



Defamation verdict against Romanian politician Macovei led to a violation of the Convention

In today's Chamber judgment¹ in the case of [Macovei v. Romania](#) (application no. 53028/14) the European Court of Human Rights held, by five votes to two, that there had been:

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

The case concerned the applicant being found liable for defaming another politician.

The Court found in particular that the applicant's statements, whereby she had called the other politician's combination of work as a lawyer and as a member of parliament an example of corruption, had been a mix of value judgment and statement of fact.

She had not intended to make a gratuitous attack on the other politician, who had won a defamation case against her, but had used her statement to make a general point about corruption in the context of her support for a law to prevent people working as lawyers and members of parliament at the same time.

The appeal courts, which had overturned a first-instance judgment rejecting the defamation claim, had not provided convincing reasons for their conclusions and had not struck a fair balance between the competing rights at stake. The penalty – damages and an order to pay for the final judgment to be published in newspapers – had also had a chilling effect on her freedom of expression.

Principal facts

The applicant, Monica Luisa Macovei, is a Romanian national who was born in 1959 and lives in Bucharest (Romania).

On 7 September 2009 two newspapers reported comments by Ms Macovei, a former justice minister and a member of the European Parliament, about two other politicians.

Speaking at a summer camp of the Democratic Liberal Party to which she belonged, she stated that two Social Democrat politicians, Chamber of Deputies member V.P. and Senator D.Ş., had in their work as lawyers signed contracts worth millions of euros with State companies from their constituencies, which she called a typical act of corruption by political influence.

In one of the articles she also commented that it should not be possible to work as a lawyer and be a member of parliament at the same time and that a law should be passed to that effect.

In October of that year D.Ş. brought general tort law proceedings, arguing that the applicant's remarks had discredited him in the eyes of the public and of his professional and political partners.

In October 2010 the first-instance court rejected his claim, finding that she had been exercising the right to freedom of expression. On appeal, the Bucharest Court of Appeal upheld the defamation claim, ordering the applicant to pay damages of about 2,300 euros and to publish the judgment at

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.

her own expense in national newspapers. In November 2013 the High Court of Cassation and Justice dismissed appeals on points of law by the applicant and D.Ş.

It found, among other things, that the applicant had uttered an untruth when she had accused D.Ş. of corruption in his joint role as lawyer and member of parliament; his reputation had been damaged; the applicant had overstepped the limits of acceptable criticism, even if politicians had to accept a higher level of criticism; and it did not consider that the damages awarded against the applicant would deter her from similar acts, although publishing the judgments would.

Complaints, procedure and composition of the Court

The applicant complained that the High Court of Cassation and Justice's sentence had violated her rights protected by Article 10 (freedom of speech).

The application was lodged with the European Court of Human Rights on 11 July 2014.

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

Yonko **Grozev** (Bulgaria), *President*,
Faris **Vehabović** (Bosnia and Herzegovina),
Krzysztof **Wojtyczek** (Poland),
Carlo **Ranzoni** (Liechtenstein),
Stéphanie **Mourou-Vikström** (Monaco),
Georges **Ravarani** (Luxembourg),
Péter **Paczolay** (Hungary),

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

Decision of the Court

The Court considered that the judgment against the applicant had amounted to interference with her rights under Article 10 and proceeded to examine whether it had been "necessary in a democratic society", one of the Convention-compliant reasons for such interference.

Reiterating its case-law, it noted, among other things, that statements could be classed as value judgments, which were not susceptible of proof, and as statements of facts. As the applicant's comments had focussed on D.Ş.'s conduct in his political capacity rather than on his personal life, the Court found that the authorities had had only limited discretion ("a narrow margin of appreciation") when assessing the need for the interference.

It observed that the courts had come to different conclusions: the first-instance court had found that the applicants' comments were insinuations, whereas the appeal courts had considered them an untruthful statement of fact that D.Ş. had acted corruptly as a lawyer and member of parliament.

However, the Court, referring to the limited reasoning by the appeal courts, found that it could not share their conclusions. It found that the applicant's statements had been a mix of value judgment and statement of fact. She had used the two politicians' conduct as an example of a "typical act of corruption by political influence", in the broader context of conflicts of interest, supporting an idea she had proposed of a law to prevent people combining the role of lawyer and member of parliament.

The question was whether there had been a sufficiently accurate and reliable factual basis, proportionate to the nature and degree of the applicant's statements and allegations.

On that point, it considered that some of her statements had lacked a sufficient factual basis, such as the alleged signing by D.Ş. or his law practice of large contracts with State-owned companies in his

constituency when he was a lawyer and member of parliament. In fact, no such information could be found in the applicant's submissions.

However, her statements had been of a collective nature, had concerned both D.Ş. and V.P., and had illustrated a type of political corruption. They had not intended to accuse the two politicians of genuine corruption. Furthermore, the available information suggested that V.P. had been both a member of parliament and an associate of D.Ş.'s law practice when it had signed lucrative legal-assistance contracts with State-owned companies in V.P.'s constituency.

The Court therefore took the view that the allegations and, in particular, the expressions used, while perhaps inappropriately strong, could be viewed as polemical and somewhat exaggerated. Given the circumstances, it found that the statements had not amounted to a gratuitous personal attack on D.Ş. Indeed, political invective often spilled over into the personal sphere, which was part of the hazards of politics and the free debate of ideas, which were the guarantees of a democratic society.

The size of the damages and the order to pay for the publication of the final judgment had also been capable of having a dissuasive effect on her exercise of her right to freedom of expression.

The Court concluded by noting the shortcomings in the appellate courts' reasoning, their apparent failure to consider the possible consequence of classifying the applicant's statements as collective in nature for the overall context in which they had been made, and the chilling effect of the penalty.

The domestic courts had failed to strike a fair balance between the interests at stake and to establish a "pressing social need" for protecting D.Ş.'s rights over the applicant's. The interference with her rights had not been necessary in a democratic society and there had been a violation of Article 10.

Just satisfaction (Article 41)

The Court held, by five votes to two, that Romania was to pay the applicant 4,505 euros (EUR) in respect of pecuniary damage, EUR 2,000 in respect of non-pecuniary damage and EUR 3,000 in respect of costs and expenses.

Separate opinions

Judge Carlo Ranzoni expressed a dissenting opinion joined by Judge Stéphanie Mourou-Vikström. Judge Stéphanie Mourou-Vikström also expressed a separate dissenting opinion. Judge Krzysztof Wojtyczek expressed a concurring opinion. These opinions are annexed to the judgment.

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.