

Ex-politician Ponta's freedom of expression violated by award of damages for post on his Facebook page

In today's Chamber judgment¹ in the case of [Ponta v. Romania](#) (application no. 44652/18) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned an award of damages against Mr Ponta, a former politician and Prime Minister, for posting comments directed at another person on his Facebook page, which the domestic courts found to be defamatory.

The Court observed that the domestic courts had not applied the criteria laid down in its case-law to balance the right of the claimant (a former junior minister) to respect for his reputation against the right of the applicant (a former Prime Minister) to freedom of expression. It held that the domestic courts had not convincingly established that there was a pressing social need to put the protection of the personality rights of the claimant, a public figure, above the applicant's right to freedom of expression and above the general interest in promoting that freedom where matters of public interest were concerned.

The Court accordingly concluded that the interference with Mr Ponta's exercise of his right to freedom of expression had not been "necessary in a democratic society".

Principal facts

The applicant, Victor-Viorel Ponta, is a Romanian national who was born in 1972 and lives in Bucharest. After serving as a member of parliament and leader of the Social Democratic Party, he founded and led the "PRO Romania" party. Mr Ponta was Prime Minister from May 2012 until his resignation in November 2015. From May to August 2012 L.I. was Deputy Minister for the Economy in Mr Ponta's government with responsibility for relations with business. According to Mr Ponta, L.I. then ran a very aggressive media campaign against him, involving serious unfounded accusations to which he did not respond.

In February 2016 L.I. was summoned by the public prosecutor and the National Anti-Corruption Directorate in connection with allegations of corruption.

On 10 February 2016, while he was a member of parliament, Mr Ponta posted a message on his Facebook page stating in particular: "... in my nearly four years as Prime Minister I only once received direct information from the specialised public bodies concerning a clear case of attempted corruption by a minister, L.I. (who sought personal gain from a large US investor in return for his support for the siting of a major project in Romania) ...".

On 14 September 2016 L.I. brought a tort claim in the Bucharest District Court alleging that Mr Ponta's statements were false and defamatory and had damaged his reputation and image. He maintained

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.

that the defamatory statements had been repeated and expanded upon in two television programmes.

Mr Ponta argued in court that his statements had a factual basis, namely information which he had received from specialised bodies, and needed to be understood in the context of concerns being raised by the general public. He argued that his statements were to be viewed as political speech, which was protected by the Convention and the case-law of the Court. In his submission, it was the nature of the subject matter that determined whether and to what extent the statements in issue contributed to the public debate.

On 6 April 2017 the court granted L.I.'s claim, finding that the statements made in the post had violated L.I.'s dignity and had thereby contravened Article 30 of the Romanian Constitution and the Convention. The court concluded that the conditions laid down in Articles 1349 and 1357 of the Civil Code for the imposition of liability in tort were met and ordered Mr Ponta to pay 20,000 Romanian lei (RON) – about 4,400 euros (EUR) – in compensation for non-pecuniary damage.

Mr Ponta appealed to the Bucharest County Court.

On 12 October 2017 the County Court allowed the appeal in part, halving the award to RON 10,000.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicant complained that the award against him had amounted to an interference with his right to freedom of expression which had not been necessary in a democratic society.

The application was lodged with the European Court of Human Rights on 14 September 2018.

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),
Gabriele **Kucsko-Stadlmayer** (Austria),
Ana Maria **Guerra Martins** (Portugal),

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

Decision of the Court

Article 10

The Court found, first, that the actions of the protagonists in the case – both former ministers – had occurred in a public context and that the post in question could be read as contributing to debate on a matter of public interest, namely political corruption. The authorities had thus had a particularly narrow margin of appreciation in determining whether the penalty imposed was “necessary”.

The Court further found that in their judgments, the domestic courts had not looked at the statements in the overall context of the case in order to gauge the applicant's intentions. They had confined themselves to ascertaining whether the constituent elements of liability in tort were made out, without taking into account the applicant's right to freedom of expression in the wider context of a debate between two politicians on a matter of public interest – a right on which the applicant had expressly relied in his defence.

The Court took the view that the statements had not lacked a factual basis in so far as the applicant had referred to a particular moment in his premiership and to very specific information, stating the source of that information (“specialised State bodies”) and including details relating to the context of the case, such as the fact that he had reported the information to the then President and had obtained his assent to remove L.I. from office and replace him on the basis of the allegations against him.

The Court found that the domestic courts had deprived the applicant of the opportunity to propose and obtain the examination of witnesses, since they had refused to take evidence from L.I. despite the applicant’s repeated requests. By requiring the applicant to prove that his statements were true while at the same time denying him an effective opportunity to adduce evidence in his defence, the Romanian courts had overstepped their margin of appreciation.

The Court held that the domestic courts had not balanced L.I.’s right to respect for his reputation against the applicant’s right to freedom of expression and that the lack of such a balancing exercise was in itself problematic from the standpoint of Article 10 of the Convention.

The domestic courts had not convincingly established that there was a pressing social need to put the protection of the personality rights of L.I., a public figure, above the applicant’s right to freedom of expression and above the general interest in promoting that freedom where matters of public interest were concerned.

The Court concluded that the interference with the applicant’s exercise of his right to freedom of expression had not, therefore, been “necessary in a democratic society” and that there had thus been a violation of Article 10 of the Convention.

Just satisfaction (Article 41)

The Court held that Romania was to pay the applicant EUR 2,200 in respect of pecuniary damage.

Separate opinion

Judges Grozev and Harutyunyan expressed a separate opinion, which is annexed to the judgment.

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.