

Civil judgment against the applicant for publication and hosting of statements on his Facebook page breached his freedom of expression

In today's **Chamber judgment**¹ in the case of **Alexandru Pătrașcu v. Romania** (application no. 1847/21) 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 on account of the applicant's conviction for statements made by him on his Facebook page, and

a violation of Article 10 in relation to the applicant's conviction for the comments made by third parties on his Facebook page.

The case concerned the applicant's liability for his statements and the comments published on his Facebook page.

As a passionate fan of opera and classical music, the applicant covered a scandal involving the National Opera in Bucharest, which had given rise to extremely strong feelings. He was ordered to pay compensation for the damage caused by the many posts published on his Facebook page in the period from April to June 2016.

The appellate court found that 22 comments exceeded the limits of freedom of expression and ought to be punished, and that four messages written by the applicant had interfered with the rights and legitimate interests of others.

The Court noted that the factual context of the case could have been used to assess whether each of the applicant's contested statements had contributed to a debate of public interest. It considered that the national authorities had failed to conduct a proper balancing exercise with a view to demonstrating that the civil judgment against the applicant had corresponded to a "pressing social need".

With regard to the civil judgment against the applicant for the comments made by third parties on his Facebook page, the Court considered that the legal provisions relied on and interpreted in the present case by the national courts had not been sufficiently clear and detailed to afford appropriate protection against interference by the authorities with the applicant's right to freedom of expression.

Principal facts

The applicant, Alexandru Pătrașcu, is a Romanian national who was born in 1970 and lives in Ploiesti (Romania).

Mr Pătrașcu, a computer engineer, is known for being a passionate fan of opera and classical music. He has for years published articles and commentary about opera on his Facebook page and his blog, and in national and international magazines.

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.

In 2016 a scandal arose at the National Opera in Bucharest. Members of staff demonstrated, calling for the departure of other employees, who were of foreign origin or had worked abroad. This conflict was the subject of extensive media coverage, both nationally and internationally.

Mr Pătrașcu covered those events on his Facebook page and his blog over a three-month period. Some of the articles concerned individuals who were among the approximately 400 demonstrators and signatories of a petition calling for the departure of foreign employees, such as the soprano I.I. and the conductor T.S. In response to those publications, numerous comments about, among others, I.I. and T.S., were posted by third parties on the applicant's Facebook page and blog.

On 5 July 2016 I.I. and T.S. lodged a civil action against Mr Pătrașcu before the Bucharest County Court. They asked that the applicant be ordered to remove all the comments and references published on his Facebook page and his blog during the period April-June 2016, the content of which was denigrating, defaming or insulting towards them; to refrain in future from leaving such comments on his page; and, lastly, to pay them compensation for damage to honour, dignity and reputation.

The court delivered its judgment on 19 June 2017 and granted the action brought by I.I. and T.S. Noting that several hundred offensive comments had been posted in the period of April to June 2016, and that they concerned I.I.'s physical appearance, education, name, skills and professional conduct as well as T.S.'s education, skills and professional conduct, the court considered that these comments had been insulting and denigrating, and that they infringed the claimants' rights to their image, dignity and private life, as protected by Articles 71-73 of the Civil Code, and could not be justified by a public interest or general questions of public order. It followed that the impugned publications amounted to an "unlawful act" within the meaning of Article 1349 of the Civil Code, which governed civil liability in tort. The court then held that the applicant had not acted in good faith, noting that the posts in question had been intended not to provide credible information, but to conduct a genuine campaign of denigration against the claimants. It held that the fact that the applicant was not the author of the majority of the comments, – those having been posted by third parties on his site and on his blog – was "devoid of real importance" and that the "unlawful" act lay in the fact of hosting such publications.

Mr Pătrașcu was ordered to pay each of the two claimants the sum of 20,000 Romanian lei (RON – approximately equivalent to 4,385 euros (EUR) at the relevant time) in compensation for the non-pecuniary damage caused by the numerous publications posted on his site and his blog in the period from April to June 2016.

Mr Pătrașcu appealed against that judgment.

In a judgment delivered on 11 March 2019, the appellate court partly upheld the appeal. Noting, first, that the county court's analysis had not concerned the statements published on the applicant's blog, but solely those posted on his Facebook page, it restricted its assessment to the latter comments.

The appellate court identified 41 publications on the applicant's Facebook page that had been held by the lower court to exceed what was permitted by freedom of expression.

It considered that 19 of the 41 comments referred to by the lower court had not been unlawful and could not therefore be punished. At the same time, it held that 22 of the comments posted between April and June 2016, out of the 41 identified by the lower court, had exceeded the limits of freedom of expression and ought to be punished. With regard to four messages written by the applicant ("people who take low-grade jobs in parks", "army of nationalist monkeys", "four hundred chimpanzees who have learned sign language" and "xenophobes"), the appellate court considered that the applicant had infringed the rights and legitimate interests of others and that the conditions laid down in Article 1357 of the Civil Code on civil liability in tort were accordingly fulfilled.

With regard to comments posted by 11 third parties, the court held that the applicant's failure to act, although the claimants had drawn to his attention the offensive nature of these comments, had been unlawful.

The appellate court ordered Mr Pătrașcu to pay compensation, in lower amounts than those decided by the County Court (RON 8,000 (approximately EUR 1,754) to I.I., and RON 4,000 (approximately EUR 877) to T.S.). The appellate court set aside the requirement that the applicant refrain in future from publishing or leaving on his Facebook page and his blog denigrating and defamatory comments about the claimants, holding that such a negative and general requirement could not be imposed by a judicial decision.

The claimants and the applicant appealed on points of law to the Court of Cassation.

By a decision of 20 February 2020, the Court of Cassation dismissed those appeals.

Complaints, procedure and composition of the Court

The applicant complained that the finding against him on account of statements posted on his Facebook page, by himself and by third parties, had been contrary to Article 10 (freedom of expression).

Relying on Article 6 (right to a fair hearing), he also alleged that the proceedings against him had been unfair, in that the courts had failed to verify the factual basis of the offending comments.

The application was lodged with the European Court of Human Rights on 14 December 2020.

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

Lado **Chanturia** (Georgia), *President*,
Jolien **Schukking** (the Netherlands),
Faris **Vehabović** (Bosnia and Herzegovina),
Tim **Eicke** (the United Kingdom),
Lorraine **Schembri Orland** (Malta),
Ana Maria **Guerra Martins** (Portugal),
Sebastian **Rădulețu** (Romania),

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

Decision of the Court

Article 10

The finding against the applicant in respect of his own statements

The Court noted that it was common ground between the parties that the interference had been in accordance with the law.

The Court therefore examined whether the order that the applicant was to pay damages had been compatible with his right to freedom of expression. In particular, it examined whether the domestic courts had weighed up the rights at stake and the extent to which the relevant criteria had been applied.

The Court noted, first, that the County Court which had initially established the applicant's liability had not considered it necessary to identify the comments for which he had been criticised. The appellate court had held that four of the messages written by the applicant had been defamatory and had ruled that 22 published comments, including these for messages by the applicant, had

exceeded the limits of the freedom of expression. Lastly, the Court of Cassation had merely upheld the appellate court's decision.

The Court noted that in its judgment of 19 June 2017 the appellate court had held that the four messages for which the applicant was criticised contained unlawful expressions. In reaching this conclusion, it had approached the expressions in question jointly, without analysing each of them individually and in the light of the criteria developed in the Court's case-law. Thus, it had held, referring to the comments as a whole, regardless of whether they had been made by the applicant or by the third parties, that they lacked decency and amounted to "linguistic blunders", given the "zoological references" contained in them and the "discrepancy between the expressions [used] and the cultivated milieu of the opera and opera lovers".

The Court noted that the factual context of the case, which had indeed been summarised by the appellate court in its judgment, could have been used to assess, first, any potential contribution by each of the contested statements and terms (including those described as "zoological"), to a debate of public interest, secondly, the conduct of the injured parties, who had not informed the applicant of their dissatisfaction before taking legal action, and, lastly, the seriousness of the attack on [the latter's] reputation.

The Court concluded that the domestic authorities had not performed a genuine balancing exercise between the interests at stake, with a view to demonstrating that the civil judgment against the applicant for the statements posted by him on his Facebook page had corresponded to a "pressing social need" and had been proportionate to the legitimate aim pursued. It followed that there had been a violation of Article 10 of the Convention on account of judgment finding the applicant liable for his statements on his Facebook page.

The finding against the applicant in respect of comments made by third parties

The parties were in agreement that, like the finding in respect of the statements that the applicant had himself posted, the judgment against him in respect of comments posted by third parties had been based on Articles 1349 and 1357 of the Civil Code. The decisive question was whether the applicant knew, or ought to have known, that his failure to act had been such as to render him civilly liable.

The Court noted that the legal provisions relied on by the national courts with regard to civil liability, namely Articles 1349 and 1357 of the Civil Code, provided, respectively, that everyone was required to observe the rules of conduct imposed by the law or local custom and refrain from interfering, through actions or inaction, with the rights or legitimate interests of others, and that reparation had to be made in respect of damage caused to another by fault. Those provisions did not contain any indication of any obligation on the applicant, as the holder of a Facebook page, to monitor the messages posted on his page by third parties.

Accordingly, the Court was required to examine the manner in which the courts had clarified the domestic law in the present case.

Given the very detailed nature of the reasoning of each of the national courts, which went far beyond the letter of the legal provisions relied on and the natural meaning of the expressions used, the Court accepted that it had amounted to a creation of case-law that could not be regarded as having been well-established at the relevant time. However, having regard to the grounds put forward by the national courts, the Court was of the view that this case-law had not, at the relevant time, provided a precise and coherent legal basis to find the applicant civilly liable in the manner that this had been done.

The Court held that those provisions, as interpreted in the present case by the national courts, could not therefore have been considered sufficiently clear and detailed to guarantee adequate protection against interference by the authorities with the applicant's right to freedom of expression.

In those circumstances, the Court considered that the legal basis for the impugned interference did not define the scope and manner of the applicant's exercise of his right to freedom of expression, in opening his Facebook page to comments by third parties, with sufficient clarity to afford him the degree of protection to which he was entitled under the rule of law in a democratic society. In consequence, the Court concluded that the interference in question could not be regarded as having been prescribed by law within the meaning of paragraph 2 of Article 10 of the Convention.

It followed that there had also been a violation of Article 10 of the Convention in relation to the judgment against the applicant for the comments made by third parties on his Facebook page.

Article 6

Having regard to the facts of the case and its findings under Article 10, the Court considered that the main legal questions under the Convention had been determined. There was therefore no need to give a separate ruling on the admissibility and merits of the complaint under Article 6.

Just satisfaction (Article 41)

The Court held that Romania was to pay the applicant 2,853 euros (EUR) in respect of pecuniary damage, EUR 7,800 in respect of non-pecuniary damage and EUR 6,152.33 in respect of costs and expenses.

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.