

Press release issued by the Registrar

CHAMBER JUDGMENT
FLUX v. MOLDOVA

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Flux v. Moldova* (application no. 28702/03).

The Court held unanimously that there had been a **violation of Article 10** (freedom of expression) of the European Convention on Human Rights.

Under Article 41 (just satisfaction) of the Convention, the Court awarded *Flux* 278 euros (EUR) in respect of pecuniary damage, EUR 3,000 in respect of non-pecuniary damage and EUR 1,000 for costs and expenses. (The judgment is available only in English.)

1. Principal facts

The applicant, *Flux*, is a Moldovan national daily newspaper based in Chişinău.

The case concerned the newspaper's conviction for defamation in relation to an article mainly criticising changes to the taxation system governing fuel imports.

On 19 July 2001 the Moldovan Parliament amended the 2001 Budget Act to allow the Customs Department to postpone tax levies on fuel imports for up to three months.

The 24 July 2001 edition of *Flux* featured an article about the impact of the amendment. It argued that big fuel importers with good contacts with the Customs Department would make profits as a result, which would amount to unfair competition. The article claimed that the postponement of tax payments constituted a form of credit by the State without interest or guarantees.

The newspaper also revealed that, the evening the amendments were voted in, Victor Stepaniuc, the leader of the Communist Party, which had a majority in the Moldovan Parliament, and Vadim Mişin, the Deputy Speaker of Parliament, had had a meal in the restaurant of a luxury hotel in Chişinău, the "Jolly Allon". It claimed that, according to anonymous sources, their meal had been paid for by a major fuel importer, L. The paper

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.

claimed that the two parliamentarians had, “had a big-time party on the money of the sharks from 'L.'”.

On 8 July 2002 Mr Stepaniuc lodged an action for defamation against the applicant newspaper. He did not appear in court at any stage in the proceedings.

On 1 August 2002 the President of Buiucani District Court, Judge I.M., found *Flux* liable to pay damages for being unable to prove the truth of the article in its entirety. The court took note of the large readership of the newspaper and the “degree of moral and psychological suffering” caused. The court also found that, given Mr Stepaniuc's position, the level of “moral damage” was increased. The court ordered the applicant newspaper, under Articles 7 and 7/1 of the Civil Code, to publish an apology and to pay Mr Stepaniuc the maximum damages allowed by law, plus court fees (a total of 3,690 Moldovan lei (MDL), equal to 278 euros (EUR) at the time). According to the applicant newspaper, the court held only one hearing, which lasted less than 15 minutes, at which the newspaper was asked no questions.

The applicant newspaper appealed, submitting that the phrases in question had amounted to value-judgments which could not be proved and that those opinions had been based on facts which were not disputed; a party had taken place at the hotel and the Budget Act had been amended. Moreover, in view of the length of time that had passed since the publication of the article, it had been impossible to prove that the two parliamentarians had been seen at the hotel restaurant or verify who had paid for their meal. The applicant newspaper also argued that Judge I.M. lacked independence and impartiality because he was a friend of Mr Stepaniuc and had been appointed by the Communist Party parliamentary group. The majority of the defamation cases between Flux and Mr Stepaniuc¹ had been examined by him personally and his decisions were stereotyped and did not give sufficient reasons. In other defamation cases concerning Flux, Judge I.M. had always ruled in favour of the Government and awarded them the maximum amount provided for by law.

The judgment was upheld by the appeal courts without any response to the applicant's complaint about Judge I.M.'s alleged lack of impartiality.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 10 July 2003.

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

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

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

¹ The Court has already ruled in another case involving Flux and Mr Stepaniuc: *Flux (No. 2) v. Moldova* (3.7.07).

3. Summary of the judgment¹

Complaints

The applicant newspaper complained, in particular, about the judicial decisions against it, relying on Article 10 (freedom of expression) and Article 6 § 1 (right to a fair hearing).

Decision of the Court

Article 10

The Court noted that the interference with the applicant newspaper's freedom of expression was "prescribed by law" (Articles 7 and 7/1 of the Civil Code) and served the legitimate aim of protecting the reputation of Mr Stepaniuc.

Concerning whether it was "necessary in a democratic society", the Court noted that the domestic courts had found the paragraph in question to be untrue, both in terms of the facts and the value-judgments contained in it. The Court reiterated that the existence of facts could be demonstrated, whereas the truth of value-judgments was not susceptible of proof. It followed that the applicant could not have been expected to prove the "truth" of its own opinions about the published facts, given that the domestic courts did not find to be untrue the statement that the party had taken place at a particular hotel or that the law had been amended as described.

On the other hand, the Court considered that the statement that a party had taken place "on the money of the sharks from L." amounted to a statement of fact which was susceptible of proof and which had not been proved by the applicant newspaper.

However, the Court noted the applicant newspaper's contention that it had been impossible for it to prove, a year after the events, all the relevant facts, as well as the lack of any consideration by the domestic courts of that submission. Over time, not only did it become more difficult for the media to prove the facts on which they might have relied, the damage to the person allegedly defamed by the relevant material was also bound to subside.

The Court recalled the pre-eminent role of the press in a democratic society in imparting ideas and opinions on political and other matters of public interest and noted that Mr Stepaniuc was a very high-ranking politician at the time of the events. The article as a whole raised issues of genuine public interest, within the framework of an ongoing public debate. None of the other facts published in the article had been found to be untrue, which gave the article as a whole a sufficient factual basis.

The Court further observed that the courts awarded Mr Stepaniuc the maximum amount possible under the law, despite the fact that they had never heard evidence from him in order to assess the damage allegedly caused to him.

Bearing in mind the importance of the issues raised in the article published by the applicant newspaper and that most of it was not considered to be untrue or abusive, that the applicant

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

newspaper faced particular difficulties in proving events which had happened long before the proceedings were initiated, that any damage caused to the plaintiff was substantially diminished with the passage of time, that some of the statements for which the applicant was held liable constituted value-judgments not susceptible of proof, and in view of the level of the award made by the domestic courts, the Court concluded that the interference did not correspond to a pressing social need and that it was therefore not necessary in a democratic society. Accordingly, there had been a violation of Article 10.

Article 6 § 1

The Court considered that it was unnecessary to examine separately the applicant's complaint under Article 6 § 1 as it raised no new issues.

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.