European Court of Human Rights: Sipoş v. Romania

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In a remarkable judgment the European Court of Human Rights has come to the conclusion that Romania breached the right of privacy of a journalist when the Romanian courts acquitted the director and the coordinator of the press office of the Romanian Television Company (SRTV) in criminal defamation and insult proceedings.

At the heart of the case lies a press release published by the management of the Romanian State TV channel, after removing the applicant, Ms. Maria Sipoş, from a programme that she produced and presented on the National State channel România 1. Following her replacement as a presenter, Ms. Sipoş made a number of statements to the press alleging that SRTV was engaged in censorship. The broadcaster responded in turn by issuing a press release, explaining that Ms. Sipoş had been replaced due to audience numbers. The press release, quoted by six national newspapers, also made reference to Ms. Sipoş' emotional state due to family problems, it questioned her discernment, referred to allegedly antagonistic relations between her and her colleagues and suggested she was a victim of political manipulation. Ms. Sipoş claimed that SRTV's press release had infringed her right to her reputation, and she brought criminal proceedings before the Bucharest District Court against the channel's director and the coordinator of the SRTV's press office, accusing both of insults and defamation. The Bucharest County Court acknowledged that the press release contained defamatory assertions about Ms. Sipoş, but having regard to the fact that the defendants had not intended to insult or defame her and in view of their good faith, it dismissed Ms. Sipoş' claims.

Before the European Court of Human Rights Ms. Sipoş complained that the Romanian authorities had failed in their obligation, under Article 8 of the Convention, to protect her right to respect for her reputation and private life against the assertions contained in the press release issued by the SRTV. Referring to the positive obligations a State has in securing respect for private life, even in the sphere of relations between private individuals, the European Court clarified that it had to determine whether Romania had struck a fair balance between, on the one hand, the protection of Ms. Sipoş' right to her reputation and to respect for her private life, and on the other, the freedom of expression (Article 10) of those who had issued the impugned press release. For that purpose the Court examined the content of the press release and found, in particular, that the

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assertions presenting Ms. Sipoş as a victim of political manipulation were devoid of any proven factual basis, since there was no indication that she had acted under the influence of any particular vested interest. As regards the remarks about her emotional state, the Court noted that they were based on elements of her private life whose disclosure did not appear necessary. As to the assessment about Ms. Sipoş' discernment, it could not be regarded as providing an indispensable contribution to the position of the SRTV, as expressed through the press release, since it was based on elements of the applicant's private life known to the SRTV's management. The Court noted that, given the chilling effect of criminal sanctions, a civil action would have been more appropriate, but it concluded nonetheless that the statements had crossed the acceptable limits and that the Romanian courts had failed to strike a fair balance between protecting the right to reputation and freedom of expression. Thus, there had been a violation of Article 8, and Ms. Sipoş was awarded EUR 3,000 in damages.

One dissenting judge, Judge Myer, drew attention to a particular issue in this case. Although the Third Chamber of the Court recognized that criminal sanctions have a chilling effect on speech and that it would have been more appropriate to initiate the civil proceedings available to the applicant, nevertheless the majority of the European Court found that the criminal sanction of the director and press officer of the SRTV was necessary in a democratic society in order to protect Ms. Sipoş' right to her reputation and private life, an approach that contrasts with Resolution 1577(2007) of the Parliamentary Assembly of the Council of Europe urging the decriminalization of defamation and insult.

Arrêt de la Cour européenne des droits de l'homme rendu le 3 mai 2011 (troisième section), affaire Sipoş c. Roumanie, requête n° 26125/04

Judgment by the European Court of Human Rights (Third Section), case of Sipoş v Romania, No. 26125/04 of 3 May 2011

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