European Court of Human Rights: Ghiulfer Predescu v. Romania

IRIS 2017-8:1/2

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The European Court of Human Rights (ECtHR), in a case against Romania, has confirmed the strong protection of the right to freedom of expression to be guaranteed to statements by journalists made within the context of a lively debate in a television show on a matter of public interest.

Ms Predescu, an investigative journalist, complained of a violation of her right to freedom of expression. She appeared on a television show on a national television channel together with the Mayor of Constanţa, R.M., to discuss certain violent incidents that had taken place in Mamaia, a seaside resort on the outskirts of Constanţa. During the broadcast, Ms Predescu had made allegations that the Mayor was personally connected to a vendetta between violent rival clans operating in the area. The Mayor had lodged a civil complaint against her for defamation, essentially arguing that Ms Predescu's allegations about specific facts had not been previously verified, nor ever proved to be true. He had further argued that by associating his name and image with that of criminal groups or clans, the journalist had seriously harmed his reputation as a public person and a locally elected official. After the case went to appeal, the Mayor's claim was ultimately successful and Ms Predescu was ordered to pay RON 50,000 (approximately EUR 10,000) in damages, plus costs, and to publish at her own expense the judgment against her in two newspapers.

The question before the ECtHR was whether the domestic authorities had struck a fair balance between the protection of freedom of expression, as enshrined in Article 10, and the protection of the reputation of those against whom allegations are made, a right which, as an aspect of private life, is protected by Article 8 of the European Convention on Human Rights (ECHR).

Firstly, the ECtHR reiterated that there is little scope under Article 10 § 2 of the ECHR for restrictions on political speech or on debate on matters of public interest, and that the limits of acceptable criticism are therefore wider with regard to a civil servant or a politician acting in his public capacity than in relation to a private individual. Journalistic freedom also covers possible recourse to a degree of exaggeration or even provocation, while the safeguard afforded by Article 10 of the ECHR to journalists in relation to the reporting of issues of general interest is subject to the proviso that they are acting in good faith in order to provide

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accurate and reliable information, in accordance with the ethics of journalism.

Focusing on the concrete elements of the case, the ECtHR observed that the impugned television show had been an attempt to debate publicly the question of the possible implication of R.M. - the Mayor of the city of Constanţa and a local businessman - in violent incidents in which a large group of armed persons had wrecked several hotels in Mamaia, including a hotel belonging to a company in which R.M. was a shareholder. It stressed that the role of the press certainly entails a duty to alert the public when it has learned of presumed misappropriation on the part of local elected representatives and public officials. The ECtHR also noted that the format of the television show was designed to encourage an exchange of views or even an argument, in such a way that the opinions expressed would counterbalance each other and the debate hold the viewers' attention. The show had been broadcast live on television, so Ms Predescu had had only a limited possibility to reformulate, refine or retract any statements before they were made public. Furthermore, the statements expressed by Ms Predescu had had a sufficient factual basis, as they had been based on information which was already known to the general public - namely articles and journalistic investigative material that had been previously published about R.M.

In contrast with the judgment by the domestic appeal court that found Ms Predescu liable for defamation, the ECtHR was of the opinion that there was nothing in the case to suggest that the journalist's allegations had been made otherwise than in good faith and in pursuit of the legitimate aim of debating a matter of public interest. Finally the ECtHR noted that the amount that Ms Predescu had been ordered to pay had been extremely high and was capable of having a "chilling", dissuasive effect on her freedom of expression. The sanction imposed on the journalist had also lacked appropriate justification and the standards applied by the domestic courts had failed to ensure a fair balance between the relevant rights and related interests. Accordingly, the interference complained of was not "necessary in a democratic society" within the meaning of Article 10 § 2 of the ECHR; therefore the ECtHR found that there has been a violation of Article 10 ECHR.

Judgment by the European Court of Human Rights, Fourth Section, case of Ghiulfer Predescu v. Romania, Application no. 29751/09 of 27 June 2017

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