

Romania, Judec?toria Buftea, decision no. 842/11.02.2020

Member State

 Romania

Topic

Freedom of expression

Sector

Freedom of Expression and Association; Role of Lawyers

Deciding Court Original Language

Judec?toria Buftea

Deciding Court English translation

County Court

Registration N

N/A

Date Decision

11/02/2020

ECLI (if available)

N/A

National Follow Up Of (when relevant)

N/A

EU legal sources and CJEU jurisprudence

N/A

ECtHR Jurisprudence

ECHR (art. 10, art. 8)

ECtHR judgments: Axel Springer AG v. Germany (07.02.2012); Tãnãsoaicã v. Romania (16.06.2012); ?ipoã v. Romania (03.05.2011); Anticã ?i S.C. "R" v. Romania (02.03.2010)

Subject Matter

Freedom of expressions of lawyers – client/lawyer responsibility for slanderous affirmations in the case - moral damages — article 10 ECHR

Legal issue(s)

The case addresses the freedom of expression of lawyers in conjunction with the freedom of expression of their clients. In particular the case illustrates that when a lawyer acting as a legal representative of his/her client goes beyond the limits of freedom of expression, both the client and the lawyer may be held liable for their misconduct. Therefore, the disciplinary proceedings against the lawyer do not wave the client' civil responsibility and vice versa.

Request for expedited/PPU procedures

NO

Interim Relief

N/A

National Law Sources

Civil Code (art. 70-72, art. 1349 et seq.)

Civil Procedural Code (art. 36, art. 80, art. 248)

Romanian Constitution (art. 26, art. 30)

Facts of the case

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The plaintiffs, Mr. M.E. and Mrs. P.M.M., is the former husband of the first respondent, Mrs. M.R., whom he had divorced in 2019. Following their divorce, M.E. and M.R. opened a second case, in order to have their property shared by a court decision. During that second trial of property shearing, the plaintiff was represented by the second respondent, P.M.M., who acted as his proxy.

In the case at hand, the plaintiffs asked the Court (Judecãtoria Buftea) to adjudge and declare that the respondent violated their right to honour and reputation and to impose upon her the obligation to pay them 50.000 lei as moral damages.

The first plaintiff, Mr. M.E. complained that his former wife made slanderous affirmations about him, both during their marriage and during the divorce trial, and that her comments seriously affected his reputation in the small rural community he had been living.

The second plaintiff, Mrs. P.M.M. complained that during the property shearing trail the respondent acting through her lawyer, registered written documents to the case file, where she affirmed that

Mrs. P.M.M. was her former husband's mistress and that she was seeking financial gains from this relationship. Mrs. P.M.M. insisted that her relationship with Mr. M.E. begun only after his divorce and said that his former's wife affirmations humiliated her.

The respondent invoked her lack of passive procedural quality, since the allegedly slanderous affirmation had not been made by herself, but by her lawyer, Mr. I.R.C., acting on her behalf. He drafted the legal contestation in the case and had it registered at the case file. Moreover, during the preparation of the case and during the trial the lawyer was not in touch with the defendant, but with her son.

The lawyer emailed the contestation to her son and asked him to make any necessary corrections and then to resend them to the lawyer. According to the defendant, the lawyer inserted in those draft documents pieces of information that were conveyed to him by the defendant in a confidential manner during their first encounter and which should not have been put in written form and registered by the court. Moreover, the defendant noticed that some of the defence arguments put forward by her lawyer were not real. However, given that there was not enough time for her to engage another lawyer, she decided to make some corrections in the written draft and then she sent this final version to the lawyer.

Notwithstanding her efforts, the defendant noticed that her lawyer had registered by the court the initial version of the contestation and not the one corrected by her.

The Disciplinary Commission of the Bar has been notified about the lawyer's conduct and asked to apply penalties accordingly.

The plaintiff argued that the case should be dismissed, as she was not the author of the illegal act invoked by the plaintiffs, but her lawyer.

Reasoning (role of the Charter or other EU, ECHR related legal basis)

Legal Reasoning

According to the Court, a lawyer acts as a conventional representative for the party to a trial, acting on behalf of that party. As such, he did not register the documents in his own name, but in his client's name and the defendant was aware of their content. Moreover, all the documents written and registered by the lawyer had been drafted in the same slanderous tonality and there is no way the defendant could have been ignorant about the lawyer's conduct. Therefore, the civil responsibility of the defendant cannot be waved.

The Court said that the lawyer's civil responsibility can also be engaged, separately, based on provisions of Law no. 51/1995, regarding the organization of the profession for lawyers. However, by triggering the lawyer's civil responsibility, the respondent cannot exempt herself from her own civil responsibility.

For all these reasons, the Court rejected the respondent's preliminary exemption regarding her alleged lack of procedural quality.

On the merits, the Court noted that every person is entitled to have his/her right to honour and dignity respected and the national and international legislation contain express provisions regarding the protection of private life. When the right to dignity and private life competes with the

right to freedom of expression, a fair balance between the two rights should be struck. To this end, the Court referred to relevant case of the ECtHR which indicate towards the relevant contextual criteria to be applied in such cases: (i) contribution to a debate of general interest; (ii) the notoriety of the person affected by those affirmations; (iii) the previous conduct of the person affected by those affirmation; (iv) the method of obtaining those affirmation and their veracity; (v) content, form and consequences of those affirmations (iv) seriousness of the punishment applied.

After considering all the criteria listed above, the Court considered that the respondent had acted in bad faith, with the intent to harm the plaintiff, and therefore she committed an illegal act. The plaintiff was awarded 1500 lei as moral damages.

Relation of the case to the EU Charter

N/A

Relation between the EU Charter and ECHR

N/A

Use of Judicial Interaction technique(s)

consistent interpretation

Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

N/A

Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

The Romanian Court refers in a general way to the ECtHR case law on article 10 of the ECHR in order to interpret the meaning of the freedom of expression of lawyers. In this regard, the Romania courts established that both lawyers and the clients they act on behalf of must respect the dignity of others parties involved in the process.

Strategic use of judicial interaction technique (purpose aimed by the national court)

N/A

Impact on Legislation / Policy

N/A

Notes on the national implementation of the preliminary ruling by the referring court

N/A

Did the national court quote case law of the CJEU/ECtHR (in particular cases not already referred to by the CJEU in its decision) or the Explanations?

N/A

Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports?

N/A

Did the national court take into account national case law on fundamental rights?

N/A

If the court that issued the preliminary reference is not a last instance court, and the “follow up” was appealed before a higher court, include the information

N/A

Was there a consensus among national courts on how to implement the CJEU's preliminary ruling; and were there divergences between the judiciary and other state powers regarding the implementation of the preliminary ruling?

N/A

Impact on national case law from the same Member State or other Member States

N/A

Connected national caselaw / templates

N/A

Other

N/A

[\(Link to\) full text](#)

Please contact the author of the case note or TRIIAL partners for the full text of the judgment.

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