



Damages awarded against a journalist for posting several articles on his blog criticising another journalist: breach of freedom of expression

In today's **Chamber** judgment¹ in the case of [Gheorghe-Florin Popescu v. Romania](#) (application no. 79671/13) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned the domestic authorities' decision to order the applicant, a journalist, to pay damages for having published five blog posts criticising L.B., another journalist who was the editor-in-chief of a newspaper in the Desteptarea media group and producer for a local television channel belonging to the same group.

The Court found, in particular, that the domestic courts had failed to give relevant and sufficient reasons to justify the interference with the applicant's right to freedom of expression. The standards applied by the domestic courts had not been compatible with the principles embodied in Article 10 of the Convention, including, in particular, contribution to a public-interest debate, whether the person concerned was well-known and his or her prior conduct, the content, form and consequences of the publication, and the severity of the sanction imposed. Nor had they based their decisions on an acceptable assessment of the relevant facts.

It followed that the interference with the applicant's right to freedom of expression had not been "necessary in a democratic society" and that there had been a violation of Article 10 of the Convention.

Principal facts

The applicant, Gheorghe-Florin Popescu, is a Romanian national who was born in 1971 and lives in Bacău (Romania).

In 2011 Mr Popescu, a journalist, published on his blog (www.aghiuta.com) a series of articles targeting L.B., who brought civil proceedings before the Bacău first-instance court. On 11 April 2012 the court partly allowed L.B.'s action and ordered Mr Popescu to pay 5,000 Romanian lei (about 1,100 euros) in respect of non-pecuniary damage.

The court considered that in the articles posted on 7 July and 18 August 2011 Mr Popescu had, without any factual basis, described L.B. as morally responsible for a murder-suicide. With regard to the articles posted on 15 January, 8 July and 4 August 2011, the court held that vulgar and defamatory expressions had cast a slur on L.B.'s honour and reputation.

Mr Popescu lodged an appeal. The county court dismissed this appeal and endorsed the findings of the court of first instance, namely that the accusations in respect of L.B. were without factual basis and thus exceeded the limits of freedom of expression.

Mr Popescu lodged a further appeal with the Bacău Court of Appeal against that decision. By a judgment of 17 June 2013, the court of appeal dismissed the appeal as unfounded. It held that Mr Popescu had

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

not denied that he administered the site in question and that in any event, the claims made in the impugned articles were defamatory and insulting in nature and exceeded the limits of freedom of expression, thus giving rise to his liability in tort, in accordance with Articles 998 and 999 of the Civil Code.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicant alleged that by finding against him in civil proceedings for having posted five articles on a blog administered by him, the domestic courts had breached his right to freedom of expression.

The application was lodged with the European Court of Human Rights on 17 December 2013.

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

Yonko **Grozev** (Bulgaria), *President*,
Faris **Vehabović** (Bosnia and Herzegovina),
Iulia Antoanella **Motoc** (Romania),
Armen **Harutyunyan** (Armenia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Tim **Eicke** (the United Kingdom),
Jolien **Schukking** (the Netherlands),

and also Andrea **Tamietti**, *Section Registrar*.

Decision of the Court

Article 10

The Court noted, as the parties had, that the award of damages against the applicant, a journalist, for attacking L.B.'s honour and reputation by posting five articles on a blog, amounted to an interference with his right to freedom of expression. The interference in question was prescribed by law, namely Articles 998 and 999 of the former Civil Code. The contested measure was intended to protect the honour of L.B., and thus pursued the legitimate aim of "protection of the reputation or rights of others".

The general principles applicable to cases in which the right to freedom of expression (Article 10) must be balanced against the right to respect for private life (Article 8) had been set out by the Grand Chamber in the [Von Hannover v. Germany](#) and [Axel Springer AG v. Germany](#) judgments, delivered on 7 February 2012. The Court identified a number of criteria, including in particular the contribution to a public-interest debate, the extent to which the person concerned is well-known and his or her prior conduct, the content, form and consequences of the publication, and the severity of the sanction imposed.

Assessing the reasoning in the decisions in the domestic proceedings, the Court noted that the national courts had essentially based their analysis on the adverse impact of the contested statements on L.B.'s honour, reputation and dignity, and on the fact that the applicant had been unable to prove his allegations. They had made no distinction between statements of facts and value judgments.

The Court further noted that the domestic courts had failed to assess certain essential factors. Thus, they had attached very significant weight to the need to compensate for L.B.'s non-pecuniary damage, while ignoring the fact that the applicant was a journalist and that the freedom of the press fulfilled a fundamental function in a democratic society. Furthermore, the domestic courts had failed to note that the case concerned a conflict of rights between freedom of expression and protection of reputation.

The national courts had not examined in this case whether the applicant's statements concerned an area of public interest and contributed to a debate of general interest. However, analysis of the contested statements was of particular importance in assessing the necessity of the interference with the right to freedom of expression. The Court also noted that the national courts had not taken account either of the extent to which L.B. was well-known, or of his prior conduct. It had not been accurately established whether L.B. was a "public figure" acting in a public context, within the meaning of the Court's case-law, in view of his possible involvement in political life or his employment as editor-in-chief and television producer in a media group.

With regard to the content of the contested articles, the Court noted that the domestic courts had also failed to ascertain their purpose, but had merely concluded that the applicant had described L.B. in a negative light that was likely to cause him psychological suffering, concern and distress. In the Court's opinion, such reasoning demonstrated a tacit acceptance that respect for private life outweighed respect for the right to freedom of expression in this case.

As to the form of the articles in question, the Court accepted that their style could appear open to criticism, particularly with regard to the offensive nature of certain passages. However, although the satirical nature of the articles had been the main argument in the applicant's defence, the domestic courts had failed to investigate with sufficient care whether or not this was a form of exaggeration or distortion of reality, naturally aimed to provoke. In the Court's view, the style was part of the form of expression and was protected as such under Article 10, in the same way as the content of the statements.

The Court also noted that the domestic courts had not assessed the extent to which the contested articles had been disseminated, nor their accessibility, nor whether the applicant was a well-known blogger or a popular user of social media, which could have attracted the public's attention and increased the potential impact of the contested statements.

Lastly, with regard to the severity of the penalty imposed, in the absence of information about enforcement of the domestic decision the Court could not speculate as to the penalty's impact on the applicant's situation.

In conclusion, the Court considered that the domestic courts had failed to give relevant and sufficient reasons to justify the interference with the applicant's right to freedom of expression. The standards applied by the domestic courts had not been compatible with the principles embodied in Article 10 of the Convention and their decisions had not been based on an acceptable assessment of the relevant facts.

It followed that the interference with the applicant's right to freedom of expression had not been "necessary in a democratic society" and that there had been a violation of Article 10 of the Convention.

The judgment is available only in French.

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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.