

# Boldea v. Romania

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Judgment: Strasbourg, 15th May 2007

## INTRODUCTION

Marian Boldea, professor at the University of Timișoara, filed an action before the European Court of Human Rights alleging a violation of his right of freedom of expression by the Romanian Government.

## THE FACTS

On 9th March 2001, Marian Boldea took part along with other professors to a meeting organised by the dean of his faculty in order to assess whether two of their colleagues' publications were the fruit of plagiarism. During the discussion, the applicant shared his point of view according to which the publications were actually plagiarized. Although the meeting did not reach the same conclusion, it was decided that the two professors deserved a verbal remark.

On 9th May 2001, each of the professors accused of plagiarism started penal proceedings against Marian Boldea. They accused him of defamation.

The court of first instance joined the two proceedings, and on the following 27th November sentenced Mr Boldea to pay an administrative fine of 500 000 ROL (20.00 EUR) and the judicial expenses, which amounted to 2 120 000 ROL (80 EUR).

Marian Boldea appealed against the decision, but his recourse was rejected by the higher court.

## THE LAW

Marian Boldea brought the case before the European Court alleging violations of his right to fair trial and freedom of expression, granted under articles 6 and 10 respectively of the European Convention on Human Rights.

The applicant stated that the court convicted him on the basis of no material evidence. In fact, he pointed out that according to the Romanian law a person should make the allegedly offensive statements in a manner which shows his intention to hinder somebody else's dignity, in order to be found guilty of the crime. He further declared that the requisite of social risk requested for entailing the crime was not satisfied in the present case. His statements were made during a professional meeting with few other colleagues.

In dealing with the present case, the Court considered the respect of the right to fair trial (Article 6) was connected with the applicant's right of freedom of expression (Article 10). With regard to Article 6, the Court recalled its previous case-law according to which national courts and tribunals are under a duty to give detailed answers to all the matters brought before them.

In the present case, the Court found that the Romanian judicial authorities do not take into account the evidence brought to their attention by the applicant supporting the truthfulness of his statements. As a consequence, the equality of arms between the parties has not been granted.

As to the respect of Article 10, the Romanian Government recognized that the proceedings against Mr Boldea amounted to an interference with his right to freedom of expression. However, it further contended that the interference was provided by law, in pursuance of a legitimate aim, and that it was necessary in a democratic society within the meaning of Article 10. Particularly, it stressed that the measure was feeble.

The Court firstly reminded its constant jurisprudence on the subject matter. This regards freedom of expression as one of the fundamental features of a democratic society, which grants its development and evolution. Moreover, the same guarantees apply not only to information and ideas deemed inoffensive, indifferent, or favourable accepted; but also to those which shock, offend, or disturb.

Furthermore, according to its previous case-law the word 'necessary' used under paragraph 2, refers to a social impellent need. On the one hand, Member States enjoy a certain margin of appreciation in judging the necessity of the aforementioned need; on the other hand, it is within the powers of the Court to assess whether the manner domestic law provisions give effect to the Convention's guarantees and national courts implement them is compatible with the Convention itself.

Therefore, the Court exercises its review considering the matter as a whole, and taking into account the reasons given by the national authorities to justify their interference. The Court is also called to consider whether these reasons are pertinent and sufficient; and whether the action undertaken is based on acceptable knowledge of the basic facts. Moreover, nature and heaviness of the sanctions are elements which deserved to be taken into account.

With regard to the current case, the Court recognized that the interference was based on the law, and that it pursued a legitimate aim, namely the protection of the rights of others. However, as to the necessity of the interference, that Court pointed out that the applicant's statements were based on a principle of proof, and he made them in the context of a meeting with his colleagues, during which he was asked to express his professional opinion. All these elements together showed that the applicant acted in good faith.

In conclusion, the fact that equality of arms between parties were not granted during the proceedings that gave rise to the present case, it entailed both a violation of Article 6 and of Article 10 of the ECHR. Therefore, the condemnation of Mr Boldea does not answer to an impellent social need.