

Press release issued by the Registrar

CHAMBER JUDGMENT IN THE CASE OF AMIHALACHIOAIE v. MOLDOVA

The European Court of Human Rights has today notified in writing a judgment¹ in the case of *Amihalachioaie v. Moldova* (application no. 60115/00). The Court held by six votes to one that there had been **a violation of Article 10** of the European Convention on Human Rights. It held, by five votes to two, that the finding of a violation constituted just satisfaction for any non-pecuniary damage sustained by the applicant.

(The judgment is available only in French.)

1. Principal facts

The applicant, Gheorghe Amihalachioaie, is a Moldovan national who was born in 1949 and lives in Chişinău (Moldova). He is a lawyer and President of the Union of Lawyers of Moldova.

In a case referred to it by a group of deputies and the Ombudsman of Moldova, the Constitutional Court gave a decision on 15 February 2000 declaring unconstitutional the statutory provisions requiring lawyers to be members of the Union of Lawyers of Moldova.

The applicant criticised the decision in an interview with a journalist, which was published in the “Economic Analysis” journal. In a final decision of 6 March 2000 the Constitutional Court imposed an administrative fine of the equivalent of 36 euros on the applicant for being disrespectful towards it. It penalised him for stating that, as a result of the decision, “complete chaos would reign in the legal profession” and that the question therefore arose as to whether the Constitutional Court was constitutional. The court also penalised him for asserting that its judges “probably did not consider the European Court of Human Rights to be an authority”.

2. Procedure and composition of the Court

The application was lodged on 14 July 2000 and declared partly admissible on 23 April 2002.

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

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

Jean-Paul **Costa** (French), *President*,
Loukis **Loucaides** (Cypriot),
Corneliu **Bîrsan** (Romanian),
Karel **Jungwiert** (Czech),
Volodymyr **Butkevych** (Ukrainian),
Wilhelmina **Thomassen** (Netherlands),
Stanislav **Pavlovschi** (Moldovan), *judges*,

and also Lawrence **Early**, *Section Registrar*.

3. Summary of the judgment¹

Complaint

The applicant complained, under Article 10 of the European Convention on Human Rights, that the penalty imposed on him amounted to unjustified interference with his right to freedom of expression.

Decision of the Court

The Court noted that the applicant's conviction amounted to interference with his freedom of expression and that this interference was prescribed by Article 82(e) of the Code of Constitutional Procedure. In that connection the Court noted that although that legislation did not define with absolute precision the actions that had been penalised, on account of his professional training and experience the applicant could reasonably have foreseen that his remarks were capable of being caught by that provision. The interference in question had pursued a legitimate aim, which was to maintain the authority and impartiality of the judiciary.

With regard to whether the interference in question was "necessary in a democratic society", the Court noted that the applicant's statements had concerned a matter of general interest which was the subject of a fierce controversy among lawyers, that had been unleashed by a decision of the Constitutional Court on the status of the profession and which had put an end to the organisation of lawyers into a single structure, the Union of Lawyers of Moldova, of which the applicant was the president.

In that context, even if Mr Amihalachioaie's statements did conceivably denote a certain lack of consideration towards the Constitutional Court, they could not be regarded as serious or insulting towards the judges of that court. Furthermore, since the applicant had subsequently denied part of the statements attributed to him by the press the Court considered that he could not be held responsible for everything that had been published in the interview. With regard to the fine imposed on him, although the amount had not been substantial, it had nonetheless shown an intention to punish the applicant severely since the Constitutional Court had applied a fine approaching the statutory maximum penalty.

In those circumstances the Court considered that there had not been a "pressing social need" to restrict the applicant's right to freedom of expression and that the domestic authorities had not provided "relevant and sufficient" grounds justifying the interference. Since the applicant

¹ This summary by the Registry does not bind the Court.

had not exceeded the limits of criticism permissible under Article 10 of the Convention, the interference complained of could not be regarded as “necessary in a democratic society”.

Judge Loucaides and Judge Thomassen have each expressed a partly concurring and partly dissenting opinion and Judge Pavlovski has expressed a dissenting opinion, all of which are annexed to the judgment.

The Court’s judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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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. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court’s judgments. More detailed information about the Court and its activities can be found on its Internet site.