COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FOURTH SECTION

CASE OF FLUX AND SAMSON v. MOLDOVA

(Application no. 28700/03)

JUDGMENT

STRASBOURG

23 October 2007

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Flux and Samson v. Moldova,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Sir Nicolas BRATZA, *President,*
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ, *judges,*
and Mr T.L. EARLY, *Section Registrar,*

Having deliberated in private on 2 October 2007,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 28700/03) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Moldovan newspaper, *Flux* ("the applicant newspaper") and Ms Aurelia Samson ("the second applicant"), on 13 May 2003.

2. The applicants were represented by Mr V. Gribincea from "Lawyers for Human Rights", a non-governmental organisation based in Chişinău. The Moldovan Government ("the Government") were represented by their Agent at the time, Mr V. Pârlog.

3. The applicant newspaper alleged, in particular, that its right to freedom of expression had been violated as a result of judicial decisions in defamation proceedings brought against it. The second applicant complained about a violation of her right to reputation, contrary to Article 8 of the Convention.

4. The application was allocated to the Fourth Section of the Court. On 9 February 2006 the President of the Section decided to communicate the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it was decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The facts of the case, as submitted by the parties, may be summarised as follows.

6. On 13 December 2001 the applicant newspaper published an article based on a story by Mrs Z. Samson about her daughter (the second applicant). The article described the second applicant's problems with her neighbour, G.C., former Minister of Construction.

7. G.C. initiated court proceedings claiming damages for defamation. He did not specify which parts of the article he found to be defamatory. Before the first-instance court adopted its judgment, the applicant newspaper published an apology to G.C. at the request of the second applicant and G.C.

8. On 17 October 2002 the Buiucani District Court partly accepted G.C.'s claim due to the publication of the apology and ordered the newspaper to publish a retraction on the same page as the original article and to pay damages and court fees in the total amount of 1,404 Moldovan lei (MDL), equivalent to 105 euros (EUR).

9. The court found that the following "information" from the article did not "coincide with the truth":

> "a former State official builds himself castles", "the neighbours say that he rents them to earn a fortune", "the ex-Minister of Construction G.C. decided to get rich off the back of the misery of others", "through various methods he forced the elderly who lived in the same neighbourhood as [the second applicant] to leave their houses in exchange for paltry sums of money", "he told [the second applicant] that he would achieve his aim at any price" and that "he would make her life impossible".

10. The article also made the following statements, none of which was found to be untrue by the courts:

> "one of G.C.'s 'attractive little houses' was built next to [the second applicant's] house" and "towered above it"; "in order to extend his assets G.C. destroyed [the second applicant's] shed"; "the fact that [G.C.] owns three apartments does not mean that he cannot get a fourth".

The article also discussed [the second applicant's] lack of faith in the ability of the justice system to protect her against a much wealthier neighbour. A picture of the second applicant's and G.C.'s house was published. The article ended with G.C.'s opinion on the matter which he had given by phone and a summary of several documents he sent by fax which suggested that the second applicant had breached some of her obligations under the law.

11. The court found that the repeated mention of G.C.'s former position as a minister increased the harm caused to him and found that there was no proof that he had used his former position in any illegal way.

12. On appeal, the applicant newspaper argued that the statements made were value-judgments not susceptible of proof. It also complained that the court had taken a proactive approach in favour of G.C. in identifying of its own motion specific expressions as defamatory even though G.C. had not singled any out. Moreover, it pointed out that there had been no reaction to the fact that Mrs Z. Samson had confirmed in court her statements.

13. On 14 January 2003 the Chişinău Regional Court upheld the judgment, rejecting a number of the newspaper's arguments and finding that "...the information in the article was a ground for an eventual proposal for the dismissal of [G.C.]". The argument that the article reproduced the opinions of G.C.'s neighbours was rejected because the newspaper had published them. The court also assumed that two statements (namely, "he told [the second applicant] that he would achieve his aim at any price" and that "he would make her life impossible") could only have been made by the second applicant.

14. In a further appeal (on 30 January 2003 and 3 March 2003), the applicant newspaper submitted that several of the second applicant's neighbours had been evicted from their houses, that one of them was left without a place to live and that G.C. had become the owner of those houses. It also argued that, according to domestic law, G.C. had to prove the fact that the second applicant had made the two statements in question, whereas the court simply assumed that she had made them.

15. On 20 March 2003 the Court of Appeal upheld the judgment. It rejected the newspaper's appeal as unfounded and as out of time, without giving any details as to the latter conclusion.

II. RELEVANT DOMESTIC LAW

16. The relevant domestic law has been set out in *Busuioc v. Moldova* (no. 61513/00, § 39, 21 December 2004).

THE LAW

17. The applicant newspaper complained of a violation of its rights guaranteed by Article 10 of the Convention, which reads:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are

prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

I. ADMISSIBILITY

18. The Court notes that in its observations of 4 September 2006 the applicant newspaper asked the Court not to examine its complaints made under Articles 6 and 13 of the Convention or under Article 1 of Protocol No. 1 to the Convention. In the same observations, the second applicant asked the Court not to examine her complaint lodged under Article 8 of the Convention since she had, in the meantime, settled the dispute with her neighbour. Accordingly, the Court will not examine these complaints.

19. The Court considers that the applicant newspaper's complaint under Article 10 of the Convention raises questions of law which are sufficiently serious that their determination should depend on an examination of the merits. No grounds for declaring this complaint inadmissible have been established. The Court therefore declares it admissible. In accordance with its decision to apply Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of this complaint.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

20. It is common ground between the parties that there was an interference with the applicant newspaper's freedom of expression in the present case, that it was "prescribed by law" and pursued a legitimate aim within the meaning of Article 10 § 2 of the Convention. The Court's task is to establish whether the interference was "necessary in a democratic society".

21. The Court refers to the applicable general principles as established in its jurisprudence regarding freedom of expression (see, among many other authorities, *Sunday Times v. the United Kingdom (no. 1)*, judgment of 26 April 1979, Series A no. 30; *Busuioc v. Moldova*, no. 61513/00, 21 December 2004; and *Savitchi v. Moldova*, no. 11039/02, 11 October 2005).

22. The Court notes that the applicant newspaper was fined for being unable to prove the truth of several statements made in its issue of 13 December 2001 (see paragraph 9 above). The applicant newspaper argued before the domestic courts that most of the statements represented value-judgments which could in principle not be proved. On appeal, it referred to several additional facts supporting, in its view, the value-judgments made (see paragraph 14 above).

23. The Court notes that none of the domestic courts responded to these arguments by verifying whether any of the statements could be considered value-judgments or by verifying the truth of the additional facts referred to by the applicant newspaper. The Court reiterates that the existence of facts can be demonstrated, whereas the truth of value-judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 (see *Jerusalem v. Austria*, no. 26958/95, § 42, ECHR 2001-II, and *Busuioc*, cited above, § 61), although opinions insufficiently based on facts can also be excessive (see *Oberschlick v. Austria* (no. 2), judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1276, § 33).

24. The Court considers that the phrases "a former State official builds himself castles" and "the ex-Minister of Construction G.C. decided to get rich off the back of the misery of others" are value-judgments, expressing as they did the newspaper's opinion about the building activities of G.C. and their effects on his neighbours. These opinions were, moreover, based on facts which have not been shown to be untrue, some mentioned in the article itself (see paragraph 10 above) and some referred to during the proceedings (see paragraph 14 above). In such circumstances, the Court considers that the newspaper could not be expected to prove the truth of its value-judgments and that, moreover, its opinions were not without a factual foundation.

25. The Court also notes that the domestic courts did not react to the confirmation made by the second applicant's mother of her own statements made to the newspaper. The Court considers that, in requiring the applicant newspaper to prove the truth of its statements, while at the same ignoring the evidence adduced to support its statements and thereby show their truthfulness, the finding of the Moldovan courts that the statement was defamatory could not be justified as necessary in a democratic society (see *Jerusalem v. Austria*, no. 26958/95, § 45-46, ECHR 2001-II; *Savitchi*, cited above, § 59; and *Busuioc*, cited above, § 88).

26. The Court also takes into account the balanced tone of the article. Having presented one party's view, it also informed the reader of the other party's story and referred to some documents which suggested that the second applicant had also breached certain legal obligations (see paragraph 10 above). In view of the above, the Court is satisfied of the newspaper's good faith and that it had acted in consonance with principles of responsible journalism (see *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 63, ECHR 1999-III), albeit resorting to "a degree of exaggeration or even provocation", which had to be protected (see *Prager and Oberschlick v. Austria*, judgment of 26 April 1995, Series A no. 313, § 38).

27. Finally, it is to be noted that the article raised issues of genuine public interest, namely the alleged abuses of a former State official and the

inability of the justice system to properly respond to such alleged abuse. It also conveyed the views of third parties while making that clear to the reader. This is of particular relevance to the phrases in the article "the neighbours say that he rents them to earn a fortune", "he told [the second applicant] that he would achieve his aim at any price" and that "he would make her life impossible". The Court reiterates that "punishment of a journalist for assisting in the dissemination of statements made by another person ... would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so" (see *Jersild v. Denmark*, judgment of 23 September 1994, Series A no. 298, § 35; and *Thoma v. Luxembourg*, no. 38432/97, § 62, ECHR 2001-III). The Court does not see such strong reasons for interfering with the newspaper's freedom of expression in the present case, given the balanced tone of the article.

28. In view of the above, and given that any residual harm to G.C.'s reputation was removed by the prompt publication of an apology (see paragraph 7 above), the Court concludes that the interference did not correspond to a pressing social need and thus that it was not necessary in a democratic society. Accordingly, there has been a violation of Article 10 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary damage

30. The applicant newspaper claimed EUR 112 for pecuniary damage, corresponding to the fine and court fees paid by it.

31. The Government submitted that there was no causal link between the alleged violation and the claims made by the applicant newspaper.

32. The Court considers the applicant newspaper's claim for pecuniary damage to be well founded and awards it in full.

B. Non-pecuniary damage

33. The applicant newspaper also claimed EUR 5,000 for non-pecuniary damage, referring to the Court's awards in previous Article 10 cases.

34. The Government disagreed and considered that no evidence of non-pecuniary damage had been submitted.

35. Having regard to its finding of a violation of Article 10 of the Convention, the Court considers that an award of compensation for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards the applicant newspaper EUR 3,000 (see *Savitchi*, cited above, § 64; *Ukrainian Media Group v. Ukraine*, no. 72713/01, § 75, 29 March 2005, and *Kommersant Moldovy v. Moldova*, no. 41827/02, §§ 49 and 52, 9 January 2007).

C. Costs and expenses

36. The applicant newspaper's lawyer claimed EUR 1,665 for the costs and expenses incurred before the Court. He submitted a detailed time-sheet according to which he had spent 27.75 hours working on the case at an hourly rate of EUR 60. The calculation in the time-sheet did not include the time spent on the complaints under Articles 6, 8 and 13 and Article 1 of Protocol No. 1 to the Convention which were subsequently withdrawn by the applicant newspaper.

37. As to the hourly fee of EUR 60, the lawyer argued that it was within the limits of the rates recommended by the Moldovan Bar Association which were EUR 40-150. He also referred to the high cost of living in Chişinău, giving as examples the prices of accommodation and petrol.

38. The Government disagreed with the amount claimed for representation. They considered it excessive and argued that the amount claimed by the lawyer was not the amount actually paid to him by the applicant newspaper. They disputed the number of hours worked by the applicant newspaper's lawyer and the hourly rate he charged. They also argued that the rates recommended by the Moldovan Bar Association were too high in comparison to the average monthly salary in Moldova and pointed to the non-profit nature of the organisation Lawyers for Human Rights.

39. The Court reiterates that in order for costs and expenses to be included in an award under Article 41 of the Convention, it must be established that they were actually and necessarily incurred and are reasonable as to quantum (see, for example, *Amihalachioaie v. Moldova*, no. 60115/00, § 47, ECHR 2004-III).

40. The reimbursement of fees cannot be limited only to those sums already paid by the applicant to his or her lawyer; indeed, such an interpretation would discourage many lawyers from representing less prosperous applicants before the Court. In any event, the Court has always awarded costs and expenses in situations where the fees were not paid by the applicants to their lawyers before the Court's judgment (see, among other authorities, *Ilaşcu and Others v. Moldova and Russia* [GC],

no. 48787/99, § 493, ECHR 2004-VII, and *Christian Democratic People's Party v. Moldova*, no. 28793/02, § 85, ECHR 2006-...).

41. In the present case, regard being had to the itemised list submitted and the complexity of the case, the Court awards the applicant newspaper's lawyer EUR 1,000 for costs and expenses.

D. Default interest

42. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant newspaper, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 112 (one hundred and twelve euros) in respect of pecuniary damage, EUR 3,000 (three thousand euros) in respect of non-pecuniary damage, and EUR 1,000 (one thousand euros) for costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant newspaper's claim for just satisfaction.

Done in English, and notified in writing on 23 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President