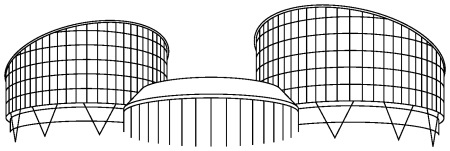

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF RADU v. THE REPUBLIC OF MOLDOVA

(Application no. 50073/07)

JUDGMENT

STRASBOURG

15 April 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Radu v. the Republic of Moldova,

The European Court of Human Rights (Third Section), sitting as a Chamber composed of:

Josep Casadevall, *President,*
Alvina Gyulumyan,
Ján Šikuta,
Dragoljub Popović,
Luis López Guerra,
Johannes Silvis,
Valeriu Griţco, *judges,*
and Marialena Tsirli, *Deputy Section Registrar,*

Having deliberated in private on 25 March 2014,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 50073/07) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Moldovan national, Ms Liliana Radu ("the applicant"), on 27 October 2007.

2. The applicant was represented by Mr V. Iordachi, a lawyer practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr L. Apostol.

3. The applicant alleged, in particular, that the State had failed to fulfil its obligation to secure respect for her private life as a result of the disclosure by a State-owned hospital of information concerning her medical condition without her consent.

4. On 10 January 2011 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1969 and lives in Chişinău. At the time of the events she was thirty-four years old and married. She was a lecturer at the Police Academy.

6. It appears from the case-file materials that at the time of the events the relationship between the applicant and her superiors at the Police Academy

were tense and that there had been a set of employment-related civil proceedings between them.

7. On an unspecified date in 2003 the applicant underwent artificial insemination at a fertility clinic and became pregnant with twins. On 3 August 2003 she was seen by a doctor from the No. 7 Centre for Family Doctors ("the CFD)", an institution belonging to the Ministry of Health, who ordered her hospitalisation on account of an increased risk of miscarriage. The applicant was hospitalised between 4 and 20 August 2003 and was later closely supervised by a doctor from the CFD. It would appear that the applicant's absence from work during her hospitalisation was certified by a sick note referring to her pregnancy and an increased risk of miscarriage as the reasons for her absence.

8. On 5 November 2003 the President of the Police Academy requested information from the CFD in connection with the applicant's medical leave in August 2003. In particular, he asked who had ordered her hospitalisation, when she had been hospitalised, what had been the initial and final diagnoses, and what treatment she had received.

9. In a letter dated 7 November 2003 the CFD informed the applicant's employer that the applicant had been hospitalised between 4 and 20 August 2003 on account of an increased risk of miscarriage. The letter also stated that this was the applicant's first pregnancy and that she was carrying twins; that the pregnancy had resulted from artificial insemination and that the applicant had hepatitis B. The letter further mentioned that the applicant had obstetrical complications and that she had a negative blood type. A copy of the applicant's medical file from the hospital where she had been hospitalised, containing a detailed description of all the medical procedures she had undergone and of all the medical analyses, was annexed to the letter.

10. On an unspecified date the applicant suffered a miscarriage. According to the medical report, one of the factors which had led to the miscarriage was the stress to which she had been subjected.

11. In January 2004 the applicant initiated civil proceedings against the CFD and the Police Academy and claimed compensation for a breach of her right to private life. She argued, *inter alia*, that her employer had had sufficient information as to the reasons for her medical leave and had not been entitled to seek further details of such a private nature. Moreover, after the information had been obtained it had not been kept confidential but had been disclosed to everybody at the Police Academy. According to the applicant, the disclosure had caused her serious stress and anxiety. Everyone at her workplace, including her students, had learned details about her private life, and different rumours had begun to circulate. Only two days after the disclosure, she had suffered a miscarriage due to the stress to which she had been subjected. Her husband, who had also been an employee of the

Police Academy, had had to resign from his post and accept a less well-paid job.

12. On 6 July 2004 the Centru District Court dismissed the applicant's action on the grounds, *inter alia*, that the disclosure of information by the fertility clinic had been lawful in view of the ongoing investigation being conducted by the applicant's employer. As to the contention that the employer had disclosed the information to other employees, the court found it to be ill-founded. The applicant appealed.

13. On 2 November 2006 the Chişinău Court of Appeal upheld the applicant's appeal and quashed the above judgment. The court found the applicant's action well-founded and ordered the CFD to pay her 20,000 Moldovan lei (MDL) (EUR 1,124) and the Police Academy to pay her MDL 15,000 (EUR 843). The Court of Appeal found that the CFD had disclosed to the applicant's employer more information than had actually been requested.

14. On 10 May 2007 the Supreme Court of Justice upheld the appeal on points of law lodged by the CFD and dismissed the applicant's claims against it. The Supreme Court held that the CFD had acted in accordance with the law when providing the applicant's employer with medical information about her. The CFD had been under an obligation to provide the Police Academy with such information in the context of the latter's legal relationship with its employee. According to the Supreme Court, at the time of the events there were relations of an employment-law and of a criminal-law nature between the Police Academy and the applicant. The Supreme Court considered that the provisions of the laws on reproductive health and on the rights and obligations of the patient were not pertinent to the case.

II. RELEVANT DOMESTIC LAW AND NON-CONVENTION MATERIAL

15. The Council of Europe's Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine, also known as the Convention on Human Rights and Biomedicine, which entered into force in respect of the Republic of Moldova on 1 March 2003, provides, in so far as relevant:

"Article 10 – Private life and right to information

1. Everyone has the right to respect for private life in relation to information about his or her health."

16. The relevant provision of Law No. 185 on reproductive health and family planning provides as follows:

"**Section 12. The right to confidentiality in realizing one's rights to reproduction**

(1) Every person is entitled to respect for the confidentiality of information concerning his or her application to fertility institutions, the treatment received therein and the state of his or her reproductive health."

17. The relevant provisions of Law No. 263 on the rights and obligations of patients stipulate as follows:

"Section 12. The patient's right to respect for the privacy of confidential medical information

(1) All data concerning the identity and the condition of the patient, results of investigations, diagnoses, prognoses or treatment and data of a personal nature shall be confidential and shall be protected even after the patient's death.

(2) The confidentiality of information concerning the soliciting of medical care, examinations and treatment, as well as any other information which is medically confidential, shall be ensured by the treating doctor and the professionals involved in the providing of the medical care or biomedical research ... as well as by any other persons having learned such information by virtue of their professional duties.

(3) Information which is considered to be confidential can be disclosed only with the patient's or his legal representative's explicit consent and under conditions approved by the patient ...

(4) Disclosure of confidential information without the patient's ... consent shall be possible in the following situations:

a) in order to involve in the process of treatment other professionals in the field, including in the case of the urgent examination or treatment of a person incapable of expressing his or her consent because of his or her state of health, but only to the extent necessary for the taking an informed decision;

b) in order to inform the State epidemiology authorities in the case of a real risk of the spreading of contagious diseases, poisoning or mass contamination;

c) at the request (with reasons) of criminal investigation bodies or courts of law in connection with the carrying out of a criminal investigation or criminal proceedings, in accordance with the law;

c1) at the request of the Ombudsman or of members of the consultative body of the Centre for Human Rights, in order to ensure protection against torture or other cruel or inhuman treatment;

d) for the purpose of informing the parents or the legal representative of persons under eighteen years of age when providing such persons with medical care;

e) when there is reason to believe that the harm to a person's health has resulted from criminal or illegal activities, and information must be provided to the competent law bodies.

(5) Any kind of involvement in the private or family life of a patient without his or her consent shall be forbidden.

(6) Persons having obtained confidential information in the exercise of their functions, together with paramedical staff and pharmacists, are responsible under the law for any disclosure of medically confidential information...

(7) Biological products, including organs and tissue, from which identifiable data can be extracted shall also be protected."

18. The relevant provisions of Law No. 264 on the medical profession stipulate as follows:

"Section 13. Professional confidentiality

(1) Every doctor shall be under an obligation to preserve professional confidentiality.

(2) Information concerning the soliciting of medical care or the state of health, diagnosis or other information obtained by a doctor as a result of examining or treating a patient is of a private nature, constitutes medically confidential information and cannot be disclosed.

(3) With the patient's consent ... it shall be possible to disclose confidential information to other persons in the interests of examining and treating the patient, of carrying on scientific research, for academic purposes and for other purposes.

(4) Disclosure of information which is professionally confidential to other persons without the patient's ... consent shall be possible in the following circumstances:

a) for the purpose of examining or treating a patient who on account of his/her health condition, is unable to express his or her wish;

b) in case of a real risk of the spreading of contagious diseases, poisoning or mass contamination;

c) at the request of criminal investigation bodies or courts of law in connection with the carrying out of a criminal investigation or criminal proceedings, in accordance with the law;

c1) at the request of the Ombudsman or of members of the consultative body of the Centre for Human Rights, in order to ensure protection against torture or other cruel or inhuman treatment;

d) in the case of providing medical care to a person who is not responsible under the law and is incapable of informing his or her parents or legal representatives;

e) when there is reason to believe that the harm to a person's health has resulted from criminal or illegal activities and information must be provided to the competent law bodies.

(5) Persons having obtained information which amounts to professionally confidential information are responsible under the law for disclosure of such information.

(6) Professional confidentiality cannot be breached even after the termination of the treatment or the death of the patient."

19. The relevant provision of Law No. 411 on health care stipulates as follows:

"**Section 14. Professional duties and responsibiltiy for their breach**

1. Doctors, other medical personnel and pharmacists are under a duty to maintain the confidentiality of information concerning diseases, or the private and family life of patients, which they come to learn in the exercise of their duties, except for cases

where there is a risk of the propagation of contagious diseases and at the reasoned request of the criminal investigation authorities or courts of law."

20. The relevant provisions of Law No. 982 on access to information, as in force at the material time, provided as follows:

"Section 8. Access to information of a personal nature

(1) Information of a personal nature is considered to be information with restricted access and consists of data concerning an identified or identifiable person the disclosure of which would constitute a breach of his or her [right to respect for] private and family life.

...

(7) Providers of information may disclose information of a personal nature solicited in accordance with the present law only in the following circumstances:

a) the person whom the information concerns agrees to its disclosure;

b) the whole of the solicited information has previously been in the public domain ...

(8) If the person whom the information of a personal nature concerns does not consent to its disclosure, access to such information can be authorised by a court after it has found that the disclosure at issue is in the public interest, that is, that disclosure would pursue the aim of protecting public health, security or the environment."

21. The relevant provision of the Criminal Code reads as follows:

"Article 177. Breach of a person's right to respect for private life

(1) Unlawful gathering or disclosure of confidential information protected by law concerning a person's private life, without that person's consent, shall be punished by a fine of up to MDL 6,000 or by community service work of 180 to 240 hours."

22. The relevant provision of the Employment Code reads as follows:

"Article 91. General rules concerning the treatment by the employers of employees' personal data and guarantees concerning its protection

With a view to ensuring the protection of human rights and freedoms, when processing the personal data of their employees, employers and their representatives are obliged to observe the following conditions:

...

d) the employer has no right to obtain or store data concerning the employer's political and religious views or his private life. In the cases provided for by law, the employer can request and store data concerning an employee's private life only after obtaining that employee's consent;

..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 AND 8 OF THE CONVENTION

23. The applicant complained that the disclosure of information of a medical nature by the CFD to her employer constituted a violation of her right to respect for private life as provided in Article 8 of the Convention. She also alleged that the proceedings in which her action against the CFD had been examined had been unfair because the courts had adopted arbitrary decisions and failed to give reasons for them. Articles 6 and 8 of the Convention, on which the applicant relied, read as follows:

Article 6

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

24. The Court notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

25. The applicant asserted that there had been an interference with her rights guaranteed by Article 8 and that the interference had no legal basis in domestic law. Moreover, the interference had not been "necessary in a democratic society" because the applicant's employer had not been conducting even an internal investigation, let alone a criminal one. The information disclosed by the CFD to the applicant's employer was of a very personal nature and the employer already had sufficient knowledge

concerning the applicant's state of health from the sick leave certificates she had submitted.

26. The Government agreed that there had been an interference with the applicant's right to respect for her private life. However, they argued that the interference was provided for by law, namely by Article 8 of Law No. 982 on access to information (see paragraph 20 above), had pursued a legitimate aim, and had been necessary in a democratic society. The Government stressed that, in their view, the present case very much resembled the case of *M.S. v. Sweden* (27 August 1997, *Reports of Judgments and Decisions* 1997-IV) and asked the Court to adopt a similar approach to it.

2. The Court's assessment

27. It is undisputed between the parties, and the Court agrees, that the disclosure by the CFD to the applicant's employer of such sensitive details about the applicant's pregnancy, her state of health and the treatment received constituted an interference with her right to private life. An interference will contravene Article 8 unless it is "in accordance with the law", pursues one or more of the legitimate aims referred to in paragraph 2 of that Article, and furthermore is "necessary in a democratic society" in order to achieve the aim (see the following judgments: *Campbell v. the United Kingdom*, 25 March 1992, § 34, Series A no. 233; *Calogero Diana v. Italy*, 15 November 1996, § 28, *Reports* 1996-V; and *Petra v. Romania*, 23 September 1998, § 36, *Reports* 1998-VII).

28. The expression "in accordance with the law" not only necessitates compliance with domestic law, but also relates to the quality of that law (see *Halford v. the United Kingdom*, 25 June 1997, § 49, *Reports* 1997-III). The Court reiterates that domestic law must indicate with reasonable clarity the scope and manner of exercise of the relevant discretion conferred on the public authorities so as to ensure to individuals the minimum degree of protection to which citizens are entitled under the rule of law in a democratic society (see *Domenichini v. Italy*, 15 November 1996, § 33, *Reports* 1996-V; *Avilkina and Others v. Russia,* no. 1585/09, § 35, 6 June 2013).

29. In their submissions, the Government referred to section 8 of Law 982 on access to information (see paragraph 20 above) as being, in their view, the legal basis for the interference. The Court notes, firstly, that it was only the Government and not the Supreme Court of Justice that referred to such legal basis for the interference. In fact, the Supreme Court merely stated that the CFD was entitled to disclose the information to the applicant's employer, without citing any legal basis for such disclosure.

30. Secondly, even assuming that the Supreme Court had intended to rely on that provision, the Court notes that under section 8 of that Law a

doctor would not be entitled to disclose information of a personal nature even to the applicant's employer without her consent.

31. In fact, the Court notes that all the relevant domestic and international law cited above expressly prohibits disclosure of such information to the point that it even constitutes a criminal offence. There are exceptions to the rule of nondisclosure; however, none of them seems to be applicable to the applicant's situation. Indeed, the Government did not show that any such exception was applicable. It follows that the interference complained of was not "in accordance with the law" within the meaning of Article 8. Accordingly, there is no need to examine whether the interference pursued a legitimate aim or was "necessary in a democratic society".

32. The Court therefore finds that there has been a violation of Article 8 of the Convention in respect of the applicant's right to respect for her private life. In view of this conclusion it also holds that no separate issue arises under Article 6 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

33. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

34. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage.

35. The Government disputed the amount claimed by the applicant and reiterated their position that there had been no violation in the present case. Alternatively, they considered that a finding of a violation would in itself constitute sufficient just satisfaction.

36. Having regard to the violation found above, the Court considers that an award of just satisfaction for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards the applicant EUR 4,500.

B. Costs and expenses

37. The applicant also claimed EUR 1,440 for the costs and expenses incurred before the Court. The applicant submitted relevant documents in support of her claims.

38. The Government objected and argued that the amount was excessive.

39. The Court awards the entire amount claimed for costs and expenses.

C. Default interest

40. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 8 of the Convention;

3. *Holds* that there is no need to examine the complaint under Article 6 of the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 1,440 (one thousand four hundred and forty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 April 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli	Josep Casadevall
Deputy Registrar	President