

Press release issued by the Registrar

CHAMBER JUDGMENT
FLUX AND SAMSON v. MOLDOVA

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Flux and Samson v. Moldova* (application no. 28700/03).

The Court held unanimously that there had been a **violation of Article 10** (freedom of expression) of the European Convention on Human Rights concerning the conviction of a Moldovan newspaper for publishing certain statements about a former Minister.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant newspaper 112 euros (EUR) in respect of pecuniary damage, EUR 3,000 for non-pecuniary damage and EUR 1,000 for costs and expenses. (The judgment is available only in English.)

1. Principal facts

The applicants are *Flux*, a Moldovan newspaper, and Aurelia Samson.

On 13 December 2001 *Flux* published an article based on a story by Ms Samson's mother which described the applicant's problems with her neighbour, G.C., a former Minister of Construction. The article stated in particular that "a former State official builds himself castles" and that "the ex-Minister of Construction G.C. decided to get rich off the back of the misery of others" and also mentioned the following facts: "one of G.C.'s 'attractive little houses' was built next to [Aurelia Samson's] house" and "in order to extend his assets G.C. destroyed [Aurelia Samson's] shed". It also summarized documents which suggested that Ms Samson had herself breached some of her obligations under the law.

G.C. brought proceedings against *Flux* claiming damages for defamation. Before the first-instance court adopted its judgment, the applicant newspaper published an apology to the former Minister. In October 2002 the courts ordered *Flux* to publish a retraction on the same page as the original article and to pay damages and court fees. The courts found in particular that the repeated mention of G.C.'s former position as a Minister increased the harm caused to his reputation. Furthermore, there was no proof that he had used his former position in any illegal way.

¹ Under Article 43 of the Convention, 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.

The judgment was ultimately upheld in March 2003. On appeal, Flux argued that the statements made were value-judgments not susceptible of proof, and pointed out that there was no reaction to the fact that the applicant's mother had confirmed her statements in court. The newspaper also submitted that G.C. had become the owner of several of Aurelia Samson's neighbours' homes following their eviction.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 13 May 2003.

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

Nicolas **Bratza** (British), *President*,
Josep **Casadevall** (Andorran),
Giovanni **Bonello** (Maltese),
Kristaq **Traja** (Albanian),
Stanislav **Pavlovski** (Moldovan),
Lech **Garlicki** (Polish),
Ljiljana **Mijović** (citizen of Bosnia and Herzegovina), *judges*,

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

3. Summary of the judgment¹

Complaint

Relying on Article 10, *Flux* complained about its conviction for defamation.

Relying on Article 8 (right to respect for private and family life), Aurelia Samson complained about a violation of her right to reputation. She ultimately asked the Court not to examine that complaint as she had, in the meantime, settled the dispute with her neighbour.

Decision of the Court

Article 10

It was common ground between the parties, and the Court agreed, that the interference with the applicant newspaper's freedom of expression had been "prescribed by law" and pursued the "legitimate aim" of protecting G.C.'s reputation.

The Court noted that *Flux* was fined for being unable to prove the truth of its statements. Even though the newspaper argued that most of the statements represented value judgments and, on appeal, referred to several additional facts, none of the domestic courts responded to those arguments. The Court considered the statements to be value judgments which expressed the newspaper's opinion about the building activities of G.C. and their effects on his neighbours. It reiterated that the requirement to prove the truth of a value judgment was impossible to fulfil and infringed freedom of opinion itself, which was a fundamental part of the right guaranteed under Article 10.

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

The Court also took into account the balanced tone of the article. Having presented one party's view, the article also informed the reader of the other party's story and referred to documents suggesting that Ms Samson had also breached certain legal obligations. Flux had therefore acted in accordance with the principles of responsible journalism, even if resorting to a degree of exaggeration or provocation. The article also raised issues of genuine public interest, namely the alleged abuses of a former State official, to which the Moldovan justice system was unable to respond properly.

In view of the above, and given that any residual harm done to G.C.'s reputation had been put right by the prompt publication of an apology, the Court concluded that the interference with the newspaper's freedom of expression had not been "necessary in a democratic society". Accordingly, it found unanimously that there had been a violation of Article 10.

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.