European Court of Human Rights: Final Judgment in Case Cumpana and Mazare v. Romania

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Constantin Cumpana and Radu Mazare are both professional journalists who have been convicted in Romania of insult and defamation. In April 1994 they published an article in the *Telegraf* newspaper questioning the legality of a contract in which the Constan ta City Council had authorised a commercial company, Vinalex, to perform the service of towing away illegally parked vehicles. The article, which appeared under the headline "Former Deputy Mayor D.M. and serving judge R.M. responsible for series of offences in Vinalex scam", was accompanied by a cartoon showing the judge, Mrs R.M., on the former deputy mayor's arm, carrying a bag marked "Vinalex" containing banknotes. Mrs R.M., who had signed the contract with Vinalex on behalf of the city council while employed by the council as a legal expert, brought proceedings against Cumpana and Mazare. She submitted that the cartoon had led readers to believe that she had had intimate relations with the former deputy mayor, despite the fact that they were both married. In 1995 both journalists were convicted of insult and defamation and sentenced to seven months' imprisonment. They were also disqualified from exercising certain civil rights and prohibited from working as journalists for one year. In addition, they were ordered to pay Mrs R.M. a specified sum for non-pecuniary damage. In November 1996 the applicants were granted a presidential pardon releasing them from their custodial sentence. In a Chamber judgment of 10 June 2003 the Strasbourg Court held by five votes to two that there had been no violation of Article 10 of the Convention, emphasizing that the article and the cartoon were indeed damaging the authority, reputation and private life of judge R.M., overstepping the bounds of acceptable criticism. The Grand Chamber of the European Court in its judgment of 17 December 2004 has now unanimously come to the conclusion that there has been a violation of Article 10. As the allegations and insinuations in the article did not have a sufficient factual basis, the Court is of the opinion that the Romanian authorities were entitled to consider it necessary to restrict the exercise of the applicants' right to freedom of expression and that their conviction for insult and defamation had accordingly met a "pressing social need". However, the Court observes that the sanctions imposed on the applicants have been very severe and disproportionate. In regulating the exercise of freedom of expression in order to ensure adequate protection by law of individuals' reputations, States should avoid taking measures that might deter the media from fulfilling their role of alerting the public to apparent or suspected misuse of public power. The imposition of a prison sentence for a press offence is

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compatible with journalists' freedom of expression only in exceptional circumstances, notably where other fundamental rights had been seriously impaired, as, for example, in the case of hate speech or incitement to violence. In a classic case of defamation, such as the present case, imposing a prison sentence inevitably has a chilling effect. The order disqualifying the applicants from exercising certain civil rights is also to be considered particularly inappropriate and is not justified by the nature of the offences for which both journalists have been held criminally liable. The order prohibiting the applicants from working as journalists for one year is considered as a preventive measure of general scope contravening the principle that the press must be able to perform the role of public watchdog in a democratic society. The Court comes to the conclusion that, although the interference with both journalists' right to freedom of expression might have been justified as such, the criminal sanction and the accompanying prohibitions imposed on them by the Romanian courts have been manifestly disproportionate in their nature and severity to the legitimate aim pursued. The Court therefore holds that there has been a violation of Article 10 of the Convention.

Judgment by the European Court of Human Rights (Grand Chamber). Case of Cumpana and Mazare v. Romania, Application no. 33348/96 of 17 December 2004

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