



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

**CASE OF ION CÂRSTEA v. ROMANIA**

*(Application no. 20531/06)*

JUDGMENT

STRASBOURG

28 October 2014

*This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Ion Cârstea v. Romania,**

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President*,

Alvina Gyulumyan,

Ján Šikuta,

Dragoljub Popović,

Luis López Guerra,

Johannes Silvis,

Iulia Antoanella Motoc, *judges*,

and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 7 October 2014

Delivers the following judgment, which was adopted on that date:

## PROCEDURE

1. The case originated in an application (no. 20531/06) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Romanian national, Mr Ion Cârstea (“the applicant”), on 3 May 2006.

2. The Romanian Government (“the Government”) were represented by their Agent, Ms I. Cambrea, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the domestic courts had failed to protect his reputation following the publication of an article in a local newspaper, which constituted a violation of his right to respect for his private life as guaranteed by Article 8 of the Convention.

4. On 14 January 2011 the application was communicated to the Government.

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1949 and lives in Craiova. He was, at the time of the events, a lecturer at Craiova University.

#### A. Content of the disputed article

6. On 8 September 2001 the local newspaper *Republica Oltenia* published an article entitled “Feature story on sex-blackmail professor”

(“*Poveste de lung metraj cu un profesor de sex-șantaj*”). The article, written by R.C., was illustrated by two photographs showing a man and a woman naked and having sex. The man’s face was not visible. On the photographs were the handwritten words “the man in the photos is Ion Cârstea, university as.[sistant] at the electrotechnical faculty”. One of the photographs also appeared at the top of the front page of the newspaper.

7. The article started by mentioning that the man in the photographs was a university professor, an important person in society, who was involved in bribery, blackmail, child sex abuse and sexual deviance, the details of which would be given in the article.

8. The article continued by stating that in 1992 the applicant’s students had complained to the university dean that he was not very friendly during sessions and used to demand money from them. The applicant was also branded as litigious, because he had three trials pending before the courts, two of them brought with the purpose of contesting decisions taken by his university superiors.

9. Further on, the article contained the following statements:

#### **Sex pervert, criminal, blackmailer**

In 1982 a girl, so young that she was not even eighteen, got pregnant. Abortion being illegal, she decided to ask her second cousin, a university assistant at the time, to help her find a doctor. The cousin took advantage of the girl’s desperate situation. He might have told her that he would tell her mother if she did not let him “taste” her at least once. The atmosphere at the time may be inferred from the black and white photos attached. They were taken ... by the cousin himself. Apparently, even from a young age, Ion Cârstea had unorthodox habits. After satisfying his needs, Cârstea remembered that in fact he could not help his cousin, and advised her to sell some jewellery in order to raise money for a doctor. To develop the photos, Cârstea appealed to a repeat student and amateur photographer ... “In your fourth or fifth year you will have an exam with me and won’t pass” Cârstea said, according to the photographer. The student gave in to the blackmail, but after developing only gave Cârstea 24 photos instead of 36. The gesture had its logic, because in 1990, when our student managed to proceed to the fifth year, Cârstea tried to raise the stakes, by asking for a non-reimbursable loan of 130 [German] marks to pass an exam. The student was upset and went to the prosecutor’s office: “I made a complaint to the prosecutor’s office in [19]90, accusing him of blackmail. I submitted the relevant evidence, namely the first [set of] photos, because he later came to me with six more films, also porn ... the prosecutor said that we were dealing with a university professor and should leave him alone, not amplify the case.

#### **Wax in the ears at the dean’s office**

Why not amplify the case? We’ll tell you: because between Cârstea and M.I., the University dean, there is a special relationship, which might also be based on blackmail ... We know that [M.]I. sold Cârstea a flat, but this doesn’t say much. That would be another case of blackmail, because we heard that Cârstea’s obsession with audio-video recordings remained unchanged ... As for the prosecutors who received a complaint from the blackmailed photographer, they were in no hurry to go to talk to the girl in the photos. That would have obliged them to open an investigation ex

officio. Instead they sent the victim, the photographer-student, to take statements. And he obtained a statement signed by the girl's mother, while the actress in the photos wrote on them "The man in the photo is Ion Cârstea, university as. [sistant] at the electrotechnical faculty."

#### **Hello non-indictment!**

Of course such evidence obtained under these circumstances had no legal relevance. The case would normally be greeted with a gracious non-indictment. ... Our photographer can hardly wait for justice to be done and to finish his studies now, twelve years after he proceeded to the fifth year."

### **B. Criminal proceedings for defamation**

10. On 6 November 2001 the applicant lodged a criminal complaint with the Craiova District Court against the journalist R.C. and B.B.O., editor-in-chief of the newspaper, accusing them of defamation, an offence under Article 206 of the Criminal Code in force at the time. The applicant alleged that the facts described in the article were not true and that, together with the photographs, they had seriously damaged his reputation. In this connection, the applicant claimed from the two defendants 1 billion lei (RON) for non-pecuniary damage and RON 500,000,000 for pecuniary damage. As to the compensation for pecuniary damage the applicant alleged that owing to the publication of the article and the photographs in question he could no longer be promoted to a higher position within the university.

11. R.C. and B.B.O. did not appear before the court, although they had been summoned on several occasions.

12. Two witnesses for the applicant were heard by the court. M.G. stated that as far as he knew the applicant, the facts described in the article in dispute were not true. P.T. made a statement in support of the compensation claimed by the applicant for pecuniary damage.

13. On 27 June 2002 the Craiova District Court acquitted the two defendants. It decided that they had not intended to defame the applicant, since they had merely brought to the public's attention certain facts mentioned by other people, with whom the applicant did not have a good relationship. With respect to the photographs complained about, the court briefly held that "... it is not clear from the photos whether the person photographed is or is not the injured party [the applicant]". The court further rejected the applicant's compensation claim, stating that there was no connection between the defendants' acts and the damage alleged.

14. An appeal on points of law (*recurs*) brought by the applicant against this decision was allowed by the Dolj County Court on 31 October 2003. It ordered a retrial of the case, due to the fact that the two defendants had not been identified and heard by the lower court.

15. A search conducted by the police concluded that B.B.O. had written the article in question under the alias of R.C. B.B.O. did not appear before the court, although he had been summoned.

16. On 8 April 2005 the Craiova District Court acquitted B.B.O. and rejected the applicant's claim for compensation. Quoting the Court's case-law on freedom of expression, the Craiova District Court held that the applicant was a public figure and was hence exposed to criticism. The court also held that the defendant had not intended to defame the applicant, as he had just published information that he had collected from other people, such as students, professors, and so on. It also held:

“The publication of the compromising photos accompanied by comments concerning the actors' identity is a shocking way of exercising the freedom of expression guaranteed by Article 10 of the Convention and Article 30 of the Romanian Constitution. ...

Restricting the ability to publish documents because [they] might harm a person's dignity would not be a necessary measure in a democratic society where the journalist's sources were credible.

As regards crimes against dignity committed through the media, a journalist's investigation is always important and is based on direct and indirect sources, official documents and documents collected through leaked information, official and private statements, some confidential, not all free from doubt. What must be proved beyond any doubt is the journalist's bad faith which, in the current case, has not been proved.

The statements of witnesses M.G. and P.T., colleagues and friends of the applicant, with respect to his personality and professional reputation are credible, but strictly only prove the perception of these people.”

The court analysed the applicant's claim for compensation from the standpoint of Article 998 of the Civil Code and decided to reject the claim for non-pecuniary damage since the defendant's guilt had not been proved, and the claim for pecuniary damage as unsubstantiated.

17. The applicant lodged an appeal on points of law against this decision, alleging that the defendant had not been summoned at the correct address and that, in his absence, the judges could not have correctly established the facts or whether he had acted in good or bad faith. The applicant further submitted that B.B.O. had not acted in good faith. Firstly, because he had never contacted him for his version of the facts and secondly, because according to his criminal record attached to the file, the journalist had several previous convictions for slander and defamation. The applicant also alleged that the journalist had made accusations which attracted criminal sanctions, and therefore their truthfulness could and should have been verified by the courts.

18. On 11 November 2005 the Dolj County Court finally dismissed the applicant's appeal on points of law as ill-founded. The court held that, even though it may have been defamatory, having in mind the applicant's profession and the media's role in a democratic society, the article in

question had just drawn attention to the behaviour of a public figure in the exercise of his functions. The court further held that the defendant journalist had wanted to “expose certain backstage games and interests in a higher education institution ... with a view to remedying the situation and maintaining good educational process”. The applicant’s specific reasons for appealing on points of law, such as the incorrect summoning and the failure to hear the defendant’s statement and verify the truthfulness of the allegations published by the defendant, were not analysed by the court.

## II. RELEVANT DOMESTIC LAW

19. The relevant domestic provisions of the Civil and Criminal Codes concerning defamation and liability for compensation, in force at the material time, as well as the subsequent developments in the legislation, are described in the case of *Timciuc v. Romania* ((dec.), no. 28999/03, §§ 95-97, 12 October 2010).

## THE LAW

### I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

20. Relying on Article 6 §§ 1 and 2 and Article 8 of the Convention, the applicant complained that the publication of the article in question and accompanying pictures had damaged his reputation, which the domestic courts had subsequently failed to protect. The Court considers that the present complaint falls to be examined solely under Article 8 of the Convention which reads as follows:

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

#### A. Admissibility

21. The Government disputed the admissibility of the application on the grounds that the applicant had made serious accusations and insulted national judges; an attitude which was not in conformity with the right to individual petition before the Court.

22. In particular, the Government pointed out that, in his submissions to the Court, the applicant had mentioned that the judges dealing with his case at the domestic level were corrupt, having deliberately misinterpreted and misapplied the law and taken unlawful decisions.

23. The Court reiterates that an application may be rejected as abusive if it is knowingly based on untruths (see *Akdivar and Others v. Turkey*, 16 September 1996, §§ 53-54, *Reports of Judgments and Decisions* 1996-IV; *I.S. v. Bulgaria* (dec.), no. 32438/96, 6 April 2000; and *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X). In addition, persistent use of insulting or provocative language by an applicant may be considered an abuse of the right of application within the meaning of Article 35 § 3 of the Convention (see *Manoussos v. the Czech Republic and Germany* (dec.), no. 46468/99, 9 July 2002; *Duringer and Others v. France* (dec.), nos. 61164/00 and 18589/02; and *Stamoulakatos v. the United Kingdom*, no. 27567/95, Commission decision of 9 April 1997).

24. Turning to the present case, the Court notes that the statements made by the applicant as quoted by the Government reflect his emotional attitude towards the behaviour of the authorities in his case. Admittedly, some of the applicant's allegations were provocative and inappropriate and thus regrettable, but in sum the Court finds that they do not meet the threshold of offensiveness and frequency that would make them an abuse of petition (see *Omerović v. Croatia* (no. 2), no. 22980/09, § 33, 5 December 2013).

25. Further, the Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

## **B. Merits**

### *1. The parties' submissions*

26. The applicant asserted that the article of 8 September 2001 made untrue and defamatory statements about his private life, such as the fact that he was involved in child sex abuse, statements which had damaged his reputation on both a personal and professional level. In addition, the applicant submitted that in assessing his complaint, the domestic courts had failed to verify the truthfulness of the facts contained in the article and to analyse all his allegations.

27. Referring to the Court's decision in *Pipi v. Turkey* ((dec.), no. 4020/03, 12 May 2009), the Government contended that the information published in the current case did not concern purely personal details and were not an intolerable and continuous intrusion into the applicant's life. The applicant's reputation may have been affected, but this did not exceed the limits of the journalist's right to freedom of expression.

28. The Government submitted that the applicant's complaint had been thoroughly examined by the national courts, which had applied the law in force at the relevant time to the particular circumstances of the case. They emphasised the fact that in its judgment of 8 April 2005, the Craiova District Court had taken into consideration the Court's case-law under Article 10 of the Convention.

2. *The Court's assessment*

29. What is at issue in the present case is a publication affecting the applicant's reputation. The Court reiterates that it has already been established in its case-law that "private life" extends to aspects relating to personal identity and reputation (see *Pfeifer v. Austria*, no. 12556/03, § 35, 15 November 2007; *Petrina v. Romania*, no. 78060/01, §§ 27-29 and 34-36, 14 October 2008; and *Timciuc*, cited above, § 143). Moreover, the Court has found the publication of a person's photograph to fall within the scope of his or her private life, even where the person concerned is a public figure (see *Von Hannover v. Germany*, no. 59320/00, § 34, 24 June 2004). Article 8 therefore applies, and this is not disputed by the parties.

30. The Court notes that the applicant did not complain about any action by the State, but rather that the State had failed to protect his reputation against interference by third parties. In this connection, the Court reiterates that although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in effective respect for private and family life. These obligations may involve the adoption of measures designed to secure respect for private and family life, even in the sphere of the relations of individuals between themselves (see *Odièvre v. France* [GC], no. 42326/98, § 40, 13 February 2003 and *Dickson v. the United Kingdom* [GC], no. 44362/04, § 70, 4 December 2007). The Court therefore considers that the present case engages the State's positive obligations arising under Article 8 to ensure effective respect for the applicant's private life, in particular his right to protection of his reputation.

31. The main question in the present case is whether the State has, in the context of its positive obligations under Article 8, achieved a fair balance between the applicant's right to protection of his reputation, which is an element of his "private life", and the other party's right to freedom of expression guaranteed by Article 10 of the Convention (see *Von Hannover*, cited above, § 57, with further references, and *Pfeifer*, cited above, § 38).

32. The Court reiterates that where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see *MGN Limited v. the*

*United Kingdom*, no. 39401/04, §§ 150 and 155, 18 January 2011; *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06, 28957/06, 28959/06, 28964/06, § 57, 12 September 2011; and *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 107, ECHR 2012). In balancing the right to freedom of expression against the right to respect for private life in the present case, the Court will take into account the following relevant criteria laid down in its case-law.

33. An initial essential criterion is the contribution made by articles or photographs published in the press to a debate of general interest involving issues such as politics, crime, sport or the performing arts (see *Von Hannover*, cited above, § 60; *White v. Sweden*, no. 42435/02, § 29, 19 September 2006; and *Axel Springer AG v. Germany* [GC], no. 39954/08, § 90, 7 February 2012, with further references). The rumoured marital problems of the president of a Republic or the financial difficulties of a famous singer have not been deemed to be matters of general interest (see *Standard Verlags GmbH v. Austria (no. 2)*, no. 21277/05, § 52, 4 June 2009, and *Hachette Filipacchi Associés (ICI PARIS) v. France*, no. 12268/03, § 43, 23 July 2009). In addition, the Court has previously found no public interest justifying the publication of data concerning a person's health or reference to her sex life, which have been held to be of a purely private nature therefore falling within the protection of Article 8 of the Convention (see *Biriuk v. Lithuania*, no. 23373/03, §§ 39-42, 25 November 2008).

34. In the current case, the article published on 8 September 2001 in the *Republica Oltenia* newspaper described in detail an incident in the applicant's sex life which happened nineteen years before, as well as crimes allegedly committed by him in connection with his job as a university professor nine years before. The article included pictures of the applicant nude and having sex. It also included serious accusations against him, such as the fact that he was involved in "bribery, blackmail, child sex abuse and sexual deviance". Lampooning statements about his character were also made by the journalist, such as: "Sex pervert, criminal, blackmailer". The Court observes that the domestic courts did not make a serious assessment as to whether the entire material published contributed to a debate of general interest, or whether what was published was true. For example, the public interest at the moment of publishing of matters dating back to nine or even nineteen years ago, was not analysed. Furthermore, the domestic courts did not discuss at all whether the photographs themselves contained information related to an event of contemporary society or contributed to a debate of public interest.

35. In this connection, the Court also considers that the act of making such serious accusations against a person identified by their name and occupation, such as the applicant, involves an obligation on behalf of the journalist to provide a sufficient factual basis for his statements (see *Polanco Torres et Movilla Polanco v. Spain*, no. 34147/06, § 47,

21 September 2010). The Court had previously attached serious importance to whether the domestic courts analysed whether the journalist concerned had obtained his information legally, verified it with the applicants before publishing and whether he had also given the applicants the right to reply within the same article (*ibid.*, §§ 50-52). On the contrary, in the current case, failing to identify and subsequently correctly summon the journalist who wrote the article, the domestic courts automatically regarded his sources as credible and assumed that he had acted in good faith (see paragraphs 13 and 16 above). In this respect the Court notes that, in the course of the proceedings before the domestic courts, no material was produced in order to support the allegations made in the article and no witnesses testified that the applicant was involved in the activities described by the journalist (see *Lavric v. Romania*, no. 22231/05, § 44, 14 January 2014).

36. The role or function of the person concerned and the nature of the activities that form the subject matter of the article constitute another important criterion, which relates to the previous one. In this connection, the Court has previously held that a fundamental distinction needs to be made between reporting factual matters capable of contributing to a debate in a democratic society, such as those relating to politicians in the exercise of their official functions, and reporting details of the private life of an individual who does not exercise such functions, with the sole aim of satisfying public curiosity (see *Von Hannover*, cited above, §§ 63 and 65, and *Standard Verlags GmbH*, cited above, §§ 47 and 53). In the latter case, freedom of expression calls for a narrower interpretation (see *Von Hannover*, cited above, § 66, and *Hachette Filipacchi Associés (ICI PARIS)*, cited above, § 40).

37. The Court observes that the applicant in the present case was a university professor unknown to the larger public. It also notes that the domestic courts did not make any assessment which could lead to the conclusion that he was a public figure, but merely assumed that his position as university professor rendered him more exposed to criticism.

38. There can be little doubt that the disputed article and accompanying photographs seriously prejudiced the applicant's honour and reputation and was harmful to his psychological integrity and private life (see, *mutatis mutandis*, *A. v. Norway*, no. 28070/06, § 64, 9 April 2009, *Mikolajová v. Slovakia*, no. 4479/03, § 55, 18 January 2011 and *Roberts and Roberts v. the United Kingdom*, (dec.), no. 38681/08, §§ 40-41, 5 July 2011). In view of the above, the Court is therefore not convinced that the national courts attached the required importance to the questions whether the article contributed to a debate of general interest and whether the applicant should have been regarded as a public figure. It considers therefore that the national courts did not carefully balance the journalist's right to freedom of expression against the applicant's right to respect for his private life.

39. The foregoing considerations are sufficient to enable the Court to conclude that there has thereby been a violation of Article 8 of the Convention.

## II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

40. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

### A. Damage

41. The applicant claimed 40,000 euros (EUR) in respect of pecuniary damage, consisting of loss of income owing to the fact that the article in dispute had prevented him from accessing a higher position in his occupation. He also claimed EUR 100,000 in respect of non-pecuniary damage, submitting that the publication of the article and serious accusations therein had exposed him and his family to public shame.

42. The Government submitted that the amounts claimed were excessive and unsubstantiated. They contended that the finding of a violation would constitute sufficient just satisfaction for the applicant in the current case.

43. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it accepts that the failure to protect the applicant’s reputation against the defamatory article must have caused him feelings of distress. Making its assessment on an equitable basis, the Court awards the applicant EUR 4,500 in compensation for non-pecuniary damage.

### B. Costs and expenses

44. The applicant also claimed EUR 1,000 for the costs and expenses incurred before the Court, without submitting any supporting documents.

45. The Government requested the Court to dismiss the applicant’s claims as unsubstantiated.

46. According to the Court’s case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the lack of relevant documents justifying the payment of the requested expenses and in the light of its case-law, the Court rejects this claim (see *Alkaya v. Turkey*, no. 42811/06, § 48, 9 October 2012).

### C. Default interest

47. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 8 of the Convention;
3. *Holds*
  - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 4,500 (four thousand five hundred euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable, in respect of non-pecuniary damage;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 28 October 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli  
Deputy Registrar

Josep Casadevall  
President