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

FOURTH SECTION

CASE OF BUSUIOC v. MOLDOVA

(Application no. 61513/00)

JUDGMENT

STRASBOURG

21 December 2004

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 Busuioc v. Moldova,

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

Sir Nicolas BRATZA, *President*,
Mr M. PELLONPÄÄ,
Mr J. CASADEVALL,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr J. BORREGO BORREGO,
Mrs E. FURA-SANDSTRÖM,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 27 April 2004 and on 30 November 2004,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 61513/00) 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, Mr Valeriu Busuioc (“the applicant”), on 31 January 2000.

2. The applicant was represented by Mr Sergiu Ostaf, a lawyer practising in Moldova. The Moldovan Government (“the Government”) were represented by their Agent, Mr Vitalie Pârlog.

3. The applicant alleged, in particular, that his right to freedom of expression was violated as a result of judicial decisions in defamation proceedings brought against him.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court).

5. By a decision of 27 April 2004 the Court declared the application admissible.

6. The applicant and the Government each filed observations on the merits (Rule 59 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicant was born in 1956 and lives in Chişinău, Moldova. He is a journalist.

1. Background to the case

8. On 14 August 1998 the Russian language weekly newspaper "Express" published an article entitled *"The minor affairs of the big Airport"*, signed by the applicant. He gave as sources for his article the outcome of an investigation conducted by him and the materials of a Parliamentary Commission concerning the selling of aircraft. The article stated, *inter alia*, that:

> "The scandal of the sale of Moldovan aircraft at dumping prices attracted the public attention of Moldovan society, which is already used to being unsurprised by such events. However, these still ongoing events offered our newspaper the opportunity to focus on this topic (see, 'Express' No. 19 and 20 of 19 and 26 June 1998). This article is an attempt to give a meaning to the events, which happened within the State Administration of Civil Aviation ('SACA') in the last two years, on the basis of facts which became known as a result of a press investigation.
>
> In 1995 Chişinău International Airport ('CIA') split from the State Air Company 'Air Moldova' and became an independent enterprise. The Head of SACA was L.P., while A.I. was appointed as Head of CIA. An agreement was signed between SACA and A.I. for a period of three years. In 1996 the above agreement was cancelled on the grounds of the negligence of A.I. in carrying out his duties. This fact was the starting point of the story which follows.
>
> A.I. disagreed with SACA's decision on his dismissal and lodged a court action seeking his reinstatement. Since court proceedings in Moldova are so lengthy, A.I., who could not accept his dismissal, took steps to approach CIA's staff. To this end, he organised with the support of his adherents a demonstration on the old Airport square. A.I. took the floor and the core of his speech was that he was the only person who, as head of CIA, could ensure its economic growth.
>
> SACA also decided to seek the opinion of its staff and for this purpose, its Director General, L.P., summoned a meeting of his deputies and the Airport units' heads. Everyone expressed a view and the common opinion was that A.I. was not the right person to be the head of CIA. Hence, the meeting of the Airport administration clearly expressed its distrust of A.I.
>
> Nevertheless, such an outcome did not discourage the pretender to the chairmanship. He even issued a leaflet entitled 'Appeal to the Airport staff', which stated: 1. SACA unfairly dismissed A.I.; 2. A.I. will inevitably become CIA's Chief Executive.

This proved to be true, when the court declared SACA's actions to be illegal and ordered the reinstatement of A.I. in his previous post. ...”

9. The following related to the events that took place after A.I.'s reinstatement:

“...The purging and transfer of staff marked the reinstatement of A.I. in the position. Many were reminded of their disapproval of the candidature of A.I. for the position of Chief Executive of CIA, expressed at the meeting with directors and managers. ... Once he had become Chief Executive of the Chişinău Airport for the second time and after he had successfully accomplished the first staff purge by means of the reorganisation of the enterprise's structure, A.I. called up his 'team', which had been created in between his two directorships. ... the present Director General L.I., devoted to the policy chosen by his patron A.I. ...

...One can become convinced about this by the example of another worker promoted by A.I. It is I.V. Not long ago, I.V. was working somewhere in the system of road transport and knew no more about planes than an ordinary person knows, and perhaps what he had been told by his relative A.I. But, probably, I.V. had shown a special interest in airport matters and the idea to hire him at the Airport came to his influential relative. To this end, he did not even hesitate to invent a new position – Deputy Director of Handling. ...

...Later, A.I. dismissed them from their positions... Instead of them he appointed (a) K.V. (who some time ago had graduated the Odessa Institute of Communications), (b) S.I. (a graduate of the Kiev Institute of Food Industry).

...Frankly speaking, C.P. himself is not a great expert in landing planes...

...One of the most colourful figures of A.I.'s conscription became the head of the Staff Unit of the Airport, C.M. Indeed, his position can be characterised as follows: the head of the Airport's Staff Unit would puzzle even an employee of the Staff Unit of any penitentiary. Here are some extracts from reports made by Airport employees:

'I bring to your attention that on many occasions the head of the staff unit came to the Security Service and asked for a car... to take him home. Usually he was drunk.'

...

'I was silent for a long time about the sexual harassment I was exposed to from the head of the Staff Unit, until recently when he came to my office and invited me to his summer cottage. I refused but he started to touch me. I struggled free of his hands and threatened to hit him with a telephone if he would not stop.... Once, when I entered C.M.'s office for work-related purposes, he closed the door and asked me to show him my breasts.'

...

... it is probably unnecessary to describe every detail of the adventures of this unrestrained civil servant *(распоясавшегося функционера)*...

> ...The saying that everything is possible *(не боги горшки обжигают)* is borne out by another example, namely the former veterinary doctor, but currently the Manager of the Services' Purchase Unit, C.V...
>
> ...A.I. has appointed S.I. (a graduate of the Kiev Institute of Food Industry)....
>
> However, now public opinion in Moldova is focused, as we already stated, on the shady deal of the sale of aircraft. The shady deal, behind which, in the opinion of many civil aviation employees, were A.I. and S.I."

10. On an unspecified date in 1998 six employees of CIA - I.V., C.P., C.M., C.V., S.I. and A.I. (hereinafter: "the complainants") - lodged separate civil actions for defamation against the applicant and the publishing office of the newspaper with the Centru District Court. Relying on Articles 7 and 7/1 of the Civil Code, the complainants alleged that the article contained statements which were defamatory of them. On 5 September 1998 the Centru District Court decided to join all six actions.

2. Findings of the first instance court

11. On 3 December 1998 the Centru District Court found that the information contained in the article was defamatory of each of the complainants and did not correspond to reality in respect of I.V, C.V., S.I. and A.I. In the same decision, the complainants were awarded damages to be paid by the applicant and the newspaper.

(i) In respect of I.V.

12. The court found that the following passage was defamatory of I.V. and did not correspond to reality:

> "...One can become convinced about this by the example of another worker promoted by A.I. It is I.V. Not long ago, I.V. was working somewhere in the system of road transport and knew no more about planes than an ordinary person knows, and perhaps what he had been told by his relative A.I. But, probably, I.V. had shown a special interest in airport matters and the idea to hire him at the Airport came to his influential relative. To this end, he did not even hesitate to create a new position – Deputy Director of Handling. ..."

13. The court found that I.V. was not a relative of A.I. and that there was no proof that it was A.I. who had invited I.V. to work at the Airport and created a new position for that purpose. The court also found that I.V. had completed technical studies and had graduated from the Academy of Public Administration. The applicant and the newspaper admitted that the information about I.V. being a relative of A.I. was not accurate. The newspaper offered to publish a notice withdrawing it.

14. The court ordered the applicant and the newspaper to pay I.V. damages of 900 Moldovan Lei (MDL) and MDL 1,350 respectively.

(ii) In respect of C.P.

15. The court further ruled that the sentence:

> "Frankly speaking, C.P. himself is not a great expert in landing planes"

was defamatory of C.P. The court agreed that C.P. had made a rough landing in Budapest once; however, that case could not serve as a basis to question his entire expertise. The court ordered the applicant and the newspaper to pay C.P. damages of MDL 900 and MDL 1,800 respectively.

(iii) In respect of C.M.

16. The court quoted in its decision the following two passages as being defamatory of C.M.:

> "One of the most colourful figures of A.I.'s conscription became the head of the Staff Unit of the Airport, C.M. Indeed, his position can be characterised as follows: the head of the Airport's Staff Unit would puzzle even an employee of the staff unit of any penitentiary"
>
> and
>
> "it is probably unnecessary to describe every detail of the adventures of this unrestrained civil servant *(распоясавшегося функционера)*."

17. The applicant explained that the words used to describe C.M. were justified by the latter's conduct (see paragraph 9 above). In this respect the applicant put forward three witnesses. One of them declared that on one occasion C.M. had been drunk and that the witness had written a report to the Chief Executive about that. The other two witnesses were female employees who declared that on several occasions C.M. had sexually harassed them.

18. The court decided not to admit the testimony of the first witness, because no sanction had been applied to C.M. as a consequence of the report. As to the statements of the two female witnesses, the court did not make any assessment of them.

19. The court ordered the applicant and the newspaper to pay the complainant damages of MDL 900 and MDL 1,350 respectively.

(iv) In respect of C.V.

20. The court found that the sentence:

> "The saying that everything is possible *(не боги горшки обжигают)* is borne out by another example, namely the former veterinary surgeon, but currently the Manager of the Services Purchase Unit, C.V."

was defamatory of C.V., and did not correspond to reality.

21. The applicant admitted that a mistake had been made, since C.V. did not graduate from a veterinary school. The court found that C.V. had a diploma from a business school.

22. The court ordered the applicant and the newspaper to pay the complainant damages of MDL 900 and MDL 1,350 respectively.

(v) In respect of S.I.

23. The court found that the phrases:

> "A.I. has appointed S.I. (a graduate of the Kiev Institute of Food Industry) ....
>
> ... the shady deal, behind which, in the opinion of many civil aviation employees, were A.I. and S.I."

were defamatory of S.I., and did not correspond to reality.

24. The applicant admitted to having made a mistake as regards the university attended by S.I., the court finding that she had a diploma from a School of Commerce. As to the "shady deal", the applicant argued that the dubious character of the transaction with State-owned aircraft was evident from an official report of a Parliamentary Commission and that the participation of S.I. in the conclusion of that transaction was not contested by S.I. herself. Relying on statements of A.I. and S.I., the court found that, even though they were involved in the transaction concerning the sale of State-owned aircraft, they were part of a special commission created by the Government for the purpose of the transaction and that they were not the key persons in that transaction. The court ordered the applicant and the newspaper to pay S.I. damages of MDL 900 and MDL 1,800 respectively.

(vi) In respect of A.I.

25. The court identified in its decision the following extracts as being defamatory of A.I. and as not corresponding to reality:

> "... A.I. [...] organised with the support of his adherents a demonstration on the old Airport square. ... He even issued a leaflet, entitled 'Appeal to the Airport staff'. ... The purging and transfer of staff marked the reinstatement of A.I. in the position. Many were reminded of their disapproval of the candidature of A.I. for the position of Chief Executive of CIA, expressed at the meeting with directors and managers. ... Once he had become Chief Executive of the Chişinău Airport for the second time and after he had successfully accomplished the first staff purge by means of the reorganisation of the enterprise's structure, A.I. called up his 'team', which had been created in between his two directorships. ... the present Director General L.P., devoted to the policy chosen by his patron A.I. ... One can become convinced about this by the example of another worker promoted by A.I. It is I.V. Not long ago, I.V. was working somewhere in the system of road transport and knew no more about planes than an ordinary person knows, and perhaps what he had been told by his relative A.I. But, probably, I.V. had shown a special interest in airport matters and the idea to hire him at the Airport came to his influential relative. To this end, he did not even hesitate to invent a new position – Deputy Director of Handling. ... Later, A.I. dismissed them from their positions... Instead of them he appointed (a) K.V. (who some time ago had graduated the Odessa Institute of Communications), (b) S.I. (a graduate of the Kiev Institute of Food Industry). ... Later on, A.I. dismissed S.I. from the position of Director of the State Air Company 'Air Moldova'.... the shady deal, behind which, in the opinion of many civil aviation employees, were A.I. and S.I."

26. The applicant put forward a witness who claimed to have heard about a meeting that was held on the Old Airport Square. He also referred to five employees of the Airport who had been dismissed immediately after A.I.'s reinstatement, in support of his statement regarding the alleged staff purge. The court considered that there was no proof that it was A.I. who had organised the meeting on the Old Airport Square or that it was he who later organised a staff purge. The court found that, according to the existing procedures, A.I. did not have the right to employ or to dismiss personnel. Relying on statements of A.I. and S.I., the court also found that even though they had been involved in the sale of State-owned aircraft, they had been part of a special Commission created by the Government for the purpose of the transaction and that they were not the key persons in that transaction.

27. The newspaper submitted that the article had not been intended to defame the complainants and that it was ready to publish a notice correcting the factual mistakes as to I.V. being a relative of A.I. and as to the schools attended by C.V. and S.I.

28. The court ordered the applicant and the newspaper to pay A.I. damages of MDL 1,800 and MDL 3,600 respectively and to publish a notice withdrawing all the statements concerning the complainants found to be defamatory.

3. The appeal

29. The applicant and the newspaper lodged an appeal against this judgment with the Chişinău Regional Court. The applicant requested that the decision be quashed, submitting that he had produced sufficient evidence substantiating the accuracy of the statements made in the published article, despite certain minor and accidental factual errors.

30. As regards I.V., the applicant provided copies of the former's employment record, including his previous job at an insurance company specialising in car insurance. The applicant also argued that there was nothing defamatory in the statement that I.V. was a relative of A.I. and that it was true that the position of Deputy Director of Handling had never existed before the employment of I.V.

31. In respect of C.P., the applicant noted that the accuracy of his statements had been substantiated by the written depositions of the complainant himself, which established that he had been involved in a minor aircraft accident in Budapest.

32. As to C.M., the applicant pointed out that the witnesses put forward by him (Airport employees) confirmed the acts of sexual harassment and abuse (see paragraphs 9 and 17 above) by C.M.

33. As to C.V., the applicant admitted having made an error in the job profile and that C.V. was not a veterinary surgeon but had a basic diploma in nursing. The applicant did not consider the description given by him to be defamatory.

34. In so far as S.I. was concerned, the applicant stated that confusion had occurred in respect of the institution she had graduated from. He also submitted that she had indeed worked on the economic aspects of the transaction regarding the sale of State-owned aircraft and that the dubious character of that deal was proved by an official report in an issue of the Official Gazette *("Monitorul Oficial").*

35. As regards A.I., the applicant noted that the accuracy of the allegations had been proved by the depositions of witnesses and by the content of the leaflet attached to the appeal application.

4. Findings of the second instance court

36. On 5 July 1999 the Chişinău Regional Court allowed in part the applicant's appeal and amended the District Court's decision by dismissing the initial action filed by C.P., on the ground that the statement contained in the article about him (see paragraph 15 above) had reflected the truth and had therefore not been of a defamatory nature. The court also reduced the amount of the damages to be paid by the applicant and the newspaper to the complainants. The court justified the reduction by the fact that the circulation of the newspaper "Express" was limited. Accordingly, the applicant and the newspaper were ordered to pay MDL 450 and MDL 1,350 respectively to I.V., MDL 900 and MDL 1,350 respectively to C.M., MDL 180 and MDL 1,350 respectively to C.V., MDL 180 and MDL 1,350 respectively to S.I. and MDL 900 and MDL 1,350 respectively to A.I.

5. The appeal in cassation

37. The applicant and the newspaper lodged an appeal in cassation with the Court of Appeal, submitting that sufficient supporting evidence had been produced to the first and the second instance courts to prove the truth of the statements made in the impugned article. In particular, the applicant noted that relevant supporting information had been contained in the report of the Parliamentary Comission on the illegal sale of aircraft published in the Official Gazette and that therefore he should be exonerated from any civil responsibility.

6. Findings of the third instance court

38. On 7 September 1999 the Court of Appeal dismissed the appeal in cassation and upheld the decisions of the Regional Court and District Court, stating that the appeal in cassation was unfounded. The court concluded that the impugned article had contained both defamatory statements which did not correspond to reality and statements which were not of a defamatory nature but did not correspond to reality. The court further ruled that the award of damages imposed on the newspaper had not in any way infringed

its right to freedom of expression guaranteed by the Constitution and by the Law on the Press.

II. RELEVANT DOMESTIC LAW

39. The relevant provisions of the Civil Code in force at the material time read:

Article 7. Protection of honour and dignity

"(1) Any natural or legal person shall be entitled to apply to the courts to seek the withdrawal of statements which are damaging to his or her honour and dignity and do not correspond to reality, as well as statements which are not damaging to honour and dignity, but do not correspond to reality.

(2) When the media body which circulated such statements is not capable of proving that these statements correspond to reality, the court shall compel the publishing office of the media body to publish, not later then 15 days after the entry into force of the judicial decision, a withdrawal of the statements in the same rubric, on the same page or in the same programme or series of broadcasts."

Article 7/1. Compensation for moral damage

"(1) The moral damage caused to a person as a result of circulation through the mass media or by organisations or persons of statements which do not correspond to reality, as well as statements concerning his or her private or family life without his or her consent, shall be compensated by way of a pecuniary award. The amount of the award shall be determined by the court.

(2) The amount of the award shall be determined by the court in each case as an amount equal to between 75 and 200 minimum wages if the information has been circulated by a legal person and between 10 and 100 if the information has been circulated by a natural person."

40. The decision of the Parliament of the Republic of Moldova No. 211-XIV of 9 December 1998

Having examined the report of the Investigation Commission on the re-examination of the materials concerning the report of the Auditor's Court and the sale of the State-owned aircraft, which has established numerous serious illegalities committed by public servants from the previous and the present Government, the Parliament adopts the following decision:...

Art. 2. – The Commission shall continue its activity and shall establish the responsibility of the Prime Minister, of the members of the Government and of other persons mentioned in the Report within one month.

Art. 3. – The heads of the institutions mentioned in the Commission's report shall take the appropriate measures for sanctioning the servants responsible for the illegalities and shall communicate the adopted measures to the Parliament.

...

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

41. The applicant alleges a violation of his right to freedom of expression as guaranteed by Article 10 of the Convention, which reads:

> “1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interests of ... public safety, for the prevention of disorder or crime ... for the protection of the reputation or rights of others ... .”

A. Arguments of the parties

1. The applicant

42. The applicant argued that Article 7 and 7/1 of the Civil Code were not formulated with sufficient precision and clarity and that the Code failed to elaborate on the meanings of “facts”, “honour”, “dignity”, “value judgment”, “defence available to journalists in each case” and “burden of proof” in such a way as to render the law clear and foreseeable.

43. The applicant further submitted that the interference with his freedom of expression was not necessary in a democratic society. According to him, the article contained value judgments alone in regard to certain complainants and value judgments based on facts in regard to other complainants. The applicant argued that there had been no pressing social need for an interference with his freedom of expression and that the domestic courts did not adduce relevant and sufficient arguments to justify the interference.

44. The applicant also submitted that the award of damages imposed on him was too heavy and thus disproportionate to the legitimate aim pursued. His monthly income at the material time varied between MDL 180 and MDL 220, while the minimum cost of living *(coşul minim de consum)* was MDL 600. According to the applicant, he had been dismissed from the weekly “Express” after the lawsuit and he paid the sums awarded in instalments over a period of three years.

2. The Government

45. The Government agreed that the facts of the case disclosed an interference with the applicant's freedom of expression. This interference was nevertheless justified under Article 10 § 2 of the Convention.

46. The applicant was ordered to pay non-pecuniary damages for defamation on the basis of Articles 7 and 7/1 of the Civil Code. The interference was thus "prescribed by law" and the law was accessible and foreseeable. It served the legitimate aim of protecting the dignity of the complainants and furthermore the measure was necessary in a democratic society.

47. Relying on *Janowski v. Poland* ([GC], no. 25716/94, ECHR 1999-I), the Government stated that the persons against whom the applicant's article was directed were civil servants and that civil servants must enjoy public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive verbal attacks when on duty.

48. The Government submitted that the published article in respect of which an award of damages was made against the applicant contained factual statements and not value judgments.

49. They pointed to the national authorities' margin of appreciation in assessing the need for interference and submitted that where the Convention refers to domestic law it is primarily the task of the national authorities to apply and interpret domestic law. They contended that in the present case the domestic authorities had not overstepped this margin of appreciation.

50. The Government further stated that the award of damages imposed on the applicant (MDL 2,610 that the applicant was ordered to pay to the complainants) was not disproportionate to the legitimate aim pursued. In this respect the Government submitted that in December 1998 the average monthly salary in the Republic of Moldova was MDL 351.5 and in July 1999 it was MDL 298.9 Moldovan Lei (MDL) (the equivalent of approx EUR 25.5 at the time).

B. The Court's assessment

51. It is common ground between the parties, and the Court finds, that the decisions of the domestic courts and the awards of damages made against the applicant in respect of five of the complainants referred to in the relevant article amounted to an "interference by [a] public authority" with the applicant's right to freedom of expression under the first paragraph of Article 10. Such an interference would entail a violation of Article 10 unless it was "prescribed by law", had an aim or aims that were legitimate under paragraph 2 of the Article and was "necessary in a democratic society" to achieve such aim or aims.

1. “Prescribed by law”

52. One of the requirements flowing from the expression “prescribed by law” is the foreseeability of the measure concerned. A norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the person to regulate his or her conduct: he or she must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. Whilst certainty in the law is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice (see, for example, *Rekvényi v. Hungary* [GC], no. 25390/94, § 34, ECHR 1999-III).

53. The Court notes that the interference complained of had a legal basis, namely Articles 7 and 7/1 of the Civil Code (see paragraph 39 above).

54. In the instant case the Court does not consider that the provisions in question are so vague as to render the consequences of the applicant's actions unforeseeable. Defamation laws, with their emphasis on honour and reputation, inevitably involve a degree of vagueness (see, *Rekvényi v. Hungary*, cited above, § 34). However this does not remove their “legal” character for purposes of Article 10 of the Convention. It falls to the national authorities to apply and to interpret domestic law (see, for example, *Otto-Preminger-Institut v. Austria*, judgment of 20 September 1994, Series A no. 295-A, p. 17, § 45). Accordingly, the Court considers that the interference was “prescribed by law” within the meaning of Article 10 § 2 of the Convention.

2. “Legitimate aim”

55. It is not disputed by the parties, and the Court agrees, that the interference served the legitimate aim of protecting the reputation of the complainants. It therefore remains to be examined whether the interference was “necessary in a democratic society”.

3. “Necessary in a democratic society”

(a) General Principles

56. Freedom of expression constitutes one of the essential foundations of a democratic society and the safeguards to be afforded to the press are of particular importance. Whilst the press must not overstep the bounds set, *inter alia*, in the interest of "the protection of the reputation or rights of others", it is nevertheless incumbent on it to impart information and ideas of

public interest. Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog" (see, for instance, the *Observer and Guardian v. the United Kingdom* judgment of 26 November 1991, Series A no. 216, pp. 29-30, § 59).

57. The most careful scrutiny on the part of the Court is called for when the measures taken or sanctions imposed by the national authority are capable of discouraging the participation of the press in debates over matters of legitimate public concern (see, for example, *Lingens v. Austria*, judgment of 8 July 1986, Series A no. 103, § 44, *Bladet Tromsø and Stensaas v. Norway* [GC], no. 21980/93, § 64, ECHR 1999-III, *Thorgeir Thorgeirson v. Iceland*, judgment of 25 June 1992, Series A no. 239, § 68).

58. The right to freedom of expression is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference but also to those that offend, shock or disturb the State or any section of the community. In addition, journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see, the *De Haes and Gijsels v. Belgium*, judgment of 24 February 1997, *Reports of Judgments and Decisions* 1997-I, p. 236, § 47).

59. Article 10 of the Convention does not guarantee a wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern. Under the terms of paragraph 2 of the Article the exercise of this freedom carries with it “duties and responsibilities”, which also apply to the press. These “duties and responsibilities” are liable to assume significance when, as in the present case, there is a question of attacking the reputation of private individuals and undermining the “rights of others”. By reason of the “duties and responsibilities” inherent in the exercise of the freedom of expression, the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism (see the *Goodwin v. the United Kingdom*, judgment of 27 March 1996, *Reports of Judgments and Decisions* 1996-II, p. 500, § 39, and *Fressoz and Roire v. France* [GC], no. 29183/95, § 54, ECHR 1999-I).

60. Civil servants must enjoy public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive and abusive verbal attacks when on duty (see *Janowski v. Poland* [GC], no. 25716/94, § 33, ECHR 1999-I). The requirements of such protection have to be weighed, however, against the interests of the freedom of the press or of open discussion of matters of public concern.

61. In its practice, the Court has distinguished between statements of fact and value judgments. The existence of facts can be demonstrated, whereas the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 (see *Jerusalem v. Austria*, no. 26958/95, § 42, ECHR 2001-II). However, even where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient factual basis for the impugned statement, since even a value judgment without any factual basis to support it may be excessive (see *De Haes and Gijsels v. Belgium*, cited above, § 47, *Oberschlick v. Austria* (no. 2), judgment of 1 July 1997, *Reports of Judgments and Decisions* 1997-IV, p. 1276, §33).

62. In exercising its supervisory jurisdiction, the Court must look at the interference in the light of the case as a whole, including the content of the remarks held against the applicant and the context in which he made them. In particular, it must determine whether the interference in issue was “proportionate to the legitimate aims pursued” and whether the reasons adduced by the national authorities to justify it are “relevant and sufficient” (see *Janowski v. Poland* judgment, cited above, § 30, and the *Barfod v. Denmark* judgment of 22 February 1989, Series A no. 149, § 28). In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based themselves on an acceptable assessment of the relevant facts (see *Jersild v. Denmark*, judgment of 23 September 1994, Series A no. 298, § 31).

(b) Application of the above principles in the present case

63. The Government contended that the complainants in question were civil servants and therefore, unlike politicians, they should enjoy a higher level of protection from undue criticism and scrutiny (*Janowski v. Poland*, cited above).

64. The Court has in several cases observed (see, in particular the above-mentioned *Janowski v. Poland* judgment and *Nikula v. Finland*, no. 31611/96, ECHR 2002-II, § 48) that it may be necessary to protect public servants from offensive, abusive and defamatory attacks which are calculated to affect them in the performance of their duties and to damage public confidence in them and the office they hold. However, the Court considers that the present case should be distinguished from the *Janowski* and *Nikula* cases for the following reasons: First, the complainants in issue were neither law-enforcement officers nor prosecutors; it would go too far to extend the *Janowski* principle to all persons who are employed by the State or by State-owned companies: Second, the applicant's remarks formed part of an open and ongoing discussion of matters of public interest. In this

context the Court notes that, during the period from 19 June to 14 August 1998, the weekly "Express" published three articles related to the topic of the sale of State-owned aircraft and the wider question of the State administration of civil aviation, raising as it did an important issue of public concern, namely the management and alleged misuse of public funds. Moreover, in contrast to the statements made by the applicant as a private individual in the case of *Janowski*, the impugned article in the present case was written by the applicant in his capacity as a journalist and gave rise to issues of freedom of the press.

65. Accordingly, the approach employed by the Court in the *Janowski* case is not applicable in the present case. On the contrary, the Court considers that since the freedom of the press was at stake, the Moldovan authorities enjoyed a less extensive margin of appreciation when deciding whether there was a "pressing social need" to interfere with the applicant's freedom of expression.

66. The domestic courts examined separately the passages in the article relating to each of the complainants. The Court will likewise separately examine the justification for the interference in respect of the impugned passages relating to each complainant.

(i) In respect of I.V.

67. The Court notes that an award of damages was made against the applicant for stating that I.V. had been given a job at the Airport only because he was a relative of the Chief Executive, and that a new position had been created especially for him (see paragraph 12 above).

68. The Court takes the view that the impugned passage contained statements of fact and not value judgments.

69. Even though the applicant's comments were made as part of a debate on an issue of public interest, there are limits to the right to freedom of expression where an individual's reputation is at stake and the applicant had a duty to act in good faith and to verify any information before publishing it.

70. It appears that the applicant did not verify the information before publication which, as a journalist, he ought to have done. The applicant himself admitted during the domestic proceedings to having published inaccurate information as regards the family ties between the first and the sixth complainants, without even trying to persuade the courts that he had made reasonable attempts to verify the information.

71. In essence, by publishing the impugned statement, the applicant accused I.V. of nepotism and induced readers to believe that he was employed not for any personal qualities but only because he was a relative of the Chief Executive. These were serious allegations, going to the heart of I.V.'s personal and professional reputation.

72. Accordingly, the Court concludes that the interference could be considered as justifiable in terms of Article 10 of the Convention.

(ii) In respect of C.M.

73. The Court notes that the applicant included in his article several episodes of alleged abuses committed by C.M. in his capacity as Head of the Staff Unit. For that purpose the applicant cited formal complaints lodged by Airport employees regarding acts of alleged sexual harassment, drunkenness and abuse of an official car by C.M. (see paragraph 8 above). The Court further notes that the domestic courts did not find any of those statements to be inaccurate or untrue. However, they found the language used to describe C.M. in the light of those alleged abuses to be defamatory (see paragraph 16 above). In particular, expressions such as “colourful figure”, “the head of the Airport's Staff Unit would puzzle even an employee of the staff unit of any penitentiary” and “adventures of this unrestrained civil servant *(распоясавшегося функционера)*” were found to be defamatory.

74. The Court takes the view that the impugned passages amounted to the expression of an opinion or value judgment whose truth, by definition, is not susceptible of proof. While such an opinion may be excessive, in particular in the absence of any factual basis, this is not the position in the present case. The Court finds that the applicant acted in good faith and in accordance with the ethics of journalism and that it has been shown that there existed a reasonable factual basis for the opinion expressed.

75. Bearing in mind the fact that the impugned statements were made by a journalist within a debate on an issue of public interest and having regard to the language used, the Court concludes that the interference was not necessary in a democratic society.

(iii) In respect of C.V.

76. An award of damages was made against the applicant for stating that C.V. was not qualified for his job. In particular the applicant stated that C.V. had been appointed as the Manager of the Services Purchase Unit even though he was only qualified as a veterinary surgeon. The domestic courts found that C.V. had in fact graduated from a School of Business (see paragraph 21 above).

77. The Court takes the view that the impugned passage contained both a statement of alleged fact and a value judgment.

78. It appears that the applicant did not verify the information before publication which, as a journalist, he ought to have done and that the information proved to be inaccurate and could be considered as offensive and damaging to the reputation of C.V. In essence, by publishing the impugned statement, the applicant sought to convey to readers that C.V. was incompetent due to his inadequate professional background, namely that of a veterinary surgeon. In that respect the applicant also made a value judgment based on the stated fact, suggesting that the appointment of a wholly unqualified person was illustrative of the fact that in a corrupt

system everything was possible. The Court notes that the applicant himself admitted during the domestic proceedings to having published inaccurate information in regard of C.V.'s professional background and did not seek to persuade the courts that he had made any reasonable attempt to verify the information before publication.

79. Accordingly, the Court concludes that the interference could be considered as necessary in a democratic society.

(iv) In respect of S.I.

80. In respect of S.I., the applicant made two statements which were considered to be defamatory and not to correspond to reality.

81. First, the applicant stated that S.I. had graduated from an Institute of Food Industry, while the domestic courts found that she had graduated from a School of Commerce (see paragraph 23).

82. The Court finds the situation to be similar to that of C.V. (see paragraphs 75-78), and concludes that the interference in respect of the statement "A.I. has appointed S.I. (a graduate of the Kiev Institute of Food Industry) ...." could be considered as justifiable in terms of Article 10 of the Convention.

83. As to the second impugned statement, the Court notes that the applicant wrote that in the opinion of many employees of civil aviation S.I. had been involved in a "shady deal", referring to the sale of State-owned aircraft (see paragraph 23). Before the domestic courts the applicant argued that the statement was based on an official report of a Parliamentary Commission.

84. The Court notes that the transaction referred to in the impugned statement was suspected of being illegal and that a Parliamentary Commission made a report to that effect (see paragraph 40 above). Accordingly, there was some objective and factual basis for the applicant's description of it as a "shady deal". At the same time, the domestic courts did not establish that S.I. had not been involved in the transaction. On the contrary, S.I. admitted during the proceedings to having been included, together with A.I., in a Government Commission which concluded the sale of the aeroplanes (see paragraph 24 above). In these circumstances it does not appear that the applicant acted in bad faith with the purpose of defaming S.I. It is to be noted that the applicant carried out a reasonable amount of research in order to establish that the sale of the aircraft was suspected of being illegal and that S.I. had a role in the transaction. The conclusions drawn by the applicant are to be regarded as value judgments which had a factual basis.

In this respect the Court recalls that the press plays an essential role as a "public watchdog" in a democratic society (see *Thorgeir Thorgeirson v. Iceland*, cited above, § 63). In circumstances where there are objective grounds to suspect public servants of involvement in the unlawful sale of

public property, the press must be free, in a manner consistent with their obligations and responsibilities, to impart such information and ideas and the public has a right to receive them.

85. Accordingly, the Court concludes that the interference in respect of the statement "... the shady deal, behind which, in the opinion of many civil aviation employees, were A.I. and S.I." was not necessary in a democratic society.

(v) In respect of A.I.

86. The Court identified four main statements made by the applicant in respect of A.I. which were found to be defamatory by the domestic courts.

87. First, the courts found that the applicant's claim that A.I. had convened a meeting on the Old Airport Square was untrue (see paragraph 25 above). It appears that the applicant tried to bring evidence in support of the impugned statement by putting forward a witness and by producing a copy of a leaflet allegedly published by A.I. (see paragraphs 26 and 35 above). The Court notes that the domestic courts ignored the evidence adduced by the applicant and did not make any assessment of it.

88. The Court considers that, in requiring the applicant to prove the truth of his statements, while at the same time depriving him of an effective opportunity to adduce evidence to support his statements and thereby show their truthfulness, the finding of the Moldovan courts that the statement was defamatory could not be justified as necessary in a democratic society (see *Jerusalem v. Austria*, no. 26958/95, § 45-46, ECHR 2001-II).

89. In the second impugned passage, the applicant stated that, after being reinstated in the position of Chief Executive, A.I. organised a staff purge. In this respect, the applicant referred to five former employees of the Airport who were dismissed after A.I.'s reinstatement (see paragraphs 25 and 26 above). The domestic courts did not find the statements concerning the alleged dismissals to be untrue. They found, however, that the alleged involvement of A.I. did not correspond to reality, noting that according to the existing procedure, A.I. had no right to employ or dismiss personnel.

90. The Court observes that there it cannot be said that the description of events given in the impugned statement was entirely without foundation. It appears that the applicant carried out a reasonable amount of research before publishing the impugned information, since he knew the names of those who had been dismissed. The Court considers that, even if according to the existing procedure it was not for the Chief Executive to make the decision as to the dismissal of an employee, it was reasonable for a journalist to believe that there was a link between the fairly large-scale dismissals of personnel and the change of the Chief Executive. In these circumstances the Court finds that the interference was not necessary in a democratic society.

91. In the third impugned passage, the applicant stated that A.I. had hired his relative I.V. (see paragraph 25 above).

92. The Court finds the situation to be similar to that of the statement concerning I.V. (see paragraphs 67-72), and concludes that the interference could be considered as justifiable in terms of Article 10 of the Convention.

93. As to the fourth impugned statement, namely that A.I. was involved together with S.I. in a "shady deal", the Court reiterates its findings as to this statement in relation to the complaint by S.I. (see paragraph 80-85 above). For similar reasons, the Court concludes that the interference with the applicant's freedom of expression was not necessary in a democratic society.

94. The applicant also invoked the severity of the awards of damages imposed on him as a separate head of complaint.

95. The nature and severity of the penalties imposed are also factors to be taken into account when assessing the proportionality of an interference with freedom of expression guaranteed by Article 10 of the Convention (see for example, *Ceylan v. Turkey* [GC], no. 23556/94, § 37, ECHR 1999-IV; *Tammer v. Estonia*, no. 41205/98, § 69, ECHR 2001-I; and *Lešník v. Slovakia*, no. 35640/97, § 63, ECHR 2003-IV).

96. Given the Court's finding of a violation in respect of statements concerning C.M., S.I. and A.I., it is not necessary to examine the severity of the relevant awards of damages imposed on the applicant. At the same time, the Court notes that the applicant was ordered to pay MDL 450 to I.V. and MDL 180 to C.V. Having regard to the average monthly salary at the material time in Moldova and the fact that the awards of damages imposed on the applicant were at the lower end of the scale allowed by law (see paragraph 39 above), the Court takes the view that the amounts were not excessive.

C. Conclusion

97. Having regard to the above, the Court concludes:

(1) That there has been no violation of Article 10 of the Convention as regards the applicant's statements concerning I.V.;

(2) That there has been a violation of Article 10 of the Convention as regards the applicant's statements concerning C.M.;

(3) That there has been no violation of Article 10 of the Convention as regards the applicant's statements concerning C.V.;

(4) That there has been a violation of Article 10 of the Convention as regards the applicant's statements concerning S.I.;

(5) That there has been a violation of Article 10 of the Convention as regards the applicant's statements concerning A.I.;

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. 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. Pecuniary damage

99. The applicant claimed EUR 2,460 for pecuniary damage suffered as a result of the breach of his right to freedom of expression. He claimed that he was not able to work as a journalist after having lost the proceedings, because everyone considered him to be a bad journalist. Accordingly he had to work as a translator for less money. The applicant stated that the sum claimed would cover the amount of the penalty paid to the applicants, the amount of money he could have earned as a journalist and the losses caused by inflation.

100. The Government contested the amount claimed by the applicant. In their view an appropriate compensation would be the amount of the penalty paid, namely MDL 2,610 (EUR 224). According to the Government, the applicant used to work as a translator even before losing the proceedings and accordingly no causal link could be established between the trial and his subsequent employment.

101. The Court agrees with the Government that the applicant has failed to show the existence of a link between the awards of damages imposed on him and his subsequent employment. Therefore the Court makes no award in respect of the alleged inability of the applicant to work as a journalist after having lost the defamation proceedings. On the other hand, the Court has found a violation of Article 10 by reason of the decisions concerning all or some of the impugned statements made by the applicant in respect of C.M., S.I. and I.V. In the light of this, and deciding on an equitable basis, the Court awards the sum of EUR 125 by way of pecuniary damage in respect of amounts which the applicant was ordered to pay to the complainants in compensation.

B. Non-pecuniary damage

102. The applicant claimed EUR 30,000 for the non-pecuniary damage suffered as a result of distress and frustration caused by the awards of damages imposed on him. As in the case of pecuniary damage, the applicant argued that the defamation trial and the award of damages imposed on him played a very negative role in his career and meant that he could not find

employment with any serious newspaper. He submitted that it was not only his career that had suffered but also his family relations.

103. The Government disagreed with the amount claimed by the applicant, arguing that it was excessive in light of the case-law of the Court. They stated that in some cases the mere fact of finding a violation was considered to be just satisfaction. The Government further stated that in any event any award in respect of non-pecuniary damage could not exceed that in respect of pecuniary damage, namely MDL 2,610.

104. In view of its findings above, the Court considers that the applicant must have been caused a certain amount of stress and frustration as a result of the breach of his right to freedom of expression. Deciding on an equitable basis, it awards the applicant the total sum of EUR 4,000 for non-pecuniary damage.

C. Costs and expenses

105. The applicant also claimed EUR 1,800 for the costs and expenses incurred before the Court, of which EUR 1,600 were representation fees, and the rest transportation and communication expenses.

106. The Government did not agree with the amounts claimed, stating that the applicant had failed to prove the alleged representation expenses. According to the Government, the amount claimed by the applicant was too high in the light of the average monthly wage in Moldova and the official fees paid by the State to *pro bono* lawyers. The Government also contested the number of hours spent by the applicant's representative on the case in general and on research of the case law of the Court in particular, arguing that a person with a law degree from the Moldovan State University did not need to study the case-law of the European Court of Human Rights since he or she was presumed to have studied it during the second and fourth year of studies. In the Government's view an award for that purpose would amount to a study scholarship.

107. The Court recalls that in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred and were reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII).

108. In the present case, regard being had to the itemised list submitted by the applicant, the above criteria and the complexity of the case, the Court awards the applicant EUR 1,500 for costs and expenses.

D. Default interest

109. The Court considers it appropriate that the default interest 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. *Holds* that there has been no violation of Article 10 of the Convention in respect of the statements concerning I.V.;
2. *Holds* that there has been a violation of Article 10 of the Convention in respect of the statements concerning C.M.;
3. *Holds* that there has been no violation of Article 10 of the Convention in respect of the statements concerning C.V.;
4. *Holds* that there has been a violation of Article 10 of the Convention in respect of the statements concerning S.I.;
5. *Holds* that there has been a violation of Article 10 of the Convention in respect of the statements concerning A.I.;
6. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, EUR 125 (one hundred and twenty five euros) in respect of pecuniary damage, EUR 4,000 (four thousand euros) in respect of non-pecuniary damage and EUR 1,500 (one thousand and five hundred euros) in respect of costs and expenses, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
   (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;
7. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 December 2004, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President