FOURTH SECTION

CASE OF PETRENCO v. MOLDOVA

(Application no. 20928/05)

JUDGMENT

STRASBOURG

30 March 2010

FINAL

04/10/2010

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

In the case of **Petrenco** 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 9 March 2010,

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

PROCEDURE

1. The case originated in an application (no. 20928/05) 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 Anatol **Petrenco** ("the applicant"), on 25 May 2005.

2. The applicant was represented by Mr Vlad Moga, a lawyer practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr Vladimir Grosu.

3. The applicant alleged that his rights had been breached by the publication of defamatory statements in a Government-owned newspaper and by the failure of the Moldovan courts to protect his reputation.

4. On 28 August 2007 the Court decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1954 and lives in Chişinău. He was, at the time of the events to which the present application pertains, the Chairman of the Association of Historians of the Republic of Moldova and a university professor and is the author of the 1996 school curriculum on "Universal History".

6. On 4 April 2002 the official newspaper of the Moldovan Government, *Moldova Suverană* (“Sovereign Moldova”), published an article written by a historian and former deputy minister for education, S.N., headed “Commentary on Mr **Petrenco**'s reply on the Internet” (*Comentariul la răspunsul de pe Internet al domnului **Petrenco***). The article made negative remarks about the applicant's competence as a historian. It went on to suggest that the applicant's university place as a postgraduate student and his subsequent career as a historian were the result of his cooperation with the Soviet secret services. In particular, the article contained the following statements:

“That is, Mr **Petrenco**, it is not a political question but has to do with your 'feeble' memory or the lack of professional dignity.”

“But, you see, they did not properly understand this exorcising priest ...”

“... for his special merit (confirming the confidence of the AUCP (b)[1] – KGB[2]), [the applicant] was sent for postgraduate studies ...”

“... as a student, he excelled ... due to his 'special accomplishments' (he was a well-educated person who knew how to knock politely and respectfully at his superiors' doors: knock-knock-knock?!? [*stuk-stuk-stuk*][3]), and he became a member of CPSU[4] – AUCP (b) during his student years ...”

“...the Party once sent a 'Volga' especially for [the applicant] (how much faith did those from the CC – KGB have in comrade **Petrenco** Anatolii Mihailovici!!) to take him to Chişinău ...”

7. On 18 April 2002, the applicant brought defamation proceedings against S.N. and the newspaper, seeking the publication of a retraction and compensation for non-pecuniary damage.

8. During the proceedings before the Centru District Court, the court heard evidence from a witness who was questioned about the allegation that, as a student, the applicant had collaborated with the Soviet secret services. The witness was unable to confirm whether the applicant had been involved with the secret services and merely stated that the KGB had been operating undercover.

9. In its judgment of 30 April 2003 the Centru District Court granted the applicant's claims in part. The court found that it had been confirmed that the applicant had been a member of the Communist Party. However, it held that the reference to the applicant's links with the secret services (“confirming the confidence of the AUCP (b) – KGB”) was defamatory as it had not been proved that he was an agent of the KGB. The court's judgment stated, *inter alia*:

“... S.N.'s assertion that A. **Petrenco** 'was sent for postgraduate studies' ... only for his 'special accomplishments' for the KGB and 'confirming the confidence of the AUCP (b) – KGB', cannot, in the court's opinion, be interpreted other than as meaning that the applicant had collaborated with the KGB, which is recognised as having been a repressive organisation during the Soviet period. Any such collaboration is seen as

highly reprehensible by civil society. Taking into consideration that this fact has not been confirmed, the statements seriously affect the applicant's honour and dignity and cause him non-pecuniary damage and, therefore, should be retracted ..."

10. The court ordered the newspaper to publish a retraction, within 15 days, of some of the statements in the article of 4 April 2002, including the statement "confirming the confidence of the AUCP (b) – KGB". It further ordered S.N. and the newspaper to pay the applicant 900 Moldovan lei (MDL) (the equivalent of 57 euros (EUR) at the time) and MDL 1,800 (EUR 114) respectively.

11. The court also found in favour of S.N. in a counter-claim in respect of an article allegedly published by the applicant. The applicant appealed the judgment.

12. On 23 December 2003 the Chişinău Court of Appeal quashed the judgment of the Centru District Court on grounds of procedural error and remitted the case for a fresh judgment by the Centru District Court.

13. Pending the re-hearing of the case, on 1 April 2004, *Moldova Suverană* published an article headed "*Moldova Suverană* does not tolerate accusations and primitivisms", which stated, *inter alia*, that:

"... S.N.'s article of 4 April 2002 ... and the inappropriate language used do not represent the editorial policy of this newspaper. Epithets like 'feeble memory' or 'lack of personal dignity' [sic], 'exorcising priest' used by the scientist [S.]N. towards the scientist **Petrenco** are alien to us.

Moreover, we recall that the article was published two years ago and since then, the editorial board has changed, starting with its editor at the time, I.G., and continuing with the political department of the newspaper.

Therefore, we regret the disparaging remarks and immoderate language directed at the historian Mr **Petrenco**, even if we assume our right not to share his political opinions and ideas."

14. In the subsequent proceedings before the Centru District Court, S.N. stated that during the Soviet era nobody would have been sent to Moscow for postgraduate studies without the support of the Communist Party and the KGB. However, he accepted that not all those sent for postgraduate studies had been KGB agents.

15. On 12 May 2004 the Centru District Court dismissed the applicant's action, finding, *inter alia*:

"... According to the author of the article, he published it in good faith and had no intention to humiliate or defame his former colleague [Mr **Petrenco**]. On the contrary, he said in evidence that, in his personal opinion, Mr **Petrenco** had been a brilliant student and a committed activist, who was well-mannered and respected his elders. The fact that he had become a member of the CPSU was not a secret and did not disclose

any intention to defame, because everyone has the right to become a member of a political party ...

... the court finds that both [the author and the applicant] were former colleagues at the history faculty and had published articles in the press without any intention to defame the other."

16. The applicant appealed.

17. On 28 September 2004 the Chişinău Court of Appeal dismissed the appeal, finding that S.N. could not be held responsible for expressing his opinions. It considered the distinction between statements of fact and value judgments and stated:

"... [the Court of Appeal] considers that the phrases written in the article represent the author's own subjective opinion of Mr **Petrenco** ...

In a democratic society a person cannot be held responsible for expressing his own views ...

The notion of a 'value judgment' has also to be taken into consideration, which means that a person cannot be held responsible for his opinions or his views on certain events or circumstances ..., the veracity of which cannot be proved."

18. The applicant lodged an appeal on points of law. He mainly contended that:

"... the said article was published by the newspaper in bad faith and the first-instance court wrongly found that S.N. publishes articles in the press without any intention to defame the applicant. The defendants knowingly published the article with the aim of damaging the applicant's honour, dignity and professional reputation.

... the applicant does not object to the author's right freely to express his views, but he objects to the derogatory remarks in the article, which are not true and, in substance, damage the applicant's honour, dignity and professional reputation.

The courts disregarded the fact that the defendants had disseminated information which was damaging to [the applicant's] honour and did not apply the provisions of sections 7 and 7/1 of the Civil Code..."

19. The applicant attached to his appeal a linguistic report on the author's statements prepared by the National Centre of Terminology of the Department of Interethnic Relationships. The report concluded that S.N. had directly insulted the applicant and that the article had damaged his honour, dignity and professional reputation.

20. On 1 December 2004 the Supreme Court of Justice held that the applicant's appeal was inadmissible as it reiterated the arguments advanced at first instance and before the Court of Appeal. The court nonetheless briefly considered the issues arising in the case and found, *inter alia*, that:

"... Article 10 of the European Convention on Human Rights and Article 32 of the Moldovan Constitution guarantee the right to freedom of expression, including the right to communicate information and ideas.

Under these circumstances, by dismissing the applicant's action, the courts have correctly found that a distinction must be drawn between facts and 'value judgments'.

As the lower courts found in their judgments in the present case, the author's statements must be treated as 'value judgments', a circumstance which excludes liability on the part of the newspaper *Moldova Suverană* for the opinion it has expressed on certain events and circumstances, the veracity of which is impossible to prove.

In the light of the above and taking into consideration that the impugned statements are, in substance, 'value judgments' ... the appeal on points of law must be dismissed."

21. The Court made no comment on the report attached to the appeal.

22. According to the applicant, he was not summoned to attend the hearing before the Supreme Court of Justice.

II. RELEVANT DOMESTIC LAW

A. Freedom of expression and the right to reputation

23. Article 32 of the Constitution guarantees freedom of expression and provides, in so far as relevant, as follows:

"(1) The freedom of expression of all citizens ... is guaranteed.

(2) Freedom of expression must not damage the honour, dignity or rights of others ...

(3) Defamation ... is prohibited by law and incurs sanctions."

24. 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 [an order for] the retraction 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 organisation which disseminated such statements is not capable of proving that they correspond to reality, the court shall compel the publishing office of the media organisation concerned to publish, not later then 15 days after the judicial decision becomes effective, a retraction of the statements in the same column, on the same page or in the same programme or series of broadcasts."

Article 7/1 Compensation for non-pecuniary damage

"The non-pecuniary damage caused to a person as a result of the dissemination through the mass media or by organisations or natural persons of statements which do not correspond to reality, or statements concerning his or her private or family life without his or her consent, shall give rise to an award of financial compensation in an amount to be determined by the court.

The amount of the award determined by the court in each case shall be equal to between 75 and 200 times the minimum wage if the information has been disseminated by a legal entity and between 10 and 100 times the monthly wage if it has been disseminated by a natural person.

The immediate publication of an apology or retraction ... before a judgment is handed down in the matter constitutes a reason to reduce the value of any compensation or to exempt the party from the requirement to make a payment."

25. On 12 June 2003 a new Civil Code entered into force, Article 16 of which reads as follows:

"(1) Everyone shall have the right to respect for his or her honour, dignity and professional reputation.

(2) Everyone shall have the right to seek [an order for] the retraction of statements which are damaging to his or her honour, dignity and professional reputation, if the person who disseminated them is unable to prove their truthfulness.

...

(8) Anyone whose honour, dignity or professional reputation has been damaged as a result of disseminated information shall have the right to claim compensation for pecuniary and non-pecuniary damage ..."

B. Provisions concerning the *Moldova Suverană*

26. The relevant provisions of Government decision no. 305 of 17 May 2004 on the launch of the Government newspaper, *Moldova Suverană*, read as follows:

"(1) The Government newspaper *Moldova Suverană* shall be launched with effect from 1 July 1994.

The editor of the Government newspaper shall be appointed by a decision of the Government ..."

27. The relevant provisions of Government decision no. 587 of 20 June 2005 on the winding up of *Moldova Suverană* read as follows:

“With the purpose of fulfilling the State's obligation to prevent and to limit a State monopoly in media ...

(1) The State newspaper *Moldova Suverană* ... shall be wound up with effect from 1 July 2005 ...”

C. Provisions relating to the procedure before the Supreme Court

28. The Code of Civil Procedure of 12 June 2003 set out the procedure before the Supreme Court. Article 440 provides, in so far as relevant, as follows:

“Procedure for the examination of the admissibility of an appeal

(1) Once the court has established the existence of one of the reasons cited in Article 433, a chamber of three judges shall decide, in a non-reasoned and non-appealable judgment, on the admissibility of the appeal. In such cases, a report on the inadmissibility shall be prepared which, together with a copy of the appeal and the judgment, shall be held by the court in the relevant case file.

(2) The admissibility of an appeal is decided without summoning the parties.”

29. Article 442(1) provides that:

“In examining the appeal introduced ... the court shall verify, on the basis of the material in the case, the legality of the decision against which the appeal has been lodged, without taking any new evidence.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

30. The applicant complained under Article 6 § 1 of the Convention of procedural unfairness, arguing that the domestic courts had applied the law incorrectly and had failed to comment on the report he had submitted in evidence. He also alleged that he had not been properly summoned by the Supreme Court of Justice to attend the hearing on 1 December 2004.

31. Article 6 § 1 of the Convention, in so far as relevant, provides:

“1. In the determination of his civil rights and obligations ... everyone is entitled to a fair hearing ... within a reasonable time...”

32. The Government disputed that there had been any violation of Article 6 § 1 in the domestic proceedings.

A. The parties' submissions

33. The applicant argued that the judicial authorities had misinterpreted and misapplied the law and had taken illegal decisions. He further argued that all instances of jurisdiction had demonstrated partiality towards the defendants in the proceedings before them. As regards the report of the National Centre of Terminology, the applicant claimed that this had also been submitted to the first-instance court and had wrongly not been taken into account by the courts. Finally, he insisted that he had not been summoned to attend the Supreme Court hearing.

34. The Government pointed to the fact that the applicant's claim had been examined by several national tribunals, which had applied the law in force at the time, interpreted in a reasonable manner justified by the particular circumstances of the case. They took into consideration the relevant principles outlined by this Court. The applicant's general allegation that the law had been incorrectly applied was, in the Government's view, insufficient to find a violation of Article 6 § 1 in the absence of any explanation of the specific complaint. The decisions of the domestic courts were well-reasoned, with reference to relevant legislation.

35. As to the applicant's complaint about the failure of the Supreme Court to comment on the linguistic report, the Government insisted that the report had not been submitted at first instance or before the Court of Appeal. Under domestic legislation, the Supreme Court was required to consider the matter without the submission of new evidence (see paragraph 29 above). The fact that the court did not reach the conclusion sought by the applicant did not mean that it had wrongly assessed the evidence in the case. Further, according to the applicable regulations, the National Centre of Terminology was not granted competence to prepare expert reports to be produced in court proceedings. In any event, from a procedural perspective, the report did not comply with the relevant requirements, including requirements regarding its signature.

36. In respect of the applicant's complaint that he was not summoned to the hearing before the Supreme Court, the Government highlighted that under the legislation governing civil procedure, the admissibility of an appeal to the Supreme Court was to be assessed without the presence of the parties (see paragraph 28 above).

37. In conclusion, the Government considered that there was no violation of Article 6 § 1 in the present case.

B. Admissibility

1. General principles

38. The Court reiterates that, in accordance with Article 19 of the Convention, its only task is to ensure the observance of the obligations undertaken by the Parties in the Convention. In particular, it is not competent to deal with a complaint alleging that errors of law or fact have been committed by domestic courts, except where it considers that such errors might have involved a possible violation of any of the rights and freedoms set out in the Convention (see, for example, *Schenk v. Switzerland*, 12 July 1988, § 45, Series A no. 140; and *Laaksonen v. Finland*, no. 70216/01, § 20, 12 April 2007). In particular, while Article 6 guarantees the right to a fair hearing, it does not lay

down any rules on the admissibility of evidence as such, which is primarily a matter for regulation under national law (see *Schenk*, cited above, § 46; *Jalloh v. Germany* [GC], no. 54810/00, §§ 94-96, ECHR 2006-IX; and *Bykov v. Russia* [GC], no. 4378/02, § 88, ECHR 2009-...).

39. The Court recalls that an oral, and public, hearing constitutes a fundamental principle enshrined in Article 6 § 1. However, the obligation to hold a hearing is not absolute. According to the Court's established case-law, in proceedings before a court of first and only instance the right to a "public hearing" in the sense of Article 6 § 1 entails an entitlement to an "oral hearing" unless there are exceptional circumstances that justify dispensing with such a hearing (see, for example, *Håkansson and Sturesson v. Sweden*, 21 February 1990, § 64, Series A no. 171-A; and *Fredin v. Sweden (no. 2)*, 23 February 1994, §§ 21 to 22, Series A no. 283-A). However, the manner of application of Article 6 § 1 to proceedings before courts of appeal depends on the special features of the proceedings involved. In this respect, account must be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein (see *Helmers v. Sweden*, 29 October 1991, § 31, Series A no. 212-A). Provided that a public hearing has been held at first instance, the absence of such a hearing before second or third instance courts may be justified by the special features of the proceedings at issue. Thus, leave-to-appeal proceedings and proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6, although the appellant was not given the opportunity to be heard in person by the appeal or cassation court (*Helmers*, cited above, § 36). The overarching principle of fairness embodied in Article 6 is, as always, the key consideration (see, *mutatis mutandis*, *Pélissier and Sassi v. France* [GC], no. 25444/94, § 52, ECHR 1999-II; and *Sejdovic v. Italy* [GC], no. 56581/00, § 90, ECHR 2006-...).

2. Application of the general principles to the present case

40. The Court notes that the applicant complained that the law had been wrongly applied in his case. However, he did not provide any further details of the alleged misapplication of the law and in particular did not explain how any alleged error might have resulted in a possible violation of the rights and freedoms set out in the Convention. Accordingly, the Court considers that this part of the complaint is unsubstantiated.

41. As regards the applicant's complaint that the courts failed to have regard to the report of the National Centre of Terminology, the Court observes at the outset that the fact that the courts did not directly refer to the report in their judgments cannot of itself support the allegation that it refused to take the report into account at all. It is not clear in the present case whether the report was expressly excluded from evidence by the domestic courts. However, even if the courts did refuse to consider the report, the Court recalls that questions related to the admissibility of evidence are primarily a matter for regulation under national law. The question for the Court is whether the proceedings as a whole, including the way in which the evidence was obtained, were fair (see *Bykov*, cited above, § 89). In the present case, there is no evidence that the failure of the courts to have regard to the report of the National Centre of Terminology led to unfairness in the proceedings as a whole.

42. Finally, in so far as the applicant complained about the failure to summon him to attend the hearing before the Supreme Court, the Court notes that the applicant's appeal to the Supreme Court was on points of law only and that the hearing in question was an admissibility hearing. In respect of such hearings, Moldovan Law stipulated that the decision whether an appeal to the Supreme Court was admissible was taken on the basis of the written submissions in the case without the parties being summoned (see paragraph 29 above). In the circumstances, the Court concludes that, having regard to the fact that the applicant had enjoyed an oral hearing at first instance (see paragraphs 8 to 10 and 14 to 15 above) and the fact that the impugned hearing was a leave-to-appeal hearing concerning an appeal on points of law only, the failure to summon the applicant to the hearing did not give rise to any violation of Article 6 § 1.

43. In conclusion, the Court considers that, having regard to the above, the court proceedings in the applicant's case, taken as a whole, were fair. It therefore finds the applicant's complaints under Article 6 § 1 to be manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. They must therefore be declared inadmissible in accordance with Article 35 § 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

44. Although originally invoking Article 10, the applicant complained, in substance, of a breach of his right to protection of his reputation as a result of the article published in the *Moldova Suverană*. The Court recalls that it is the master of the characterisation to be given in law to the facts of the case submitted for its examination (see *inter alia*, *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 54, ECHR 2009-....). It has, moreover, previously found that the right to protection of one's reputation, as an element of "private life", is a right which falls under Article 8 of the Convention (see *Petrina v. Romania*, no. 78060/01, § 19, 14 October 2008), which reads as follows:

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

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

45. The Government refuted the applicant's allegations that his right to protection of his reputation had been violated.

A. The parties' submissions

46. The applicant asserted that the article of 4 April 2002 had damaged his honour and dignity and his professional reputation as a historian. He emphasised that, at the time the article was published, he was the Chairman of the Association of Historians of Moldova (see paragraph 5 above) and that the allegations that his career as a historian was the result of his collaboration with the former Soviet secret services had been made with the

purpose of undermining his professional reputation. He refuted the suggestion that he was, at the time of the publication of the article or during the relevant domestic proceedings, a member of any political party or the president of any political body, although subsequently, in October 2006, he was elected president of the "European Action" movement, a minor political party in Moldova.

47. The applicant further contended that the domestic courts had wrongly characterised the impugned statements as value judgments. In his view, the truthfulness of the statements in the article had not been established and the domestic courts had omitted to comment on his argument that, by publishing the retraction on 1 April 2004 (see paragraph 13 above), the newspaper *Moldova Suverană* had acknowledged that it had exceeded the boundaries of freedom of expression.

48. Referring to the Court's case-law in *Pfeifer v. Austria* (no. 12556/03, ECHR 2007-...), the Government accepted that a person's reputation was protected under Article 8, even if that person was criticised in the context of a public debate.

49. As to whether there had been a violation of Article 8, the Government explained at the outset that the *Moldova Suverană* had an independent editorial policy at the time the article was published. Accordingly, they submitted, since the author of the article was a private individual, the State was not directly responsible for the impugned statements. Further, they highlighted that the State was not a defendant in the domestic proceedings and that the applicant had not insisted on his argument of direct State responsibility for the publication of the article before the national courts.

50. As to the alleged failure of the courts to protect the applicant's reputation, the Government considered the key question to be whether the courts had struck a fair balance between the applicant's right to respect for his reputation and the freedom of expression of S.N. and the *Moldova Suverană*. Emphasising the State's margin of appreciation in such matters, the Government argued that the domestic courts' finding that the impugned statements were value judgments which had a sufficient factual basis was reasonable. Further, the Government submitted that the case had to be considered within the wider context in which the statements were made and the longstanding dispute between S.N. and the applicant, which had arisen as a result of a professional disagreement but which had become a more personal disagreement with the passage of time. Finally, the Government emphasised that the article in question had been published as part of a topical political debate on questions of general interest concerning the history of Moldova, in particular regarding the content and quality of history textbooks and the assessment to be made of various historical events. The contributions made by S.N. and the applicant to the debate had provoked further contributions from others in the field. The Government contended that the applicant was a political figure well-known in the field: he had unsuccessfully stood for election to parliament in 1998 and 2001 and was from 2000 the president of the "*Mouvement de Sauvegarde Nationale*" ("National Safeguard Movement"). Accordingly, the opinions expressed in the context of the debate were of particular public interest. Referring to the importance of ensuring freedom of expression in the context of political debate on questions of general interest, the Government invited the Court to conclude that the applicant's

complaint was inadmissible as manifestly ill-founded or, alternatively, that there had been no violation of Article 8.

B. Admissibility

51. It is clear from the Court's case-law, and the respondent Government accepts, that Article 8 is applicable in the circumstances arising in the present case (see *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI; *Pfeifer v. Austria*, cited above, §§ 53 to 55; and *Petrina v. Romania*, cited above, § 28). The applicant's allegation that his right to protection of his reputation was infringed as a result of the publication of the article of 4 April 2002 raises serious issues of law and fact which require examination on the merits. The Court accordingly concludes that the complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

C. Merits

1. General principles

52. The Court recalls that, although the object of Article 8 is to protect the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference. In addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private and family life. These obligations may involve the adoption of measures designed to secure respect for private and family life even in the sphere of the relations of individuals between themselves (see *Odièvre v. France* [GC], no. 42326/98, § 40, ECHR 2003-III; and *Dickson v. the United Kingdom* [GC], no. 44362/04, § 70, ECHR 2007-XIII). The Court considers that the present case engages the State's positive obligations arising under Article 8 to ensure effective respect for the applicant's private life, in particular his right to respect for his reputation (see *Petrina*, cited above, §§ 34 to 35). The applicable principles are similar to those arising in cases involving the State's negative obligations: regard must be had to the fair balance to be struck between the competing interests, in this case, the applicant's right to protection of his reputation and the right of the newspaper and S.N. to freedom of expression.

53. The Court reiterates that freedom of expression constitutes one of the essential foundations of a democratic society and that the safeguards afforded to the press are of particular importance. Although it must not overstep certain boundaries, in particular in respect of the reputation and rights of others, its duty is nevertheless to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest. Not only does the press have the task of imparting 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, *inter alia*, Observer *and* Guardian *v. the United Kingdom*, 26 November 1991, § 59, Series A no. 216; Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, § 59, ECHR 1999-II; and Flux *v. Moldova (no. 6)*, no. 22824/04, § 24, 29 July 2008). Accordingly, journalistic freedom covers possible recourse to a degree of exaggeration, or even provocation (see *Von Hannover v. Germany*, no. 59320/00, § 58, ECHR 2004-VI). In

this respect, it is clear from the Court's case-law that 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 sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no “democratic society” (see, *inter alia*, *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24; and *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 43, ECHR 1999-VIII). This freedom is subject to the exceptions set out in Article 10 § 2, which must, however, be construed strictly. The need for any restrictions must be established convincingly (see, for example, *Lingens v. Austria*, 8 July 1986, § 41, Series A no. 103; *Nilsen and Johnsen*, cited above, § 43; and *Tammer v. Estonia*, no. 41205/98, § 59, ECHR 2001-I).

54. The Court recalls that the choice of the means calculated to secure compliance with Article 8 in the sphere of the relations of individuals between themselves is, in principle, a matter that falls within the Contracting States' margin of appreciation. In this connection, there are different ways of ensuring “respect for private life”, and the nature of the State's obligation will depend on the particular aspect of private life that is at issue (see *Odièvre*, cited above, § 46). Further, the Court's task in exercising its supervision is not to take the place of the national authorities but rather to review, in the light of the case as a whole, the decisions that they have taken pursuant to their margin of appreciation (see, *mutatis mutandis*, *Tammer*, cited above, § 63).

55. In the cases in which the Court has had to balance the protection of private life against freedom of expression, it has always stressed the contribution made by articles in the press to a debate of general interest (see, for example, *Tammer*, cited above, §§ 66 and 68; *Von Hannover*, cited above, § 60; and *Standard Verlags GmbH v. Austria (no. 2)*, no. 21277/05 § 46, 4 June 2009). In cases concerning debates or questions of general public interest, the extent of acceptable criticism is greater in respect of politicians or other public figures than in respect of private individuals: the former, unlike the latter, have voluntarily exposed themselves to a close scrutiny of their actions by both journalists and the general public and must therefore show a greater degree of tolerance (see *Petrina*, cited above, § 40).

56. Finally, the Court has distinguished between statements of fact and value judgments. 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 right secured by Article 10. The classification of a statement as a fact or as a value judgment is a matter which in the first place falls within the margin of appreciation of the national authorities, in particular the domestic courts. However, even where a statement amounts to a value judgment, there must exist a sufficient factual basis to support it, failing which it will be excessive (see, for example, *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 76, ECHR 2004-XI; Timpul Info-Magazin *and Anghel v. Moldova*, no. 42864/05, § 37, 27 November 2007; and *Petrina*, cited above, §§ 40 to 41).

2. Application of the general principles to the present case

57. The Court observes that the applicant criticised the article published in the *Moldova Suverană* on 4 April 2002 on the ground that it damaged his reputation as it contained humiliating insults and untrue allegations that he was a member of the Soviet secret services. The Court notes the general tone of the article and the nature of the statements it contained. It further observes that the article contained several references to the applicant's alleged connections with the Soviet secret services (see paragraphs 6 and 13 above).

58. The Court refers to the finding of the Centru District Court, in its first judgment of 30 April 2003, that the references in the article could not be interpreted other than as meaning that the applicant had collaborated with the KGB. The court further noted that the KGB was recognised as having been a repressive organisation during the Soviet period and that collaboration was seen as highly reprehensible by civil society. It concluded that there was no proof that any such collaboration had occurred and that, as a consequence, the article was defamatory (see paragraph 9 above). The court ordered that a retraction of certain phrases, including the phrase which indicated that the applicant had been sent for postgraduate studies for his special merit "confirming the confidence of the AUCP (b) – KGB", be published. Although the case was subsequently re-examined by the Centru District Court and appealed to the Court of Appeal and the Supreme Court, none of the subsequent court judgments made any findings as to whether the article should be read as implying that the applicant had collaborated with the KGB. The Court considers that the national tribunals are, in principle, better placed than an international court to assess the intention behind the impugned phrases in the article and, in particular, to judge how the general public of Moldova would interpret, and react to, such phrases. It is therefore regrettable that the later court judgments failed to address this issue. Having regard to the terms of the article and to the findings of the only domestic court which examined the matter, the Court is persuaded that the author of the article intended to imply that the applicant had collaborated with the KGB. The question, therefore, is whether these allegations fell within the realm of acceptable criticism or fair comment.

59. In examining whether the comments made in the article were acceptable, the Court refers, first, to the Government's submissions concerning the nature of the debate within the context of which the impugned article was published, namely a discussion of the content and quality of school history textbooks and the assessment to be made of various historical events (see paragraph 50 above). This was not contested by the applicant. The Court therefore concludes that the impugned article was written as part of a debate which was likely to have been of significant interest to the general public. Further, the Court emphasises that the issue of the collaboration with the Soviet secret services of Moldovan citizens, particularly those holding positions of power or held in high esteem, was a particularly sensitive social and moral question in the specific context of Moldova (see, *mutatis mutandis*, *Petrina*, cited above, § 43).

60. The Court observes, second, that the applicant, as Chairman of the Association of Historians of the Republic of Moldova at the relevant time, was a public figure. As the author of the 1996 school curriculum on "Universal History" (see paragraph 5 above), his views and opinions were likely to have been considered particularly significant in the context of the debate taking place in 2002 on the content of history textbooks.

Accordingly, the Court is of the view that the level of acceptable criticism of the applicant within the context of that debate was relatively high.

61. Third, the Court notes that the author of the impugned article was also a historian and former deputy minister for education (see paragraph 6 above). A lively debate between the applicant and S.N., which exposed and explained their opposing views on the subject, was likely to contribute to the effectiveness of the general debate and to inform the general public as to the relevant issues. Indeed, the Government in their submissions explained that the contributions by the applicant and S.N. provoked further contributions from others in the field (see paragraph 50 above).

62. Fourth, the Court also considers it significant that on 1 April 2004, the *Moldova Suverană* published a retraction in which it distanced itself from S.N.'s article of 4 April 2002, explaining that the inappropriate language used did not represent the editorial policy of the newspaper and that it did not approve of the use of terms such as “feeble memory”, “lack of personal dignity” and “exorcising priest” used by S.N. The *Moldova Suverană* concluded by expressing regret for the “disparaging remarks and immoderate language” directed towards the applicant.

63. In the circumstances, the Court considers that the general tone of the article and the insulting language used by S.N., in the context of a lively debate on the content of historical textbooks and viewed in light of the subsequent statement published by the *Moldova Suverană*, did not in itself give rise to a breach of the applicant's rights to respect for his reputation.

64. However, different considerations apply to the specific allegations intended to imply that the applicant had collaborated with the Soviet secret services. The Court observes that the domestic courts classified the relevant statements as value judgments and concluded that, as S.N. had published the article in good faith and with no intention to humiliate or defame the applicant, the applicant's claim in defamation should be dismissed (see paragraphs 15, 17 and 20 above). The Court of Appeal emphasised that, in its view, the phrases written in the article represented S.N.'s “own subjective opinion” of the applicant and that a person could not be held responsible for expressing his opinions or views on certain events the veracity of which could not be proved (see paragraph 17 above). This approach was subsequently endorsed by the Supreme Court in its subsequent decision on admissibility (see paragraph 20 above).

65. Unlike the domestic courts, the Court is not persuaded that the statements in question can be considered mere value judgments. As the Court has already found (see paragraph 58 above), the article intended to imply that the applicant had collaborated with the KGB. In the Court's view, whether an individual has collaborated with the Soviet secret services is not merely a matter for speculation but a historical fact, capable of being substantiated by relevant evidence (see, *mutatis mutandis*, *Pfeifer v. Austria*, cited above, § 47; and *Petrina*, cited above, § 44). The domestic courts have provided no convincing reasons as to their conclusions on the nature of the statements at issue. In the circumstances, notwithstanding the margin of appreciation afforded to domestic courts as regards the classification of a statement as a fact or as a value judgment, the Court concludes that the allegations of collaboration with the KGB constituted clear

statements of fact (compare and contrast *Scharsach and News Verlagsgesellschaft v. Austria*, no. 39394/98, § 41, ECHR 2003-XI).

66. The Court emphasises the damaging nature of the allegation in the present case, which was likely seriously to discredit the applicant and his views on the question under discussion. As such, rather than contributing to the debate, the allegation risked undermining its integrity and usefulness. The Court recalls that a person's status as a politician or other public figure does not remove the need for a sufficient factual basis for statements which damage his reputation, even where such statements are considered to be value judgments, and not statements of fact as in the present case (see *Petrina*, cited above, §§ 45 and 50). In this respect, the Court further recalls that, giving judgment on 30 April 2003, the Centru District Court emphasised that there was no proof that the applicant was an agent of the KGB (see paragraph 9 above). The subsequent judgments of the domestic courts did not find otherwise. The Court notes that there is no indication in the materials submitted by the parties that the applicant collaborated with the Soviet secret services. In the context of the proceedings before the Centru District Court, the defendants did not produce any material judged sufficient by that court to support the allegation and no witnesses testified that the applicant was involved in such activities. It is, in such a case, not appropriate to make reference to the margin for provocation or exaggeration permitted to newspapers generally where articles concern public figures. The present case concerned a distorted presentation of reality, for which no factual basis whatsoever had been shown by the author (see *Petrina*, cited above, §§ 48 and 50). By implying that the applicant had collaborated with the KGB as though it were an established fact when it was mere speculation on the part of the author, the article overstepped the limits of acceptable comments.

67. Finally, the Court recalls that a subsequent retraction was printed by the *Moldova Suverană*. However, while the retraction regretted the insulting tone of the article and the offensive language used, it is important to note that it made no mention of the allegation that the applicant had collaborated with the Soviet secret services and, in particular, did not clarify that there was no basis for any such allegation.

68. In conclusion, the Court considers that the article of 4 April 2002, in implying without any factual basis that the applicant had collaborated with the Soviet secret services, exceeded the acceptable limits of comment in the context of a debate of general interest. Taking into account the particular gravity of the allegation in the present case, the Court finds that the reasons advanced by the domestic tribunals to protect the newspaper and S.N.'s right to freedom of expression were insufficient to outweigh the applicant's right to respect for his reputation. There has accordingly been a violation of Article 8 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

69. 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

70. The applicant claimed the sum of EUR 7,000 for psychological suffering as a result of the humiliation and indignity incurred following the publication of the impugned article.

71. The Government considered that no award for non-pecuniary damage was merited in the present case. They argued that the applicant's claim was without foundation and exaggerated. It was for him to prove that he had suffered as a result of the alleged violation but he had failed to provide any evidence of the alleged harm caused. The Government invited the Court to take into consideration the conduct of the applicant and the consequences and duration of the violation, and to conclude that the finding of a violation constituted adequate just satisfaction in the present case.

72. The Court is of the view that the applicant must have experienced feelings of frustration and anguish as a result of the defamatory article and the failure of the courts to uphold his claim. Accordingly, the Court grants an award of EUR 1,200 in respect of non-pecuniary damage.

B. Costs and expenses

73. The applicant presented a detailed claim in the sum of MDL 5,936 (the equivalent of approximately EUR 370 at the time of submission of the claim) in respect of legal fees before the domestic courts and this Court, and other related costs.

74. The Government emphasised that only those sums actually and necessarily incurred and reasonable as to quantum could be claimed by the applicant. They argued that the applicant had incurred expenses which were not necessary and that insufficient receipts had been provided in respect of other costs and expenses allegedly incurred. In any case, the Government alleged that the applicant's claims were entirely speculative and invited the Court to reject them.

75. The Court considers that, having regard to the receipts provided by the applicant, it is reasonable to award the sum of EUR 300 in respect of costs and expenses.

C. Default interest

76. 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

1. *Declares* unanimously the applicant's complaint under Article 8 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* by six votes to one that there has been a violation of Article 8 of the Convention;

3. *Holds* by six votes to one

(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, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:

(i) EUR 1,200 (one thousand two hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii) EUR 300 (three hundred euros), plus any tax that may be chargeable, 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* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 30 March 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early Nicolas Bratza
Registrar President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) joint concurring opinion of Judges Garlicki, Šikuta and Poalelungi;

(b) dissenting opinion of Judge David Thór Björgvinsson.

N.B.
T.L.E.

JOINT CONCURRING OPINION OF JUDGES GARLICKI, ŠIKUTA AND POALELUNGI

We fully agree with the finding that there has been a violation of Article 8 of the Convention and that, in the circumstances of the case, protection of reputation had to take priority over freedom of expression. What prompts us to express a concurring opinion is that the ***Petrenco*** case can be regarded as an illustration of two problems of a more general nature.

1. This is a case of so-called "wild lustration": a situation in which allegations concerning former collaboration with the communist political police are raised, in the heat of a political debate, by the press and/or by a private person of some political standing. Whilst in the process of "regular lustration" the facts of such collaboration are assessed and established by a public authority that has access to the necessary documents and is able to provide procedural guarantees for all those involved (see, for the requisite standards, the judgment in *Ādamsons v. Latvia*, no. 3669/03, § 116, 24 June 2008), the "wild lustration" takes place outside any organised procedural framework. With its potential for discrediting the person concerned, it usually targets politicians or other public figures.

To avoid such cases of lustration resulting from personal or political revenge, the Council of Europe Parliamentary Assembly adopted the Council of Europe Guidelines on Lustration Laws[5]. According to the guidelines, lustration "can be compatible with a democratic state under the rule of law, if several criteria are met". Among these criteria are:

(a) guilt must be proven in each individual case[6];

(b) the right of defence, the presumption of innocence and the right to appeal to a court must be guaranteed[7];

Further, lustration may not be used for punishment, retribution or revenge[8]. These principles apply *a fortiori* when no formal lustration procedure has been engaged against an applicant.

Political debate has its own rules and sometimes those rules can be very harsh for those who decide to actively participate in it. But neither the press nor political opponents can be granted a licence to kill. That is why the very fact that "wild lustration" takes place within a political context is not sufficient to absolve them from the obligation to protect the reputation and good name of others.

Since allegations concerning collaboration with the communist political police must, by their nature, be regarded as statements of fact, the Court has rightly applied the "sufficient factual basis" test. Those who publicly raise such allegations must be able to demonstrate the existence of that basis. This is less than a duty to deliver absolute proof of collaboration. But what may – and should – be required is, on the one hand, to show

facts and information that, taken together, could indicate such collaboration, and, on the other, to display sufficient diligence in addressing the problem and comparing different sources of information. *Mutatis mutandis*, this is the approach to be taken in respect of allegations of corruption (see – in a context of political debate – *Rumyana Ivanova v. Bulgaria*, no. 36207/03, 14 February 2008; Flux *v. Moldova (no. 6)*, no. 22824/04, 29 July 2008; and *Mahmudov and Agazade v. Azerbaijan*, no. 35877/04, 18 December 2008).

2. The pre-democratic life of public figures today may be of legitimate interest to public opinion and may constitute a matter of political debate. The press must play a prominent role in such debate.

But the only way to put that debate into a civilised framework is to open the state archives in which information about past events can be researched. For as long as access to the archives remains reserved only for the privileged few it will be very difficult to erase “wild lustration” from the political debate.

In its judgment in *Turek v. Slovakia* (no. 57986/00, ECHR-II), the Court clearly stated (with reference to lustration proceedings) that, unless the contrary is shown on the facts of a specific case, “it cannot be assumed that there remains a continuing and actual public interest in imposing limitations on access to materials classified as confidential under former regimes. This is because lustration proceedings are, by their very nature, oriented towards the establishment of facts dating back to the communist era and are not directly linked to the current functions and operations of the security services. Lustration proceedings inevitably depend on the examination of documents relating to the operations of the former communist security agencies. If the party to whom the classified materials relate is denied access to all or most of the materials in question, his or her possibilities of contradicting the security agency's version of the facts will be severely curtailed (§ 115)."

We would, therefore, not exclude the possibility that there may be some positive obligations of the State in that field. Full disclosure of archive material may not always be possible (particularly when, as in the case of Moldova, a significant portion of the material is controlled by another country). However – as the Court has already indicated in the *Rotaru* case – an arbitrary bar on any reasonable access may constitute a violation of both Article 8 and Article 10 of the Convention.

DISSENTING OPINION OF JUDGE DAVID THÓR BJÖRGVINSSON

1. I disagree with the majority in finding a violation of Article 8 of the Convention.

2. The majority has come to the conclusion, contrary to the domestic courts, that the statements made in the article asserting the applicant's affiliation with the KGB were without any factual basis and that by associating him with a “repressive organisation” were damaging to his reputation. As he had not been successful with his claim before the domestic courts the majority held that the Moldovan authorities failed in their positive obligations to afford the applicant the protection of his honour and reputation to which, under Article 8, he is entitled.

3. In the domestic court's balancing of Article 8 and Article 10 the balance rightly tilted in favour of Article 10. There are, in my opinion, no sufficient grounds for overturning the domestic court's assessment.

4. The applicant, Mr Anatol **Petrenco**, is Chairman of the Association of Historians of the Republic of Moldova, a university professor and an author of a school curriculum “Universal History”. He has, furthermore, as submitted in paragraph 87 of the Government's written observations of 10 January 2008, before and after the publication of the contested article, been actively involved in politics. He was a member of the Communist Party of the former Soviet Union and a member of the Democratic Front on behalf of which he ran for Parliament in 1998. He was also a member of the National Liberal Party and a candidate for that party in the general elections in 2001. From 2000 he was the leader of the National Movement. Since 2006 he has been the President of the European Action (Acţiunea Europeană), a political party in Moldova, albeit a minor one.

5. Thus the applicant is not only a well-known scholar in Moldova. He is also an active contributor to the general political debate. He is a public figure who, as such, has therefore voluntarily exposed himself to close scrutiny of his actions, past and present, by journalists, politicians and other contributors to public debate. The Court has frequently stated that the extent of acceptable criticism and commentary is greater in respect of politicians or other public figures than in respect of private individuals (see *Petrina v. Romania*, no. 78060/01, § 19, 14 October 2008, § 40). The applicant, as a participant in a public debate, should therefore be prepared for harsh, exaggerated and even unfair commentary on his past and present actions, not only in the form of so-called value judgments, but also as concerns presentation of facts. Furthermore, as an active participant in a public debate the applicant has had every opportunity to answer any insinuations which allegedly were directed at him. This is how a media-driven public debate in a democratic society works and should work.

6. In assessing whether the publication of the article overstepped the limits of acceptable criticism in a democratic society where the freedom of expression ranks highly, the following points are relevant:

i. The article was published in the context of a debate on issues related to Moldovan history and politics. It was therefore of general interest, though admittedly it took the form of a debate between the applicant and S.N. that became somewhat personal. The present case is therefore manifestly distinguishable from a case such as *Biriuk v Lithuania* (no. 23373/03, 25 November 2008) which concerned a blatant intrusion into the applicant's private life. In many cases in which the Court has had to balance the protection of private life against freedom of expression, it has always stressed the importance of the contribution made by articles in the press to a debate of general interest (see, among others, *Tammer v. Estonia*, no. 41205/98, § 59, ECHR 2001-I).§§ 66 and 68; *Von Hannover v. Germany*, no. 59320/00, § 60, ECHR 2004-VI); and *Standard Verlags GmbH v. Austria (no. 2)*, no. 21277/05 § 46, 4 June 2009).

ii. As to the content of the contested article (see § 6 of the judgment), I agree with the majority that the only real issue concerns the statements about the applicant's alleged association with the KGB. However I disagree that they should be viewed as direct allegations of collaboration with the KGB. The KGB is mentioned twice in the article. However, nowhere is it directly alleged that the applicant collaborated with the KGB. The first statement simply implies the confidence that the AUCP (All union Communist party of Bolsheviks) and the KGB must have had in him and the second that they must have placed their faith in him. These statements do not by their wording assert that the applicant was, as a matter of fact, a KGB collaborator. At best they contain an innuendo that the applicant was well regarded by the KGB.

iii. It is also relevant that pending the rehearing of the case on 1 April 2004 the newspaper *Moldova Suverană* published an article which can be seen as a retraction of the earlier article and an attempt to distance the newspaper from its content. It stated *i.a.*; "... we regret the disparaging remarks and immoderate language ...". The majority has interpreted these words narrowly (see §§ 62 and 67) as not referring to the contested statements, or at least not clearly enough. I disagree. Although the article does not retract specifically the remarks concerning the applicant's alleged associations with the KGB, the words "disparaging remarks" are most naturally understood as including all disparaging remarks in the article, including those referring to the KGB.

iv. The applicant does not deny that he was a member of the Communist Party of the former Soviet Union. Admittedly, membership of the Communist Party is one thing; association with the KGB is quite another. However, what is not in dispute is the fact of his association with a former repressive regime albeit in one of its less oppressive guises. In such circumstances and particularly in the context of a political debate on matters of public interest, I do not accept that the mere suggestion that the applicant was well regarded by the KGB so increases the level of stigmatisation that it warrants sacrificing the fundamental right to press freedom for the sake of protecting his rights under Article 8.

v. The relevance and seriousness of the statements for the applicant's reputation must also be assessed in light of the whole social and political context in which they were made. In many of the former communist countries, including Moldova, insinuations similar to those in the present case are not uncommon in everyday political and social debate. True or false, they should be viewed as an unavoidable part of the public debate

when a new political system is being established on the ruins of an oppressive regime, with which many of the present players in the public debate were associated in one way or another.

7. With the above considerations in mind, the publication of a newspaper article querying the KGB's good opinion of the applicant does not overstep the limits of what is acceptable in the context of a general political and historical debate in Moldova. This was no more than the applicant could be expected to tolerate and respond to within the framework of a public debate. In these circumstances, refuting the impugned publication through the instrument of public debate is the most appropriate form of reply in a democratic society.

8. Accordingly, in my view, there has been no violation of Article 8 of the Convention.

1. AUCP (b) – The acronym of the "All-Union Communist Party (of Bolsheviks)", the official name of the Communist Party of the Soviet Union between 1925 and 1952, under Stalin.

2. KGB – The acronym in Russian of the former Soviet Union Intelligence Service.

3. "*stuk-stuk-stuk*" – Russian language onomatopoeia used to suggest that a person is an informant, usually of the former political police.

4. CPSU – The acronym of the "Communist Party of the Soviet Union", the official name of the Soviet Communist Party after 1952.

1. Resolution 1096 (1996) "on Measures to dismantle the Heritage of former Communist Totalitarian Systems".

2. Ibid, para 12

3. Ibid.

4. See Report on measures to dismantle the heritage of former communist totalitarian systems, Doc. 7568, 3 June 1996, para 3.