

Press release issued by the Registrar

**CHAMBER JUDGMENT
BUSUIOC v. MOLDOVA**

The European Court of Human Rights has today notified in writing a judgment¹ in the case of *Busuioc v. Moldova* (application no. 61513/00).

The Court held unanimously:

- that there had been **a violation of Article 10** (freedom of expression) of the European Convention on Human Rights in respect of the statements concerning three of the plaintiffs at national level.;
- that there had been **no violation of Article 10** in respect of statements concerning two other plaintiffs.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant 125 euros (EUR) for pecuniary damage, EUR 4,000 for non-pecuniary damage and EUR 1,500 for costs and expenses.

(The judgment is available only in English.)

1. Principal facts

The applicant, Valeriu Busuioc, is a Moldovan national who was born in 1956 and lives in Moldova.

On 14 August 1998 an article written by him criticising the staff management at Chişinău International Airport (CIA) appeared in the Russian-language weekly newspaper *Express*². As a result six employees of CIA (I.V., C.P., C.M., C.V., S.I. and A.I.) brought separate actions for defamation. The actions were subsequently joined.

On 3 December 1998 the Centru District Court found that the article was defamatory in respect of each of the plaintiffs and, in addition, inaccurate in respect of four of them (I.V., C.V., S.I. and A.I.). The plaintiffs were awarded damages to be paid by the applicant and the newspaper.

¹ Under Article 43 of the European Convention on Human Rights, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

² Extracts from the article may be found in the full text of the judgment.

On 5 July 1999 the Chişinău Regional Court allowed in part the applicant's appeal and dismissed one of the initial actions (brought by C.P.) and reduced the amount of damages awarded. The total amount of damages payable by the applicant now amounted to 2,610 Moldovan Lei (MDL). According to the Government the average monthly salary in Moldova in July 1999 was MDL 298.9 (approximately 25 euros at the time).

This judgment was upheld by the Court of Appeal.

2. Procedure and composition of the Court

The application was lodged on 31 January 2000 and declared admissible on 27 April 2004.

Judgment was given by a Chamber of 7 judges, composed as follows:

Nicolas **Bratza** (British), *President*,
Matti **Pellonpää** (Finnish),
Josep **Casadevall** (Andorran),
Rait **Maruste** (Estonian),
Stanislav **Pavlovschi** (Moldovan),
Javier **Borrego Borrego** (Spanish),
Elisabet **Fura-Sandström** (Swedish), *judges*,

and also Michael **O'Boyle**, *Section Registrar*.

3. Summary of the judgment¹

Complaint

The applicant complained, under Article 10 of the Convention, that his right to freedom of expression had been violated.

Decision of the Court

Article 10 of the Convention

The Government had contended that the complainants in the defamation proceedings were civil servants and therefore, unlike politicians, they should enjoy a higher level of protection from undue criticism and scrutiny. However, the complainants in the present case were neither law-enforcement officers nor prosecutors. It would go too far to extend the protection recognised in the Court's case-law as available to certain civil servants to all persons who were employed by the State or by State-owned companies. Moreover the applicant's remarks had formed part of an open and ongoing discussion of matters of public interest and had been made by him in his capacity as a journalist.

The Court examined separately the statements in relation to each complainant in order to determine whether the admitted interference could be regarded as justified under Article 10 § 2 and notably whether in each case the interference could be considered necessary in democratic society.

¹ This summary by the Registry does not bind the Court.

(i) In respect of I.V.

An award of damages had been 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. These were statements of fact and not value judgments. It appeared that the applicant had not verified the information before publication which, as a journalist, he ought to have done. The applicant had himself admitted during the domestic proceedings that he had published inaccurate information as regards the family ties between the first and the sixth complainants. The interference could therefore be considered justifiable under Article 10 of the Convention.

(ii) In respect of C.M.

The article referred to several episodes of alleged abuses committed by C.M. in his capacity as Head of the Staff Unit. He cited formal complaints lodged by Airport employees regarding acts of alleged sexual harassment, drunkenness and abuse of an official car by C.M. The domestic courts had not found 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.

The Court considered that the impugned passages amounted to the expression of an opinion or value judgment whose truth, by definition, was not susceptible of proof. While such an opinion may be excessive, in particular in the absence of any factual basis, this was not the position in the present case. The applicant had 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.

(iii) In respect of C.V.

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 Business School.

The applicant himself had admitted during the domestic proceedings that information published concerning C.V.'s professional background had been inaccurate. The interference could be considered necessary in a democratic society.

(iv) In respect of S.I.

In respect of S.I., the applicant had made two statements which were considered to be defamatory and to be inaccurate.

First, he had 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. The Court concluded that the interference in respect of this statement could be considered justifiable in terms of Article 10 of the Convention.

Secondly, he had written, referring to the sale of State-owned aircraft, that in the opinion of many civil aviation employees S.I. had been involved in a "shady deal".

The transaction referred to was suspected of being illegal and a Parliamentary Commission had made a report to that effect. There was therefore some objective and factual basis for the applicant's description of it as a "shady deal".

The Court recalled that in circumstances where there were 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 had a right to receive them.

Accordingly, the interference in respect of this statement was not necessary in a democratic society.

(v) In respect of A.I.

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.

The first statement was that A.I. had organised a demonstration by his supporters. By requiring the applicant to prove its truth, while at the same time depriving him of an effective opportunity to adduce evidence to support it and thereby show its truthfulness, the finding of the Moldovan courts that the statement was defamatory could not be justified as necessary in a democratic society.

Secondly, the applicant had stated that, after being reinstated in the position of Chief Executive, A.I. had organised a staff purge. 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 those circumstances the interference was not necessary in a democratic society.

Thirdly the applicant had stated that A.I. had hired his relative I.V. The Court concluded that the interference could be considered justifiable in terms of Article 10 of the Convention.

Fourthly, the applicant had claimed that A.I. was involved together with S.I. in a "shady deal". The Court reiterated its findings in relation to the complaint by S.I. For similar reasons, the Court concluded that the interference with the applicant's freedom of expression was not necessary in a democratic society.

The applicant had also invoked the severity of the awards of damages imposed on him as a separate head of complaint. 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, the Court took the view that the amounts were not excessive.

The Court therefore concluded:

- (1) That there had been no violation of Article 10 of the Convention as regards the applicant's statements concerning I.V.;
- (2) That there had been a violation of Article 10 of the Convention as regards the applicant's statements concerning C.M.;
- (3) That there had been no violation of Article 10 of the Convention as regards the applicant's statements concerning C.V.;

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

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights. Since 1 November 1998 it has sat as a full-time Court composed of an equal number of judges to that of the States party to the Convention. The Court examines the admissibility and merits of applications submitted to it. It sits in Chambers of 7 judges or, in exceptional cases, as a Grand Chamber of 17 judges. The Committee of Ministers of the Council of Europe supervises the execution of the Court's judgments. More detailed information about the Court and its activities can be found on its Internet site.