas and disappeared.
>
> Before long a Sergeant of the traffic police arrived and began to take measurements and investigate, making notes in a note book. At the height of the investigation the owner of the Opel arrived, but without his car. He waited until the policeman finished his work, and then said that he would go to the Municipal Traffic Police Centre to solve the problem.
>
> At the Municipal Traffic Police Centre the two car owners and the policeman were received by a person of a venerable age with the epaulets of a Sergeant-Major (later we found out that he worked in the emergency department). The owner of the Opel addressed him in a very friendly way, calling him 'Jora'[1]. The sergeant-major Jora approached the young Sergeant, who investigated the accident, and asked him in a way more like an order than a question: 'How many years have you been working for the Traffic Police?' – Two years... 'But I worked for twenty years; therefore you should listen to me. Don't write anything, let the people come to an agreement themselves and the guilty one (i.e. the owner of the Opel) pay to the second one approximately 30 Moldovan Lei (MDL). In any event his car is a flea-pit, and there is no need to make a lot of fuss.'
>
> The owner of the 'flea-pit', who cannot be considered a wealthy man, almost lost the power of speech when he heard that. How was it possible to offer him such a petty sum for his severely damaged car? Since the victim would not agree, Sergeant-Major Jora and the owner of the Opel increased somewhat the amount, bargaining for each leu. Afraid that he would not get anything, Victor agreed to the sum of MDL 75. He later had his car fixed by some acquaintances, who laughed at him for being fooled like a boy. Victor spent a little bit more than MDL 200 for the repair – a sum that might seem ridiculous to some traffic inspectors. For Victor though, this is really big money. But it is not the money, that he's worried about, but the way he was treated at the Traffic Police Centre, in particular this Sergeant-Major Jora, who treated him as a man from the lowest strata, almost as a nonentity. After a few days Victor went to Jora

[1] Jora is a Russian diminutive for Gheorghe, like Bill is for William

and asked for his driver's licence back. The Sergeant-Major promised to return the driver's licence, but only on condition that Victor pay a fine of MDL 18. Victor was dumbfounded. – 'Why should I pay a fine? What did I do?' The Sergeant-Major, answered very furiously: 'Once I say that you should pay, then you should pay, without asking any questions.'

Victor, who was very upset about the absurdity of the situation, warned the policeman that he would complain to his superiors. The Sergeant-Major, understanding that there was no way for him to prevail, literally went ballistic. He threw the driver's licence in Victor's face, shouting like a madman.

- 'He would complain! Who are you? Take your documents and get out of here, and pray God not to come back to the Traffic Police, because otherwise you'll get into big trouble.'

The man took his driver's licence and left the Police Station, meditating on what Jora could possibly do to him if ever he came back...”

On an unspecified date in 1999 a policeman named G.R. lodged a civil action for defamation against the applicant and the publishing office of the newspaper with the Centru District Court. Relying on Articles 7 and 7/1 of the Civil Code, the complainant alleged that the article contained statements which were defamatory of him.

Between January and March 2000 several oral hearings were held and a few witnesses were heard. The applicant and the newspaper stated that the facts presented in the article were a simple reproduction of the story told by Victor, the victim of the road accident. Victor gave evidence to that effect. They further stated that the information contained in the article was not of a defamatory nature and could not harm in any way the reputation of the complainant, particularly since it did not contain his full name, but only a diminutive of his first name.

By its judgment of 14 March 2000, the Centru District Court found that the information contained in the article was defamatory of G.R. and did not correspond to reality. It argued that in the emergency department of the Municipal Traffic Police there was only one Sergeant-Major Jora, and that he was therefore easily identifiable. In particular, the court quoted the following extracts from the article as being defamatory:

“...this sergeant-major Jora, who treated him as a man from the lowest strata, almost as a nonentity.”

The court found that this statement conveyed the idea “that 'Jora' was a policeman who could not behave with other people, and who was not a very positive person”.

“The sergeant-major, promised to return the driver's licence, but only on condition that Victor pay a fine of MDL 18.”

The court found that this statement did not correspond to reality since Victor forgot to take his driving licence. Moreover, Victor could not prove that he was requested to pay a fine.

> "He threw the driver's licence in Victor's face, shouting like a madman."

> "Take your documents and get out of here, and pray God not to come back to the Traffic Police, because otherwise you'll get into big trouble."

The court found that these statements were defamatory of G.R. since they characterised him as a brutal, menacing and vindictive person. Moreover, the applicant did not bring any evidence in support of these statements.

The court ordered the applicant and the newspaper to pay the complainant non-pecuniary damages of MDL 180 (the equivalent of 14.4 euros (EUR) at the time) and MDL 1,800 (the equivalent of EUR 147 at the time) respectively. It also ordered them to publish a denial of the above statements.

Only the newspaper appealed against this judgment. The applicant lodged a request submitting that she fully agreed with the appeal and that she subscribed to it.

On 30 May 2000 the Chişinău Regional Court dismissed the appeal on the ground that the applicant had not proved the truth of his statements.

The newspaper lodged an appeal in cassation against the judgment of the Regional Court. The applicant neither lodged an appeal in cassation nor subscribed to the one lodged by the newspaper.

On 24 October 2000 the Court of Appeal upheld the appeal in cassation and quashed the judgments of the Centru District Court and of the Chişinău Regional Court in respect of both the newspaper and the applicant. It issued a new judgment, in which it found in favour of G.R.. In its judgment the court found that only the following statements were defamatory and did not correspond to reality:

> "...this sergeant-major Jora, who treated him as a man from the lowest strata, almost as a nonentity."

> "He threw the driver's licence in Victor's face, shouting like a madman."

It ordered the newspaper to publish a denial of the above statements within fifteen days. It ordered the applicant and the newspaper to pay the complainant non-pecuniary damages of MDL 180 and MDL 1,800 respectively. It also ordered both the applicant and the newspaper to pay the court fees of MDL 90.

B. Relevant domestic law

The relevant provisions of the Civil Code in force at the material time read:

Article 7. Protection of honour and dignity

"(1) Any natural or legal person shall be entitled to apply to the courts to seek the refutation of statements which are damaging to his or her honour and dignity and do not correspond to reality, as well as statements which are not damaging to honour and dignity, but do not correspond to reality.

(2) When the media body which circulated such statements is not capable of proving that these statements correspond to reality, the court shall compel the publishing office of the media body to publish, not later then 15 days after the entry into force of the judicial decision, a refutation of the statements in the same rubric, on the same page or in the same programme or cycle of broadcasts."

Article 7/1. Compensation for moral damage

"(1) The moral damage caused to a person as a result of circulation through the mass media or by organisations or persons of statements which do not correspond to reality, as well as statements concerning his or her private or family life without his or her consent, shall be compensated by way of a pecuniary award. The amount of the award shall be determined by the court.

(2) The amount of the award shall be determined by the court in each case as an amount equal to between 75 and 200 minimum wages if the information has been circulated by a legal person and between 10 and 100 if the information has been circulated by a natural person."

COMPLAINT

The applicant complains that the judgment of the Court of Appeal awarding G.R. non-pecuniary damages constituted an unjustified interference with her right to freedom of expression under Article 10 of the Convention.

THE LAW

The applicant alleges a violation of her right to freedom of expression as guaranteed by Article 10 of the Convention, which reads:

"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. ...

> 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 ... public safety, for the prevention of disorder or crime ... for the protection of the reputation or rights of others ... .”

The Government agree that the facts of the case disclose an interference with the applicant's freedom of expression. This interference was nevertheless justified under Article 10 § 2 of the Convention. The applicant was ordered to pay non-pecuniary damages for defamation on the basis of Articles 7 and 7/1 of the Civil Code. The interference was thus “prescribed by law” and the law was accessible and foreseeable. It served the legitimate aim of protecting the dignity of a police officer and furthermore the measure was necessary in a democratic society.

The Government submit that the impugned statements contained factual statements and not value judgments and that there was a pressing social need that justified the interference.

They point to the national authorities' margin of appreciation in assessing the need for interference and submit that where the Convention refers to domestic law it is primarily the task of the national authorities to apply and interpret domestic law. They contend that in the present case the domestic authorities did not overstep this margin of appreciation and they made use of it in good faith, carefully and in a reasonable way.

The Government submit that the reasons given to justify the interference were “relevant and sufficient”. In this respect they argue that the readers could easily identify G.R. by the diminutive of his name since there was only one person with that diminutive in the police unit named.

Relying on *Janowski v. Poland* ([GC], no. 25716/94, ECHR 1999-I), the Government state that the person against whom the applicant's article was directed was a civil servant and that “civil servants must enjoy public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive verbal attacks when on duty”.

Referring to the proportionality of the sanction with the legitimate aim pursued, the Government submit that the applicant was ordered to pay compensation of MDL 180, which was the lowest sanction possible under Articles 7 and 7/1 of the Civil Code. Accordingly, they conclude that the sanction was proportionate to the legitimate aim pursued.

The applicant argues that Articles 7 and 7/1 of the Civil Code are not formulated with sufficient precision and clarity and that the interference was not necessary in a democratic society.

The applicant states that Articles 7 and 7/1 of the Civil Code fail to elaborate on the fact that value judgments are not susceptible of proof and therefore the law is unclear and unforeseeable.

The applicant submits that the interference with her freedom of expression was not necessary in a democratic society. In this respect she disagrees with the Government's submission that the impugned statements contained facts and not value judgments. According to the applicant, the impugned statements contained value judgments. By obliging the applicant to prove that the value judgments were true, the national courts put on her an impossible burden of proof.

She further submits that the article did not contain the full name of G.R. and therefore it was almost impossible to identify him. The article was written in a sarcastic tone, and it aimed to reveal and to criticize psychological and behavioural aspects of many road police officers. It refered to a matter of public interest.

Moreover, the amount of damages awarded to G.R. was arbitrary since the courts did not elaborate on its quantification.

In the light of the parties' observations, the Court considers that the application raises serious questions of fact and law which are of such complexity that their determination should depend on an examination on the merits. It cannot, therefore, be considered manifestly ill-founded within the meaning of Article 35 § 3 of the Convention, and no other ground for declaring it inadmissible has been established.

For these reasons, the Court, unanimously,

Declares the application admissible, without prejudging the merits of the case.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President