

Court/Tribunal: European Court of Human Rights

Case: *Flux v. Moldova*

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On February 24th of 2009, the European Court of Human Rights (“European Court”) overturned a decision by Moldova’s Supreme Court of Justice regarding the fragile balance between freedom of expression and protection of individuals’ dignity and reputation.

The parties are Flux, a local news agency, and the government of Moldova. In 2004, Flux published an article suggesting that four communist members of Parliament were planning to live in newly remodeled apartments at the Republic’s expense. Flux journalists first investigated the story by visiting the apartments and trying to contact the members of Parliament and other state officials. None of the members allegedly involved would comment. A non-involved member reported that a deputy speaker of Parliament told him that Parliament had paid for the apartments.

The article’s title was strongly worded: “Four More Communists Have Obtained Housing On Our Money.” The body of the article stated that the allegations were based on anonymous third party tips and had not been confirmed. It went on to describe the journalists’ multiple attempts to discover the truth and the uncooperative responses of the government. It also mentioned an analogous situation that had occurred three years earlier, when another speaker of Parliament had obtained an apartment under similar circumstances.

The president of Parliament’s communist faction and alleged future owner of a subsidized apartment (referred to in the proceedings as “V.S.”) sued Flux for defamation. Neither V.S. nor his representative made an appearance. The Buiucani District Court held for V.S. in full and awarded him 30,000 Moldovan lei (“MDL”) (about 2,046 Euros), finding that Flux had failed to give any evidence to support the truth of its published statements. Flux appealed the decision, relying on its original arguments and contending that the district court had provided no justifications for its holding, and had awarded damages without proof of the nature and extent of the alleged injury.* The Chişinău Court of Appeal rejected the substance of the appeal because it found that Flux could not verify its defamatory statements toward V.S. The Court of Appeal did reduce the award to 15,000 MDL. After another appeal, the Supreme Court of Justice upheld the lower courts’ holdings, but again reduced the award amount, this time to 5,000 MDL (300 Euros).

On June 28, 2005, Flux applied for a hearing with the European Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“Convention”), which gives individuals the right to contest human rights violations against contracting states. Moldova, a former member of the Soviet Bloc, has been a member of the Council of Europe since 1995 and subject to this court’s jurisdiction since ratifying the European Convention on Human Rights in 1997.

The Moldovan government (“government”) relied on domestic defamation laws, which give individuals a private right of action and the possibility of both pecuniary and non-pecuniary damages. Flux relied on Article 10 of the Convention, which protects freedom of expression. No such freedom is absolute, however, and the European Court found that governments may interfere with the freedom of expression when three requirements are met: (1) the interference is prescribed by law; (2) it has a legitimate aim as described in Article 10 of the Convention; and (3) such interference was “necessary in a democratic society.”

The European Court easily found that the government had satisfied the first requirement, as Moldova’s domestic law allows individuals to sue for defamation. It also found that the government had been pursuing a legitimate aim: protecting V.S.’s reputation. But ultimately, the government could not persuade the European Court that imposing liability on Flux was necessary in a democratic society.

The European Court relied on several factors in reaching this decision. First, V.S. is a public figure, and the European Court has long held that because such people place themselves in the public eye, they must expect to be talked about more than a private citizen. Second, Flux’s article only mentioned V.S. twice, the real focus being

government corruption and lack of transparency. Finally, the subject of the article was a matter of public interest and the public's right to know outweighs a public figure's right to control what is said about him.

While such factors were relevant, the European Court's decision is not narrowly tailored to the facts. It acknowledges that readers might have assumed that the statements in the article were fact, not opinion, and therefore may be subject to an evidentiary requirement. However, the European Court emphasized the vast importance of the media's role as "public watchdog" in a democratic society. Because journalists must be encouraged to shed light on public issues, the legal question becomes one of good faith or malicious intent. The Flux journalists tried diligently to verify the allegations in their story, but were blocked. Significantly, the article specified that the allegations had not been verified, thus there had been no intent to mislead the public.

The European Court reversed Moldova's decision and granted Flux pecuniary and non-pecuniary damages plus costs and expenses, for a total award of 4,812.25 Euros.

*Flux also challenged the appeals judge as being biased for personal and professional reasons. The Supreme Court rejected the challenge, and the European Court found the complaint inadmissible and therefore did not rule on it.