European Court of Human Rights: Ghimpu and Others v. the Republic of Moldova

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Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy

On 1 February 2022, the European Court of Human Rights (ECtHR) delivered a judgment in a case concerning the failure to protect two politicians' dignity and reputation from attacks in a documentary film aired by several TV channels, and which was also available on the Internet. The ECtHR found that by dismissing the complaints of the two politicians, Article 8 of the European Convention on Human Rights (ECHR) had been violated, in particular because the domestic courts had not sufficiently considered the (lack of) factual basis of some of the serious accusations against them.

In this case, two politicians, Mr Mihai Ghimpu and Mr Dorin Chirtoacă, as well as the Liberal Party (the politicians were president and vice-president of that party), claimed that their right to dignity and reputation under Article 8 ECHR had been violated by a documentary film titled "Moldova under attack".

The film analysed the events that had followed the general election held on 5 April 2009, narrowly won by the ruling Communist Party of Moldova. The days that followed saw growing discontent with the results of the election and a feeling that electoral fraud had taken place. On 7 April 2009 a demonstration which had begun peacefully ended with violent riots and in the storming of the Presidential palace and the Parliament building. Those events had been the subject of the documentary film, which started with the phrase "How it all happened". Mr. Ghimpu, Mr. Chirtoacă, and the Liberal Party lodged court actions against the Moldovan president, the General Prosecutor, the head of the security service and several TV-stations, claiming that they had defamed them and affected their honour, dignity and professional reputation by making a series of statements in the film without any factual basis. They complained that that throughout the film they had been accused of complicity in having committed particularly serious offences such as mass disorder and an attempted *coup d'état*.

The District Court, and later the Chișinău Court of Appeal, dismissed their actions. The applicants' appeal before the Supreme Court of Justice was declared inadmissible. The Moldovan courts found that the film "Moldova under attack" had been based on the events of April 2009, which were notorious facts that did not need to be proved. References were made to the ECtHR's case-law on Article 10 ECHR and the right to freedom of expression and information. It was emphasised

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that the information in the film dealt with a matter of public interest and contained opinions, interviews and conclusions made by officials, politicians and public officers, as well as value-judgments and demonstrated factual statements. Furthermore, it was recalled that public persons could be subject to criticism of their actions by the media and should show increased tolerance towards scrutiny by the public at large. It was also held that sanctioning the media or journalists for assisting in the dissemination of statements made by others in an interview would seriously hamper the media's contribution to discussing issues of public interest. Before the Strasbourg Court the two politicians and the Liberal Party complained that the domestic authorities had not fulfilled their positive obligation to protect their honour and reputation, in breach of Article 8 ECHR.

While the ECtHR left the issue open as to whether a political party could claim the protection of its reputation under Article 8 ECHR, it found that in this case the impugned statement related to the Liberal Party had only limited negative effects and had not crossed the threshold of seriousness for an issue to be raised under Article 8 ECHR. Accordingly, the claim of the Liberal Party was rejected as manifestly ill-founded.

Next the ECtHR reiterated that Article 8 encompassed positive obligations on the authorities to protect individuals' rights to privacy and reputation. These obligations might involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. Where a complaint was made that rights protected under Article 8 had been breached as a consequence of the exercise by others of their right to freedom of expression, due regard had to be had, when applying Article 8, to the requirements of Article 10 ECHR. In such cases, the ECtHR needed to balance the right to respect for private life against the public interest in protecting freedom of expression, bearing in mind that no hierarchical relationship existed between the rights guaranteed by the two Articles. The ECtHR referred to the relevant principles developed in its earlier case-law, and the criteria in the context of balancing the competing rights at issue, including the contribution to a debate of public interest, the degree of notoriety of the person affected, the subject of the news report, the prior conduct of the person concerned, and the content, form and consequences of the publication. Where the balancing exercise between the rights protected by Articles 8 and 10 ECHR had been undertaken by the national authorities in conformity with those criteria, the ECtHR required strong reasons to substitute its view for that of the domestic courts.

The ECtHR noted that the documentary film about the events of April 2009 had contributed to a matter of public interest and it had referred to the fact that the applicants were politicians. The film had been aired in the electoral context, and the applicants had indeed been involved in the events and had thus provoked scrutiny of their actions. However, some of the statements made in the film accused Mr. Ghimpu and Mr. Chirtoacă of specific facts or even serious crimes,

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such as having instigated mass disorder and a *coup d'état*, and of being "definitely" aware of a plan aimed at overthrowing the Government by force, and of organising of armed groups. The ECtHR considered that, notwithstanding the political and electoral context in which the film had been aired and the wider limits of acceptable criticism to which politicians knowingly subjected themselves, such serious accusations could not be left without specific examination by the domestic courts. The ECtHR recalled that persons, even disputed public persons that had instigated a heated debate due to their behaviour and public comments, did not have to tolerate being publicly accused of violent criminal acts without such statements being supported by facts. The ECtHR was of the opinion that the domestic courts had not examined in detail any of the statements identified by Mr. Ghimpu and Mr. Chirtoacă as affecting their reputation. By making broad conclusions in respect of the entirety of the statements made, the courts had effectively treated on an equal footing all those statements, despite the rather diverse nature and degree of accusations made and of harm allegedly caused. In that connection, the domestic courts had failed to explain which of those expressions were considered as being statements of fact or value-judgments, with the relevant difference in the level of proof that needed to be established. The ECtHR further recalled that a general requirement for journalists systematically and formally to distance themselves from the content of a quotation that might insult or provoke others or damage their reputation was not reconcilable with the press's role of providing information on current events, opinions and ideas. However, in the present case, the journalist who authored the film had not only reproduced what others had stated in interviews but had also added his own comments which went further than what those interviewed had stated. The documentary was very clear that Mr. Ghimpu and Mr. Chirtoacă had been responsible for the violence and devastation that had happened in April 2009. The ECtHR found that the balancing of the two competing rights which the domestic courts had carried out in a rather general manner had not remedied the absence of any analysis in respect of specific statements in the film, notably concerning the most serious accusations of crimes allegedly committed by the applicants. Therefore the ECtHR concluded that there had been a violation of Article 8 ECHR.

Judgment by the European Court of Human Rights, Second Section (sitting as a Committee), in the case of Ghimpu and Others v. the Republic of Moldova, Application no. 24791/14, 1 February 2022

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