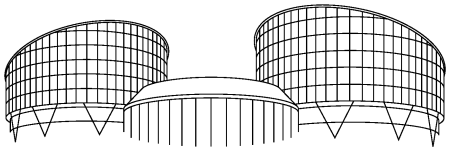

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF URECHEAN AND PAVLICENCO v. THE REPUBLIC OF MOLDOVA

(Applications nos. 27756/05 and 41219/07)

JUDGMENT

STRASBOURG

2 December 2014

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Urechean and Pavlicenco v. the Republic of Moldova,

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

Josep Casadevall, *President*,
Luis López Guerra,
Ján Šikuta,
Dragoljub Popović,
Kristina Pardalos,
Valeriu Griţco,
Iulia Antoanella Motoc, *judges*,
and Stephen Phillips, *Section Registrar*,

Having deliberated in private on 4 November 2014,

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

PROCEDURE

1. The case originated in two applications (nos. 27756/05 and 41219/07) 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 two Moldovan nationals, Mr Serafim Urechean ("the first applicant") and Mrs Vitalia Pavlicenco ("the second applicant"), on 26 July 2005 and 10 September 2007 respectively.

2. The applicants were represented by Mr D. Graur and Mr V. Gribincea, lawyers practising in Chişinău. The Moldovan Government ("the Government") were represented by their Agent, Mr V. Grosu.

3. The applicants alleged, in particular, that their right of access to a court had been breached on account of the fact that they could not bring libel actions against the then president of the country by virtue of the immunity enjoyed by him.

4. On 25 May and 6 January 2010 the applications were communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1950 and 1953 respectively and live in Chişinău.

6. Both applicants were politicians at the time of the events. The first applicant was mayor of Chișinău and the leader of an opposition political party. The second applicant was a Member of Parliament ("MP") and member of an opposition party.

7. On 30 November 2004 and 3 March 2007 the then president of the Republic of Moldova Mr V. Voronin (hereinafter "the President") participated in two television programmes on two privately owned channels, one of which had national coverage. He was interviewed by journalists on various topics such as the economy, justice, foreign relations and elections. The President stated, among other things, that *"*during the ten years of activity as a Mayor of Chisinau, Mr Urecheanu did nothing but to create a very powerful mafia-style system of corruption*"*. When referring to the second applicant and to other persons, the President stated that all of them *"*came straight from the KGB*"*.

8. Both applicants brought libel actions against the President, seeking a retraction of the impugned statements and compensation. The first applicant sought compensation of 0.1 Moldovan lei (MDL), while the second applicant claimed MDL 500,000 plus payment of her court fees and legal costs. The President's representative opposed the actions arguing that the impugned statements had been covered by his immunity.

9. On 11 January 2005 the Buiucani District Court discontinued the proceedings in the case lodged by the first applicant on the grounds that the President enjoyed immunity and could not be held responsible for opinions expressed in the exercise of his mandate. The court gave the following reasoning in its decision:

> "Having examined the materials of the case and heard the parties, in the light of Article 265 of the Code of Civil Procedure, the court considers it necessary to strike out the case.
>
> Thus, Article 81 para. 2 of the Constitution provides as follows: 'The President of the Republic of Moldova shall enjoy immunity. He may not be held legally responsible for opinions expressed in the exercise of his mandate'.
>
> It its judgment Nr. 8 of 16 February 1999 on the interpretation of Article 71 of the Constitution, the Constitutional Court held that legal responsibility encompasses responsibility under criminal, civil and administrative laws.
>
> In the same judgment, the Constitutional Court gave an extensive explanation to the expression "opinions expressed in the exercise of his mandate" used in Article 71 of the Constitution, holding that it means the point of view, opinions and convictions expressed in the exercise of his mandate in respect of matters and events from public life.
>
> In such circumstances of fact and law, the court considers it necessary to strike out the case against the President of the Republic of Moldova, V. Voronin, on the ground that he cannot be held liable under civil law."

10. On 25 April 2007 the Centru District Court discontinued the proceedings in the case lodged by the second applicant on the grounds that

the President enjoyed immunity. The court gave the following reasoning in its decision:

> "Having heard the arguments of the parties and having analysed the materials of the case, the court considers well founded the plea of the representative of the defendant to strike the case out.
>
> The Constitution guarantees a large immunity to the chief of the state. Thus, Article 81 para. 2 of the Constitution provides as follows: 'The President of the Republic of Moldova shall enjoy immunity. He may not be held legally responsible for opinions expressed in the exercise of his mandate'.
>
> For elucidating the limits of this constitutional immunity, the court refers to judgment Nr. 8 of 16 February 1999 of the Constitutional Court. Giving its interpretation to Article 71 of the Constitution, the Constitutional Court held that legal responsibility encompasses responsibility under criminal, civil and administrative laws.
>
> The Constitutional Court also gave an explanation to the meaning of the expression 'opinions expressed in the exercise of his mandate' ruling that it means the point of view, opinions and convictions expressed in the exercise of his mandate in respect of matters and events from public life. From the meaning of the judgment of the Constitutional Court, the court considers that the independence of the opinions of the President of the Republic of Moldova in the exercise of his mandate is absolute and perpetual.
>
> In her action lodged with the court, plaintiff V. Pavlicenco relies on Articles 16 and 1422 of the Civil Code and asks for the President of the Republic of Moldova to be held liable under civil law, namely for the opinions expressed by him publically in a programme in the exercise of his mandate.
>
> In view of the circumstances described above, bearing in mind the principle of the presidential immunity enjoyed by the President of the Republic of Moldova and of the impossibility to hold him responsible under law, the court comes to the conclusion that the present case must be struck out of the list of cases because in this case the President of Moldova cannot be held liable either by a court or by any other bodies."

11. Both applicants appealed, arguing that Article 81 § 2 of the Constitution afforded immunity to the President only in respect of opinions he expressed and not in respect of statements of fact. Moreover, they argued that the impugned statements made by the President had not been in connection with the exercise of his official functions, and that the court of first instance had failed to determine whether that had been the case. In support of that argument, the second applicant pointed to the President's official duties as enumerated in the Constitution, and to the fact that some of the topics discussed during the television programme, such as problems in the economy, foreign affairs and the functioning of parliament, fell outside the scope of the President's official functions.

The second applicant also stressed that the accusation made against her (that she had belonged to the KGB) was very offensive, and had been made by a very important person in the State at a prime-time hour on a channel with national coverage. Even if the President had been exercising his official functions when participating in the television programme, the defamatory accusations made against her could not be considered part of those functions. Both applicants complained that the first-instance decision

had unjustifiably limited their right of access to court, in breach of the Constitution and Article 6 of the Convention.

12. On 3 February 2005 and 14 June 2007 the Chișinău Court of Appeal dismissed the applicants' appeals and upheld the judgments at first instance.

II. RELEVANT DOMESTIC LAW AND PRACTICE

13. The relevant provisions of the Constitution read as follows:

Article 71: Independence of opinion

"[MPs] may not be prosecuted or held legally responsible for votes or opinions expressed in the exercise of their mandate.

Article 77: President of the Republic of Moldova – Head of State

(1) The President is the head of State.

(2) The President represents the State and is the guarantor of national sovereignty, independence and the unity and territorial integrity of the nation.

Article 78: Election of the President

(1) The President is elected by Parliament by secret ballot.

...

(5) If a new president ... has not been elected after repeated elections, the President shall dissolve Parliament and call a new parliamentary election.

Article 81: Incompatibilities and immunities

(1) The office of President is incompatible with the holding of any other remunerated position.

(2) The President shall enjoy immunity. He may not be held legally responsible for opinions expressed in the exercise of his mandate.

(3) Based on a majority vote of at least two thirds of its members, Parliament may decide to indict the President in the event that he commits an offence. The Supreme Court of Justice shall be granted full prosecutorial powers in accordance with the law. The President shall be legally removed from office on the same date he is sentenced.

Article 84: Messages

(1) The President may attend parliamentary sessions.

(2) The President addresses Parliament on messages relating to the main issues of national interest.

Article 85: Dissolution of Parliament

(1) In the event that government cannot be formed or the procedure for adopting legislation has been deadlocked for 3 months, the President, on consultation with parliamentary factions, may dissolve Parliament.

(2) Parliament may be dissolved if no vote of confidence for setting up the new government has been passed within 45 days of the first presidential request and only after at least two unsuccessful requests for inauguration.

(3) Parliament may be dissolved only once per year.

(4) Parliament may not be dissolved either within the last 6 months of the President's term of office, except as provided in Article 78 § 5 or during a state of emergency, martial law or war.

Article 86: Powers regarding foreign policy

(1) The President is empowered to hold official negotiations, conclude international treaties on behalf of the Republic of Moldova and present them for ratification by Parliament in such manner and within such period as may be prescribed by law.

(2) Upon government proposal, the President may accredit and recall the Republic of Moldova's diplomatic representatives, as well as approve the setting up, cancellation and ranking of diplomatic missions.

(3) The President receives letters of accreditation and revocation of foreign diplomatic envoys to the Republic of Moldova.

Article 87: Powers regarding national defence

(1) The President is the commander-in-chief of the armed forces.

(2) Upon the prior approval of Parliament, the President may declare partial or total mobilisation of the armed forces.

(3) In the event of an armed attack against the country, the President shall undertake the necessary steps to repel the attack, as well as declare a state of war and inform Parliament without delay. If Parliament is not in session, it shall be legally convened within 24 hours of the onset of the attack.

(4) The President may take whatever other steps are necessary to ensure national security and public order within the scope and parameters of the law.

Article 88: Other powers

The President also fulfils the following duties:

(a) awards medals and titles of honour,

(b) awards supreme military ranks as conferred by law;

(c) resolves problems of Moldovan citizenship and grant political asylum;

(d) appoints public officials as conferred by law;

(e) grants individual pardons;

(f) requests citizens ... to express, by way of referendum, their views on matters of national interest;

(g) awards diplomatic ranks;

(h) confers greater powers on officials holding positions within the prosecution authorities, courts of law and other areas of the civil service, as conferred by law;

(i) repeals acts of the government which run contrary to the law until the Constitutional Court has given its final decision;

(j) exercises other powers as conferred by law.

Article 89: Dismissal

(1) In the event that the President commits an act which violates the Constitution, he shall be removed from office by Parliament based on a majority vote of two thirds of its members.

(2) The proposal for the removal from office shall be initiated by at least a third of members and shall be brought to the attention of the President without delay. The President may give explanations for the actions for which he is being censured before Parliament.

Article 93: Promulgation of laws

(1) The President promulgates the law.

(2) The President is entitled, whenever he objects to a given law, to submit it to Parliament within two weeks for review. In the event that Parliament upholds its original decision, the President must promulgate that law.

Article 94: Presidential acts

(1) In the exercise of his powers, the President issues decrees whose enforcements are mandatory throughout the entire territory of the nation. The decrees shall be published in the Official Gazette (*Monitorul Oficial*) of the Republic of Moldova.

(2) Decrees issued by the President which fall under the provisions of Article 86 § 2 and Article 87 § 2, 3 and 4 must be countersigned by the Prime Minister."

14. Relevant provisions of the Code of Civil Procedure

Article 14: Court acts *(Actele judecătorești de dispoziție)*

"(1) At first instance court acts are issued in the form of judgments, decisions and ordinances.

(2) A judgment (*hotărîre*) shall be issued when the merits of the case are solved.

(3) A decision (*încheiere*) shall be issued when the merits of the case are not solved.

[...]

Article 239: The legality and validity of the judgment

A judgment must be lawful and valid. The court shall base its judgment solely on circumstances established directly by it and on evidence examined during the hearing.

Article 240: The problems to be solved during deliberation

(1) When deliberating, the court must assess evidence, determine the circumstances relevant for solving the case which have or not have been established, determine the nature of the legal relationship between the parties and the applicable law and decide on the admissibility of the case.

[...]

Article 241: The contents of the judgment

[...]

(5) the reasoning part of a judgment must include: the circumstances of the case as established by the court, evidence upon which its conclusions regarding those circumstances are based, the arguments invoked by the court to reject some evidence and the law applied by the court.

Article 265: Reasons for striking a case out

The court shall strike the case out when:

a) the case cannot be examined within a civil procedure;...

Article 269: The decision of the court

(1) The rulings of the first instance court or of the judge by which it is decided not examine the merits of the case shall take the form of decisions (încheieri). Such decisions shall be adopted in the deliberation room in accordance with the provisions of Article 48.

(2) In the case of simple matters, the court may adopt its decision without going to the deliberation room. Such a decision must be noted in the minutes of the hearing.

(3) The decision shall be read out immediately.

Article 270: Contents of the decision

(1) A decision must contain:

[...]

d) the matter it is issued upon;

e) the reasons relied upon by the court to reach its conclusions and the applicable law;

[...]."

15. In a decision of 16 February 1999 the Constitutional Court interpreted the meaning of Article 71 of the Constitution concerning the immunity enjoyed by MPs. It held, *inter alia*, that

"According to Article 71 of the Constitution, a Member of Parliament shall enjoy independence in expressing his opinions. He cannot be prosecuted or held legally liable for votes or opinions expressed in the exercise of his mandate.

[...]

The phrase 'opinions expressed in the exercise of his mandate' used in Article 71 of the Constitution, means the views, opinions, beliefs of a Member of Parliament in the exercise of his mandate in respect of matters and events from public life.

[...]

In view of the above, according to Article 71 of the Constitution, the independence of opinions of Members of Parliament is absolute and perpetual. A Member of Parliament cannot be held responsible in criminal, civil or administrative proceedings in respect of votes or opinions expressed in the in the exercise of his mandate, even after its expiry.

[...]

The provisions of Article 71 of the Constitution on impossibility of holding a Member of Parliament 'legally liable' means [...] that a Member of Parliament cannot be held liable under criminal, administrative and civil law for opinions or actions expressed in the exercise of his mandate and after its expiry.

[...]

However, the legal guarantee of the independence of the opinions of a Member of Parliament does not exempt him from criminal or administrative liability for an offense committed outside the exercise of his mandate.

Public calls to rebellion, violence or other actions, which according to the law in force are criminally prosecuted, shall not be protected.

[...]

According to Article 71 of the Constitution [...] the independence of the opinions of a Member of Parliament, [...] shall be absolute and perpetual. A Member of Parliament cannot be held legally liable for votes or opinions expressed within the exercise of his mandate even after its termination.

[...]"

16. In its explanatory judgment No. 2 of 7 July 2008, the Plenary Supreme Court held as follows:

"1. A court judgment is the final act of the first instance court, irrespective of its level. It shall be in writing and shall be adopted in the deliberation room by the members of the panel appointed according to the law to examine the case. The panel should adopt the judgment after having examined the case personally and after having elucidated its circumstances during debates with the participation of the parties. The judgment shall be based on the substantive and procedural law; it shall be pronounced in public and shall have the force of res judicata.

All other acts issued by the first instance court or by a judge, by which the merits of the case is not solved shall have the form of decisions.

2. By virtue of Article 14 of the Code of Civil Procedure, the court is bound to adopt the relevant act [...]. It shall not be possible to substitute a judgment with a decision and vice-versa."

17. Two other cases lodged with the Court by the first applicant (nos. 41654/08 and 61428/08) concern unsuccessful attempts by him to bring libel actions against the President in respect of alleged defamatory misstatements made in the course of interviews. The domestic courts decided to strike those cases out on the basis of the immunity enjoyed by the President. The wording of the courts' decisions was identical to that in the decisions referred to in the present case, in that they only cited Article 81 § 2 of the Constitution and referred to the Constitutional Court's decision of 16 February 1999. Since after communication, the applicant did not submit any observations in those cases, the Court struck them out of its list of cases.

THE LAW

I. JOINDER OF APPLICATIONS

18. The Court notes that the subject matter of the applications (nos. 27756/05 and 41219/07) is similar. It is therefore appropriate to join the cases, in application of Rule 42 of the Rules of Court.

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

19. The applicants complained under Article 6 § 1 that the refusal of the domestic courts to examine their libel actions against the President had breached their right of access to a court. Article 6 § 1 of the Convention reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

20. The Government submitted, firstly, that the applicants had failed to exhaust the domestic remedies available to them and should have attempted to request the Constitutional Court to interpret Article 81 § 2 of the Constitution. The first applicant, having had no direct access to the Constitutional Court, could have requested the court dealing with his case to apply on his behalf. The second applicant, in her capacity as an MP, could have applied to the Constitutional Court directly.

21. The applicants disagreed with the Government, arguing that there had been no need for the Constitutional Court to interpret Article 81 of the Constitution, since it had already interpreted Article 71, a provision which referred to parliamentary immunity and contained identical wording to Article 81. The domestic courts had referred in their decisions to the Constitutional Court's decision of 1999 as the leading authority on presidential immunity. The applicants were thus entitled to legitimately expect that, in accordance with the Constitutional Court's decision in 1999, the domestic courts would have to determine whether the President had been acting in the exercise of his mandate when defaming them.

22. The Court reiterates that the purpose of Article 35 § 1 of the Convention is to afford Contracting States the opportunity to prevent or put right violations alleged against them before those allegations are submitted to the Court. Consequently, States are dispensed from answering for their acts before an international body before they have had the opportunity to put matters right through their own legal system (see, for example, *Remli v. France*, 23 April 1996, § 33, *Reports of Judgments and Decisions* 1996-

II, and *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). Under Article 35 § 1 of the Convention, normal recourse should be had by an applicant to remedies which are available and sufficient to afford redress in respect of the breaches alleged. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 66, *Reports* 1996-IV; *Vučković and Others v. Serbia* [GC], no. 17153/11, § 71, 25 March 2014).

23. In the present case, the domestic courts considered relevant the Constitutional Court's findings in its decision of 1999 (see paragraph 15 above) when dealing with the problem of the immunity afforded to the President. The Government did not argue that the Constitutional Court's findings in that decision were in any way contrary to the Convention, nor did they say what kind of interpretation the applicants should have sought from the Constitutional Court in respect of Article 81 of the Constitution. The Court therefore considers that the remedy suggested by the Government was not effective for the purposes of Article 35 § 1 of the Convention and that their objection must be dismissed.

24. The Government further maintained that the first applicant was not a victim within the meaning of Article 34 of the Convention, because the amount of compensation he had claimed before the domestic courts (MDL 0.1) had been so low as to suggest that the true purpose of his libel action had not been to obtain redress for being defamed, but rather to make a political example of the President and the governing party. In the alternative, the Government submitted that the first applicant's application was inadmissible under Article 35 § 3 (b) of the Convention because he had suffered no significant disadvantage.

25. The first applicant contested the Government's argument, maintaining that he was a victim within the meaning of Article 34.

26. The Court does not consider the amount of compensation claimed by the first applicant in the libel proceedings instituted by him of any importance to the assessment of his victim status for the purposes of the present case (see, *mutatis mutandis*, *Thoma v. Luxembourg*, no. 38432/97, §§ 39, 50 and 51, ECHR 2001-III). It notes that Article 6 of the Convention is applicable to libel proceedings, and that the first applicant's libel action was not examined on the merits on account of the immunity enjoyed by the President from civil jurisdiction. This is sufficient to establish the first applicant's victim status for the purposes of the present case. The Government's objection is therefore dismissed.

27. In so far as the Government's objection concerning the insignificant disadvantage suffered by the first applicant is concerned, the Court does not agree that, in the circumstances of the present case, issues relating to the

access to court in libel actions could constitute an "insignificant" disadvantage. Their objection in this regard is also dismissed.

28. The Court notes that the applications are not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that they are not inadmissible on any other grounds. They must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

29. The applicants contended that the refusal of the domestic courts to examine the merits of their libel actions against the President on account of his immunity had constituted an interference with their right of access to court. They accepted that the immunity enjoyed by the President was prescribed by law and pursued a legitimate aim; however, they disputed whether the interference with their right of access to a court was proportionate to the legitimate aim pursued. In their view, it should be acceptable in a democratic society to confer such privileges and immunities on the head of State. Nevertheless, they considered that the immunity enjoyed by a president should be narrower than that enjoyed by MPs. A president's functions were different from those of MPs. Unlike the latter, a president is not called upon to participate in adversarial debates in the exercise of his functions. Moreover, unlike the parliamentary opposition, he does not run the risk of undue interference with his freedom of expression. His tasks as enumerated in the Constitution differ from those of an MP, and in exercising them he is required to display balanced and respectful behaviour. Another reason for a president to have narrower immunity is, in the applicant's view, the fact that unlike MPs, he is not elected by the people, but is a figure of compromise elected by Parliament.

30. The applicants further argued that the defamatory misstatements made by the President in their cases had not been made in the exercise of his functions. In particular, the second applicant submitted that the interview of 3 March 2007 had been broadcast on a privately owned television channel at the weekend and had not been made in cooperation with the presidential administration. Moreover, the topics discussed during the interview related only vaguely to the functions conferred upon the President by the Constitution. The President, who was also the leader of the governing party, had acted more like the leader of his party than the head of State.

31. The applicants further submitted that presidential immunity under Moldovan law was absolute and there was no possibility of having it lifted or waived even after the expiry of a president's mandate. The immunity could be lifted only in respect of criminal matters. In examining their libel

actions against the President, the Moldovan courts did not make any attempt to establish whether the impugned statements had been made in the exercise of his mandate. Moreover, unlike in other countries, there were no alternative means of protecting the applicants' Convention rights.

32. Article 81 § 2 of the Constitution conferred to a president immunity in respect of his opinions; however, in the applicants' view, the President's defamatory misstatements constituted statements of fact rather than opinions.

33. The second applicant contended that the accusation about her belonging to the KGB had been extremely defamatory. The President had made his statements at a prime-time hour on a television channel with national coverage. The applicant requested airtime from the channel in order to express her views on the President's accusations, but to no avail. The first applicant contended that the accusations made against him had been part of a personal quarrel between him and the President and that it was part of ongoing systematic harassment to which he had been subjected at the material time.

(b) The Government

34. The Government stressed that the core issue of the present case was striking a fair balance between the President's freedom of expression protected by his immunity and the applicants' right of access to a court. When making the impugned statements, he had been exercising his right to freedom of expression. As was the case with parliamentary immunity, the immunity afforded to a president pursued the aim of allowing his free and unhindered speech, preventing partisan complaints from the opposition and ensuring his independence.

35. In the Government's view, the immunity enjoyed by a president should be wider than that enjoyed by MPs. Unlike in the case of parliamentarians, whose statements are made either in the course of parliamentary debates or outside them, it is more difficult to know when a president is acting in the exercise of his official mandate. Irrespective of the fact whether the President's statements had constituted value judgments or statements of fact, in the Government's opinion, they had been made outside the context of a personal quarrel with the applicants but within the context of a political debate regarding a matter of public interest.

36. In the Government's view, the applicants had only brought libel actions against the President in order to promote their political agenda, not to obtain relief for the alleged defamation. That was evident from the nominal amount of damages sought by the first applicant in his libel action. Instead, the applicants should have resorted to the media to express their points of view in respect of the President's allegations against them. They were both public figures, so would have been able to do so.

37. The Government believed that the immunity afforded to a president by the domestic legal order in Moldova constituted a proportionate restriction on the right of access to a court. The lack of interpretation by the Constitutional Court was not an impediment on the part of the domestic courts, since the Constitutional Court's ruling in respect of parliamentary immunity was applied by them *mutatis mutandis*.

38. In the Government's opinion, the domestic courts had duly considered the matter put before them, before concluding that the President's statements had been covered by immunity.

2. The Court's assessment

(a) General principles

39. The right of access to a court secured by Article 6 § 1 of the Convention is not absolute, but may be subject to limitations; these are permitted by implication since the right of access by its very nature calls for regulation by the State. In this respect, the Contracting States enjoy a certain margin of appreciation, although the final decision as to the observance of the Convention's requirements rests with the Court. It must be satisfied that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (see *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 59, ECHR 1999-I). The right of access to a court is impaired when the rules cease to serve the aims of legal certainty and the proper administration of justice and form a sort of barrier preventing the litigant from having his or her case determined on the merits by the competent court (see *Tsalkitzis v. Greece*, no. 11801/04, § 44, 16 November 2006).

40. The Court has been called to examine many cases concerning limitation of the right of access to a court by operation of parliamentary immunity. The general principles applied in those cases are relevant in the present case too.

41. The Court held in the context of parliamentary immunity that when a State affords immunity to its MPs, the protection of fundamental rights may be affected. That does not mean, however, that parliamentary immunity can be regarded in principle as imposing a disproportionate restriction on the right of access to a court as embodied in Article 6 § 1. Just as the right of access to a court is an inherent part of the fair trial guarantee in that Article, so some restrictions on access must likewise be regarded as inherent, an example being those limitations generally accepted by the Contracting

States as part of the doctrine of parliamentary immunity (see *A. v. the United Kingdom*, no. 35373/97, § 83, ECHR 2002-X).

42. The Court has already acknowledged that the long-standing practice for States generally to confer varying degrees of immunity on parliamentarians pursues the legitimate aims of protecting free speech in Parliament and maintaining the separation of powers between the legislature and the judiciary (see *A. v. the United Kingdom*, cited above, §§ 75-78; *Cordova v. Italy (no. 1)*, no. 40877/98, § 55, ECHR 2003-I; *Cordova v. Italy (no. 2)*, no. 45649/99, § 56, ECHR 2003-I; and *De Jorio v. Italy*, no. 73936/01, § 49, 3 June 2004). Different forms of parliamentary immunity may indeed serve to protect the effective political democracy that constitutes one of the cornerstones of the Convention system, particularly where they protect the autonomy of the legislature and the parliamentary opposition.

43. The Court further noted that the regulation of parliamentary immunity belonged to the realm of parliamentary law, in which a wide margin of appreciation was left to member States. That being so, the creation of exceptions to parliamentary immunity, the application of which depended upon the individual facts of any particular case, would seriously undermine the legitimate aims pursued (see *A. v. the United Kingdom*, cited above, § 88).

44. However, from the point of view of its compatibility with the Convention, the broader an immunity, the more compelling must be its justification (ibid., § 78). Indeed, the lack of any clear connection with parliamentary activity requires the Court to adopt a narrow interpretation of the concept of proportionality between the aim sought to be achieved and the means employed. This is particularly so where the restrictions on the right of access stem from the resolution of a political body (see *Tsalkitzis*, cited above, § 49). Thus, where a personal quarrel was involved it would not be right to deny someone access to a court purely on the basis that the quarrel might be political in nature or connected with political activities (see *Cordova (no. 1)*, cited above, § 62; *Cordova (no. 2)*, cited above, § 63; and *De Jorio*, cited above, § 53).

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

45. Turning to the facts of the present case, the Court notes that it is undisputed between the parties that there was a limitation of the applicants' right of access to a court as a result of the refusal of the domestic courts to examine the merits of their libel actions against the President. Similarly, the parties agreed that the limitation of their right was prescribed by law and pursued a legitimate aim. While the applicants considered that the immunity enjoyed by a president should be narrower than that enjoyed by MPs, the Government argued the contrary and maintained that it should be wider. The Court, for its part, is not ready to accept either of these positions and shall

examine, as in the cases concerning parliamentary immunity, whether in the circumstances of the case a fair balance was struck between the competing interests involved, namely between the public's interest in protecting the President's freedom of speech in the exercise of his functions and the applicants' interest in having access to a court and obtaining a reasoned answer to the complaints.

46. The Court notes that under the Constitution, the President enjoys immunity. However, in so far as his opinions are concerned, the immunity is not absolute: it extends only to opinions expressed "in the exercise of his mandate". In this sense, the Court notes that the exclusion of libel proceedings against the President constitutes an exception from the general rule of civil responsibility for defamatory or insulting opinions, an exception limited to cases in which the President acts in the exercise of his functions.

47. It goes without saying that in general, irrespective of the form of government in a given country, a head of State exercises important functions in the State structure. Such is the case with Moldova, a parliamentary democracy, where the head of State plays an important role in areas such as foreign affairs, defence and the promulgation of the law. Although a head of State's task is not, unlike that of an MP, at least in the case of Moldova, to be actively involved in debates, the Court considers that it should be acceptable in a democratic society for States to afford functional immunity to their heads of State in order to protect their free speech in the exercise of their functions and to maintain the separation of powers in the State. Nevertheless, such immunity, being an exception from the general rule of civil responsibility shall be regulated and interpreted in a clear and restrictive manner.

48. The Court notes that the Constitutional provisions concerning the President's immunity do not define the limits of the immunity against libel actions. The same is the case of the Constitutional Court's decision of 1999 (see paragraph 15 above) which was considered as authority by the domestic courts which dealt with the applicants' cases. That decision relates only to the parliamentary immunity and does nothing to define even the limits of that immunity, referring only to the relation to matters from public life.

49. In such circumstances, the Court considers it imperative for the domestic courts dealing with libel actions against the President to establish whether the impugned statements were made in the exercise of his official duties. However, in the present cases the domestic courts chose not to answer the applicants' contention to that effect both at first and second instances, nor making any reference to whether the President had expressed his opinion within the exercise of his mandate, referring only to matters and events relating to "public life".

50. Against this background, the Court notes that the immunity afforded to the President was perpetual and absolute. Thus, the applicants could not have had access to the courts even after the expiry of his mandate. Moreover, his immunity against libel actions could not be lifted.

51. The domestic case-law relating to problems with the immunity enjoyed by the head of State (see paragraph 17 above) indicated that the courts proceeded on the basis that the rule of presidential immunity provided a watertight defence to the head of State, and that it was impossible to prise open the immunity he enjoyed from libel actions. Indeed, the Government did not point to the existence of any other case-law than that indicated above (see paragraph 17), where the domestic courts dismissed libel actions directed against the head of State by merely referring to the relevant provisions of the Constitution. In none of the cases known to the Court, have the domestic courts attempted to determine whether the President had been acting in his official capacity when making the impugned statements, or whether there were other issues of public or personal interest involved in the case which would justify an examination of the merits of the cases (see *C.G.I.L. and Cofferati v. Italy*, no. 46967/07, § 77, 24 February 2009 and *Syngelidis v. Greece*, no. 24895/07, § 47, 11 February 2010).

52. The application of the rule of immunity in this manner, without any further enquiry into the existence of competing interest considerations, serves to confer blanket immunity on the head of State. The Court considers that blanket inviolability and immunity are to be avoided.

53. The lack of alternative means of redress is another issue to be considered by the Court. The Government submitted that the applicants, being politicians, should have resorted to the media to express their points of view on the President's allegations about them. The second applicant replied that she had made an attempt to obtain airtime from the channel on which the head of State had made the impugned statements, but to no avail.

54. In this latter connection, the Court considers relevant its findings in *Manole and Others v. Moldova* (no. 13936/02, §8, ECHR 2009), which provided that at the material time there were only two television channels with national coverage in Moldova, one of which was involved in the present case and refused to offer airtime to one of the applicants, the other being State television. In view of that, and of the findings in *Manole and others* concerning the administrative practice of censorship on State television, the Court is not persuaded that the applicants had at their disposal an effective means of countering the accusations made against them by the head of State at a prime-time hour on a television channel with national coverage, even from the parliamentary tribune.

55. For the above reasons, the Court concludes that the manner in which the immunity rule was applied in the instant case constituted a

disproportionate restriction on the applicants' right of access to a court. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

56. 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

57. The first applicant did not make a claim for just satisfaction. The second applicant claimed 5,000 euros (EUR) in respect of non-pecuniary damage.

58. The Government objected and argued that the amount was excessive. They submitted that if the Court were to find a violation in this case, such a finding would in itself constitute sufficient just satisfaction.

59. Having regard to the violation found above, the Court considers that an award of just satisfaction for non-pecuniary damage is justified. Making its assessment on an equitable basis, the Court awards the second applicant EUR 3,600.

B. Costs and expenses

60. The first applicant did not make any claims under this head. The second applicant claimed EUR 5,289.60 for costs and expenses incurred before the Court. She submitted relevant documents in support of her claims.

61. The Government objected and argued that the amount was excessive. They submitted that if the Court were to find a violation in this case, such a finding would in itself constitute sufficient just satisfaction.

62. The Court awards the amount claimed in full.

C. Default interest

63. The Court considers it appropriate that the default interest rate 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. *Decides* unanimously to join the applications;

2. *Declares* unanimously the applications admissible;

3. *Holds*, by four votes to three that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds*, by four votes to three
   (a) that the respondent State is to pay the second 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 the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 3,600 (three thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 5,289.60 (five thousand two hundred eighty-nine euros and sixty cents), plus any tax that may be chargeable to the second 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;

5. *Dismisses*, unanimously, the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 2 December 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stephen Phillips	Josep Casadevall
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Šikuta, Pardalos and Griţco is annexed to this judgment.

J.C.M.
J.S.P.

JOINT DISSENTING OPINION OF JUDGES ŠIKUTA, PARDALOS AND GRIȚCO

1. To our regret, we cannot agree with the majority's finding that there has been a violation of Article 6 § 1 of the Convention in the present case, which seems to be the first one to examine certain guarantees provided for by that provision in relation to the immunity enjoyed by the Head of one of the Contracting States within the national jurisdiction of the State concerned.

I. Preliminary remarks

2. The applications lodged with the Court originated in two separate sets of civil proceedings commenced at domestic level by two claimants, who were politicians at the time of the events. The applicants complain of an interference with their right of access to a court on the grounds that the national courts did not examine on the merits the civil actions they had brought against the then President of the Republic of Moldova to protect their honour, dignity and professional reputation. The courts had relied on the latter's immunity in respect of opinions expressed in the exercise of his mandate on matters and events of public life.

3. Taking into account the specific circumstances of the instant case, we will concentrate our reasoning on the conformity of the civil proceedings and outcome of the judicial solutions adopted in the applicants' cases with certain procedural guarantees provided for by Article 6 § 1 of the Convention.

II. As regards the adequate reasoning of the national courts' decisions

1. Whether the national courts issued the appropriate judicial acts

4. In the Republic of Moldova, in accordance with valid legislation and judicial practice, a ruling of the first-instance court in civil cases is issued in the form of a judgment *(hotărîre)* where the case is dealt with on the merits and in the form of a decision *(încheiere)* where it is not. The court is bound by the terms of Article 14 of the Code of Civil Procedure (hereinafter "the CPC") to adopt the appropriate judicial act. In other words, it is not allowed to substitute a judgment with a decision and vice versa (see paragraphs 14 and 16 of the judgment).

5. The requirements for the structure and content of judgments are wider than those for decisions, which basically address a procedural issue. Thus, while in the former case the courts will give their views on the whole spectrum of the circumstances and evidence on the basis of which the case is examined on the merits (Art. 239 CPC), in the latter case the court's

examination is confined to the matter which prevents examination of the case on the merits, and the reasons determining the relevant court's decision with reference to the governing law (Art. 270 CPC) are stated. In other words, by its juridical nature, a decision is presumed to be more concise than a judgment.

6. An example of that is a decision striking out a case on grounds of a procedural impediment which does not allow it to be examined in civil proceedings (Art. 265, para. 1, item a) CPC). In a situation like the present one, for instance, where the defendant enjoys judicial immunity, the domestic courts not only could not, but did not have the right to examine the merits.

7. That regulation by the national legislation of the structure and content of judicial acts is fully consonant with the established case-law of the Court, which affords the Contracting States a wide discretion regarding legal provisions, practice and the courts' tradition of issuing judicial acts (see, amongst other authorities, *Hiro Balani v. Spain*, 9 December 1994, § 27, Series A no. 303-B, and *Ruiz Torija v. Spain*, 9 December 1994, § 29, Series A no. 303-A).

8. We therefore consider that in the applicants' cases the domestic courts properly chose the correct judicial act to be issued, namely, not judgments on the merits, but decisions striking the cases out of the list on the ground that the President enjoyed immunity and could not be held responsible for opinions expressed in the exercise of his mandate on matters and events of public life.

9. In this connection we would also point out that when assessing compliance with the above-mentioned standards, it is not the Court's task to substitute itself for the competent domestic authorities in determining the most appropriate means of regulating access to justice, nor to assess the facts which led the domestic courts to adopt one decision rather than another. The Court's role is to review under the Convention the decisions that those authorities have taken in the exercise of their power of appreciation and ascertain whether the consequences of those decisions were compatible with the Convention (see *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 32, *Reports* 1997-VIII, and *Malahov v. Moldova*, no. 32268/02, § 29, 7 June 2007). It therefore remains to be determined whether that outcome of the judicial proceedings at national level met the requirements of a fair trial guaranteed by Article 6 of the Convention.

2. Whether the decisions in the applicants' cases comply with the "clarity" test

10. According to the Court's established case-law reflecting a principle linked to the proper administration of justice, judicial acts issued by national courts must state reasons (see *Van de Hurk v. the Netherlands,* 19 April

1994, § 61, Series A no.288, and *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I).

11. At the same time, however, we would emphasize that the nature of the judicial act in question is important in determining the extent to which the duty to give reasons applies in the specific circumstances of the case (see *Rolf Gustafson v. Sweden*, 1 July 1997, § 48, *Reports* 1997-IV; *Higgins and Others v. France*, 19 February 1998, § 42, *Reports* 1998-I; and *Georgiadis v. Greece*, 29 May 1997, § 41-43, *Reports* 1997-III). According to the Court's case-law, the courts are not obliged to give a detailed answer to every argument, nor is the European Court called upon to examine whether arguments were adequately addressed (see *Perez v. France* [GC], no. 47287/99, § 81-82, ECHR 2004-I, *Helle v. Finland*, 19 December 1997, § 55, *Reports* 1997-VIII; *Van de Hurk*, cited above, § 61; and *Ruiz Torija v. Spain*, cited above, § 29).

12. In the light of the above-mentioned general principles established in the Court's case-law, and in view of the nature of the judicial acts issued in the applicants' cases and the specific circumstances relating to the immunity enjoyed by the head of State, one of the main questions is whether the extent to which the domestic courts gave reasons for the judicial solutions adopted complied with the requirements of a fair trial. In that connection the Court has already had occasion to develop criteria in its case-law providing an answer to this question, namely, the test of "clarity" of judgments, according to which a judicial act can be considered sufficiently reasoned if the parties can understand the reasons on which the judicial act is based, so as to be able to present their counter-arguments in the higher courts (see, for instance, *Hadjianastassiou v. Greece*, 16 December 1992, § 33, Series A no. 252).

13. Analysing the applicants' submissions in the light of that test it can be observed that they never complained that they had not understood the reasons why the national courts had not examined their cases on the merits and discontinued the proceedings. Accordingly, in our view, the relevant judicial decisions met the requirements of the "clarity" test with regard to adequate reasoning and are thus in keeping with the principles of a fair trial in this respect (see, conversely, *Karakasis v. Greece*, no. 38194/97, § 27, 17 October 2000, and *Annoni di Gussola and Others v. France*, nos. 31819/96 and 33293/96, § 58-59, ECHR 2000-XI).

3. Whether the impugned statements were made by the President in "exercise of his mandate"

14. According to the judgment, the domestic courts did not make "any ... reference to whether the President had expressed his opinion within the exercise of his mandate, referring only to matters and events relating to "public life" (see paragraph 49 of the judgment).

15. We fail to see how it could be stated that the national courts made no reference to this subject, when it clearly emerges from their decisions (see paragraphs 9 and 10 of the judgment) that, referring to the relevant constitutional provisions, the courts stated that the President of the Republic of Moldova enjoyed immunity and could not be held legally responsible for the opinions expressed in the exercise of his mandate. This is followed by the interpretation given to that statement, with regard to which, we would like to point out, the judgment considered that the domestic courts "... did not make any reference ...". To that end the national courts, referring to the decision of the Constitutional Court of 16 February 1999 (see paragraph 15 of the judgment), stated that "opinions expressed in the exercise of his mandate" meant the views, opinions and convictions expressed in the exercise of his mandate in respect of matters and events of public life. In one of the two decisions, the court was even more explicit on this issue, finding that the applicants' claims related to the President's opinions "... expressed by him publicly in a programme in the exercise of his mandate" (see paragraph 10 of the judgment).

16. Turning to the judgment, we observe that, despite the criticism expressed in relation to the decisions of the national courts, there is no suggestion that these were arbitrary or had any other shortcoming such as to make them conflict with the procedural guarantees provided for by Article 6. We are ready to develop this subject because we consider that the national courts' decisions in the applicants' cases do not display any arbitrariness and that there are no reasons which could lead to a different conclusion.

III. As regards the proceedings "as a whole"

17. Taking into account the specific circumstances of this case, and with the aim of providing a proper assessment of compliance by the domestic proceedings with the principles of a fair trial, it would have been useful to assess them "as a whole". To our regret, no attempt was made to apply this test here, despite the fact that in a very recent case, bearing certain similarities to the present one, this Court did apply it (see *Andrášik and Others v. Slovakia*, nos. 16857/11 and 32336/11, § 51, 55 and 60, 9 September 2014).

18. Thus, in assessing the domestic proceedings from this angle (see, *mutatis mutandis*, *Mérigaud v. France*, no. 32976/04, § 77, 79, 24 September 2009, and *García Ruiz v. Spain*, cited above, § 29-30) it will be observed that the applicants had the benefit of adversarial proceedings, were able at different stages of those proceedings to adduce arguments which they considered relevant to their case, had the opportunity to challenge the outcome of the judicial proceedings by using appropriate avenues of appeal,and so on (see, conversely, *Barberà, Messegué and*

Jabardo v. Spain, 6 December 1988, § 89, Series A no. 146; *Georgiadis v. Greece*, cited above, § 40; and *Buzescu v. Romania*, no. 61302/00, § 74, 24 May 2005). That further illustrates the fairness of the judicial proceedings at the national level.

IV. As regards alternative means of redress

19. According to the judgment, the applicants did not have at their disposal any effective means of countering the accusations made against them by the head of State (see paragraphs 53 and 54 of the judgment). We cannot agree with that conclusion because it conflicts with the national law relied on by the applicants and other information available to the Court in the instant case.

20. The applicants based their claims, *inter alia*, on Article 16 of the Civil Code, the relevant parts of which are worded as follows:

> **"Article 16. Protection of honour, dignity and professional reputation**
>
> (1) Everyone has the right to respect for his or her honour, dignity and professional reputation.
>
> (2) Everyone has the right to demand the retraction of information damaging to his or her honour, dignity and professional reputation unless the person who has disseminated such information proves that it corresponds to reality. ...
>
> (7) Anyone whose legally protected rights and interests are damaged by a mass media publication has the right to publish his or her reply in that mass media at the latter's expense". ...

For the purposes of our opinion, we would like to draw attention to the right of reply, which is stipulated in paragraph 7 of that Article.

21. As stated in the judgment, the second applicant made only one attempt to obtain a right of reply from the broadcasting channel on which the head of State had made the impugned statements, to no avail (see paragraphs 33 and 53 of the judgment). There is nothing in the judgment or the case file to indicate that the second applicant initiated judicial proceedings, for instance, against the refusal of the television channel to offer her the opportunity to enforce her right of reply.

22. The Chamber judgment does not say anything about the first applicant's attempt to obtain a right to reply. However, it can be seen from the copy of the domestic court's file attached to the Government's observations in the case that in his initial statement of claim the first applicant also named the relevant television station as second defendant and asked the court to order it to offer airtime in order to reply to the statements in question. However, shortly afterwards the first applicant withdrew his claims against the television station, asked the court to discontinue the proceedings in the case in that regard and maintained only his claims against the President. The court allowed the first applicant's request and

discontinued the proceedings against the television channel with regard to the claims concerning enforcement of his right of reply.

23. In the reasons for their conclusion regarding the lack of alternative means of redress, the majority make reference to *Manole and Others v. Moldova* (see paragraph 54 of the judgment), which, in our view, cannot constitute a precedent in the instant case.

24. To begin with, the facts do not fit as the impugned statements were broadcast by two private television stations and not by State television, so the findings in *Manole and Others v. Moldova* concerning the administrative practice of censorship on State television are totally irrelevant to the instant case. Secondly, as we have already mentioned above, (i) the national legislation provides for a number of means of redress in cases of defamation of honour, dignity and professional reputation, (ii) these means are not illusory and can be achieved in practice, as was actually demonstrated by the first applicant, and the fact that the proceedings did not yield any result cannot be blamed on the national authorities and, lastly, (iii) the second applicant never challenged the television station's refusal to offer her airtime for the right of reply.

V. As regards the proportionality between the interference with the right of access to a court and the legitimate aim pursued

25. The applicants agree that the restriction of their right of access to a court was prescribed by law and pursued a legitimate aim, namely, to allow the President to perform his tasks properly and without undue interference. There are no disputes between the parties concerning the interpretation by the Constitutional Court of Article 71 of the Constitution or with regard to the fact that the domestic courts extended that interpretation to the case of the President's immunity (see paragraphs 9,10 and 15 of the judgment). An assessment must therefore be made of the proportionality between the limitation on the applicants' right of access to a court and the aim sought to be achieved (see, amongst other authorities, *Fayed v. the United Kingdom*, 21 September 1994, §§ 71, 75, 77, 81, 82-83, Series A no. 294-B, and *Waite and Kennedy v. Germany* [GC], no. 26083/94, § 59, ECHR 1999-I).

26. As quoted in the judgment, "... the President enjoys immunity. However, in so far as his opinions are concerned, the immunity is not absolute: it extends only to opinions expressed in the exercise of his mandate" (see paragraph 46 of the judgment). Then, later on, it is noted that "... the immunity afforded to the President was perpetual and absolute. Thus, the applicants could not have had access to the courts even after the expiry of his mandate. Moreover, his immunity against libel actions could not be lifted" (see paragraph 50 of the judgment).

27. On the basis of those two diametrically opposed statements, neither of which, in our opinion, exactly corresponds to the national legislation or

to the Constitutional Court's interpretation of the issues, it was concluded that the immunity enjoyed by the head of State was a blanket one (see paragraph 52 of the judgment). Then, combined with the alleged lack of alternative means of redress, the judgment ultimately finds that there has been a violation of Article 6 § 1 of the Convention on account of a disproportionate restriction of the right of access to a court (see paragraphs 54 and 55 of the judgment).

28. Having regard to the subsidiary role of the Court, it is primarily for the national authorities, notably the courts, to resolve problems of interpretation of domestic legislation (see, among other authorities, *Bulut v. Austria*, 22 February 1996, § 29, *Reports* 1996-II; *Brualla Gómez de la Torre v. Spain*, *cited above*, § 31; *Fayed v. the United Kingdom*, *cited above*, § 81; and, *mutatis mutandis*, *Tolstoy Miloslavsky v. the United Kingdom*, 13 July 1995, § 59, Series A no. 316-B). We therefore consider that the interpretation of the legal concept of presidential immunity by the national courts in the instant case is fully in line with the requirements of a fair trial as stipulated in Article 6 of the Convention.

29. Thus, according to the Constitution (see paragraph 13 of the judgment), the President represents the State and is the guarantor of national sovereignty, independence and the unity and territorial integrity of the nation. In this capacity the President enjoys judicial immunity, including in respect of opinions expressed in the exercise of his mandate on matters and events of public life. In other words, the legitimate aim of the immunity granted to the President is to ensure the unhindered exercise of his role as guarantor of the constitutional order, particularly in terms of freedom of expression on matters or events of public life (see the Constitutional Court's interpretation of Article 71 of the Constitution – paragraph 15 of the judgment).

30. In our view, the words *"public life"*, used by the Constitutional Court and referred to in the decisions of the national courts, are key words, which indicate that the immunity provided to the President under the Constitution is not a blanket one, but on the contrary embodies, *inter alia*, a concrete extension to the opinions expressed in the exercise of the mandate to those which relate to public life.

31. In its content and application, presidential immunity in the Republic of Moldova fully corresponds to the generally recognised principles relating to restrictions on the right of access to a court as a consequence of immunity granted by the Contracting States to high-ranking officials[1].

32. While it is true that the Constitution does not literally enshrine the right of the President to grant interviews to the media, it cannot be denied that there is no prohibition in that respect. Indeed it would be strange, to say

[1] See, for example, Mattias Kloth: "Immunities and the Right of Access to Court under Article 6 of the European Convention on Human Rights", in *International studies in human rights, Vol.103*, Martinus Nijhoff Publishers, Boston, 2010, pp.107-32.

the least, to assert that the President, as head of State, is not allowed to express via the media his opinions on matters of public interest which he considers important in terms of his constitutional status. It would also be strange, not to say ridiculous, to maintain that there is an exhaustive list of matters of public interest which the President does or does not have the right to address.

33. In this context it should be underlined that the President's statements did not contain any comments on the private life of the applicants and did not address them as mere individuals, but referred to them as politicians and persons well known within the public and political arena of Moldova. Incidentally, the applicants did not challenge that point in their submissions and did not lodge any complaints concerning defamation which would raise potential issues under Article 8 of the Convention. Lastly, there is nothing in the file to support the conclusion reached by the majority that there might have been a personal quarrel between the President and the first applicant, other than the unsubstantiated statements of the latter (see paragraphs 33 and 44 of the judgment).

34. Accordingly, in their capacity as politicians the applicants fall within the category of persons open to close scrutiny of their acts, not only by the press but also – and above all – by bodies representing the public interest, thus the risk of some uncompensated damage to reputation is inevitable (see *Fayed v. the United Kingdom*, cited above, § 75, 81; *Brasilier v. France*, no. 71343/01, § 41, 11 April 2006; and *Axel Springer AG v. Germany (no. 2)*, no. 48311/10, § 54, 10 July 2014). In that connection we would point out that the existence in the national legislation of alternative means of redress, related to the right of reply in cases of potential defamation, could serve to counterbalance the damage alleged by the applicants (see *A. v. the United Kingdom*, no. 35373/97, § 86-89, ECHR 2002-X). However, it is necessary to emphasize that both of them failed to make use of those means, as we have already mentioned in the present opinion.

35. For the above reasons, it follows that the President's immunity from suit in the Republic of Moldova cannot be said to exceed the margin of appreciation allowed to Contracting States and that in the particular circumstances of the present case the restriction on the applicants' right of access to a court was not disproportionate to the legitimate aims pursued and, accordingly, there has been no violation of Article 6 § 1 of the Convention.