



Fair balance not struck by the Supreme Court of the Republic of Moldova in case concerning freedom of expression and a public figure's right to reputation

In today's Chamber judgment¹ in the case of [Oleg Balan v. the Republic of Moldova](#) (application no. 25259/20) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned the publication of a document by Mr Usatîi, the leader of an opposition party, on his Facebook page, which he claimed had been written by the Moldovan Security and Information Service and addressed to the President. The document accused Mr Balan, Minister of the Interior at the time, of criminal activity. Although the Security and Information Service publicly stated that it had never sent such a document and the President's Office confirmed that it had not received it, the Supreme Court rejected Mr Balan's claims against Mr Usatîi, finding that the leader of the opposition party was entitled to the protection of freedom of expression under both national law and the Convention.

The Court noted that the Supreme Court had decided to apply the presumption of good faith applicable to investigative journalists. It had failed to carry out its own careful analysis of the elements of the case file with regard to the protection of Mr Balan's right to a reputation. Therefore, the Court was not convinced that the Supreme Court had struck a fair balance between the competing rights involved under the European Convention.

Principal facts

The applicant, Oleg Balan, is a Moldovan national who was born in 1969 and lives in Chişinău. He served as Minister of the Interior between 18 February 2015 and 20 January 2016.

On 10 November 2015, Mr Renato Usatîi, the leader of an opposition political party, and the mayor of Bălţi since June 2015, published an "information note" on his Facebook page. The document bore the letterhead of the Security and Information Service (SIS), was dated May 2015, and was addressed to the President of the Republic of Moldova. It purportedly alerted the President to criminal activity carried out by Mr Balan, then Minister of the Interior.

The news of Mr Usatîi's Facebook post was published by several news portals and other media in the Republic of Moldova. That same day, the SIS published a statement declaring that they had nothing to do with the note and had not sent it to the country's President. The following day, the President's office also published a statement that it had never received the document.

Mr Balan wrote to Mr Usatîi and his party asking them to formally declare that the information contained in the document was false. He also demanded a public apology from both of them and 500,000 Moldovan lei (MDL – approximately 23,280 euros (EUR) at the time) in compensation. Receiving no answer, he lodged a court action on 15 January 2016, also naming the media outlets who had relayed the defamatory statements as defendants in the case.

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.

On 10 February 2017 the Chişinău District Court found in Mr Balan's favour. Mr Usatîi was ordered to publish an apology and to pay Mr Balan MDL 50,000 (EUR 2,500). The court also ordered the defendant media outlets to publish a retraction informing the public that the information in the note was false.

Mr Usatîi appealed. However, in June 2017 the Chişinău Court of Appeal quashed the initial judgment because of a procedural issue and sent the case for re-examination.

In January 2018 the Chişinău District Court again found in Mr Balan's favour and, in June 2018, the Chişinău Court of Appeal upheld the lower court's judgment. It found that Mr Usatîi had failed to prove that he had made any attempt to verify the note's authenticity before publishing the document. However, in January 2019 the Supreme Court of Justice quashed the lower court's judgment and sent the case for re-examination, in particular because the logs for the outgoing and incoming mail from the SIS and the President's office had not been submitted to the courts.

In April 2019 the Chişinău Court of Appeal found in Mr Balan's favour. The SIS had informed the court that the document number and other details in the information note did not enable the identification of any of its units as being the author of the document and that, therefore, it was impossible to determine which unit's logs should be submitted. The relevant incoming correspondence logs from the President's office, which had been submitted to the court, did not contain any indication of receipt of the note.

Mr Usatîi appealed against that judgment.

In a final judgment of 4 December 2019, the Supreme Court of Justice overturned the lower courts' judgments, rejecting Mr Balan's claims. It referred to the protection of freedom of expression enshrined in both national law and the European Convention and found that publishing on Facebook could amount to journalistic activity. As there was a clear public interest in investigative journalism, especially when it acted as a "public watchdog" against corruption and crime, any doubt as to the good faith of a person involved in investigative journalism had to be interpreted in his or her favour unless proven otherwise. The document had clearly been of public interest, concerning, as it did, the performance of a minister's professional duties. It accepted that Mr Usatîi had not been able to verify the authenticity of the note before publishing it because of its purported authorship (the SIS) and its "secret" nature. Moreover, any attempt to contact the SIS and/or the President's office would have been impractical, given the time-sensitive nature of news.

The Supreme Court found that the lower courts had focused on the document's authenticity but had failed to approach the case from a freedom of expression point of view and had not taken into account the "chilling effect" that such a decision could have on the media and journalists. The court found that Mr Usatîi, in his double capacity of "journalist", in the sense of informing the public via social media, and of a "public person", in the sense of obtaining and revealing information of public interest, was entitled to the protection of freedom of expression under both national law and the Convention.

Complaints, procedure and composition of the Court

Relying on Article 8 (right to respect for private and family life) of the European Convention on Human Rights, Mr Balan complained that the Supreme Court's rejection of his claims against Mr Usatîi had amounted to a breach of his right to the protection of his honour, dignity and professional reputation. Relying on Article 13 (right to an effective remedy) taken together with Article 6 (right to a fair trial), he complained that he had not been able to respond to the reasoning given by the Supreme Court of Justice.

The application was lodged with the European Court of Human Rights on 9 June 2020.

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

Arntfinn Bårdsen (Norway), *President*,
Jovan Ilievski (North Macedonia),
Pauliine Koskelo (Finland),
Saadet Yüksel (Türkiye),
Lorraine Schembri Orland (Malta),
Frédéric Krenc (Belgium),
Davor Derenčinović (Croatia),

and also Hasan Bakırcı, *Section Registrar*.

Decision of the Court

Article 8

Although the Supreme Court of Justice had referred to the applicable Convention principles and the Court's case-law, the Court was not convinced that the Supreme Court had struck a fair balance between the competing rights involved under the Convention. In particular, it had treated Mr Usatîi as an investigative journalist and a "public person" and had decided to apply the presumption of good faith applicable to investigative journalists in his case. However, it had failed to carry out its own careful analysis of the elements of the case file with regard to the protection of the applicant's right to a reputation, such as whether the unverified information note coincided at least in part with known or verified information; whether Mr Usatîi had attempted to verify the note's authenticity or any of its contents; the manner in which he had presented the report to his readers (in particular, his failure to warn them of the unverified source and content of the note); and whether he had published any follow-up information.

Therefore, there had been a violation of Article 8 of the Convention.

Other articles

The Court rejected Mr Balan's complaint under Article 13 (right to an effective remedy) taken together with Article 6 (right to a fair trial) as inadmissible.

Just satisfaction (Article 41)

The Court held that the Republic of Moldova was to pay the applicant 1,500 euros (EUR) in respect of non-pecuniary damage. As no claim had been made in respect of costs and expenses, no award was made on that account.

The judgment is available only in English.

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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.