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Contact: Zoë Bryanston-Cross
Tel: 03.90.21.59.62

Date: 09/07/2024

DH-DD(2024)758

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Meeting: 1507th meeting (September 2024) (DH)

Communication from an NGO (Association for the Defence of Human Rights in Romania (APADOR-CH)) (03/06/2024) concerning the group of cases Ghiulfer Predescu v. Romania (Application No. 29751/09).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Réunion : 1507^e réunion (septembre 2024) (DH)

Communication d'une ONG (Association for the Defence of Human Rights in Romania (APADOR-CH)) (03/06/2024) relative au groupe d'affaires Ghiulfer Predescu c. Roumanie (requête n° 29751/09) [**anglais uniquement**]

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.



**ASOCIAȚIA PENTRU APĂRAREA DREPTURILOR
OMULUI ÎN ROMÂNIA - COMITETUL HELSINKI**

București, Str. Nicolae Tonitza nr.8A, Sector 3, www.apador.org, e-mail: office@apador.org

DGI Directorate General of Human Rights and Rule of Law
Department for the Execution of Judgments of the ECtHR
F-67075 Strasbourg Cedex
FRANCE
Email: DGI-Execution@coe.int

COMMUNICATION

**In accordance with Rule 9.2. of the Rules of the Committee of Ministers of the
Council of Europe regarding the supervision of the execution of the judgment**

**Ghiulfer Predescu v. Romania case
(application number no. [29751/09](#), Judgment 27/06/2017)
By APADOR-CH**

1. Introduction

This Rule 9.2 submission is made by the Association for the Defence of Human Rights in Romania (APADOR-CH) in accordance with Rule 9.2. of the Rules of the Committee of Ministers of the Council of Europe regarding the general measures required for the implementation of the *Ghiulfer Predescu* group of cases. The present submission sets out information about recent developments at the national level concerning defamation cases, as well as the applicable legislation.

APADOR-CH is a non-governmental, not-for-profit organization, established in 1990. The organization primarily protects and promotes the civil rights enshrined in the European Convention on Human Rights. It is a key promoter of access to information of public interest, freedom of association and assembly legislation, as well as freedom of expression and right to private life. The organization is also working for the development of efficient legal and institutional mechanisms for respecting human rights and monitoring relevant institutions and the development of practices and institutional mechanisms for increasing transparency and good governance.

2. Case Summary

This case concerns the unjustified interference with the freedom of expression as a result of court decisions delivered in 2008 holding the applicant (a journalist) liable in tort for defamation for statements made on matters of public interest (violations of Article 10). In *Ghiulfer Predescu*, the European Court held that not only had the

interference with the applicant's freedom of expression not been necessary in a democratic society, but the domestic courts had **also failed to** convincingly justify how the extremely high amount she had been ordered to pay in compensation was proportionate to the impugned acts. Since the *Ghiulfer Predescu* judgment was delivered by the Court in 2017, nine more repetitive judgments on the same issue have been handed down by the Court.

3. Executive Summary

Judges have the absolute freedom to decide on moral damages in defamation cases. The price for this is ultimately paid by the press/journalists. This absolute freedom leads to a restriction of the freedom of the press, because the damages that the press has to pay in a defamation case are unpredictable. This unpredictability induces a phenomenon of self-censorship on the part of the media. A balance should be ensured between the absolute freedom of decision of the judge, which leads to unpredictability, and the freedom of the press. The balance is currently skewed to the detriment of the press.

APADOR-CH requests the Committee of Ministers to call on the Romanian authorities to publish a consolidated action plan in the *Ghiulfer Predescu v. Romania* group of cases and to reconsider a change in the Civil Code in order to limit the moral damages that journalists can be held liable for in defamation cases.

4. General measures

The violation identified by the Court in the *Ghiulfer Predescu* judgment stemmed from, *inter alia*, the failure of the authorities to convincingly justify how the extremely high amount she had been ordered to pay in compensation was proportionate to the impugned acts.

The [Recommendation CM/Rec\(2024\)2 on countering the use of strategic lawsuits against public participation \(SLAPPs\)](#), adopted by the Committee of Ministers in April 2024, recommended that Member States take measures to ensure the capping of damages for claimants:

Capping of damages for the claimant

42. Member States should, within the possibilities of their national legal systems, provide for the capping of damages, in order to pre-empt abusive or disproportionate financial penalties for the defendants, which would have a chilling effect on their public participation, and to avoid creating financial incentives for filing legal action.

The reasoning behind this recommendation is that asymmetries in political, financial and other forms of power in society can give rise to inequalities in public debate and that the misuse and abuse of power and privilege by threatening or taking legal action to harass, intimidate or silence critical voices have a chilling effect on public participation.

Relevant developments at national level

In January 2024, APADOR-CH submitted to the [Ministry of Justice](#) and the [Superior Council of Magistracy](#) a proposal to modify the Civil Code in such a way as to limit the moral damages that journalists can be held liable for in defamation cases, with reference to a number of national average salaries.

This would ensure that the obligation of journalists to pay high amounts of compensation would not depend solely on the subjective decision of judges.

This amendment could help to resolve the case of *Ghiulfer Predescu v. Romania*, which is still pending implementation on account of the lack of predictability of the rules for determining the amount of moral damages to be awarded in defamation cases.

Under the current Romanian Civil Code, there is a mixed system of compensation for moral damages, including in defamation cases. This present mixed system allows the judge to order the defamer to pay a sum of money (which is not limited by law, any amount being possible) and possibly impose certain non-pecuniary measures (such as an obligation to issue a public apology, a public denial, to publish a statement, etc.) if the judge considers that the moral damages cannot be covered by the sum of money alone.

APADOR-CH's proposal aimed at maintaining the existing mixed system, but with an amendment consisting of a cap on moral damages awarded for defamation. This would entail only capping the amounts for cases of defamation, but not for other cases in which moral damages may arise - for example, in car accidents, where there will be no cap.

Therefore, a cap on moral damages for defamation should be included in legislation as part of an already existing mixed compensation system for moral damage suffered, in the sense that the judge will be able to award compensation up to a certain amount (cap) and, if they consider that the damage is not fully compensated by the limited financial means, they will be able to add other non-pecuniary means to compensate for the damage (e.g. ordering a public apology, public recantation, the publication of a statement, etc.). This proposal is in line with the [Recommendation CM/Rec\(2024\)2 on countering the use of strategic lawsuits against public participation \(SLAPPs\)](#).

APADOR-CH's proposal was rejected by both the [Ministry of Justice](#) and the [Superior Council of Magistracy](#), which considered that the current system was sufficient to resolve cases fairly. In their replies, both institutions essentially justified their rejection of the proposal on the grounds that the judge should not be restricted in their right to assess in each specific case the most appropriate way of fully compensating for the damage caused by the tort, including by awarding damages without any pre-established limits. The Ministry of Justice and the High Council of the Judiciary also

indicated that capping by law the monetary damages for defamation would unduly limit this right of the judge.

We emphasize that our proposal to cap monetary damages was limited to *defamation* cases only, not to any case where there are moral damages to be redressed.

Recent court case examples

At a superficial, quantitative look at national jurisprudence,¹ during 2022-2023 only, there were 20 final decisions concerning defamation cases against journalists. In reality, their number can be higher. In all these cases, substantial moral damages were requested from journalists, for example: 50.000 EUR, 70.000 EUR, 100.000 EUR, 150.000 EUR, 300.000 EUR, 500.000 EUR 2 million EUR.² Most of the claims against the journalists were rejected as unfounded. In those that were admitted (3 out of 20), moral damages were reduced from 70,000 euros to 5.000 euros, from 300.000 euros to 5.000 euros, from 150.000 euros to 600 euros.

This is a positive development compared to 2015 when the final awarded moral damages could go up to 70.000 EUR.³ However, the fear instilled in a journalist by the such huge requests is real and has a self-censorship effect.

A recent example of the risks generated by the current regulatory system is the case of Context newsroom, reported in the press on 26 March 2024⁴. After an investigation by Context.ro revealed that the Romanian state had invested €2 million of European funds in a golf course that was never built, its editorial team was sued by a businessman for €3.4 million in damages, including €100,000 for "stress caused by journalistic investigations".⁵

Another example concerns the Reporter de Iași publication and defamation proceedings lodged against it. During 2017-2021, the onerous nature of the association between BZI and Iasi City Hall was investigated. The articles of the

¹ <https://lege5.ro/App>, legislative portal.

² Hotărâre nr. 951/2022 din 05/05/2022 - Civil - actiune in raspundere delictuala

Înalta Curte de Casație și Justiție - Secția I civilă

<https://lege5.ro/App/Hotarare/geydambggaydcmzqgezdcoby/?pid=1298858318&expression=daune%20morale%20ziarist%20#p-1298858318>

Hotărâre nr. 82/2023 din 19/01/2023 - Civil - actiune in raspundere delictuala

Înalta Curte de Casație și Justiție - Secția I civilă (Completul nr. 5 NCPC)

<https://lege5.ro/App/Hotarare/geydambggaydcmzgwgy4tqmru/?pid=1299285295&expression=daune%20morale%20ziarist%20#p-1299285295>

Hotărâre nr. 911/2022 din 03/05/2022 - Civil - actiune in raspundere delictuala

Înalta Curte de Casație și Justiție - Secția I civilă (Completul nr. 9 NCPC)

<https://lege5.ro/App/Hotarare/geydambggaydcmzrgizdemzu/?pid=1299090641&expression=daune%20morale%20ziarist%20#p-1299090641>

³ <https://adevarul.ro/stiri-locale/vaslui/cine-este-ana-birchall-unul-dintre-cei-mai-bogati-1757644.html>

⁴ [https://context.ro/actiune-de-intimidare-judiciara-de-34-milioane-de-euro-impotriva-redactiei-context/.](https://context.ro/actiune-de-intimidare-judiciara-de-34-milioane-de-euro-impotriva-redactiei-context/)

⁵ It is worth mentioning that following the publication of the investigation, the National Anticorruption Directorate opened a criminal investigation. The Romanian state has also recently won a lawsuit seeking to recover money paid to build the golf course.

Reporter de Iasi demonstrated the illegality of this association and the damage caused to public patrimony. In 2020, the Directorate for the Investigation of Organized Crime and Terrorism (DIICOT) opened a file for organized crime. In 2023, it was transferred to the National Anti-Corruption Directorate. Other articles revealed illicit activities of the Good Day Iași patrons in cooperation with the local administration: real estate projects on public land, illegal construction and a long string of influence peddling facts in the field of commerce and constructions.

The Reporter de Iași⁶ publication was sued by the owners of the BZI publication (Good day Iasi) on defamation grounds. The damages requested amount to 100.000 euros.⁷ In 2023, Reporter de Iași won the case before the Iași Tribunal. However, the solution was subjected to a retrial due to errors committed in the judge reasoning. The trial resumed at the Iași Court, the requested amount for damages remains 100.000 euros.

In 2022, the Freedom House Romania, owner of the PressHUB publication (presshub.ro), was sued by the WorldTeach Association.⁸ The object of the trial is an investigation⁹ published by PressHUB on the existence of a phantom center for victims of human trafficking. After the article was published, the WorldTeach Association pressured Press Hub in various ways, demanding that the investigation be removed from the site. Finally, they sued, demanding moral damages in the amount of 350.000 lei (app. 70.000 euro).

Although these cases are not finalized yet, the amount of damages demanded created a chilling effect among journalists even while the proceedings are pending.

If a journalist is not wrong and they have full evidence for their published claims, and a reasonable factual basis for their claims, they will eventually find justice. If not before national courts, they should be able to eventually find justice before the ECtHR.

However, journalists who publish incorrect information, despite acting in good faith and demonstrating diligence, do not benefit from any safeguards. Information is a perishable commodity, given that journalists work under time pressure and with limited and difficult access to relevant evidence, it is possible for them to make mistakes. In the current legal system, journalists are not allowed to make such mistakes. This can be heavily detrimental to them, depriving them of financial means, due to the high (unlimited) monetary damages they can be ordered to pay. If a journalist can be ordered to pay 100,000 euros in moral damages for an error committed, the 'Sword of Damocles' hangs over their entire work, forcing them to choose on an ongoing basis between protecting themselves and practicing their profession as expected. This raises the question of whether a press is truly free if journalists are allowed only one mistake before becoming bankrupt.

⁶ News/media company focusing on Iași city.

⁷ Information collected from Gabriel Gachi, editor REPORTER DE IAȘI (April 2024).

⁸ https://portal.just.ro/3/SitePages/Dosar.aspx?id_dosar=3000000000168726&id_inst=3

⁹ <https://www.presshub.ro/investigatie-centru-fantoma-pentru-recuperarea-femeilor-traficate-213356/>.

5. Conclusions and recommendations

Having in mind the arguments set out above, as well as the increasing number of repetitive cases added to this group (five more judgments had been added to the group between 2022 and 2023), the execution of the judgment in *Ghiulfer Predescu v. Romania* should continue being monitored by the Committee of Ministers. We kindly request the Committee of Ministers to:

- Call on the Romanian authorities to publish a consolidated action plan in the *Ghiulfer Predescu v. Romania* group of cases.
- Ask the authorities to reconsider a change in the Civil Code in order to limit the moral damages that journalists can be held liable for in defamation cases, in line with the [Recommendation CM/Rec\(2024\)2 on countering the use of strategic lawsuits against public participation \(SLAPPs\)](#).
- Ask the National Institute of Magistracy to continually update the existing training curricula for judges, with a specific focus on Article 10 and defamation cases.