



Minority shareholder in the Oltchim company ordered to pay damages for criticising the CEO in the press in breach of the right to freedom of expression

In today's **Chamber judgment**¹ in the case of [Petro Carbo Chem S.E. v. Romania](#) (application no. 21768/12) 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 a civil court order issued to the applicant company to pay symbolic compensation to the Chief Executive Officer (CEO) of the Oltchim company (which was the largest chemicals factory in Romania) for criticising the CEO's management of the company in the context of a media conflict.

The Court found that the applicant company's comments had concerned a question of public interest relating to the free flow of information and ideas in the sphere of the activities of powerful commercial companies, and also relating to the accountability of the directors of such companies, which necessitated a high level of protection of the freedom of expression.

The Court also held that the finding against the applicant company had amounted to interference in the exercise of the company's right to freedom of expression. It noted that the Romanian courts had not properly balanced the need to protect the CEO's reputation with the necessity of ensuring compliance with the rules of the Convention, to the effect that very weighty reasons were required to justify imposing restrictions on freedom of expression in the framework of questions of public interest with regard to a major company.

The Court dismissed the applicant company's complaint under Article 8 (right to respect for private life) of an attack on its reputation, on the grounds that it was manifestly ill-founded. The Court noted that the comments made by the Oltchim CEO concerning the applicant company had also concerned questions of public interest and that the limits of acceptable criticism of that company were broader given that it was a major concern owning many industrial sites in Europe and was simultaneously a shareholder in Oltchim.

Principal facts

The applicant company, Petro Carbo Chem S.E., was established in 2007. It is based in Duisburg (Germany). It owns many industrial sites in Europe, including a chemicals factory in Poland.

In 2007 it became the main shareholder in the Romanian company Oltchim S.A. Râmnicu Vâlcea, a listed company which owned the largest chemicals factory in Romania and in which the Romanian State was the majority shareholder (54% of the share capital).

The case concerns the dismissal of a civil action which the applicant company brought against the Chief Executive Officer (CEO) of Oltchim for injury to his reputation, in the framework of a media dispute in 2008 and 2009, mainly concerning the CEO's management of the company.

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.

In 2009, following a media battle, the applicant company brought an action for damages before the Romanian courts against the CEO of the Oltchim company, alleging that he had stated in the local and national press that it was responsible for that company's insecure state, that it had tried to block the conversion of debts into shares in favour of the State, and that it was trying to disparage the firm's business activities. The applicant company argued that the CEO's allegations had been false and defamatory and had damaged its reputation and image.

The CEO brought an action against the applicant company, claiming that several statements made by its representatives had damaged his honour and reputation.

In 2010 the County Court dismissed the applicant company's action and allowed that brought by the Oltchim CEO. It ordered the applicant company to pay him the symbolic sum of 1 Romanian leu (about 0.23 euros) in respect of non-pecuniary damage stemming from a breach of his right to respect for his reputation. The court also ordered the publication of the judgment in two successive issues of the national newspaper.

According to the court, the applicant company had conducted a media war against the interests of the Oltchim company and its management, implicitly targeting the CEO, a well-known figure in the business world. It also ruled that all the applicant company's actions had been dictated by a spirit of unfair competition and a lack of loyalty. It further held that the statements made by the applicant company's representatives had transmitted a negative image of Oltchim and its CEO to the general public and had created unease among the company's business partners. Lastly, the court held that the statements by the CEO had been geared to calming and pacifying the business partners and restoring their confidence.

Subsequently, the applicant company appealed against that judgment, but its appeal was dismissed. An appeal to the High Court of Cassation and Justice was also dismissed.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression) of the Convention, the applicant company complained that it had been ordered to pay damages on account of the comments which it had made in the press about the CEO.

Relying on Article 8 (right to respect for private and family life), the applicant company alleged that the Romanian courts had failed to protect its reputation, and submitted that it had sustained damage on account of the CEO's public statements.

The application was lodged with the European Court of Human Rights on 9 April 2012.

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

Yonko **Grozev** (Bulgaria), *President*,
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Branko **Lubarda** (Serbia),
Carlo **Ranzoni** (Liechtenstein),
Stéphanie **Mourou-Vikström** (Monaco),
Péter **Paczolay** (Hungary),

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

Decision of the Court

Article 10 (freedom of expression)

The civil court's finding against the applicant company for damaging the Oltchim CEO's honour and reputation had amounted to an interference in the exercise of that company's freedom of expression. That interference was provided for by law and had aimed at protecting the CEO's reputation.

As regards the necessity of the interference in a democratic society, the Court observed that the applicant company's comments had concerned the manner in which the CEO had been managing the activities of Oltchim, rather than any aspects of his private life. In that connection, as regards comments by a minority shareholder on the future of the foremost chemicals company in Romania in which the Romanian State was the majority shareholder, the Court considered that the impugned statements had concerned a matter of public interest relating to the free flow of information and ideas in relation to the activities of powerful commercial companies, and also as regards ensuring that the directors of such concerns shouldered their responsibilities, inducing them to take account of their firm's long-term interests. This necessitated a high level of protection of the freedom of expression and, consequently, a narrower margin of discretion for the Contracting States.

The Court further noted that the CEO had been in charge of one of the foremost Romanian companies at the material time, which position, in the instant case, had exposed him to close scrutiny of his conduct, given the wider limits on admissible criticism against him.

The Court also held that the Romanian courts had failed to consider whether the statements by the applicant company had contributed to a public-interest debate, and that they had not duly assessed whether the CEO had actively participated in the debate, whether his statements had been accurate and what form the statements had taken. Furthermore, most of the information communicated had concerned financial matters likely to impact on the assets of the applicant company. Moreover, the applicant company's real intention had been to launch a debate on the issue of the management of the firm in which it had held shares, rather than to jeopardise the firm's commercial success and viability for its shareholders and employees, and more broadly for the well-being of the economy. Therefore, its comments appeared to have been motivated by a desire to exercise active control over the firm in order to improve its management and encourage the creation of long-term value.

As regards the form of the impugned statements, the comments by the applicant company had been reproduced and disseminated both by means of articles in the press by journalists and at a press conference organised by that same company. The words it had used had neither disclosed details of the CEO's private life nor included insulting expressions or allegations devoid of factual basis; they had mainly expressed opinions on the manner in which the CEO had been managing Oltchim's activities.

Even though the penalty had been merely symbolic and had had no financial effect on the applicant company, the Court considered that it could have had a chilling effect.

Consequently, the domestic courts had not properly balanced the necessity of protecting the CEO's reputation with that of ensuring compliance with the rules of the Convention, pursuant to which very weighty reasons were required to justify imposing restrictions on freedom of expression in the framework of debates on questions of public interest concerning a major firm. It followed that the balancing of the competing interests carried out by the domestic courts had been insufficiently based on the criteria set out in the Court's case-law. Furthermore, the courts had failed to strike a fair balance between the need to protect the CEO's reputation and the necessity of protecting the applicant company's freedom of expression. There had therefore been a violation of Article 10 of the Convention.

Article 8 (right to respect for private and family life)

The applicant company argued that the CEO's comments about it had damaged its reputation.

The Court found the complaint to be manifestly ill-founded. First of all, it noted that the comments by the Oltchim CEO had concerned a question of public interest relating to the free flow of information and ideas in relation to the activities of powerful commercial companies.

Moreover, the applicant company had been a major firm owning many industrial sites in Europe and was simultaneously a shareholder in Oltchim, which had exposed it to close scrutiny of its actions. That had therefore broadened the limits of admissible criticism concerning it. Secondly, the Oltchim CEO's comments had concerned issues bound up with a possible competitive confrontation between his firm and the applicant company. Thus, even though the CEO's remarks had involved a degree of exaggeration, they had been somewhat akin to value judgments. Lastly, in the absence of evidence to prove the impact of the comments on the ability of the applicant company to continue to invest on the Romanian market or to act as an international business partner, the Court held that it could not speculate on any possible damage sustained. Consequently, the national authorities had not overstepped their margin of appreciation or failed in their positive obligation to guarantee the applicant company's right to effective respect for its reputation.

Just satisfaction (Article 41)

The Court held that the finding of a violation was sufficient just satisfaction for any damage which the applicant company might have sustained.

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.