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

FOURTH SECTION

DECISION

Application no. 8789/17
Alina-Florentina STOICA
against Romania

The European Court of Human Rights (Fourth Section), sitting on 8 October 2024 as a Committee composed of:

Faris Vehabović*, President*,
Armen Harutyunyan,
Anja Seibert-Fohr*, judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 8789/17) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 25 January 2017 by a Romanian national, Ms Alina-Florentina Stoica ("the applicant"), who was born in 1973, lives in Bucharest and was represented by Ms Cojocaru, a lawyer practising in Bucharest;

the decision to give notice of the complaint concerning Article 8 of the Convention to the Romanian Government ("the Government"), represented by their Agent, Ms O.F. Ezer, of the Ministry of Foreign Affairs, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the domestic courts' alleged failure to protect the applicant's reputation from journalistic attacks in online media.

A. Background to the case

2. The applicant was a senior prosecutor with the National Anticorruption Department ("DNA"), in which capacity she was appointed to oversee an

investigation into a case involving allegations of fraud of European funds committed in relation to the organisation of a major boxing event. Several senior officials from the Ministry of Regional Development and Tourism ("MRDT") and the Ministry of Economy were investigated, including E.G.U., the MRDT minister at the time, and R.O., then president of the Romanian Boxing Federation. The case was widely reported in the media.

3. On 6 November 2013 the applicant drew up an indictment ("the indictment") in which she proposed that R.O. be committed for trial for fraud of EU funds and that the investigation against the remaining suspects be discontinued.

4. With an order of 2 December 2013, the DNA hierarchical prosecutor reversed the indictment and ordered that the investigation resume, noting that its discontinuation in respect of some alleged offences and the legal classification of R.O.'s acts was "unlawful", and that the proposal not to investigate certain additional charges against R.O. was "erroneous".

5. In December 2013, the applicant resigned from the DNA. On 10 December 2013, two journalists ("the journalists") who published several investigative articles about the organisation of the boxing event (see paragraphs 7-15 below) appear to have sent the DNA's press office a right to reply regarding the applicant's reported resignation from the DNA.

6. In 2014, the applicant was appointed to the Department for Combating Organised Crime and Terrorism ("DIICOT").

B. Newspaper articles concerning the applicant

7. Starting in 2011, the journalists published several investigative articles concerning the boxing event on two websites. Eight of those articles published between December 2013 and January 2015 referred, among other things, to the applicant's handling of the above investigation.

8. The article published on 3 December 2013 contained details about the fraudulent mechanism related to the boxing event and the resumption of the investigation into the case ordered by the DNA hierarchical prosecutor (see paragraph 4 above). It expressed frustration at how the DNA had conducted the investigation and noted that the indictment had been drawn up by the applicant.

9. The article published on 5 December 2013 reported on the complex fraudulent transactions and addressed the above reversal of the indictment drawn up by the applicant (see paragraph 4 above). Concerning the applicant's activity, the article noted that "*What a scare you must have had to make a muck of a case without a bad conscience!!! Or what protection were you promised.*" and stated that the applicant "*had her ears pulled in broad daylight*".

10. The article published on 11 December 2013 reported on the applicant's resignation from the DNA in December 2013, after she had been

"*fully hit*" and "*publicly humiliated*" by the hierarchical prosecutor's order. The article recounted that, according to internal sources, the applicant had lost support within the DNA and that she was described by her colleagues as "*hostile to teamwork*" and that no prosecutor had ever "*neglected the law in such a way these days (...)"* as the applicant had done. The article also reported that the then head of the DNA had described the applicant's professional conduct in the case as "*the non-application of the law (...) and the loss of suspects on the way*". It concluded that even the individuals the applicant had investigated and "*whitewashed*" have "*bad memories*" of her.

11. The article published on 30 January 2014 noted that the hierarchical prosecutor's order (see paragraph 4 above) had "*pulverized*" the applicant and that it had been "*an action tantamount to a dismissal*".

12. The article published on 24 April 2014 exposed the financial intricacies surrounding the boxing event and focused on the developments in the investigation. It referred to the hierarchical prosecutor's "*stern rejection*" of the applicant's indictment and stated that "*never in the history of the DNA has a prosecutor been publicly humiliated and forced to leave because he was basically covering up a case*", as it happened to the applicant.

13. The article published on 15 August 2014 provided an update on the investigation and noted that "*The prosecutor who had whitewashed [E.G.U.] was publicly humiliated by the DNA itself, pushed to leave, and the [investigation into the] case was immediately resumed.*"

14. The article published on 14 November 2014 reported that the applicant had lodged defamation proceedings against the journalists (see paragraph 16 below) and reproduced her claim. This article also reported on the applicant's appointment at the DIICOT, where she was hired by A.B., the then head of the institution, the latter being described as "*a friend of E.G.U.*"

15. The article published on 7 January 2015 discussed various topics unrelated to the boxing event and commented on the applicant's defamation proceedings (see paragraph 16 below), restating that the applicant had been hired at the DIICOT by A.B. in relation to which it said "*How beautifully are facts and characters laid out! E.G.U.'s friend hires the prosecutor that absolved E.G.U.*"

C. The defamation proceedings lodged by the applicant

16. On 17 October 2014 and 14 January 2015, the applicant lodged civil proceedings against the journalists claiming that they had violated her right to image, reputation and dignity as a result of the impugned articles (see paragraphs 8–15 above). She requested, among other things, non-pecuniary damages.

17. With a judgment of 24 June 2015, the Bucharest County Court granted the applicant's action in part, having determined that all but two of the impugned articles (3 December 2013 and 14 November 2014) had been

defamatory. After having referred to the relevant principles arising under Articles 8 and 10 of the Convention, the County Court noted that the articles were part of a journalistic campaign relating to the boxing event investigation, which concerned a matter of public interest, and which had been highly mediatised. Concerning the impugned statements, the court held that "the journalists had presented their opinions as deeds of the applicant", launched into accusations and speculation of criminal nature, and that their statements and value judgments were "totally devoid of a factual basis".

18. The applicant and the journalists appealed against the first instance judgment.

19. With a decision of 30 June 2016, the Bucharest District Court ("the District Court") upheld the journalists' appeal, overturned the first instance judgment, and dismissed the applicant's entire claim as ill-founded.

20. After having outlined the Court's overarching principles stemming from Articles 8 and 10 of the Convention and the criteria for carrying out the balancing exercise between the two rights, the District Court noted that the impugned articles related to the alleged fraud of the European funds investigation and were part of a much larger group of articles on the same topic published by the same journalists. Referring to *Morice v. France* ([GC], no. 29369/10, § 131, ECHR 2015), it further remarked that the acceptable margins of criticism in respect of public figures were much wider than those in respect of private individuals and that the impugned articles related to the applicant's professional duties related to the investigation and her professional qualities, not to her private life.

21. The court found that some of the expressions used by the journalists (see paragraphs 9, 10, 11, 12, 13 and 15 above) were provocative value judgments and some displayed a certain degree of hostility, which according to the Court's case-law, were not susceptible to proof and only required the existence of sufficient factual basis. The expressions had such a basis in the hierarchical prosecutor's order and the applicant's departure from the DNA. The District Court also found, contrary to the first instance court, that the journalists were entitled to comment on the applicant's activity regardless of the latter not being sanctioned in relation to her professional activity.

22. Although the court accepted that the expression "*What a scare you must have had to make a muck of a case without a bad conscience!!! Or what protection were you promised.*" was "potentially grave" – especially when judged from the manner in which readers could understand it – it found them to be within the permissible limits, considering the heightened protection afforded to journalistic reporting on matters of public interest.

23. When deeming the impugned statements to be value judgments, the District Court considered that they were made in the "form of comments" and as a result of a hierarchical prosecutor's order – an official report – on which the defendants could have reasonably relied. It also noted that, unlike in

Lavric v. Romania (no. 22231/05, 14 January 2014), the applicant was not accused of having committed an offence.

24. The District Court considered that the journalists had acted in good faith, as they had initiated the campaign convinced of the existence of a "professional ethics problem" on the applicant's part, which they reported on as part of their coverage of the boxing event.

25. Relying on Article 8 of the Convention, the applicant complains that, by dismissing her claim against the journalists, the State has failed in its positive obligation to protect her right to respect for reputation.

THE COURT'S ASSESSMENT

26. The general principles concerning the protection afforded by Article 8 of the Convention to the right to reputation and those applicable to cases in which the right to freedom of expression has to be balanced against the right to respect for private life have been summarised in *Von Hannover v. Germany (no. 2)* ([GC], nos. 40660/08 and 60641/08, §§ 95-99, ECHR 2012), *Axel Springer AG v. Germany* ([GC], no. 39954/08, §§ 82-84, 7 February 2012) and *Couderc and Hachette Filipacchi Associés v. France* ([GC], no. 40454/07, §§ 83-93, ECHR 2015 (extracts)).

27. In the present case, the domestic courts were unanimous in their findings that the impugned articles, which concerned an on-going investigation into serious allegations of fraud involving various senior public officials (see paragraph 2 above), related to a matter of public interest which benefits from heightened protection (see paragraphs 17 and 20 above; see *Stoll v. Switzerland* [GC], no. 69698/01, § 106, ECHR 2007-V).

28. The Court concurs with the court of last resort that the applicant, as a prosecutor and a public servant, may be subject to wider limits of acceptable criticism than private individuals (see paragraph 20 above; see also *Lavric*, cited above, § 34, and *Stancu and Others v. Romania*, no. 22953/16, § 116, 18 October 2022). On this point, the Court finds it appropriate to highlight that the impugned articles focused on the applicant's professional activities related to a matter of public interest and not her private life.

29. As for the nature and qualification given by the domestic courts to the impugned statements, even though both courts referred to the Court's well-established case-law recognising the distinction between "statements of fact" and "value judgments", they reached different overall conclusions (see paragraphs 17, 21-22 above). Recalling that the characterisation of remarks as statements of fact or value judgments falls primarily within the ambit of the margin of appreciation afforded to the domestic courts (see *Peruzzi v. Italy,* no. 39294/09, § 48, 30 June 2015), the Court notes that, unlike the first-instance court, the District Court conducted a thorough and comprehensive assessment of the impugned statements, taking into consideration their general tone in the broader context of the criminal

investigation concerning the organisation of the boxing event and the public interest the case had generated (see paragraphs 20-21 above; see, conversely, in the context of Article 10, *Balaskas v. Greece*, no. 73087/17, § 58, 5 November 2020). The District Court also established that the value judgments had a sufficient factual basis in the hierarchical prosecutor's order, which the Court does not find unreasonable (see paragraphs 4, 21-22 above). The Court further notes that the District Court correctly distinguished the present case from the situation of the applicant in *Lavric* (cited above, §§ 40 and 41), as regards the content of the impugned allegations (see paragraph 23 above).

30. Concerning the provocative nature of some statements (see *Eigirdas and VĮ "Demokratijos plėtros fondas" v. Lithuania*, nos. 84048/17 and 84051/17, § 80, 12 September 2023), the Court notes the District Court's conclusion that, in the light of the content of the impugned statements, as well as the fact that they were used in an ongoing debate of public interest, they did not overstep the limits of what is considered to be acceptable criticism. The Court attaches particular weight to the fact that the District Court, in its assessment, balanced the two rights at stake and did not merely note that the statements were provocative, but took note of their hostility and "potentially grave" nature, which it then weighed up against the matter of public interest at stake (see paragraph 22 above; see *Morice v. France* [GC], no. 29369/10, § 125, ECHR 2015). Moreover, the District Court examined the journalists' reporting and found that they had acted in good faith (see paragraph 24 above; see *Bédat v. Switzerland* [GC], no. 56925/08, § 50, 29 March 2016). The Court notes that the journalists apparently contacted the DNA press office in respect of the applicant's resignation (see paragraph 5 above).

31. In conclusion, the Court deems that the District Court carried out the required balancing exercise between the applicant's right to reputation and the journalists' freedom of expression in the light of the Court's principles and criteria. That being so and given the margin of appreciation enjoyed by the domestic courts in the present case, the Court has no strong reasons to substitute its views for those of the domestic courts (see *Von Hannover*, cited above, § 107, and *Axel Springer AG*, cited above, §§ 87-88).

32. The Court therefore finds that the applicant's complaint is manifestly ill-founded and must, as such, be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 7 November 2024.

Simeon Petrovski Deputy Registrar	Faris Vehabović President