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Meeting: 1324th meeting (September 2018) (DH)

Item reference: Action report (11/07/2018)

Communication from Romania concerning the case of Ghiulfer Predescu v. Romania (Application No. 29751/09)

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Réunion : 1324^e réunion (septembre 2018) (DH)

Référence du point : Bilan d'action

Communication de la Roumanie concernant l'affaire Ghiulfer Predescu c. Roumanie (Requête n° 29751/09)
(anglais uniquement)

Action Report

Case file Ghiulfer Predescu v. Romania

Application no. 29751/09, final judgment of 27 June 2017

I. Case summary

The present case concerns the failure by the domestic courts to ensure a fair balance between the relevant rights and related interests when imposing on the applicant to pay damages and legal costs to the third party, acting in his capacity as mayor and public figure, as well as to publish the internal judgment in two newspapers.

The Court found that, in their reasoning, the domestic courts endeavoured to distinguish between information and opinions which had been expressed in the impugned televised debate and established that neither the Constanța County Court nor the appellate court provided relevant and sufficient reasoning to justify their conclusions that the applicant had acted in bad faith "by manifesting aggression and intention to blame".

Additionally, the Court found that the amount the applicant was ordered to pay was extremely high and, as such, the national courts' decisions were capable of having a "chilling", dissuasive effect on the applicant's freedom of expression.

Finally, the Court took the view that the sanction imposed on the applicant lacked appropriate justification and that the standards applied by the domestic courts failed to ensure a fair balance between the relevant rights and related interests.

II. As to the individual measures

By the ECHR judgment, the applicant was awarded the amount of 14.000 EUR for pecuniary damage, 4.500 for moral damage and 3.369 EUR for costs and expenses.

The amounts were duly paid to the applicant and her lawyer within the legal time limit.

At the same time, in the context of the individual measures, the Government point out that following the rendering of the ECHR judgment, the applicant can lodge a review claim against the decision of 24 November 2008 of the Constanța Court of Appeal, pursuant to Article 509 point 10 of the new Code of civil Procedure.

According to the information at the Government's disposal no such review procedure has been instituted. The applicant hasn't even demanded the publishing of the judgement in the Official Bulletin.

Furthermore, the Government note that the amounts awarded by the Court under the heading of pecuniary damage (14.000 EUR), which, as stated above, have already been paid in full, adequately cover the material losses incurred by the applicant following the decision of the domestic Constanta Court of Appeal, which obliged Mrs. Predescu to pay M.R. 50.000 RON (new lei) as non-pecuniary damages, 7.197 lei as costs and expenses and 79.29 EUR as costs for publishing the final domestic judgment in two Romanian journals (the last amount is mentioned in para. 69 of the Court's judgment), thus totalling 57.197 lei (13.305,65 EUR at the 4,2987 RON for 1 EUR exchange rate of 2 February 2009 or 12.534,95 EUR at the 4.563 RON for 1 EUR exchange rate of 27 June 2017) and 79.29 EUR.

Therefore, in the light of the aforesaid, no other individual measure is required in the present case.

III. As regards the general measures

The abovementioned case deals with the unjustified interference with the applicant's freedom of expression with regards to opinions expressed on issues of public interest (breach of Article 10). The Court found that the sanction imposed on the applicant lacked appropriate justification and that the standards applied by the domestic courts failed to ensure a fair balance between the relevant rights and related interests of the applicant and of M.R.

The Government also highlight the fact that Court stated that the interference complained in the present application was prescribed by law, namely Articles 998-999 of the Civil Code in force at the time, and pursued the legitimate aim referred to in Article 10 § 2 of the Convention, namely the "protection of the reputation or rights of others".

Therefore, the Government consider that the present case does not raise issues with regards to existing legislation applicable in the area of freedom of expression, as the Court found that the sanctions imposed on the applicant by the Court lacked appropriate justification from the judges, the standards applied by the domestic courts failed to ensure a fair balance between relevant rights and the sanctions applied appeared to be excessive.

As noted by the Court's judgment, the Constanta Court of first instance made use of ECtHR's relevant case law and assessed the balance between the applicant's rights and those of M.R., analysed the applicant's intentions behind her statements and the damage they may have caused to M.R.'s reputation. The higher Courts (the Constanta County Court and the Constanta Court of Appeal) departed from the conclusions of the first-instance court yet failed to provide relevant and sufficient reasoning to justify their conclusions.

With regards to the civil decision against the applicant and the amount of money it forced her to pay as non-pecuniary damage and costs and expenses, the Government draws attention to the fact that an analysis of recent national case law (as shown in the 2015 Action report submitted in 9 cases concerning interferences with the applicants' rights under Article 10) shows that Romanian courts directly apply Article 10 of the Convention and the legal arguments raised by national judges have improved significantly in the time elapsed since the civil proceedings that make the object of application no. 29751/09 (which took place between 2006 – 2008), as the Romanian magistrates are increasingly aware of the Conventional requirements in the area of freedom of expression.

Moreover, in order to avoid further violations of the Convention, the judgment was translated and published on the internet site of the Superior Council for the Magistracy (www.csm1909.ro) (site of the Superior Council for the Magistracy). This measure will help stressing the importance of striking an adequate balance between the relevant rights and interests involved in issues pertaining to freedom of expression, as well as with regards to the subject of the nature and severity of the sanctions imposed by national courts in such cases, where excessive sanctions may have a chilling effect on the exercise of the freedom of expression.

Conclusions

Having regard to the above, the Government considers that no other specific individual or general measures are to be taken in the present case and kindly invite the Committee of Ministers to close the examination of this case.