



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

FOURTH SECTION

**CASE OF GHIULFER PREDESCU v. ROMANIA**

*(Application no. 29751/09)*

JUDGMENT

*This version was rectified on 19 June 2018  
under Rule 81 of the Rules of Court*

STRASBOURG

27 June 2017

**FINAL**

**27/09/2017**

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



**In the case of Ghiulfer Predescu v. Romania,**

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

Ganna Yudkivska, *President*,

Vincent A. De Gaetano,

Paulo Pinto de Albuquerque,

Egidijus Kūris,

Iulia Motoc,

Georges Ravarani,

Péter Paczolay, *judges*,

and Marialena Tsirli, *Section Registrar*,

Having deliberated in private on 30 May 2017,

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

## PROCEDURE

1. The case originated in an application (no. 29751/09) 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, Ms Ghiulfer Predescu (“the applicant”), on 26 May 2009.

2. The applicant was represented by Mrs D.O. Hatneanu, a lawyer practising in Bucharest. The Romanian Government (“the Government”) were represented by their Agent, Ms C. Brumar, from the Ministry of Foreign Affairs.

3. The applicant alleged that her right to freedom of expression had been breached, in violation of Article 10 of the Convention.

4. On 7 October 2013 the application was communicated to the Government.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1956 and lives in Constanța. At the time of the relevant events, she was an investigative journalist working in Constanța.

### A. Background to the case

6. During the night of 12 to 13 August 2006 a group of approximately fifty to eighty armed persons were involved in a violent incident that took place in Mamaia, a seaside resort on the outskirts of Constanța. Several locations in Mamaia – including Hotel F., belonging to a company in which R.M., mayor of Constanța since 2000, was a shareholder – were attacked and severely damaged.

7. Following that incident, R.M. accepted to participate in a television show hosted by A.G. and broadcast on “R.”, a national television channel. During the show, the applicant intervened and made some remarks which R.M. considered as defamatory. Consequently, he instituted civil proceedings against the applicant (see paragraphs 9-22 below).

8. The relevant excerpts from the television show are set out below:

“[A.G., the host of the show, acting as a moderator, asks [the applicant], a journalist in Constanța]: What types of clans are we talking about, are they gangs, are they clans, who are these people we are talking about?”

[The applicant]: These are clans, it is well known, the city of Constanța is divided between the supporters of R.M. and his enemies. More precisely, it is the V. clan, in other words the clan of the V. brothers, who are at war with the supporters of R.M. This war has been going on for several years and it is well known that at the beginning, the V. brothers and R.M. were good friends. The hostility occurred, if my memory is not mistaken, on the occasion of the construction of Hotel O., when one of the V. brothers was excluded from the business, in spite of the initial plan. This doesn't mean that M. [R.M.] or V. is personally involved in this war. This war continued between the people that represent the two, and the enmity has continued to this day. ... But the crux of the problem is not the conflict between R.M. and the V. brothers. It seems that nowadays they have different claims, at a different level, within different hierarchies ...

[A.G.]: The image you describe is that of a city torn between the underworld clans, in which the offenders retaliate against the mayor. The latter is a business partner of the President of the Regional Council and during the night anything can happen because the police have made a pact ... and do not want to sanction anyone.

[The applicant]: Lately, the police have been doing their job, as I said before. Except that they do not succeed in finalising it ... Two years ago, when there was a big fight in the city centre, before the eyes of everybody, when the G. clans were opposed to the P. clan – and here we are talking about the same clan masters – the police did not intervene promptly because, they said it clearly, these were R.M.'s men and they were afraid, because M. [R.M.] was and still is the mayor. The only victims were the heads of the city police, who were sacked; the aggressors were allowed to go free.

[A.G.]: I have the impression that we are talking about an ungoverned city, in which the delinquents walk freely and the mayor fights different clans. Is this an erroneous conclusion?

[R.M.]: I have the impression that [the applicant] needs to be hospitalised – in a psychiatric hospital (*la balamuc*). How dare she? What is this story, this nonsense? The supporters of R.M. fight I do not know who – V.? I do not even know him, I have never seen him in my life and I have never spoken to him .... I have listened for fifteen

minutes to her [the applicant's] lucubrations, in which she tries to create about Constanța the image of a demonic city, in which the mayor runs everything, is a smuggler, has clans with Kalashnikovs and bodyguards ...

[A.G.]: Would I be entitled to believe that this conflict was generated by one of your actions, or by one of your past activities, or your past partnerships; maybe you had relations with them and in this context they came to vandalise your hotel?

[R.M.]: Mr. A.G., [the applicant] is a journalist, she should have submitted a document from the Chamber of Commerce to prove that I have a business partnership with whomever she mentioned. She had not submitted anything because it is all false. I personally asked the police to intervene and arrest the perpetrators. ... I do not know the people who were fighting. It does not interest me what they do in their free time, why they fight. All I said was that it is unacceptable to see forty people armed with axes. Let them identify and arrest the guilty. Everything else is just a fantasy of [the applicant], worthy of a psychiatric hospital ...

[A.G.]: ... this is what the mayor says, that everything is false ...

[The applicant]: What I have said, I said as an observer of the daily events; these things have been observed, discussed, noted for years. I have presented a general picture of the situation.

[R.M.]: And they must be proved ... Just like other journalists, you have learned to drag others in the mud, with no evidence to support what you state.

[The applicant]: If I understand correctly, he does not know the V. brothers, he knows them well, but that is not the point, the point is that their men ...(interrupted)

[R.M.]: But I do not know them! Prove the contrary if you please; I have never spoken to any of them, I do not know them. Stop lying ...

[The applicant]: ... the reality is that they present themselves as being M. [R.M.]'s men, or V.'s men. This does not mean that M. [R.M.] or V. order these conflicts. You know what happens in the world of ordinary people: I am strong because I represent R.M., who is mayor. Or I am stronger because I have the backing of the V. brothers ... Mr R.M., I did not say that you ordered this assault. But this is indeed what has been going on for several years in the city of Constanța.

[A.G.]: Actually, we are dealing with a band of delinquents; it doesn't matter who they are associated with or who is behind them and supports them, these people were on the street, made noises and I, as a simple citizen, am dissatisfied with not seeing them arrested. This is the only thing I can say, apart from the political connotations and connotations of the clans. I now turn to Mr. M.P, a sociologist, a specialist in violent incidents. This type of incident, what do you think? ...

[M.P.]: ... I would ask Mr. R.M. if he is still live ... it is necessary to know that mayors elsewhere in the world, such as Giuliani or Chirac, have had what are called urban policies of prevention and that they were directly involved. I am talking about a sociological perspective, an area that in which I specialise. I am not interested in your relationship with the institutions that accuse you today in one way or another. Do you have an urban prevention policy project? For if this were the case, such events would not happen again. ...

[R.M.]: Do you know that according to Romanian legislation, the police are not under the authority of the mayor? ... I have asked the police to intervene and to arrest those who are guilty ...

[A.G.]: Thank you ... The story we have followed is a violent one. Hooligans go during the night, armed with axes and knives, something very common lately, and vandalise a hotel. The police, ineffective, react very late, disinterestedly, unconvincing ... At the same time, the name of Mayor R.M. and his business partners appears again directly linked to a strange business. And all these strange things, which I quote ‘need proof’, accumulate and accumulate, one after the other, and create in the end the perception of a mayor who raises certain questions, of a forgotten city and, in general, of inefficiency at all levels. In this story, in my opinion, the two managers are also guilty, the police are also guilty and we are also guilty, because we tolerate endlessly the incompetent authorities. I thank you.”

## **B. Civil proceedings instituted against the applicant**

9. On 24 October 2006 R.M. lodged a civil complaint against the applicant. He alleged that, in her capacity as a journalist, she had made defamatory statements during a television show hosted by A.G. in relation to a violent incident that had occurred during the night of 12-13 August 2006 (see paragraph 6 above). R.M. requested that the applicant write a public letter of apology, that she publish at her own expense the final judgment allowing his claims in two newspapers, one with a nationwide circulation and the other a local circulation, and that she pay him 200,000 Romanian lei (RON) in non-pecuniary damages.

10. R.M. complained that the applicant had attempted to persuade people that Constanța city was divided between two gangs, “M.’s men and those who were against M.”, and that he himself had at one point been familiar with certain persons from the underworld (“*persoane interlope*”), namely with the V. clan, who had allegedly been at the origin of the violent incident in August 2006. He considered that the applicant’s imagination had proved to be “diabolical and of an infinite malice”, as her remarks had gone beyond what was permitted not only by freedom of speech, but also by professional deontology. He claimed that the applicant had failed to first check her information before using it, and then to prove her statements.

R.M. further claimed that the defamatory statements the applicant had made against him in prime time on national television had seriously damaged his image as a public person and a locally elected official.

11. The applicant submitted that her statements during the television show had reflected her opinion in an honest and ethical manner. Like any other opinion, hers was inevitably subjective, the important issue being that it had been expressed with honesty and in good faith, based on information concerning R.M.’s conflicts with the V. brothers that had been presented more than once in the local press.

The applicant further argued that the non-pecuniary damage claimed by R.M. was unjustified, in so far as there was no evidence to prove that her statements had had any impact among R.M.’s supporters in connection with his public image.

12. On 11 October 2007 the Constanța District Court dismissed R.M.'s claims. The court started with an overview of the ECHR's case-law on freedom of expression, referring specifically to the essential role played by journalists in a democratic society and to the fact that the essential criteria in assessing their statements is whether they are made in good faith. The court held that in the case before it, the applicant's statements could not be interpreted as a personal attack on the claimant and in any event, they were not of such a severe nature as to harm R.M.'s honour, reputation or dignity. The court further noted that in answering the questions of A.G., the host of the show, the applicant had provided an objective explanation for her opinion; in support of her opinion, she had submitted before the court excerpts of articles from the local press, as well as from a publication issued by several investigative journalists on the topic of public integrity, a project implemented by Transparency International Romania, in which the name of the mayor, R.M., was connected to several ongoing criminal investigations.

The court concluded that the applicant's intervention had not been made in bad faith; her opinions concerned a matter of general interest and did not have an illicit nature; at the same time, her opinions were not found to have harmed the reputation of the claimant.

13. R.M. appealed against that judgment. He essentially argued that the applicant's defamatory statements had not only consisted of her personal opinions, but also reports on specific facts which had not been previously verified, nor ever proved to be true. He further argued that by associating his name and image with that of criminal groups or clans, the applicant had seriously harmed his reputation.

14. On 29 May 2008 the Constanța County Court allowed the appeal and awarded R.M.'s claims in part, holding the applicant liable for the payment of 50,000 RON in non-pecuniary damages, and 7,197 RON in respect of legal costs. It also ordered her to publish the judgment at her own expense in one national newspaper and in another local newspaper and to present R.M. with written public apologies within fifteen days of the date of the final judgment.

15. The County Court considered that the conclusion of the television show, as drawn by A.G., was based essentially on the applicant's statements, namely that the city was "torn between the underworld clans, in which the offenders retaliate against the mayor" (see paragraph 8 above), and that the same conclusion would have been drawn by anyone else who had watched the show. From that perspective, it was evident that the applicant's statements had damaged the reputation of the claimant.

16. The court also held that the applicant's intention had not been to present facts, but to deliberately discredit R.M. by claiming in bad faith that he was involved in illegal activities. Such allegations, made without prior verification and lacking factual support, were of a serious nature and had severely damaged the claimant's image.

Furthermore, in trying to support her allegations with extracts of articles from the press reporting on the activities of R.M., the applicant had only proved that what she had presented in the television show was information, and not her personal opinions.

17. The applicant appealed against that judgment, reiterating her arguments that the impugned statements were in fact her opinions as an investigative journalist, and that they had been expressed in an honest and ethical manner. She pointed out that the County Court had not analysed whether R.M. had participated in the television show in his capacity as a public person or as a private one, so as to attract specific consequences in the balancing-of-rights exercise carried out by the court. She pointed out that the sanction imposed by the court was excessive and lacked appropriate reasoning and any justifying criteria.

18. On 24 November 2008 the Constanța Court of Appeal dismissed the applicant's appeal and upheld the lower court's judgment.

19. The appellate court firstly noted that R.M. had participated in the television show in his capacity as a shareholder of Hotel F., as well as in his capacity as a local politician.

20. While drawing a clear distinction between opinions and information, the court held that that the applicant had not put forward any argument or explanation to support her allegation that what she had expressed in the show were her opinions, and not factual elements:

“By setting herself up as a connoisseur of what was going on in the local area, she had presented to the public, in the form of undeniable truth, some information that was not true”.

21. The court further referred to the responsibilities of journalists, namely to present information and ideas to the public, while respecting certain limits in relation to the rights and reputation of others. The applicant, as a journalist, “had breached the rules of journalistic ethics by manifesting aggression and intention to blame, with no evidence and without maintaining a balance between the statement made and the unconfirmed allegations”.

22. The court considered the amount of damages to be paid by the applicant to be fully justified, in view of the fact that the defamatory statements had been broadcast in prime time on a national television channel, and that the amount had been reduced by the appeal court to one quarter of the full amount claimed by R.M. The court held:

“If she had complied with the first obligation, namely ‘to apologise’, the court would have examined the proportionality of the amount in relation to her intentions, as she does not contest the allegations, but by means of victimisation, she gives them strength, albeit without any evidence or documents having been submitted to the present day”.

23. It appears that in February 2009 the applicant fully complied with the terms of the final judgment.



## II. RELEVANT DOMESTIC LAW AND PRACTICE

24. Articles 998 and 999 of the former Civil Code, applicable at the date of the facts of the present case, provide that any person who has suffered damage can seek redress by bringing a civil action against the person who has intentionally or negligently caused it:

### Article 998

“Any act committed by a person which causes damage to another shall render the person through whose fault the damage was caused liable to make reparation for it.”

### Article 999

“Everyone shall be liable for damage he has caused not only through his own act but also through his failure to act or his negligence.”

In order for the action to be admitted, the interested party must prove in court that the defendant committed an illicit act with liability under the civil law, that the plaintiff sustained damage and that there is a causal link between the illicit act and the damage sustained.

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

25. The applicant complained that the obligations imposed on her by the domestic courts to pay damages and legal costs to R.M., as well as to publish the judgment in two newspapers, amounted to a breach of her right to freedom of expression, protected 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.”

## A. Admissibility

26. The Court notes that this complaint 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*

#### (a) **The applicant**

27. The applicant submitted that although the interference with her right to freedom of expression had a legal basis, it did not have a legitimate aim and was not necessary in a democratic society.

28. The applicant claimed that in expressing her opinion on the activities of R.M., the mayor of Constanța, she had not been trying to harm his reputation, but simply to draw the public's attention to the manner in which he had been discharging his duties in respect of local public order.

29. The domestic courts had held that R.M. had participated in the televised debate in his dual capacity as a businessman and as a representative of public authority. From that perspective, the applicant considered that the limits of acceptable criticism were wider, and could include a certain element of exaggeration.

30. The applicant further claimed that her assertions had been made in good faith and were supported by a sufficient factual basis – namely several articles or information that had appeared in the press, which were in their turn supported by proof; that evidence had been available in the domestic case file, but had been disregarded by the domestic courts without any reasoning to justify it.

Furthermore, during the televised debate, R.M. had been given the opportunity to refute the applicant's statements; however, he had preferred to take an aggressive attitude *vis-à-vis* the applicant. Those aspects had been completely ignored by the domestic courts in their assessment of the case.

31. Lastly, the applicant claimed that the severity of the sanction imposed on her had been excessive.

The amount she had had to pay R.M. constituted the equivalent, at the time, of around 116 minimum monthly salaries, or thirty-seven medium monthly salaries. She submitted that in order to pay the whole amount to R.M., she had had to take out a bank loan, which would come to an end in December 2018, while part of the money had been given to her by fellow journalists in the form of financial aid.

From this perspective, the applicant argued that the sanction imposed on her had had a direct dissuasive effect concerning the dissemination of information of legitimate public concern.

**(b) The Government**

32. The Government accepted that the decision complained of by the applicant constituted an interference with her rights guaranteed by Article 10 of the Convention. Nevertheless, they argued that the interference was prescribed by law, namely by Articles 998-1000 of the Civil Code in force at the time. Furthermore, the interference aimed at the protection of the reputation of a third party, and was thus legitimate.

33. The Government further argued that the measure complained of had been necessary in a democratic society. Invoking the margin of appreciation that the domestic courts are allowed to have in the assessment of disputes between private parties, the Government contended that the applicant's defamatory statements had referred to the private life and private actions of R.M., and not to his actions as a politician. Furthermore, the veracity of the statements, which were quite serious, had never been proved, even though the courts had given the applicant the opportunity to do so.

34. The Government considered that the applicant had failed to prove her good faith in disseminating information that was not exact and had overstepped the acceptable limits of exaggeration and provocation. Furthermore, her allegations implying that R.M. was close to members of mafia-type criminal organisations had not been spontaneous. On the contrary, they had been deliberate and well-weighed, as proved by the fact that she had relied on several press articles that had been written in the same manner on that topic.

35. In view of the lack of a factual basis and of good faith on the part of the applicant, the Government considered that the measure taken by the authorities was proportionate. Moreover, the amount granted as compensation was only a quarter of the total amount claimed by the third party as just satisfaction.

36. The Government concluded that the domestic courts had performed a satisfactory balancing exercise between the applicant's right to freedom of expression on the one hand and the third party's right to the protection of his reputation, on the other hand, and that their assessment of the facts and the evidence in the case were detailed and in full compliance with the requirements of the Convention.

*2. The Court's assessment*

37. The parties do not dispute that the domestic courts' judgments amounted to an "interference" with the applicant's exercise of the right to freedom of expression.

38. The Court also finds that the interference complained of was prescribed by law, namely Articles 998-999 of the Civil Code in force at the time (see paragraph 24 above), and pursued the legitimate aim referred to in Article 10 § 2 of the Convention, namely “protection of the reputation or rights of others”.

39. It remains to be established whether the interference was “necessary in a democratic society”.

**(a) The general principles**

40. The general principles for assessing whether an interference with the exercise of the right to freedom of expression is “necessary in a democratic society” within the meaning of Article 10 § 2 of the Convention are well settled in the Court’s case-law. They have been recently summarised in the cases *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, §§ 90-93, ECHR 2015 (extracts), *Pentikäinen v. Finland* [GC], no. 11882/10, § 87, ECHR 2015 and *Bédat v. Switzerland* [GC], no. 56925/08, § 48, ECHR 2016).

41. The Court reiterates that, as regards the level of protection, there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on matters of public interest (see *Morice v. France* [GC], no. 29369/10, § 125, ECHR 2015, with further references); the limits of acceptable criticism are therefore wider with regard to a civil servant or a politician acting in his public capacity than in relation to a private individual (see *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 46, ECHR 2007-IV).

42. The Court reiterates that journalistic freedom covers possible recourse to a degree of exaggeration or even provocation (see *Prager and Oberschlick v. Austria*, 26 April 1995, § 38, Series A no. 313). In particular, it reiterates that freedom of expression is also applicable to “information” or “ideas” that offend, shock or disturb (see *Janowski v. Poland* [GC], no. 25716/94, § 30, ECHR 1999-I).

43. Furthermore, the Court has always 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 (see, among many other authorities, *Morice*, cited above, § 126, and *Feldek v. Slovakia*, no. 29032/95, § 75, ECHR 2001-VIII). In order to distinguish between a factual allegation and a value judgment it is necessary to take account of the circumstances of the case and the general tone of the remarks (see *Brasilier v. France*, no. 71343/01, § 37, 11 April 2006), bearing in mind that assertions about matters of public interest may, on that basis, constitute value judgments rather than statements of fact (see *Paturel v. France*, no. 54968/00, § 37, 22 December 2005).

44. The Court further reiterates that the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject

to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism. In situations where on the one hand a statement of fact is made and insufficient evidence is adduced to prove it, and on the other hand the journalist is discussing an issue of genuine public interest, verifying whether the journalist has acted professionally and in good faith becomes paramount (see *Flux v. Moldova* (no. 7), no. 25367/05, § 41, 24 November 2009 and *Tavares de Almeida Fernandes and Almeida Fernandes v. Portugal*, no. 31566/13, § 56, 17 January 2017).

45. The Court must also ascertain whether the domestic authorities struck a fair balance between the protection of freedom of expression as enshrined in Article 10 and the protection of the reputation of those against whom allegations were made, a right which, as an aspect of private life, is protected by Article 8 of the Convention. In three fairly recent cases, the Court defined its own role in balancing those two conflicting interests and went on to identify a number of relevant criteria to be considered when the right to freedom of expression was being balanced against the right to respect for private life (see *Axel Springer AG v. Germany* [GC], no. 39954/08, §§ 82-95, 7 February 2012, *Von Hannover v. Germany* (no. 2) [GC], nos. 40660/08 and 60641/08, §§ 101-13, ECHR 2012 and *Couderc and Hachette Filipacchi Associés*, cited above, § 93).

46. Lastly, the nature and severity of the sanctions imposed are also factors to be taken into account when assessing the proportionality of the interference. As the Court has previously pointed out, interference with freedom of expression may have a chilling effect on the exercise of that freedom (see *Morice*, cited above, § 127).

**(b) Application of the above principles to the present case**

47. The Court firstly observes that the impugned television show was an attempt to debate publicly the question of the possible implication of R.M., mayor of the city of Constanța and local businessman, in the violent incidents in which a large group of armed persons had wrecked several hotels in Mamaia, including Hotel F., belonging to a company in which R.M. was a shareholder (see paragraph 6 above). The Court stresses in this context that the role of the press certainly entails a duty to alert the public where it is informed about presumed misappropriation on the part of local elected representatives and public officials (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 101, ECHR 2004-XI).

48. The Court thus considers that the applicant's statements were made in the context of a lively debate on a matter of public interest, namely the maintenance of public order in the city of Constanța. Her allegations therefore concerned a sphere in which restrictions on freedom of expression are to be strictly interpreted.

49. The Court further notes that contrary to the Government's assertions that the applicant's defamatory statements referred to the private actions of R.M. (see paragraph 33 above), the domestic court had in fact established that R.M. had taken part in the televised debate in his dual capacity as a local businessman as well as a local politician (see paragraph 19 above). Indeed, at the relevant time, R.M. was the mayor of the town of Constanța and in that capacity, a well-known local public figure. In such circumstances, it is acceptable that his actions and behaviour in public life were subject to more thorough scrutiny.

50. Turning to the content of the defamatory statements, the Court notes that the Constanța County Court, acting as an appellate court, found that the plaintiff's personal interest in having his reputation protected outweighed the applicant's right to freedom of expression.

51. In this connection, the courts noted, essentially, that the applicant's remarks were intended to point to R.M.'s involvement in illegal activities, and constituted a deliberate attack on his reputation; furthermore, the remarks had been made in bad faith and in the absence of any factual support (see paragraphs 16 and 20-21 above).

52. The Court however notes that the format of the TV show was designed to encourage an exchange of views or even an argument, in such a way that the opinions expressed would counterbalance each other and the debate would hold the viewers' attention. The show was broadcast live on television, so the applicant had but a limited possibility of reformulating, refining or retracting any statements before they were made public (compare *Gündüz v. Turkey*, no. 35071/97, § 49, ECHR 2003-XI ; and *Fuentes Bobo v. Spain*, no. 39293/98, § 46, 29 February 2000). The Court reiterates in this connection that the punishment of a journalist for having worded her opinions in a specific manner 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 *Colaço Mestre and SIC – Sociedade Independente de Comunicação, S.A. v. Portugal*, nos. 11182/03 and 11319/03, § 31, 26 April 2007, and also, *mutatis mutandis*, *Jersild v. Denmark*, 23 September 1994, § 35, Series A no. 298; *Thoma v. Luxembourg*, no. 38432/97, § 62, ECHR 2001-III and *Lionarakis v. Greece*, no. 1131/05, § 51, 5 July 2007).

53. The Court notes that in their reasoning, the domestic courts endeavored to distinguish between information and opinions which had been expressed in the impugned televised debate. They invoked arguments such as the applicant's reliance on previously published material with similar content incriminating R.M., which they held proved that her remarks were more than simple opinions; that line of reasoning was also justified by the applicant's use of the words "these things have been observed, discussed, noted for years" (see paragraph 8 above). However, the Court cannot follow the domestic courts' approach.

54. The Court considers that the applicant's statements reflected essentially her opinion that R.M.'s involvement in local business had an impact on the manner in which he was able to comply with his duties as a mayor ("what I have said, I said as an observer of the daily events", in paragraph 8 above). Moreover, the Court takes note that the overall language used by the applicant remained within the acceptable limits of journalistic freedom.

55. Having regard to the circumstances in which the assertions were made, namely in the heat of a debate on a matter of public interest, as well as to the tone of the remarks, the Court considers that the impugned defamatory statements should be viewed rather as the applicant's opinions, thus falling within the concept of value judgments (see, *mutatis mutandis*, *Paturel*, cited above, § 37).

56. It thus remains to be examined whether the "factual basis" for those views was sufficient.

57. The Court is of the opinion that this condition was fulfilled in the present case. It observes, in this regard, that the applicant based her opinion on information which was already known to the general public (see *Feldek*, cited above, § 86), namely on articles and journalistic investigation material that had been previously published about R.M. Although that aspect was confirmed by the first-instance court (see paragraph 12 above), and also by the higher courts, the latter interpreted this aspect in a different way, as mentioned above (see paragraph 53 above).

58. Furthermore, the Court notes that in departing from the conclusions of the first-instance court in connection with the applicant's intentions in making the disputed allegations, neither the Constanța County Court nor the appellate court provided relevant and sufficient reasoning to justify their conclusions that the applicant had acted in bad faith "by manifesting aggression and intention to blame" (see paragraphs 16 and 21 above).

59. The Court considers that there is nothing in the case to suggest that the applicant's allegations were made otherwise than in good faith and in pursuit of the legitimate aim of debating on a matter of public interest (see, *mutatis mutandis*, *Feldek*, cited above, § 84).

60. Lastly, as to the sentence imposed, the Court reiterates that, under the Convention, an award of damages for defamation must bear a reasonable relationship of proportionality to the injury to reputation suffered (see *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, § 49, Series A no. 316-B and *Tavares de Almeida Fernandes and Almeida Fernandes*, cited above, § 77).

61. In the present case, the Court observes that the applicant was ordered to publish at her own expense the final judgment in two newspapers, to send a public apology letter to R.M. and lastly, to pay RON 50,000 in compensation to R.M., as well as RON 7,197 in respect of legal costs – obligations which were fully executed in February 2009 (see paragraph 23

above). The Court notes that the amount the applicant was ordered to pay was extremely high. It was thus, in the Court's view, capable of having a "chilling", dissuasive effect on the applicant's freedom of expression.

62. Furthermore, in departing from the conclusions of the first-instance court, which had held that no damage to R.M.'s reputation had been substantiated and therefore no civil damages could be awarded, the higher courts failed to convincingly justify how the amount awarded as compensation was proportionate to the impugned acts (see paragraph 22 above).

63. In the light of the factors set out above, the Court takes the view that the sanction imposed on the applicant lacked appropriate justification and that the standards applied by the domestic courts failed to ensure a fair balance between the relevant rights and related interests (see *Cojocaru v. Romania*, no. 32104/06, § 34, 10 February 2015).

64. Accordingly, the interference complained of was not "necessary in a democratic society" within the meaning of Article 10 § 2 of the Convention.

65. There has therefore been a violation of Article 10 of the Convention.

## II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

66. Lastly, the applicant complained under Article 1 of Protocol No. 1 to the Convention about the excessive amount she had had to pay R.M. in damages following the domestic courts' decisions in that respect.

67. Having regard to the facts of the case and its finding of a violation of Article 10 (see paragraphs 60-65 above), the Court considers that there is no need to examine either the admissibility or the merits of this complaint.

## III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. 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. Damage

69. The applicant claimed 22,799 euros (EUR) in respect of pecuniary damage. That sum was composed of: EUR 13,346.35, which she had paid R.M. in respect of damage and court fees; EUR 79.29, which she had had to pay for publishing the final domestic judgment in two newspapers; EUR 9,373.25, which represented the difference between the total cost of the bank loan taken out for ten years in order to pay the above-mentioned



amounts; and 9,750 lei (RON), which she had received as financial aid from her colleagues (see paragraph 31 above).

70. The applicant also sought EUR 10,000 in respect of non-pecuniary damage.

71. The Government pointed out that the invoices sent by the applicant to prove that she had paid R.M. the amounts ordered by the domestic courts were not clear as to the beneficiary or were not legible. They further claimed that the amount indicated as the total cost of the bank loan was speculative and that in any event, it was the applicant's own decision to take out the loan and to agree to its specific terms.

72. The Court considers that there is a causal link between the violation found and the pecuniary damage alleged; it therefore awards the applicant EUR 14,000 under the head of pecuniary damage.

It also awards the applicant EUR 4,500 in respect of non-pecuniary damage.

## **B. Costs and expenses**

73. The applicant also claimed EUR 3,669 for the costs and expenses incurred before the Court, namely, EUR 3,369 for her lawyer's fee and EUR 300 for the costs borne by the Association for the Defence of Human Rights in Romania – the Helsinki Committee (“APADOR-CH”) related to technical support and postal expenses. She submitted an itemised schedule of costs of legal assistance based on the contract she had concluded with her lawyer.

74. The Government contended that the sum claimed was excessive, in view of the complexity of the case and of the corresponding submissions drafted by the applicant's representative. They also contested the claims made with respect to the costs borne by APADOR-CH, as this was a non-profit organisation and the alleged expenditure was not substantiated by any documents.

75. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum.

In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 3,369 in respect of lawyers' fees, to be paid directly into the bank account indicated by the applicant's representative.

### C. Default interest

76. The Court considers it appropriate that the default interest rate 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 complaint concerning the breach of the applicant's right to the freedom of expression admissible;
2. *Holds* that there is no need to examine the admissibility or the merits of the complaint under Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that there has been a violation of Article 10 of the Convention;
4. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
    - (i) EUR 14,000 (fourteen thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
    - (ii) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
    - (iii) EUR 3,369 (three thousand three hundred and sixty-nine euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the bank account indicated by the applicant's representative<sup>1</sup>;
  - (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;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

---

1. Rectified on 19 June 2018; the text was "EUR 3,369 (three thousand three hundred and sixty-nine euros), plus any tax that may be chargeable to the applicant's representative, in respect of costs and expenses".

Done in English, and notified in writing on 27 June 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli  
Registrar

Ganna Yudkivska  
President