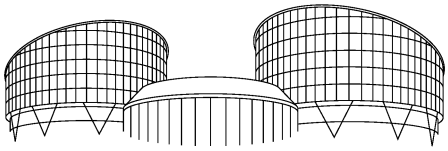

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF CARAGEA v. ROMANIA

(Application no. 51/06)

JUDGMENT

STRASBOURG

8 December 2015

FINAL

08/03/2016

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

In the case of Caragea v. Romania,

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

András Sajó, *President,*
Boštjan M. Zupančič,
Nona Tsotsoria,
Paulo Pinto de Albuquerque,
Krzysztof Wojtyczek,
Iulia Antoanella Motoc,
Gabriele Kucsko-Stadlmayer, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 17 November 2015,

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

PROCEDURE

1. The case originated in an application (no. 51/06) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Ovidiu Caragea ("the applicant"), on 6 December 2005.

2. The applicant was represented by Mr I. Măgdoiu, a lawyer practising in Târgu Jiu. The Romanian Government ("the Government") were represented by their Agent, Ms C. Brumar, from the Ministry of Foreign Affairs.

3. The applicant alleged that the Romanian authorities' failure to pursue his charges of insulting behaviour and defamation against a journalist, P.C., amounted to a breach of his rights under Article 8 of the Convention.

4. On 25 November 2010 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Events prior to the publication of the newspaper article

5. The applicant was the CEO (Chief Executive Officer) and majority shareholder of a commercial company, SC "L" SA, which had been State-owned until 1995; the company was based in Târgu Jiu and between

1998 and 2002 was listed in the top three most valuable private companies in Gorj County.

6. Between 1997 and 2004 a number of shareholders and employees of the company lodged criminal complaints against the applicant concerning the alleged improper manner in which he conducted his professional activity as manager of the company during and after its privatisation. Several criminal investigations were accordingly conducted in respect of the applicant, which were ongoing at the time of the relevant events; none of them led to his indictment.

B. Publication of the alleged defamatory newspaper article

7. On 24 September 2004 C.P., a journalist with the local newspaper *Impact de Gorj* published an article entitled "Who do we call when we disregard the law?" (*La cine apelăm când încălcăm legea?*).

The article, in its relevant parts, read as follows:

> "It is with regret that we have to make an absolutely necessary response to an unacceptable act of servitude of the press. A so-called journalist of the once serious *Gorjeanul*, decided to defend, through some completely unverified articles, the CEO of the company "L" S.A., Ovidiu Caragea, and to transform him from a dirty person into a clean one. It is true that corrupt members of the Romanian legal establishment, including county prosecutors, have cleared the CEO of S.C. "L" SA (*l-au scos basma curată*) in contradiction of the clear facts and the written evidence. Ovidiu Caragea has managed the company in a completely dictatorial style, to shareholders' cost, with serving his personal interest as the only aim.
>
> It is regrettable that colleagues from the daily *Gorjeanul* have taken to defending persons of dubious morality, perhaps even criminals, aiming neither to properly inform the readers nor to provide a space for regular advertising. In none of these cases has the author of the article had the courage to write under his or her true name. What the readers should know is that when an investigation is made public in the press – even though *Gorjeanul* invented the term "positive investigation" (assuming that such a thing could possibly exist) – the author should make their real name public so as to take responsibility and very often to be sworn at. The fact that the articles praising G.N., who brought the OJT Gorj [the County Tourist Office] to disaster, or those praising D.I.M. did not have real names in the byline, proves the lack of responsibility and the sense of shame emanating from the words written in the paper. Not only should the author be held accountable for this practice; so should the management of the publication, who should not accept it as it has nothing to do with the respect ... owed to the reader.
>
> These statements are not an attack on our colleagues in *Gorjeanul*, the oldest publication in the city, but are the opinion of one man who wants to find out who is the slave (*slugoiul*) who signed one or other of these articles, in order to discover who is the pawn for those who cannot be portrayed positively in the press after having defrauded their business partners. It is worth mentioning that our newspaper has published a few articles relating to the irregularities in the company "L" S.A. The documents we have clearly prove that what has happened has nothing to do with legality, but these have not attracted the interest of our colleagues in the other county newspaper; their only interest is, in many cases, "brown-nosing" ("*de a-i spăla la*

fund") those who fail to comply with the law. We mustn't forget the hosannas to honour N.M. and the editorial subordination shown to D.I.M. What a pity!"

C. The domestic proceedings

8. On 17 November 2004 the applicant lodged before the Târgu Jiu District Court a criminal complaint for defamation against C.P., the author of the above article. The applicant argued that the expressions that had been used by the journalist, who had associated him with "persons of dubious morality, perhaps even criminals", had damaged his good reputation and put at risk his relations with business partners on a local and national level, thus endangering the financial situation of his company. He stated that none of the charges referred to in the article had led to him being indicted.

9. On 28 March 2005 the court acquitted C.P. Having analysed the content of the article and the witnesses' testimonies, it held that the journalist's intention had not been to defame the applicant but merely to make his opinion regarding the applicant's activity public, and to highlight the dispute with other local journalists who had written articles praising the applicant. As the disputed acts had not severely damaged the dignity and the reputation of the applicant, his request for non-pecuniary compensation was dismissed.

10. The applicant appealed claiming that: the journalist had previously been convicted several times for defaming other third parties in his newspaper, showing his perseverance in using the press to insult others; and the article was part of a revenge campaign by the journalist. According to the applicant, the journalist's publishing company operated on commercial premises owned by the company "L" SA; the applicant brought a civil suit against the publishing company for rent arrears, and when the claims were granted, the journalist asked that the publisher's debt be written off in exchange for favourable publicity in the press; the proposal was turned down; hence the appearance of the disputed article a few months later.

11. On 6 June 2005, the Gorj County Court dismissed the applicant's appeal. The court stated that as the applicant had been the subject of criminal prosecution for the manner in which he had conducted his job as CEO of his company, there had been sufficient factual basis for the article, which in any case had been merely a response to another article praising the applicant published in a different newspaper. The court pointed out that the role of the press was to inform the general public and that the journalist had had no intention to defame the applicant, only to express his opinion concerning the latter's professional activity as CEO of an important company in the city of Târgu Jiu.

II. RELEVANT DOMESTIC LAW

12. The relevant provisions of the Civil and Criminal Codes concerning insult and defamation and liability for paying damages, in force at the material time, as well as the subsequent amendments to them, are described in *Cumpănă and Mazăre v. Romania* ([GC], no. 33348/96, §§ 55-56, ECHR 2004-XI and *Timciuc v. Romania* ((dec.), no. 28999/03, §§95-97, 12 October 2010).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

13. The applicant complained that the national authorities had failed to protect his reputation, as part of the right to privacy provided for by Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

14. The Government claimed that the application should be dismissed because it had been lodged outside the six-month time-limit pursuant to Article 35 §§ 1 and 4 of the Convention. The final decision of the national courts had been delivered on the 6 June 2005 while, the Government pointed out, it appeared from the statement of facts submitted by the Court that the application had been lodged on 7 December 2005, outside the time-limit.

15. The applicant contested the Government's claim and submitted that the application had been posted on 6 December 2005, as proved by a copy of the registered-postage receipt ("*tichet recomandat*"). A copy had been sent to the Court on 17 June 2011.

16. The Court notes from the documents in the file that the postage date of the application is 6 December 2005, thus within the six-month time-limit.

17. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes

that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

18. The applicant submitted that the article in dispute was not only insulting and defamatory, but had also misinformed the public in relation to his situation because all criminal charges against him mentioned in the article had in fact been dropped.

The applicant argued that there was a risk that his business partners would lose their confidence in him as a professional, which could affect existing or potential contracts of his company.

The applicant further claimed that the national authorities had not carried out a thorough examination of his criminal complaint and had thus infringed his right to protection of reputation.

19. The Government accepted that the right to the protection of reputation was a component of the right to privacy protected by Article 8.

The Government considered that the positive obligations deriving from Article 8 of the Convention should come into play only if the statements in question exceeded the limit of acceptable criticism from the perspective of Article 10. The Government reiterated that the press played a vital role in a democratic society and that journalistic freedom covered possible recourse to a degree of exaggeration.

The Government submitted that the article had to be seen against the background of an ongoing dispute between journalists, as the article in question was a response to another article published by a different newspaper in which the applicant was praised. The Government emphasised that the issues addressed in the article were of general interest: the objectivity of journalists and the proper functioning of the judicial system. The intention of the journalist was to draw the public's attention to different opinions regarding the objectivity of the judicial authorities in their relations with the applicant and other public persons. The Government pointed to the fact that at the time when the article was published, criminal investigations against the applicant were still pending before the domestic authorities.

Lastly, the Government maintained that the domestic courts at both levels had adequately analysed the applicant's complaint against the journalist. The courts found that the journalist had not intended to defame the applicant and thus the necessary element of premeditation needed to be found guilty was missing.

2. The Court's assessment

(a) General principles

20. The Court reiterates at the outset that "private life" extends to aspects relating to personal identity and reputation (see *Pfeifer v. Austria*, no. 12556/03, § 35, 15 November 2007, and *Ion Cârstea v. Romania*, no. 20531/06, § 29, 28 October 2014). Moreover, in order for Article 8 to come into play, the attack on personal honour and reputation must attain a certain level of seriousness and be in a manner causing prejudice to personal enjoyment of the right to respect for private life (see, for example, *A. v. Norway*, no. 28070/06, § 64, 9 April 2009, and *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012).

21. Starting from the premise that the present case requires an examination of the fair balance that has to be struck between the applicant's right to the protection of his private life under Article 8 of the Convention and the journalist's right to freedom of expression as guaranteed by Article 10, the Court finds it relevant to reiterate some general principles relating to the application of both Articles.

22. In cases which require the right to respect for private life to be balanced against the right to freedom of expression, the Court considers that the outcome of the application should not, in theory, vary according to whether it has been lodged with the Court under Article 8 of the Convention by the person who was the subject of the news report, or under Article 10 by the publisher. Indeed, as a matter of principle these rights deserve equal respect. Accordingly, the margin of appreciation should in theory be the same in both cases (see *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, § 91, 10 November 2015).

23. Where the balancing exercise between those two rights has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see *Axel Springer AG*, cited above, §§ 85-88).

24. In the cases in which the Court has had to balance the protection of private life against freedom of expression, the criteria it has used related to: whether the article contributed to a debate of general interest, the definition of what constitutes a subject of general interest depending on the circumstances of the case; the degree of fame of the person concerned, namely his/her role or function and the nature of the activities that are the subject of the report, as well as the conduct of the person concerned prior to publication of the report; the journalist's method of obtaining the information and its veracity, namely whether the journalist was acting in good faith and on an accurate factual basis, providing "reliable and precise" information in accordance with the ethics of journalism; the content, form and consequences of the publication, involving an assessment of the way in

which the report was published, the manner in which the person concerned was represented, as well as the extent to which the report was disseminated; and, lastly, the severity of the sanction imposed, if any (ibid., §§ 90-95).

25. In this context, the Court has always stressed the contribution made by articles in the press to debates of general interest (see *Von Hannover v. Germany*, no. 59320/00, § 60, ECHR 2004-VI). In cases concerning debates or questions of general public interest, the extent of acceptable criticism is greater in respect of politicians or other public figures than in respect of private individuals (see *Petrina v. Romania*, no. 78060/01, § 40, 14 October 2008).

26. The Court has also repeatedly emphasized the essential role played by the press in a democratic society. Although the press must not overstep certain bounds, particularly regarding protection of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Not only does the press have the task of imparting such information and ideas; the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog" (see *Axel Springer AG*, cited above, § 79).

27. Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation. Subject to paragraph 2 of Article 10, freedom of expression is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness, without which there is no "democratic society" (see *Tammer v. Estonia*, no. 41205/98, § 59, ECHR 2001-I).

28. Nevertheless, the Court has held that a "remark directed against the Convention's underlying values" is removed from the protection of Article 10 by Article 17 (see *Paksas v. Lithuania* [GC], no. 34932/04, § 88, ECHR 2011 (extracts). It also emphasized that speech that is incompatible with the values proclaimed and guaranteed by the Convention is not protected by Article 10 by virtue of Article 17 of the Convention (see *Delfi AS v. Estonia* [GC], no. 64569/09, § 136, ECHR 2015 and the references cited therein).

29. This freedom is thus subject to the exceptions set out in Article 10 § 2, which must, however, be construed strictly. The need for any restrictions must be established convincingly (ibid., § 131).

30. Furthermore, it is not for the Court, any more than it is for the national courts, to substitute its own views for those of the press as to what techniques of reporting should be adopted in a particular case (see ibid., § 81).

31. Lastly, the Court has distinguished between statements of fact and value judgments. While the existence of facts can be demonstrated, 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. The classification of a statement as a fact or as a value judgment is a matter which primarily falls within the margin of appreciation of the national authorities, in particular the domestic courts. However, even where a statement amounts to a value judgment, there must exist a sufficient factual basis to support it, failing which it could be excessive (see, for example, *Petrina*, cited above, §§ 40 to 42).

(b) Application of these principles to the present case

32. The Court firstly notes the domestic courts' conclusion according to which the article in question was published as part of an ongoing dispute between journalists concerning the proper functioning of the justice system, with reference to the applicant who had been the subject of several criminal investigations in which he had been allegedly favoured by the judicial authorities; the Court considers that such a debate is plainly of general public interest (see, *mutatis mutandis*, *Morice v. France* [GC], no. 29369/10, § 128, 23 April 2015, and *Lavric v. Romania*, no. 22231/05, § 35, 14 January 2014).

33. The Court further notes that the applicant was at the relevant time the manager of an important private company. SC "L" SA's notoriety on a local level was acknowledged by the applicant and by the domestic courts (see paragraphs 5 and 11 above). In that respect and in line with its case-law, the Court considers that for the reasons stated above, the applicant can be deemed a public figure, the extent of acceptable criticism in his respect being thus greater than in respect of private individuals (see *Steel and Morris v. the United Kingdom*, no. 68416/01, § 94, ECHR 2005-II *Tănăsoaica v. Romania*, no. 3490/03, § 46, 19 June 2012).

34. While holding that the content of the article had sufficient factual basis in so far as the applicant had been the subject of an investigation for criminal activities several times, including at the moment when the impugned article was published, the domestic courts did not explicitly classify the alleged defamatory expressions as statement of facts or value judgments. Furthermore, in acquitting the journalist, the same courts implied that the article had not been written in bad faith as the intention of the journalist had been to respond to another article published in a different local newspaper and not to defame the applicant.

35. The Court can broadly agree with that assessment. It would observe, however, that while there appears to have been a satisfactory factual basis to justify the comments in relation to the applicant's involvement with the justice system (contrast, albeit in the context of Article 6 of the Convention, *Klouvi v. France*, no. 30754/03, § 52, 30 June 2011), some statements in the article are potentially provocative, written in an inappropriate language.

Nevertheless, in the light of the fact that journalistic freedom also covers possible recourse to a degree of exaggeration or even provocation (see *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 56, ECHR 2007-IV), and in view of the applicant's position as a public figure, the Court finds there is no manifestly insulting language in the disputed remarks about the applicant (see also *Mamère v. France*, no. 12697/03, § 25, ECHR 2006-XIII), such language remaining therefore protected by Article 10 of the Convention (contrast, *Delfi AS*, cited above, § 136).

36. Furthermore, the Court observes that the article commented on the applicant's activity as a manager and tangentially on his involvement with the justice system, but made no specific reference to any aspect of the applicant's private life as such (see, *mutandis mutandis, Timciuc v. Romania* (dec.), no. 28999/03, §147, 12 October 2010).

37. Lastly, the Court notes that the applicant's allegations that the article in question damaged his reputation, the trust of his business partners and potential future business dealings were analysed by the domestic courts, which dismissed his claims in respect of damage as ill-founded. The Court is satisfied that this decision was in conformity with Convention standards, finding no strong reasons to substitute its view for that of the domestic courts.

It thus considers that the potential negative consequences that the applicant might have suffered after the publication of this article does not attain the level of gravity justifying a restriction on the right to freedom of expression guaranteed by Article 10 (see, *mutatis mutandis*, *Karakó v. Hungary*, no. 39311/05, § 28, 28 April 2009).

38. The foregoing considerations are sufficient to enable the Court to conclude that the domestic courts struck a fair balance between journalists' freedom of expression under Article 10 and the applicant's right to have his reputation respected under Article 8.

There has accordingly been no violation of Article 8 of the Convention.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 8 of the Convention;

Done in English, and notified in writing on 8 December 2015, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	András Sajó
Deputy Registrar	President