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

FOURTH SECTION

CASE OF SAVITCHI v. MOLDOVA

(Application no. 11039/02)

JUDGMENT

STRASBOURG

11 October 2005

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 Savitchi v. Moldova,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr R. MARUSTE,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Mr J. BORREGO BORREGO, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 20 September 2005,

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

PROCEDURE

1. The case originated in an application (no. 11039/02) 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, Julieta Savițchi ("the applicant"), on 17 April 2001.

2. The applicant was represented by Mr Vladislav Gribincea, a lawyer practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr Vitalie Pârlog.

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

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1.

5. On 1 November 2004 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed Fourth Section (Rule 52 § 1).

6. By a decision of 1 February 2005 the Court declared the application partly admissible.

7. The applicant and the Government each filed observations on the merits (Rule 59 § 1), the Chamber having decided, after consulting the parties, that no hearing on the merits was required (Rule 59 § 3 *in fine*).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant, Ms Julieta Savițchi, is a Moldovan national who was born in 1970 and lives in Chişinău. She is a journalist.

9. On 2 October 1999 the Russian language newspaper "The New Order" published an article entitled "Traffic Police – My Star" signed by the applicant. The article stated *inter alia* that:

> "...This is quite a banal story for us regular citizens, and a normal phenomenon for the traffic inspectors. In any event, it serves as a good example of the 'star syndrome' suffered by the traffic inspectors.
>
> A person was driving his Moskvitch on Stefan cel Mare Street. Let us call him 'Victor'. When he approached the Stefan cel Mare and Tighina crossroads, the traffic lights turned red and, like any normal person, Victor pressed the brakes. But people who abide by the rules are not always lucky. A luxurious speeding Opel ran into the old Moskvitch. Both cars were damaged, but the Moskvitch was damaged more. Victor stayed at the place of the accident, as any man believing in the strictness of the law would do, awaiting the arrival of the police and their wise and fair verdict. The owner of the 'Opel' though, aware of his guilt, hit the gas and disappeared.
>
> Before long a Sergeant of the traffic police arrived and began to take measurements and investigate, making notes in a note book. At the height of the investigation the owner of the Opel arrived, but without his car. He waited until the policeman finished his work, and then said that he would go to the Municipal Traffic Police Centre to solve the problem.
>
> At the Municipal Traffic Police Centre the two car owners and the policeman were received by a person of a venerable age with the epaulets of a Sergeant-Major (later we found out that he worked in the emergency department). The owner of the Opel addressed him in a very friendly way, calling him 'Jora'. The Sergeant-major Jora approached the young Sergeant, who investigated the accident, and asked him in a way more like an order than a question: 'How many years have you been working for the Traffic Police?' – Two years... 'But I worked for twenty years; therefore you should listen to me. Don't write anything, let the people come to an agreement themselves and the guilty one (i.e. the owner of the Opel) pay to the second one approximately 30 Moldovan Lei (MDL). In any event his car is a flea-pit, and there is no need to make a lot of fuss.'
>
> The owner of the 'flea-pit', who cannot be considered a wealthy man, almost lost the power of speech when he heard that. How was it possible to offer him such a petty sum for his severely damaged car? Since the victim would not agree, Sergeant-Major Jora and the owner of the Opel increased somewhat the amount, bargaining for each leu. Afraid that he would not get anything, Victor agreed to the sum of MDL 75. He later had his car fixed by some acquaintances, who laughed at him for being fooled like a boy. Victor spent a little bit more than MDL 200 for the repair – a sum that might seem ridiculous to some traffic inspectors. For Victor though, this is really big money. But it is not the money, that he's worried about, but the way he was treated at

the Traffic Police Centre, in particular this Sergeant-Major Jora, who treated him as a man from the lowest strata, almost as a nonentity. After a few days Victor went to Jora and asked for his driver's licence back. The Sergeant-Major promised to return the driver's licence, but only on condition that Victor paid a fine of MDL 18. Victor was dumbfounded. – 'Why should I pay a fine? What did I do?' The Sergeant-Major, answered very furiously: 'Once I say that you should pay, then you should pay, without asking any questions.'

Victor, who was very upset about the absurdity of the situation, warned the policeman that he would complain to his superiors. The Sergeant-Major, understanding that there was no way for him to prevail, literally went ballistic. He threw the driver's licence in Victor's face, shouting like a madman.

- 'He would complain! Who are you? Take your documents and get out of here, and pray God not to come back to the Traffic Police, because otherwise you'll get into big trouble.'

The man took his driver's licence and left the Police Station, meditating on what Jora could possibly do to him if ever he came back..."

10. On an unspecified date in 1999 a policeman named G.R. lodged a civil action 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 complainant alleged that the article contained statements which were defamatory of him.

11. Between January and March 2000 several oral hearings were held and several witnesses were heard. The applicant and the newspaper stated that the facts presented in the article were a simple reproduction of the story told by Victor, the victim of the road accident. Victor gave evidence to that effect. They further stated that the information contained in the article was not of a defamatory nature and could not harm in any way the reputation of the complainant, particularly since it did not contain his full name, but only a diminutive of his first name.

12. By its judgment of 14 March 2000, the Centru District Court found that the information contained in the article was defamatory of G.R. and did not correspond to reality. It argued that in the emergency department of the Municipal Traffic Police there was only one Sergeant-Major Jora, and that he was therefore easily identifiable. In particular, the court quoted the following extracts from the article as being defamatory:

"...this sergeant-major Jora, who treated him as a man from the lowest strata, almost as a nonentity."

13. The court found that this statement conveyed the idea "that 'Jora' was a policeman who could not behave with other people, and who was not a very positive person".

"The sergeant-major, promised to return the driver's licence, but only on condition that Victor paid a fine of MDL 18."

14. The court found that this statement did not correspond to reality since Victor forgot to take his driving licence. Moreover, Victor could not prove that he was requested to pay a fine.

> "He threw the driver's licence in Victor's face, shouting like a madman."

> "Take your documents and get out of here, and pray God not to come back to the Traffic Police, because otherwise you'll get into big trouble."

15. The court found that these statements were defamatory of G.R. since they characterised him as a brutal, menacing and vindictive person. Moreover, the applicant did not bring any evidence in support of these statements. The court did not make any note of Victor's testimony in its judgment.

16. The court ordered the applicant and the newspaper to pay the complainant non-pecuniary damages of MDL 180 (the equivalent of 14.4 euros (EUR) at the time) and MDL 1,800 (the equivalent of EUR 147 at the time) respectively. It also ordered them to publish a denial of the above statements.

17. Only the newspaper appealed against this judgment. The applicant lodged a request submitting that she fully agreed with the appeal and that she subscribed to it.

18. On 30 May 2000 the Chişinău Regional Court dismissed the appeal on the ground that the applicant had not proved the truth of her statements.

19. The newspaper lodged an appeal in cassation against the judgment of the Regional Court. The applicant neither lodged an appeal in cassation nor subscribed to the one lodged by the newspaper.

20. On 24 October 2000 the Court of Appeal upheld the appeal in cassation and quashed the judgments of the Centru District Court and of the Chişinău Regional Court in respect of both the newspaper and the applicant. It issued a new judgment, in which it found in favour of G.R.. In its judgment the court found that only the following statements were defamatory and did not correspond to reality:

> "...this sergeant-major Jora, who treated him as a man from the lowest strata, almost as a nonentity."

> "He threw the driver's licence in Novac's face, shouting like a madman." (*Бросил Новаку водительские права в лицо, крича как помешанный*)

21. It ordered the newspaper to publish a denial of the above statements within fifteen days. It ordered the applicant and the newspaper to pay the complainant non-pecuniary damages of MDL 180 and MDL 1,800 respectively. It also ordered both the applicant and the newspaper to pay the court fees of MDL 90.

II. RELEVANT DOMESTIC LAW

22. 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."

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTION

23. In their memorials of April 2005 the Government raised for the first time the objection that domestic remedies had not been exhausted because the applicant failed to lodge an appeal on points of law with the Court of Appeal.

24. The applicant disagreed and argued that since the Government failed to raise this issue at the stage of admissibility, they were estopped from doing so now.

25. The Court notes that while being invited by the Court to comment on the admissibility of the application, the Government failed to raise in their

observations the problem of possible non-exhaustion of domestic remedies by the applicant.

26. The Court reiterates that, the rule of exhaustion of domestic remedies referred to in Article 35 §1 of the Convention obliges those seeking to bring their case against the State before an international judicial organ to use first the remedies provided by the national legal system. At the same time, according to Rule 55 of the Rules of Court, any plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application (see *K. and T. v. Finland* [GC], no. 25702/94, § 145, ECHR 2001-VII; *N.C. v. Italy* [GC], no. 24952/94, § 44, ECHR 2002-X).

27. It is the normal practice of this Court where a case has been communicated to the respondent Government, not to declare the application inadmissible for failure to exhaust domestic remedies, unless this matter has been raised by the Government in their observations (see *Rehbock v. Slovenia*, no. 29462/95, (dec), 20 May 1998).

28. The Court notes with the applicant that, prior to the Court's decision on the admissibility of the present case the Government had not argued that domestic remedies had not been exhausted (see the admissibility decision of 1 February 2005). They are therefore estopped from raising this objection to the admissibility of the application now (see *Prodan v. Moldova*, no. 49806/99, § 36, ECHR 2004-... (extracts)).

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

29. The applicant alleges a violation of her 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

30. The applicant argued that Articles 7 and 7/1 of the Civil Code were not formulated with sufficient precision and clarity since they failed to elaborate on the fact that value judgments were not susceptible of proof.

31. She submitted that the interference with her freedom of expression was not necessary in a democratic society because the impugned statements contained value judgments and not facts. Accordingly, by obliging her to prove that her statements were true, the national courts put on her an impossible burden.

32. She further submitted that the article did not contain the full name of G.R. and therefore it was almost impossible to identify him. The article was written in a sarcastic tone, and it aimed to reveal and to criticize psychological and behavioural aspects of many traffic police officers. It refered to a matter of public interest.

33. Moreover, the amount of damages awarded to G.R. was arbitrary since the courts did not elaborate on its quantification.

2. The Government

34. 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. 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 a police officer and furthermore the measure was necessary in a democratic society.

35. The Government submitted that the impugned statements contained factual statements and not value judgments and that there was a pressing social need that justified the interference.

36. They pointed to the national authorities' margin of appreciation in assessing the need for interference and submitted that where the Convention referred to domestic law it was primarily the task of the national authorities to apply and interpret domestic law. They contended that in the present case the domestic authorities did not overstep this margin of appreciation and they made use of it in good faith, carefully and in a reasonable way.

37. The Government submitted that the reasons given to justify the interference were "relevant and sufficient". In this respect they argued that the readers could have easily identified G.R. by the diminutive of his name since there was only one person with that diminutive in his police unit.

38. Relying on *Janowski v. Poland* ([GC], no. 25716/94, ECHR 1999-I), the Government stated that the person against whom the applicant's article

was directed was a civil servant 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".

39. Referring to the proportionality of the sanction with the legitimate aim pursued, the Government submitted that the applicant was ordered to pay compensation of MDL 180, which was the lowest sanction possible under Articles 7 and 7/1 of the Civil Code. Accordingly, they concluded that the sanction was proportionate to the legitimate aim pursued.

B. The Court's assessment

40. It is common ground between the parties, and the Court agrees, that the decisions of the domestic courts and the award of damages made against the applicant amounted to "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"

41. The Court notes that the interference complained of had a legal basis, namely Articles 7 and 7/1 of the Civil Code (see paragraph 22 above). In its judgment *Busuioc v. Moldova*, no. 61513/00, § 52-54, 21 December 2004, the Court found that these provisions were accessible and foreseeable. Accordingly the Court concludes that in this case too the interference was "prescribed by law" within the meaning of Article 10 § 2.

2. "Legitimate aim"

42. It is not disputed by the parties, and the Court agrees, that the interference served the legitimate aim of protecting the reputation of the policeman G.R. It therefore remains to be examined whether the interference was "necessary in a democratic society".

3. "Necessary in a democratic society"

(a) General Principles

43. 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).

44. 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).

45. 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).

46. 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* 1996-II, p. 500, § 39, and *Fressoz and Roire v. France* [GC], no. 29183/95, § 54, ECHR 1999-I).

47. The punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so (*Jersild v. Denmark*, judgment of 23 September 1994, Series A no. 298, § 35).

48. 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.

49. 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* 1997-IV, p. 1276, §33).

50. 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

51. The Government contended that the complainant in the present case (policeman G.R.) was a public servant and therefore, he enjoyed a higher level of protection from undue criticism and scrutiny.

52. It is true that the Court decided that it may be necessary to protect public servants from offensive, abusive and defamatory attacks when on duty. However, the Court considers that this case is distinguishable from *Janowski*. It is to be noted that in contrast to *Janowski*, the impugned statements formed part of an open discussion of matters of public concern and they involved the issue of freedom of the press since the applicant acted as a journalist and not as a private individual. Moreover, in the Court's view, the language used in the article cannot be characterised as "offensive and abusive", which was the case in *Janowski*.

53. 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.

54. The Court recalls that the punishment of a journalist for assisting in the dissemination of statements made by another person in an interview would seriously hamper the contribution of the press to discussion of matters of public interest and should not be envisaged unless there are particularly strong reasons for doing so (*Jersild v. Denmark*, judgment of 23 September 1994, Series A no. 298, § 35). Bearing in mind the moderate language used by the applicant and the fact that it does not appear that she acted in bad faith with the purpose of defaming G.R., the Court takes the view that there were no particularly strong reasons for doing so.

55. The Court further notes that the first impugned statement found by the Moldovan courts to be defamatory: "*treated him as a man from the lowest strata, almost as a nonentity"* cannot be regarded otherwise than as a value judgment. The national courts found it, however, not to correspond to reality since the applicant had not been able to prove its truth. The Court notes that this value judgment had a factual basis, namely Victor's story. It is also to be noted that the language used by the applicant to express it was moderate. Accordingly the Court concludes that it was not necessary in a democratic society to interfere with the applicant's freedom of expression in respect of this statement.

56. The second statement: "*He threw the driver's licence at Victor's face, shouting like a madman*" can have a double meaning in Russian. Namely, it can either mean that the driver's licence was actually aimed and flung into Victor's face (which would be a statement of fact), or it can mean that the driver's licence was given to Victor in an impolite way (which would be a value judgment). The national courts did not attempt to clarify which meaning was intended to bear the statement.

57. Since it is primarily for the national courts to assess the facts of a case before them, the Court will not speculate on whether the second statement was intended to be a value judgment or a statement of facts. However, for the reasons set out below, it is ready to assume that it constituted a statement of facts and that, thus, the applicant had the duty to prove its truth.

58. It is further noted that the applicant tried to bring evidence by putting forward a witness, Victor (see paragraph 11 above). However, the national courts did not pay any attention to Victor's testimony and did not seek to assess it (see paragraph 15 above), apparently treating it as irrelevant.

59. In such circumstances, the Court considers that, in requiring the applicant to prove the truth of her statements, while at the same time

depriving her of an effective opportunity to adduce evidence to support her statements and thereby attempt to establish their truthfulness, the Moldovan courts interfered with her right to freedom of expression in a manner which was not necessary in a democratic society (see *Busuioc v. Moldova*, cited above, § 88).

60. Accordingly, the Court concludes that there was a breach of Article 10 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicant claimed EUR 5,000 for the pecuniary and non-pecuniary damage suffered as a result of the breach of her right to freedom of expression. She argued that she suffered distress and frustration. She invoked the case of *Ukrainian Media Group v. Ukraine*, no. 72713/01, 29 March 2005 in which the applicant was awarded EUR 33,000 for non-pecuniary damage. She also invoked the cases of *Steel and Morris v. the United Kingdom*, no. 68416/01, ECHR 2005 -... and *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, ECHR 2003-XI, in which the applicants were awarded EUR 20,000 and EUR 5,000, respectively, for non-pecuniary damages. Referring to the *Busuioc* case, in which the applicant was awarded EUR 4,000, she argued that in that case the Court found several interferences not to be in breach of Article 10 and, therefore, she was entitled to a higher award.

63. The Government disagreed with the amount claimed by the applicant, arguing that the she did not suffer any pecuniary and non-pecuniary damage. They submitted that in such cases as *Oberschlick v. Austria (no. 1)*, judgment of 23 May 1991, Series A no. 204, and *Schwabe v. Austria*, judgment of 28 August 1992, Series A no. 242 - B, the Court did not award any non-pecuniary damage to the applicants and suggested that in the present case the applicant also should not be awarded anything.

64. In view of its findings above, the Court considers that the applicant suffered a pecuniary damage, namely the award of damages made against her, and that she must have also been caused a certain amount of stress and frustration as a result of the breach of her right to freedom of expression

which cannot be compensated by a simple finding of a violation. Deciding on an equitable basis, it awards the applicant the total sum of EUR 3,000 in respect of pecuniary and non-pecuniary damage.

B. Costs and expenses

65. The applicant also claimed EUR 2,500 for the costs and expenses incurred before the Court claiming that her lawyer had spent fifty-seven hours on the case. She submitted a detailed time-sheet and a contract according to which the lawyer's hourly rate was EUR 50, but the total amount could not be higher than EUR 2,500.

66. The Government did not agree with the amount claimed, stating that the applicant had failed to prove the alleged representation expenses. According to them, 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. According to the Government, the lawyer's fee in this case should not exceed EUR 25.

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 the case-law relied upon by the applicant's lawyer was not pertinent to this case.

67. 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).

68. 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.

C. Default interest

69. 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. *Dismisses* the Government's preliminary objection;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *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, EUR 3,000 (three thousand euros) in respect of pecuniary damage and non-pecuniary damage and EUR 1,500 (one thousand 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;

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

Done in English, and notified in writing on 11 October 2005, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Nicolas BRATZA
President