

**DEFAMATION: THE PHENOMENON OF JOURNALISTS
AS DEFENDANTS AND PLAINTIFFS**

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Any government, at all times, will try to control the mass media. If it cannot succeed, it will seek ways to influence the press. Sometimes legal ways, sometimes not – depends on the regime. In democratic countries (and countries in transition), officials will find ways to put pressure on the media through legislation.

From the authorities' point of view, this is the most convenient path, as any law leaves enough room for interpretation.

Most media institutions in Moldova are quite small; their value is hardly above 1 million lei (80 000 USD). This fact, however, does not bother politicians and judges. The latter seem not to be bothered by the notion of “value judgment” either.

Why are these important?

“Timpul” newspaper is one of the most popular Moldovan weeklies. Although it is considered to be biased, often supporting the opposition against the ruling party, readers and journalists recognize its reporters' professionalism, especially when it comes to investigation.

One such article, entitled “Luxul in tara saraciei” (Luxury in a country of poverty), had deep reverberations. Printed in January, the story tells how the Government bought 42 luxurious cars (Skoda Octavia collection) at a total cost of 1 million Euro. The cars were intended for heads of county executive bodies. According to Timpul newspaper, the

vehicles were bought from DAAC-Hermes Company (one of the most important automobile importers in Moldova) without any tender. The same company had provided other luxurious cars several times before. The author quotes rumors, according to which the “fruitful” relationship between the Government and DAAC-Hermes was established after “someone gave somebody a 500 000 USD bribe”.

Apparently harmless, this article might cost Timpul 1.3 million lei (100 000 USD). DAAC-Hermes took the newspaper to court, accusing it of defamation and demanding compensation of moral damages of 2 000 000 USD. The first instance verdict found Timpul guilty, stating that it violated Article 16 of the Civil Code (see description below). However, the judge reduced the compensation to be paid from 2 000 000 USD to 100 000 USD. The Appeals Court, which recently examined the case, upheld the first instance decision.

The law

Civil Code Article 16 “Protection of honor, dignity and professional reputation”

...

(2) Any person has the right to demand correction of information that is damaging to his or her honor, dignity or professional reputation, if the one who circulated the information is not capable of proving that it corresponds to reality.

...

(8) Any person, about whom information was circulated that is damaging to his or her honor, dignity or professional reputation, is entitled to demand, beside correction, compensation of moral and material damage.

...”

Moldovan analysts have noticed that the one who should carry the burden of proof in a case concerning Article 16 is the accused side. This way, despite the presumption of innocence, the side taken to court is, in fact, considered guilty until he or she has proven his or her innocence.

Another interesting fact is that there is nothing in the Civil Code about the amount of compensation a person can demand or the court decide.

This is why most media NGOs have criticized the Civil Code. As there is no ceiling for compensations, suing newspapers could become a profitable business.

No matter what case, there is almost no hope that the Court would find innocent the media institutions accused of defamation. This is why.

“Value judgment”

The European Court on Human Rights stated many times that national courts should pay very much attention when examining trials against journalists to the difference between “facts” and “value judgments”. “Facts” are information or statements that can be proven, while “value judgments” represent deductions made by journalists (especially editors), which cannot be proven in any way. Therefore, authors should not be asked to prove their “value judgments” or, moreover, be punished for them.

For instance, a journalist is sued for the phrase “I consider this candidate unsuitable for the post of mayor because, managing a company until now, he has done nothing important”. Respecting the ECHR recommendation, the court should ask the journalist to prove only that this man had managed a company. “Unsuitable candidate” is a value judgment and it is impossible to prove whether it corresponds to reality or not.

Moldovan courts accepted the ECHR recommendation through a special decision of the Supreme Court. “The existence of facts can be proven, while the truthfulness of value judgments cannot. The demand to prove the truthfulness of a value judgment is impossible to realize and represents a violation of freedom of expression”, reads the Supreme Court recommendation to judges.

However, this still does not work. The European Court on Human Rights is examining the acceptance of at least seven cases initiated by Moldovan journalists against Moldova. Commenting on the acceptance of one of them, the Court stated that domestic instances did not take into account the difference between “facts” and “value judgments”.

Other

The most frequent visitor of courts among newspapers is Flux weekly. It belongs to an opposition party (Christian Democratic Peoples Party) and is known for its scandalous articles. Most of them deal with representatives of the ruling party, who often consider themselves offended by Flux journalists. The newspaper lost a lot of trials, with the total value of compensation to be paid amounting to several hundred thousand lei. According to the newspaper, it has not gone bankrupt yet just because all decisions handed down by domestic courts are contested at the European Court of Human Rights.

Another loud case is the one of Moldvaskie Vedomosti – a Russian-language opposition newspaper. The paper was recently taken to court by the state enterprise “Moldovan Railways”. The company demands compensation for moral damages of several million lei – a figure that exceeds the value of the whole newspaper and all its assets. The Court has not taken a decision yet.

The phenomenon

If the essence of each trial against journalists is ignored, one could see nothing in the fact that newspapers are obliged to pay exorbitant compensation. Yet, there are other aspects but legal. Moldovan lawyers believe that the absence of any compensation limit for moral damages in the Civil Code is a way to intimidate the media (sustained by trials against journalists), and therefore a brutal limitation of freedom of expression.

Statistically speaking, there are almost no trials won by journalists. Neither as defendants nor as plaintiffs.

Another kind of trials

During the past years, more and more journalists have been taking different state institutions to court. The main charge is violation of access to information.

Glasul Natiunii newspaper complains that the Parliament refused to make public its annual budget and how it spent public money. According to the newspaper, the legislative body did not respond in any way to its written request.

Timpul newspaper took the Ministry of Education to court because the minister (now ex-minister), Gheorghe Sima, had refused to provide his Curriculum Vitae. Although the trial started more than a year ago, there has not been any judiciary decision yet.

Moldavskie Vedomosty is still trying to make the Presidency give it an accreditation. The newspaper lost a trial in the first instance and the Appeals Court has been delaying the case for several months.

There are other cases like these, but again, statistically speaking, there are no trials won by journalists.

And this is the phenomenon. The authorities (no matter which of the first three, or maybe all of them together) feel like Zeus, using power to threaten the common people (in our case - journalists). Although there is no direct pressure on the media and everybody respects the law, the “watchdog” barks more seldom and almost never bites.

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