



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

FOURTH SECTION

**CASE OF SOFRANSCHI v. MOLDOVA**

*(Application no. 34690/05)*

JUDGMENT

STRASBOURG

21 December 2010

**FINAL**

*21/03/2011*

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Sofranschi v. Moldova,**

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 30 November 2010,

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

## PROCEDURE

1. The case originated in an application (no. 34690/05) 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 Eugen Sofranschi (“the applicant”), on 21 September 2005.

2. The applicant was represented by Mr T. Cârnaț, a lawyer practising in Chișinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

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

4. On 28 September 2009 the President of the Fourth Section decided to communicate the case to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 1).

## THE FACTS

### I. THE CIRCUMSTANCES OF THE CASE

5. The applicant, Mr Eugen Sofranschi, was born in 1946 and lives in Briceni.

6. After the dissolution of the Soviet Union, the land and property of the former collective farms (kolkhozes) were divided among the villagers who

had been members of the collective farms. In some localities new collective farms were formed, to which the villagers contributed their land and other goods inherited from the former collective farms. The collective farms were headed by leaders. In some cases the villagers worked in the collective farms, whereas in other cases they merely received a part of the revenue of the farm at the end of the year. At the time of the events in question, the applicant was a member of such a collective farm and had a tense relationship with its leader, V.P., whom he suspected of abusing his position. It does not appear that the applicant and V.P. had an employer-employee relationship.

7. In May 2003 during a local election campaign, the applicant, who was a member of the electoral staff of one of the candidates, wrote a letter to the President of Moldova, the Speaker of Parliament and the local Prosecutor's Office which was critical of V.P., who was also a candidate for the position of mayor of their village. In the letter, the applicant accused V.P. of numerous abuses. The applicant requested that the State authorities intervene in order to solve the problems of: (i) access to a lake and pasture on the part of local villagers; and (ii) V.P.'s abusive behaviour.

8. In August 2003 V.P. initiated civil defamation proceedings against the applicant and claimed compensation of 20,000 lei (MDL). He argued, in particular, that the following passages from the applicant's letter had been defamatory of him:

“[1] V.P. who, as a matter of coincidence, was the leader of the collective farm is shameless ... [2] He has no education and only attended primary school... He obtained false diplomas and cannot even read properly... [3] He illegally possesses shares in the collective farm ... [4] The property [of the collective farm] which was gathered by the people over a very long period of time is now used by shameless people. [5] He has guns and threatens people with them ...”

V.P. also submitted that the applicant had been spreading such rumours in the village and that because of this he had lost the elections for the position of mayor.

9. In his written defence before the Briceni District Court, the applicant rejected V.P.'s accusations and stated that the information concerning V.P.'s education and diplomas had been provided to him and to many other villagers by a person named N.C. and that it had been common knowledge in the village. As to V.P.'s reading skills, the applicant submitted that all the members of the collective farm could confirm that V.P. had had difficulty reading a text during a meeting. As to V.P.'s threatening people with guns, the applicant stated by way of example that during a village festival V.P. had fired twice from a gun into the air in order to intimidate two people. As to the allegation that V.P. had abusively limited the villagers' access to the lake, the applicant submitted that a court had deprived V.P. of possession of the lake in the interim.

10. On 28 November 2003 the Briceni District Court found in favour of V.P. and ordered the applicant to pay him MDL 10,000 in compensation for non-pecuniary damage and MDL 500 for costs and expenses. The judgment was upheld by the Court of Appeal but quashed by the Supreme Court of Justice, which ordered a fresh examination of the case. In so doing, the Supreme Court instructed the inferior courts to determine: (i) when and on exactly which occasion the impugned expressions were made by the applicant; and (ii) whether the impugned expressions had constituted value judgments.

11. On 7 July 2004 the Briceni District Court again found in favour of V.P. and ordered the applicant to pay him MDL 12,000 in compensation for non-pecuniary damage and MDL 500 for costs and expenses.

The court heard several witnesses, who declared that they had heard the applicant spreading the impugned rumours among the villagers. The applicant objected and argued that all the witnesses put forward by V.P. had been his relatives. The applicant also submitted that the impugned statements had only been made in the letter addressed to the Prosecutor's Office, the President and the Speaker of Parliament.

On the basis of the evidence before it, the court found the impugned passage from the letter of May 2003 to be defamatory. It did not find the applicant guilty of spreading the impugned statements by any other means. The court found the first statement to be false and defamatory because V.P. had been legally elected as the leader of the collective farm. The court also held the second statement to be defamatory because V.P. had been able to present a diploma from a university in the Russian Federation. In so far as the third statement was concerned, in declaring it defamatory the court relied on a letter of the Prosecutor's Office in reply to the applicant's letter of May 2003, in which the Prosecutor's Office stated that V.P.'s title to the shares was legitimate. As to the fourth statement, the court found that since V.P. had been the leader of the collective farm, he had had the right to administer its property and, therefore, the statement "used by shameless people" was defamatory of V.P. Finally, the court also found the last statement to be defamatory on the basis of a document issued by the police, according to which V.P. did not possess any registered guns. The court did not refer in its reasoning to the submissions of a witness put forward by the applicant, who claimed to have been threatened with a gun by V.P. In calculating the compensation for the non-pecuniary damage suffered by V.P., the court held that the fact that the impugned letter had been written during the election campaign and that the applicant had been a member of the electoral staff of the candidate running against V.P. in the elections were aggravating factors on the part of the applicant.

12. The applicant appealed and submitted, *inter alia*, a document issued by the Mayor's Office of his village, according to which V.P.'s use of a barn belonging to the collective farm had not had a legal basis. The applicant also

attached to his appeal a letter from the Prosecutor's Office indicating that a criminal investigation was pending against V.P. in respect of his possession of a false diploma. It appears that in September 2004 the mayor's office of the applicant's village had made an inquiry of the university in the Russian Federation which V.P. had stated that he had graduated from. According to a letter signed by the president of the university dated 9 September 2004, no person named V.P. had graduated from that university in the year indicated on V.P.'s diploma. It is not clear from the parties' submissions whether this document was part of the case file in the defamation proceedings. It would appear that it was part of the case file in the criminal proceedings pending against V.P.

13. On 7 December 2004 the Bălți Court of Appeal dismissed the applicant's appeal. The court held, *inter alia*, that the pending criminal proceedings against V.P. for possession of a false diploma were not a sufficient ground for quashing the judgment of the first-instance court. Only a final judgment finding V.P. guilty which had been adopted before the impugned letter had been written would have justified such an accusation being made against him.

14. The applicant lodged an appeal on points of law and reiterated, *inter alia*, that his letter of May 2003 had not been made public but rather had only been sent to a limited number of people.

15. On 23 March 2005 the Supreme Court of Justice upheld the judgment of the Court of Appeal but reduced the amount awarded in respect of compensation for non-pecuniary damage from MDL 12,000 to MDL 3,000.

## II. RELEVANT DOMESTIC LAW

16. The relevant part of Article 16 of the Civil Code reads as follows:

“(1) Every person has the right to the respect for his or her honour, dignity and professional reputation.

(2) Every person has the right to request the renunciation of information which affects his or her honour, dignity and professional reputation if the person circulating such information cannot prove that it corresponds to reality.

...

(4) Where information which affects a person's honour, dignity and professional reputation is circulated in a mass medium, the court shall order [that medium] to publish a disclaimer in the same column, page, programme or series of programmes, within a maximum of 15 days of the date of entry into force of the court judgment.

...

(7) A person whose rights and lawful interests have been violated by a publication in a mass medium has the right to publish a reply in the medium in question, at the latter's expense.

(8) Every person about whom information has been published [thereby] violating his or her honour, dignity and professional reputation has the right to request compensation for pecuniary and non-pecuniary damage in addition to the publication of a renunciation.”

## THE LAW

17. The applicant complained under Article 10 of the Convention that the domestic courts' decisions had entailed interference with his right to freedom of expression that could not be regarded as necessary in a democratic society. Article 10 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. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

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 national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

18. The applicant argued that he had not had effective remedies against the breach of his freedom of expression and alleged a violation of Article 13, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority ...”

The Government contested the admissibility of the application.

### I. ADMISSIBILITY OF THE CASE

19. The applicant complained under Article 13 of the Convention that he had not had an effective remedy available to defend his right to freedom of expression. The Court notes that the applicant was found guilty of defamation as a result of court proceedings instituted against him by V.P. He had been able to appeal against the judgments of the Briceni District Court and the Bălți Court of Appeal and he had his case examined twice by the Supreme Court of Justice. The applicant did not explain why, in his

opinion, such a remedy cannot be considered effective within the meaning of Article 13 of the Convention. The fact that the applicant is not satisfied with the outcome of the proceedings does not automatically trigger a violation of Article 13 of the Convention. Accordingly, the Court cannot accept the applicant's contention that he had not had an effective remedy under Article 13 of the Convention taken in conjunction with Article 10 of the Convention. The complaint is therefore manifestly ill-founded within the meaning of Article 35 § 3 of the Convention.

20. In so far as the applicant's other complaint is concerned, the Court considers that it raises questions of fact and law which are sufficiently serious that their determination should depend on an examination of the merits, and that no grounds for declaring it inadmissible have been established. The Court therefore declares the complaint admissible. In accordance with its decision to apply former Article 29 § 3 of the Convention (see paragraph 4 above), the Court will immediately consider the merits of this complaint.

## II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

### A. The arguments of the parties

21. The applicant submitted that there had been a violation of Article 10 of the Convention as a result of his having been found guilty of defamation by the domestic courts.

22. The Government agreed that there had been an interference with the applicant's right to freedom of expression, but submitted that the interference had been prescribed by law, had pursued a legitimate aim and had been necessary in a democratic society. The applicant had defamed V.P., not only in the letter addressed to the Prosecutor's Office, the President of Moldova and the Speaker of Parliament but also by spreading defamatory rumours amongst the villagers. The Government relied on the testimonies of witnesses called in the domestic proceedings by V.P. (see paragraph 11 above).

23. The Government further submitted that even though V.P. had been a candidate in the local elections at the time of the events, he could not have been considered to be a politician, and the admissible limits of criticism in his respect had therefore been more limited than those in respect of politicians. In any event, the language employed by the applicant had amounted to a "rain of insults", rather than criticism in a political context.

24. The Government went on to submit that all of the allegations made by the applicant against V.P. had been false. In so far as the applicant's second statement was concerned, he had not been able to adduce any evidence in support of his accusation that V.P. had possessed a false



diploma. In respect of the applicant's third statement, it had been established during the proceedings that V.P. had lawfully possessed shares in the collective farm. The applicant had been equally unable to prove the truthfulness of his statement that V.P. had threatened third parties with a gun.

25. The Government finally argued that the penalty imposed on the applicant could not be said to be severe as it had not been a criminal penalty, and that it had been proportionate to the aim pursued by the domestic courts in this case.

### **B. The Court's assessment**

26. 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 of the Convention. It is also undisputed that the interference was “prescribed by law”, namely Article 16 of the Civil Code, and pursued a legitimate aim, namely the protection of V.P.'s reputation. The Court's task is to establish whether the interference was “necessary in a democratic society”.

27. The test of whether the interference complained of was “necessary in a democratic society” requires the Court to determine whether it corresponded to a “pressing social need”, whether it was proportionate to the legitimate aim pursued, and whether the reasons given by the national authorities to justify it are relevant and sufficient. In assessing whether such a “need” exists and what measures should be adopted to deal with it, the national authorities are left a certain margin of appreciation. This power of appreciation is not, however, unlimited but goes hand in hand with European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10 (for an analysis of the relevant principles in more detail, see *Giniewski v. France*, no. 64016/00, §§ 43-54, ECHR 2006-I; *Aydın Tatlav v. Turkey*, no. 50692/99, §§ 22-27, 2 May 2006; *Gündüz v. Turkey*, no. 35071/97, § 38, ECHR 2003-XI; and *Murphy v. Ireland*, no. 44179/98, §§ 65-69, ECHR 2003-IX (extracts), including the further references cited therein).

28. The Government insisted that the defamation had been committed not only by the applicant's writing a letter to State officials but also by his spreading the contents of the letter amongst the villagers. They relied on the testimonies of several witnesses to that effect made during the domestic proceedings. The Court notes, however, that the domestic courts only found the applicant guilty of defamation by sending the impugned letter. It will

therefore refrain from taking into consideration any other alleged means of defamation of V.P. by the applicant.

29. The interference with the applicant's right to freedom of expression was based on the applicant's correspondence with the President of Moldova, the Speaker of Parliament and the local Prosecutor's Office during a local electoral campaign. In the impugned letter, the applicant, who was a member of the electoral staff of one of the candidates, complained about the conduct of the leader of a collective farm, also a candidate in the elections. The letter was sent privately to each of its recipients, and was not published by the applicant or disseminated by him to a wider audience. Accordingly, the requirements of the protection enjoyed by V.P. have to be weighed not in relation to the interests of the freedom of the press or of open discussion of matters of public concern, but rather against the applicant's right to report irregularities to a body competent to deal with such complaints.

30. The Court further notes that the applicant did not resort in his letter to abusive, strong or intemperate language, albeit that it might be said to have contained a certain number of emotional expressions verging on exaggeration or provocation (cf. *Prager and Oberschlick v. Austria*, 26 April 1995, § 38, Series A no. 313). Assessing the text of the letter as a whole, the Court finds that its contents did not go beyond the limits of acceptable criticism. Furthermore, it appears that the applicant's factual allegations rested on what he believed to have been sound grounds. In this respect the Court notes that the applicant's allegation that V.P. had a false diploma was considered to be serious enough by the Prosecutor's Office to initiate criminal proceedings against V.P. The Court would underline that it does not accept the reasoning of the Court of Appeal, namely that the allegations of possession of a false diploma by V.P. should have first been proved in criminal proceedings that ended with a conviction (see paragraph 13 above). To accept such a position would amount to an excessive restriction of the freedom of expression which under no circumstances can be limited to allegations proved in criminal proceedings ending in final court judgments.

31. It is further noted that the applicant attempted to bring evidence in support of the allegation that V.P. had threatened people with a gun by putting forward a witness (see paragraph 11 above). However, the national courts did not pay any attention to the witness's testimony and did not assess it, apparently treating it as irrelevant. The Court recalls that in *Busuioc v. Moldova* (no. 61513/00, § 88, 21 December 2004) where a similar situation occurred, it found that 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 attempt to establish their truthfulness, amounted to a disproportionate interference with the applicant's right to freedom of expression.

32. A further aspect of the complaint which is relevant for the Court's determination in the present case is the distinction between statements of fact and value judgments. The applicant's letter contained both factual allegations of irregular conduct on the part of V.P. and value judgments about his unethical behaviour. It has been the Court's consistent view that, while the existence of facts can be demonstrated, 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 rights secured by Article 10 (see *Savitchi v. Moldova*, no. 11039/02, § 49, 11 October 2005). In the present case the Court considers that some of the impugned statements made by the applicant, such as “V.P. who, as a matter of coincidence, was the leader of the collective farm is shameless...”, “the property [of the collective farm] which was gathered by the people over a very long period of time is now used by shameless people...” were value judgments that represented the applicant's subjective appraisal of V.P.'s personality. The burden of proof in respect of these expressions was obviously impossible to satisfy.

33. The Court finally considers that the most important aspect of its assessment of the proportionality of the interference in the present case is the limited impact of the impugned statements, due to the fact that the applicant addressed his complaint by way of private correspondence to State officials and did not make it public to the outside world (see *Grigoriades v. Greece*, 25 November 1997, § 47, *Reports of Judgments and Decisions* 1997-VII).

34. Having regard to the above considerations, the Court finds that the Moldovan courts did not adduce “relevant and sufficient” grounds for the interference with the applicant's right to freedom of expression. There has therefore been a violation of Article 10 of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

35. 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**

36. The applicant claimed 244 euros (EUR) in pecuniary damage, 176 EUR of which represented transport costs which the applicant incurred in order to attend the court hearings in Bălți and Chișinău and the remainder concerning court fees which he had been required to pay in order that his appeals be examined. The applicant did not submit any receipts in support of his claim for transport costs. He did, however, submit copies of payment receipts concerning the court fees.

37. The Government disagreed with the amount claimed and argued that the applicant had failed to substantiate his claim for reimbursement of transport costs.

38. The Court agrees with the Government and considers it necessary to grant only EUR 65 to the applicant, representing his payment of court fees.

### **B. Non-pecuniary damage**

39. The applicant claimed EUR 5,000 in non-pecuniary damage caused to him by the breach of his Convention rights.

40. The Government contested the claim and argued that it was ill-founded and excessive.

41. Having regard to the violation of Article 10 of the Convention found above, the Court considers that an award of compensation for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,000.

### **C. Costs and expenses**

42. The applicant's lawyer claimed EUR 1,040 for costs and expenses incurred before the Court. He submitted a detailed time-sheet.

43. The Government disputed the amount claimed for legal representation. They considered it excessive and disputed the number of hours worked by the applicant's lawyer.

44. The Court notes that the applicant's representative did not submit any observations concerning the admissibility and merits of the case but only made submissions in respect of just satisfaction. Deciding on an equitable basis, the Court awards him EUR 150 for costs and expenses.

### **D. Default interest**

45. The Court considers it appropriate that 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. *Declares* the complaint concerning Article 13 inadmissible and the remainder of the application admissible;
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, the following amounts, to be converted into Moldovan lei at the rate applicable upon the date of settlement:
    - (i) EUR 65 (sixty-five euros), plus any tax that may be chargeable to the applicant, in respect of pecuniary damage;
    - (ii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of non-pecuniary damage;
    - (iii) EUR 150 (one hundred and fifty euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 December 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early  
Registrar

Nicolas Bratza  
President