



## Attack on the reputation of a music professor portrayed in the media as having committed theft, without any factual basis

In today's Chamber judgment<sup>1</sup> in the case of [Văcean v. Romania](#) (application no. 47695/14) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 8 (right to respect for private life) of the European Convention on Human Rights.**

In this case the applicant, a music professor, complained of a breach of his right to reputation on account of the publication in 2011, on a number of newspapers' websites, of an interview with video and several articles alleging that he had committed a theft in 2008. The material in question was circulating on the Internet at a time when the applicant was due to be appointed as director of the Philharmonic Orchestra, having obtained first place in the competitive examination. The police subsequently confirmed to the municipal authorities that the applicant had not been investigated for theft, and he was appointed as director of the orchestra.

The Court found that the County Court, which had dismissed the applicant's action in full, had not adequately examined either whether the interview and the articles complained of made a genuine contribution to a debate of public interest, or the issue of the nature of the remarks made during the interview. In the Court's view, the County Court had not weighed the journalists' right to freedom of expression against the applicant's right to respect for his reputation in accordance with the criteria set forth in the Court's case-law. It noted, among other points, that the articles in question had been intended to convey an unequivocal message to the public, namely that the applicant, future director of a public institution, had been or should have been the subject of a criminal investigation for theft. In such circumstances the County Court should have sought to ascertain whether the articles had had an objective and sufficient factual basis.

### Principal facts

The applicant, Alin Corneliu Văcean, is a Romanian national who was born in 1978 and lives in Arad (Romania).

In 2011 an interview (with video) with M.D. (president of the trade union of members of the Arad Philharmonic Orchestra), and several press articles, were published on the websites of four newspapers, alleging that the applicant, a music professor and future director of the Arad Philharmonic Orchestra, had committed a theft in 2008. The material in question was circulating on the Internet at a time when the applicant was due to be appointed as director of the orchestra, having obtained first place in the competitive examination.

In view of the fact that persons with a criminal record were not eligible to apply for the post, the Arad municipal authorities, before confirming the applicant's appointment, asked the police whether the applicant had been implicated in a criminal investigation into a case of theft. The police told the

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

authorities that there was no criminal file in the applicant's name and that he had not been investigated for theft. The applicant was therefore appointed as director of the orchestra.

In 2012 the applicant brought a tort action in the Arad Court of First Instance against M.D. and the media outlets concerned, for damage to his right to his image and reputation. More specifically, he alleged that M.D. had portrayed him categorically and unreservedly as the perpetrator of a criminal offence when questioned about the content of the 2008 video.

In 2013 the Court of First Instance held that in the context of the case before it M.D. could not claim the protection of Article 10 (freedom of expression) of the Convention, and that the applicant had unquestionably suffered non-pecuniary damage as a result of being publicly depicted as having committed a theft. It ordered M.D. to pay the applicant EUR 5,000 in respect of non-pecuniary damage. The court added that the media outlets concerned had breached the applicant's right to a good reputation, and ordered them to remove the articles in question from their websites and publish the judgment against them over a three-day period once it became final. M.D. appealed against that judgment to the Arad County Court.

In 2014 the County Court allowed M.D.'s appeal. It overturned the first-instance judgment and dismissed the applicant's action in full. The court observed, among other findings, that M.D. had not committed any unlawful act and that the interview had been published in the context of a journalistic investigation of public interest for the purposes of Article 10 of the Convention.

## Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private life), the applicant alleged that the national authorities had failed in their obligation to protect his right to his image and to respect for his private life.

The application was lodged with the European Court of Human Rights on 25 June 2014.

Judgment was given by a Chamber of seven judges, composed as follows:

Yonko **Grozev** (Bulgaria), *President*,  
Tim **Eicke** (the United Kingdom),  
Faris **Vehabović** (Bosnia and Herzegovina),  
Iulia Antoanella **Motoc** (Romania),  
Armen **Harutyunyan** (Armenia),  
Pere **Pastor Vilanova** (Andorra),  
Jolien **Schukking** (the Netherlands),

and also Andrea **Tamietti**, *Section Registrar*.

## Decision of the Court

### [Article 8 \(right to respect for private life\)](#)

#### ***Whether the material contributed to a debate of public interest***

The Court noted the County Court's finding that the articles in question had concerned a matter of public interest and had mainly concerned the issue whether the applicant met the eligibility criteria for the post of director of the Philharmonic Orchestra bearing in mind that, according to the journalists, he had been suspected of theft.

In the Court's view, given the fact that the events shown in the video had occurred several years before the report was broadcast, and the actual content of the video and the articles, it would have

been desirable for the County Court to explain in its judgment the reasons why it considered that the material in question formed part of a debate of public interest.

***Whether the person concerned – the applicant – was well known***

The Court noted that the applicant had not been in the public eye and had not been at all well known, even within the county, before he had applied for the post in question. It considered that, in view of the status and duties of the director of a local public institution, the applicant had inevitably and knowingly entered the public domain by sitting the competitive examination for the post and had thereby laid himself open to close scrutiny of his acts. Consequently, the limits of permissible criticism were wider in his case than in the case of an individual who was wholly unknown to the public. Nevertheless, the limits in this instance were narrower compared with the degree of tolerance that had to be displayed by politicians, for instance. In the present case the allegations made against the applicant concerned his supposed involvement in the commission of a criminal offence. If proven, they would undoubtedly have had an impact on his professional career. As a result, it could not be said that the applicant should have displayed a greater degree of tolerance with regard to the claims made concerning him.

***The repercussions of M.D.'s allegations and of the articles***

**With regard to the interview with M.D.**, the Court observed that M.D. had shown no restraint in naming the applicant, and had made an assertion that left no doubt as to the identity of the person referred to. While it was true that M.D. had not stated expressly that the applicant had committed the theft, he had nevertheless identified and named him as the person shown in the video, whom he had described as being in the process of committing a theft. In the Court's view, a sequence of statements of this kind amounted to an objective statement of fact.

The Court therefore took the view that the County Court had not examined M.D.'s remarks in a sufficiently nuanced manner and had not sought to ascertain whether his allegations, taken overall and in the context of the questions asked, could have had at least some factual connotations. Moreover, the County Court had simply concluded that the assertions in question had not been statements of fact falling outside the scope of protection of the right to freedom of expression, without further explanations. However, such explanations had been particularly necessary in the present case given that the first-instance court had reached a different conclusion, namely that M.D.'s remarks had constituted factual statements.

**As to the online articles**, the Court observed that the County Court had simply found that the publication of the interview in question had been part of a journalistic investigation of public interest. The court had focused mainly on the remarks attributed to M.D. without addressing the issue of whether, in the instant case, freedom of the press could serve to justify their repeated publication and the damage which the form and content of the articles was liable to cause to the applicant's right to protection of his reputation. The Court considered such an approach to be incompatible with the principles emerging from its case-law.

In particular, the Court noted that the County Court had not assessed either the nature of the statements contained in the articles or whether the journalists were required to provide a factual basis to justify their remarks. The articles in question had been intended to convey an unequivocal message to the public, namely that the applicant, future director of a public institution, had been or should have been the subject of a criminal investigation for theft. In such circumstances the County Court should have sought to ascertain whether the articles had an objective and sufficient factual basis.

Furthermore, given that the journalists had chosen to portray the applicant as a person "suspected of theft" although he had not been the subject of any judicial investigation and there was no objective element other than M.D.'s statements to suggest that this was the case, the County Court

might even have explored whether the journalists had acted in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism.

Lastly, the County Court had at no point examined the extent to which the articles had been disseminated online, their accessibility or their impact on the applicant's situation. The Court reiterated in that regard that the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, was certainly higher than that posed by the press.

The Court therefore held, with regard to the online articles, that the County Court had omitted to take into consideration the criteria set forth in the Court's case-law and to weigh the applicant's right to respect for his reputation against the journalists' right to freedom of expression.

### **Conclusion**

The Court concluded that the County Court had not adequately examined either whether the interview with M.D. and the articles complained of had made a genuine contribution to a debate of public interest, or the issue of the nature of M.D.'s remarks, and that it had not weighed the journalists' right to freedom of expression against the applicant's right to respect for his private life in accordance with the criteria set forth in the Court's case-law. As a result, the national authorities had failed in their positive obligations under Article 8 of the Convention. There had therefore been a violation of that provision.

### **Just satisfaction (Article 41)**

The Court held that Romania was to pay the applicant 2,000 euros (EUR) in respect of non-pecuniary damage and EUR 515 in respect of costs and expenses.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.