



## Civil judgment against an editor-in-chief for publishing two articles infringing a politician's privacy: no violation of the Convention

In today's Chamber judgment<sup>1</sup> in the case of [Pretorian v. Romania](#) (application no. 45014/16) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 10 (freedom of expression) of the European Convention on Human Rights.**

The case concerned a civil judgment against the applicant, editor-in-chief of a regional weekly newspaper, for publishing two articles in which he criticised a well-known local politician.

The Court noted that, in examining the nature of the remarks contained in the two articles, the District Court had held that the applicant had made value judgments with no factual basis and had used vulgar language, and that his remarks did not therefore enjoy the protection of Article 10 of the Convention. That court had observed that the politician had done nothing to provoke the attack and that, on the contrary, it was the applicant who had engaged in provocation. The Court saw no reason to depart from those findings.

With regard to the proportionality of the penalty, the Court held that it was not unreasonable to consider that the penalty imposed had been relatively mild and that it did not have a genuinely chilling effect on the exercise of the applicant's freedom.

In sum, the Court considered that the domestic courts had weighed up the competing rights with reference to the criteria established in the Court's case-law. The courts had given relevant and sufficient reasons for finding that the penalty imposed on the applicant had been necessary in a democratic society and that there was a reasonable relationship of proportionality between that penalty and the legitimate aim pursued.

### Principal facts

The applicant, Cosmin-Adrian Pretorian, is a Romanian national who was born in 1976 and lives in Craiova (Romania).

On 9 April 2014 Mr Pretorian, editor-in-chief of the regional weekly newspaper *Indiscret în Oltenia*, published an article about H.B., former chairman of the local branch of the Liberal Party and, from 2004 to 2008, a member of the Romanian Parliament. H.B. had also been an adviser in several ministries, including the Ministry of Transport; after leaving that post he had applied to rejoin the local branch of the Liberal Party.

The article, accompanied by a photograph of H.B., was entitled "Hello, is that the pound? Catch the Liberal stray dog!" (*"Alo! Hingherii? Prindeti maidanezul liberal!"*). It was also published in the online edition of the newspaper.

In the 30 April 2014 issue of the newspaper H.B. published a letter under the right of reply. In the same issue and on the same page, Mr Pretorian published a second article entitled "Get lost, Your

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).

Majesty B.!" ("*Hai sictir, Măria Ta B.*"), which was also published in the online edition of the newspaper.

H.B. brought civil defamation proceedings in the Craiova District Court.

On 26 March 2015 the District Court gave judgment. The court concluded that the applicant had made value judgments without any factual basis and had used vulgar language. It therefore held that the remarks in question did not enjoy the protection of Article 10 of the Convention. On the question of the claimant's previous conduct, the court noted that there had been no provocation on the part of H.B. that could justify the attack on him and that, on the contrary, it was Mr Pretorian who had engaged in provocation by repeating his defamatory remarks in a second article.

The court partly upheld H.B.'s action and ordered Mr Pretorian to pay him 15,000 Romanian lei (RON) (approximately 3,200 euros (EUR)) in compensation for non-pecuniary damage. It also ordered publication of the decision in the newspaper concerned.

Mr Pretorian appealed. In a final judgment of 25 January 2016 the Dolj County Court dismissed the appeal.

## Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression) of the European Convention on Human Rights, the applicant alleged that in finding against him the domestic courts had violated his right to freedom of expression.

The application was lodged with the European Court of Human Rights on 25 July 2016.

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),  
Pere **Pastor Vilanova** (Andorra),  
Jolien **Schukking** (the Netherlands),  
Ana Maria **Guerra Martins** (Portugal),

and also Ilse **Freiwirth**, *Deputy Section Registrar*.

## Decision of the Court

### Article 10

The Court noted that the applicant had been ordered to pay compensation to H.B. in respect of non-pecuniary damage on account of the publication of two articles in the weekly newspaper of which he was editor-in-chief. It observed that, having regard to the virulent criticisms levelled against H.B., the attack on him reached the threshold of severity triggering the application of Article 8 (right to respect for private and family life) of the Convention. The Court further observed that the District Court had weighed up the competing interests at stake, referring to the Court's case-law, and had found in favour of H.B. on the grounds that some of the remarks contained in the articles had been excessive and had interfered with H.B.'s private life and damaged his honour and reputation. Those findings had been upheld by the County Court on appeal.

The Court noted, like the District Court, that the two articles concerned a matter of general interest, namely the exercise of public office by H.B., who was a well-known public figure in local politics.

The Court went on to observe that the domestic courts had examined the applicant's remarks in detail in the light of the criteria established in the Court's case-law.

Regarding the nature of those remarks, the District Court had held that the applicant had made value judgments with no factual basis and had used vulgar language, and that his remarks did not therefore enjoy the protection of Article 10 of the Convention. The District Court had criticised the applicant for making remarks that did not amount to opinions expressed in good faith on H.B.'s moral and professional qualities.

The Court acknowledged that some of the language used in the first article could claim to be satirical in style. However, it saw no reason to disagree with the decisions of the domestic courts finding that the remarks made in the second article, and in particular the sexual references and comments, had been insulting and excessive.

Furthermore, the Court noted that the applicant had spread a rumour concerning H.B.'s supposed fondness for alcohol, without verifying the facts. The Court held that a rumour of that kind could not constitute a factual basis for the serious and stigmatising accusations made against H.B. by the applicant.

After examining the nature of the applicant's remarks the District Court had addressed the issue of H.B.'s conduct. It concluded that there had been no provocation on the part of H.B. that could justify the attack on him and that, on the contrary, it was the applicant who had engaged in provocation. The Court saw no reason to depart from that finding.

Lastly, with regard to the proportionality of the penalty, the Court held that it was not unreasonable to consider that the penalty imposed had been relatively mild and did not have a genuinely chilling effect on the exercise of the applicant's freedom.

In sum, the Court considered that the domestic courts had weighed up the competing rights with reference to the criteria established in the Court's case-law. The courts had given relevant and sufficient reasons for finding that the penalty imposed on the applicant had been necessary in a democratic society and that there was a reasonable relationship of proportionality between that penalty and the legitimate aim pursued.

There had therefore been no violation of Article 10 of the Convention.

*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.