

Press release issued by the Registrar

**CHAMBER JUDGMENT
FLUX v. MOLDOVA (NO. 2)**

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Flux v. Moldova (No. 2)* (application no. 31001/03).

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 the applicant 278 euros (EUR) for pecuniary damage and EUR 3,000 for non-pecuniary damage and EUR 1,800 for costs and expenses. (The judgment is available only in English.)

1. Principal facts

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

On 19 June 2002 *Flux* published on its first page a preview of an article due to appear in a future issue, together with a summary entitled “The red millionaires” and a big picture of the leader of the Communist Party parliamentary group, Victor Stepaniuc.

The next day, Mr Stepaniuc brought proceedings for defamation against *Flux* and against the author of the article, arguing that “the defendants disseminated information which is defamatory of me as a citizen, an MP and as the leader of the Communist Party parliamentary group”.

On 21 June 2002 *Flux* published the article announced two days before, which was based on the account of the deputy Chief Executive Officer of the Anenii Noi canned food plant and which reported on alleged attempts by a Communist parliamentarian to have the plant declared bankrupt and sold off.

On 1 August 2002 a Moldovan court ruled in favour of Mr Stepaniuc, saying that the following statement from the “The red millionaires” summary was defamatory: “The Communists want to sell the Anenii Noi canned food plant off piece-meal.” The court

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.

ordered *Flux* and the author to pay Mr Stepaniuc 3,600 Moldovan Lei (MDL – EUR 270) and MDL 1,800 respectively, and to issue an apology within 15 days.

Two appeals by *Flux* against that judgment were ultimately dismissed. On 6 February 2003, Chişinău Regional Court dismissed the first appeal as being unfounded and did not take into consideration the article published on 21 June 2002. On 1 April 2003, the Court of Appeal dismissed the second appeal, stating that it was clear that the information published in the article about Mr Stepaniuc did not correspond to reality.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 15 September 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),
Ján **Šikuta** (Slovak),
Päivi **Hirvelä** (Finnish), *judges*,

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

3. Summary of the judgment¹

Complaints

Relying on Article 10 (freedom of expression), the applicant complained that the domestic courts' decisions had interfered with its right to freedom of expression. It further complained that the domestic courts' had failed to give reasons in their decisions, in breach of Article 6 § 1 (right to a fair trial).

Decision of the Court

Article 10

It was common ground between the parties, and the Court agreed, that the domestic courts' decisions had amounted to "interference by [a] public authority" with the applicant's right to freedom of expression. It was also undisputed that that interference had been "prescribed by law" and pursued the legitimate aim of protecting the reputation of Mr Stepaniuc. The Court decided to establish whether the interference had been "necessary in a democratic society".

The Court noted that the applicant argued in its appeals that the summary of 19 June 2002 was merely a preview of an article which was to appear on 21 June 2002. The information in the main article was based on the account of the plant's deputy Chief Executive Officer - a

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

reliable source - and was never found to be defamatory or untrue. Not taking into consideration the main article, national courts did not seek to assess the applicant's arguments.

The Court also considered that the article was written by a journalist and recalled the pre-eminent role of the press in a democratic society to impart ideas and opinions on political matters and on other matters of public interest. The Court further noted that Mr Stepaniuc was a very high-ranking politician at the time of the events.

Having considered the fact that journalistic freedom also covered possible recourse to a degree of exaggeration, or even provocation, and having weighed up the different interests involved in the applicant's case, the Court concluded that the interference with the applicant's right to freedom of expression was not "necessary in a democratic society". Accordingly, there had been a violation of Article 10.

Article 6 § 1

The Court held that there was no need to examine separately the complaint under Article 6 § 1.

Judge Bonello expressed a partly dissenting opinion, which is annexed to the judgment.

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

Press contacts

Emma Hellyer (telephone: 00 33 (0)3 90 21 42 15)

Stéphanie Klein (telephone: 00 33 (0)3 88 41 21 54)

Beverley Jacobs (telephone: 00 33 (0)3 90 21 54 21)

Tracey Turner-Tretz (telephone : 00 33 (0)3 88 41 35 30)

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.