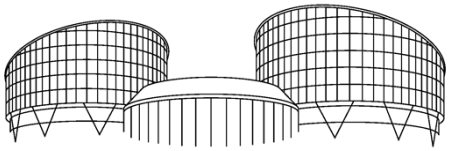

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF MONICA MACOVEI v. ROMANIA

(Application no. 53028/14)

JUDGMENT

Art 10 • Freedom of expression • Statements alleging corruption directed at certain members of parliament made by politician in support of her view of incompatibility of that role with that of lawyer • Appellate courts failing to provide convincing reasons for conclusion that comments amounted to untruthful statements • Appellate courts failing to consider collective nature of statements and consequence of context in which comments had been made • Sanction capable of having dissuasive effect on exercise of freedom of expression

STRASBOURG

28 July 2020

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 Monica Macovei v. Romania,

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

Yonko Grozev, *President,*
Faris Vehabović,
Krzysztof Wojtyczek,
Carlo Ranzoni,
Stéphanie Mourou-Vikström,
Georges Ravarani,
Péter Paczolay, *judges,*

and Hasan Bakırcı, *Deputy Section Registrar,*

Having regard to:

the application against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Ms Monica Luisa Macovei ("the applicant"), on 11 July 2014,

the decision to give notice to the Romanian Government ("the Government") of the complaint concerning the alleged breach of the applicant's right to freedom of expression under Article 10 of the Convention and to declare inadmissible the remainder of the application,

the parties' observations,

Noting the withdrawal from the case of Ms Iulia Antoanella Motoc (Rules 28 §§ 2 and 3 of the Rules of Court), the judge elected in respect of Romania, and the appointment by the President of Mr Krzysztof Wojtyczek to sit as *ad hoc* judge (Rules 29 § 1),

Having deliberated in private on 19 May and 23 June 2020,

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

INTRODUCTION

1. The applicant complained that the sentence imposed on her by a final judgment of the High Court of Cassation and Justice on 7 November 2013 had breached her right to freedom of expression. She relied on Article 10 of the Convention.

THE FACTS

2. The applicant was born in 1959 and lives in Bucharest. She was represented by Mr D.C. Mihai, a lawyer practising in Bucharest.

3. The Government were represented by their Agent, Ms C. Brumar of the Romanian Ministry of Foreign Affairs.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. STATEMENTS BY THE APPLICANT

5. At the time of the events the applicant was a former minister of justice of Romania, an active politician and a member of the European Parliament.

6. On 7 September 2009 two national newspapers published two press articles reporting comments the applicant had made the previous day at a summer school organised by the Democratic Liberal Party (*Partidul Democrat Liberal – PDL*).

7. Under the headline "Monica Macovei stated that the [Social Democrat Party's (*Partidul Social Democrat – PSD*)] members of parliament [V.]P. and [D.]Ş. are corrupt", the newspaper *Ziarul Financiar* published the following article:

> "The PDL European Parliament member Monica Macovei ... stated yesterday ... that two young PSD members of parliament had [signed] contracts worth millions of euros with State companies from the constituencies they represented [in Parliament], arguing that this was a clear case of corruption.
>
> The former minister of justice stated 'Take a look at the lawyers in Parliament, there are two youngsters from the PSD for example, who have [signed] contracts worth millions of euros with State companies from the constituencies they represent [in Parliament], money that they get for legal advice. This is a typical act of corruption by political influence. It is not at all different from other acts of corruption.'
>
> Afterwards, she named the two PSD members of parliament, stating that she was referring to [the Chamber of Deputies member] V.P., who was also the minister for relations with Parliament, and to Senator D.Ş., and added that this information had appeared in the press. Macovei argued that the first step was to make the two functions of lawyer and of member of parliament incompatible. 'For as long as one is [working as] a member of parliament, one cannot exercise this profession (of lawyer).'"

8. Under the headline "Monica Macovei lunges at [V.]P.", the newspaper *Ziua* published the following article:

> "The PDL European Parliament member Monica Macovei accused yesterday the Social Democrats V.P. and D.Ş. of corruption by implementing contracts [concluded] with State companies. [V.]P. argued that [her] accusations sounded like the ones of the 'friend' I.M. who had helped her during the electoral campaign.
>
> Naming [V.]P. and [D.]Ş., the former minister of justice stated 'Take a look at the lawyers in Parliament, there are two youngsters from the PSD for example, who have [signed] contracts worth millions of euros with State companies from the constituencies they represent [in Parliament], money that they get for legal advice. This is a typical act of corruption by political influence.'
>
> Contacted by *Ziua*, [V.]P. stated that there was no difference between the accusation made by Macovei and the one made some time ago by the controversial [I.]M.
>
> The PSD member stated that 'she is a first-class liar. Her words are the words of I.M. Birds of a feather flock together. When [I.]M. accused me of something similar, I presented documents [which proved] that I did not have any form of contract and [I.]M. went silent. Now the idea has been taken over by [I.]M.'s friend, Macovei'.

V.P. further stated that he was not considering taking legal action because he did not want to 'waste the time of [the] justice [system] with Macovei'".

II. TORT LAW PROCEEDINGS AGAINST THE APPLICANT

9. On 16 October 2009 D.Ş. brought general tort law proceedings against the applicant, seeking 500,000 Romanian lei (RON) (approximately 117,100 euros (EUR)) in respect of non-pecuniary damage and the publication of the court's judgment at the applicant's expense in three national newspapers, as well as in the newspapers *Ziarul Financiar* and *Ziua*. He argued that the applicant's statement that "the PSD members of parliament [V.]P. and [D.]Ş were corrupt" and the fact that she had named an act that in her opinion represented "a clear case of corruption" in the press articles of 7 September 2009 had discredited him in the eyes of the public and of his professional and political partners and had affected his professional and moral reputation, including his teaching career at the Bucharest Law School, as well as his dignity and honour. He relied on Articles 998-999 of the Civil Code (see paragraph 46 below), Articles 10 and 30 §§ 1 and 6 of the Constitution (see paragraph 44 below), Article 10 of the European Convention on Human Rights ("the Convention") and Article 19 § 3 of the International Pact concerning civil and political rights.

III. FIRST-INSTANCE COURT'S JUDGMENT

10. On 18 October 2010 the Bucharest County Court ("the County Court") dismissed D.Ş.'s action. It noted that on 6 September 2009 at a summer school organised by the PDL, the applicant had described an act which in her opinion had represented "a clear case of corruption" and that her opinion had been published in the newspaper *Ziarul Financiar*. It also noted that the applicant had expressed her opinion in a context in which an analysis had been made as to whether the function of lawyer and that of member of parliament were incompatible. The plaintiff's name, together with the name of the member of parliament V.P., had been mentioned in this context.

11. The court held that, examined in a context in which the applicant had supported the existence of an incompatibility between the functions of lawyer and member of parliament, her statements had not been defamatory. The words "a clear case of corruption" had not had an exclusive pejorative connotation as long as the person together with whom the plaintiff had been named had not been the object of a criminal investigation or of any other form of investigation which could have raised doubts about his moral integrity. The simple adjacent mentioning of the plaintiff's name could not have led to a deterioration of his image as a politician and lawyer, and could not have affected his dignity and honour.

12. The court further held that in the above-mentioned context, the applicant's statements could be regarded as insinuations. An insinuation was a form of implied sub-textual suggestion which could not carry blame. In her speech the applicant had publicly suggested a certain fact. A suggestion did not have a material support. It was used to speculate about certain meaning of words and especially the way in which the public perceived them, this perception being also directly influenced by the public's level of education. Albeit suggestive, the applicant's statements had not been vehement. Ironic speech and especially the suggestion of a certain circumstance were means of expressing an opinion. A person who had made a suggestion but not an offensive statement had neither accused nor exonerated.

13. The court also held that all of the above formed the content of the right to freely express an opinion. The plaintiff had undoubtedly felt affected by the fact that his name had been used in a context casting blame on politicians and especially on those in power.

14. The court considered that in those circumstances the plaintiff could not ask it to punish the applicant for her attitude, given that she had remained prudent in her suggestions. Such an approach had been endorsed also by the European Court of Human Rights ("the Court"), which had reiterated repeatedly that criticism directed at politicians, as in the plaintiff's case, was a matter of public interest.

IV. SECOND-INSTANCE COURT'S JUDGMENT

15. D.Ş. appealed against the first-instance judgment.

16. In her submissions before the second-instance court the applicant argued, amongst other things, that in several public speeches she had made in September 2009 as a Member of the European Parliament, including one she had made at the summer school organised by the PDL, she had reiterated her opinions concerning the incompatibility of the functions of lawyer and member of parliament. In support of that idea, without initially giving any names, she had provided as an example the situation in which State companies from the constituency had increased the income of two lawyers and members of parliament – members of the PSD – as a result of legal-assistance contracts. When asked by journalists, she had acknowledged that she had been referring to V.P. and D.Ş and had expressly mentioned that information about the system the two had been using to obtain income had already been reported in the press. During her public speeches on that topic she had explained that it had been a system by which the law practice "[D.]Ş and Associates" had earned substantial amounts of money from energy companies in a certain constituency at a time when V.P. had been both a senior partner of the law firm and a member of parliament representing the said constituency. The system which had led to obtaining

substantial incomes by merging parliamentary influence with the position of lawyer had also been reported in press articles of 8 September 2009 (see paragraph 44 below).

17. On 3 October 2011 the Bucharest Court of Appeal ("the Court of Appeal") allowed D.Ş.'s appeal and ordered the applicant to pay him damages of RON 10,000 (approximately EUR 2,300) and to publish the court's judgment at her own expense in three national newspapers with the widest circulation, as well as in the newspapers *Ziarul Financiar* and *Ziua*.

18. The Court of Appeal held that the conditions for civil liability had been met in the applicant's case. In particular, the applicant's unlawful act had consisted in the statement she had made on 7 September 2009 about an untruthful fact, namely that the plaintiff had committed an act of corruption in his joint functions of lawyer and member of parliament. Her statement had gone beyond a simple value judgment and had amounted to a defamatory statement of fact concerning the plaintiff's activity. The domestic courts and the Court had acknowledged that freedom of expression was limited by the fundamental rights and freedoms of others. In other words, freedom of expression stopped where the constitutional rights concerning the dignity of others began, and the national authorities had to make sure that a proportional balance was struck between those rights.

19. The court considered that even though the person targeted in the statements was a public figure involved in politics, and it could therefore be argued that he had implicitly accepted exposure to criticism concerning the exercise of his public mandate, which was of public interest, the ease with which the impugned statements had been made, by a person fully aware of the legal consequences of taking a public stance without actual proof, overstepped the limits of freedom of expression.

20. Human dignity was a characteristic of human personality and therefore its protection had to be effective, given the fundamental nature of that right. Otherwise it would become a mere illusory right which could not be relied on by persons with an intense social activity, and exercising it would be blocked by freedom of expression. As a result, the court considered that the applicant's allegations concerning the existence of a bill on the incompatibility of lawyers who were also members of parliament had to be discarded because, on the one hand, any statement had to have a foundation or a factual support well known by the person in question – even more so if the statement had been made by someone known by the public to be a trained professional belonging to the legal field – and, on the other hand, because the legislative process in that regard could have been conducted transparently and lawfully.

21. The court acknowledged that the bill to which the applicant had referred in her defence had been of public interest and had concerned democratic values. However, it considered that the applicant's statements concerning the plaintiff had overstepped the acceptable limits of

exaggeration and had represented a direct affirmation of an act of corruption concerning him, even though everyone had the right to be presumed innocent.

22. The court reiterated the scope and limits of the rights to freedom of expression, honour, dignity, reputation and public image as prescribed by domestic, European and international provisions; the Court's conclusions concerning the distinction between statements of fact and value judgments, and the required proof in support of such statements; the heightened level of protection enjoyed by political speech; and the higher level of acceptable criticisms to which public persons in general, and politicians in particular, may be exposed. On this basis it held that the intentional statement of the applicant, known to the public as a former minister of justice, that by exercising jointly the functions of lawyer and member of parliament during the relevant period of time, the plaintiff had used political influence in connection with the legal services provided by the law practice he had founded, had been of a nature that had affected the plaintiff's political, professional and teaching career. None of the available evidence had proved that the plaintiff had signed any legal-assistance or other contracts with a State-owned company located in the constituency he was representing in Parliament. As a result, the plaintiff had suffered non-pecuniary damage and was entitled both to non-pecuniary damages and to the publishing of the court's judgment in the press.

23. Lastly, the court held that the amount of compensation granted to the plaintiff in respect of non-pecuniary damage had been assessed symbolically because human dignity was not a value which could be quantified.

V. PROCEEDINGS BEFORE THE HIGH COURT OF CASSATION AND JUSTICE

24. The applicant and D.Ş. appealed on points of law against the second-instance judgment.

25. The applicant argued that the second-instance court had failed to examine the arguments raised by her in her defence and had assessed the facts wrongly. As regards her statements, the second-instance court had considered 7 September 2009 as the date when she had committed the unlawful act. However, two press articles of 8 September 2009 attached to the case file had noted that she had stated that the function of member of parliament should have been incompatible with the function of lawyer because politicians could use their status to obtain various benefits. She had provided as an example the law practice of "[D.]Ş. and Associates", which had earned millions of euros from State-owned companies – located in a certain constituency – precisely at a time when V.P. had been both a senior partner at the law practice in question and a member of parliament. It had

been clear, therefore that her statements had concerned mainly V.P., because he had been both a lawyer and a member of parliament. The law practice of "[D.]Ş. and Associates" had been the weak link in the D.Ş. and V.P. chain because D.Ş. had not been a member of parliament at the time when the contracts had been concluded.

26. The applicant further argued that she had made similar statements since 2006 when she had been a minister of justice and had initiated a bill prohibiting the exercise of lawyer and member of parliament functions at the same time. Moreover, her statements had not been a gratuitous attack against the two individuals in question as she had never referred only to D.Ş. She had referred to the mutually beneficial relationship between the two men, who had been friends, which she had used as an example to justify the need for her proposed bill to be adopted. She had never stated that D.Ş. had exercised jointly the functions of lawyer and member of parliament.

27. The applicant claimed that she had also argued before the second-instance court that D.Ş. had never proved the exact content of the alleged defamatory statements that were the object of the dispute. He had relied on a press report concerning the content of her statements, which had been contradicted by other press reports. As she had already proved before the lower courts, her statements had been reported differently by the press, and D.Ş., who had been aware of those differences, had not taken any steps to clarify them. Even so, the second-instance court had accepted D.Ş.'s version of the events without providing any reasons, holding that the applicant's unlawful act had consisted in making an untruthful public statement on 7 September 2009. She argued that it had been clear, however, that the phrase "a typical act of corruption" was missing from the press reports of 8 September 2009. Nor did it appear from those press reports that she had stated that D.Ş. had signed contracts and had earned large amounts of money from companies in his constituency, or that he had exercised jointly the function of lawyer and member of parliament. The second-instance court had avoided examining those inconsistencies in the press reports and had therefore failed to establish the facts correctly.

28. Furthermore, the applicant argued that her statements had been made on a clearly reasonable factual basis, namely: (i) at least four press articles concerning the mutually beneficial relationship between D.Ş. and V.P. published before her statements of September 2009; (ii) two investigations – into the contractual relationship between the "[D.]Ş. and Associates" law practice and two State-owned companies located in the constituency represented in Parliament by V.P. – which had been finalised more than a month before her statements and which had been brought to the attention of the criminal authorities; and (iii) V.P.'s public income declaration. V.P. had become a senior partner at "[D.]Ş. and Associates" in September 2007 and the above-mentioned investigations had disclosed that since then, the number of new contracts signed by the law practice had increased

exponentially and that the existing ones had increased in value significantly. In addition, V.P.'s income had increased considerably.

29. The applicant submitted that her statements had been made in good faith and had not been a gratuitous attack. Nor had they sought to discredit the plaintiff. She had sought to provide an example and an argument in support of an idea, namely the incompatibility between the functions of lawyer and member of parliament, which she had been promoting for a long time even before she had referred to the plaintiff.

30. Lastly, the applicant argued that the second-instance court had applied wrongly the domestic general tort law provisions and Article 10 of the Convention. The protection granted to D.Ş.'s political image had been disproportionate and detrimental to a free debate on a matter of public interest. Moreover, the second-instance court had failed to examine whether in the circumstances of the case the curtailment of her right to freedom of expression had been necessary in a democratic society. According to the Court's case-law, the level of acceptable criticism was higher in the case of politicians, regardless of whether the statements in issue had been made by journalists or other persons.

31. By a final judgment of 7 November 2013 (available to the parties on 3 March 2014) the High Court of Cassation and Justice ("the Court of Cassation") dismissed both appeals on points of law.

32. The Court of Cassation held that the conditions for civil liability had been met in the applicant's case. In particular, her unlawful act had consisted in the public statement she had made on 7 September 2009 containing an untruthful fact, namely that the plaintiff had committed an act of corruption in his joint functions of lawyer and member of parliament. Damage had been caused to the plaintiff as a result of the negative effect that her statements had had on his political and professional reputation and on his public image. The link between the unlawful act and the damage caused had consisted in the fact that the applicant's statements had raised doubts about the plaintiff's integrity in carrying out his political duties and about his reputation in the field of higher education.

33. The applicant's liability flowed from her attitude. Her direct statements concerning the plaintiff had overstepped the level of acceptable criticism and had amounted to a direct statement about an act of corruption committed by him in circumstances where he had enjoyed a right to be presumed innocent.

34. It was true that the acceptable level of criticism was higher in respect of politicians. However, they also had the right to have their reputation and dignity protected. Not every statement concerning a politician had to be tolerated by default.

35. The court referred to the Court's conclusions concerning the distinction between statements of fact and value judgments, and the required proof in support of such statements. On that basis it held that an accusation

of acts of corruption formulated by a former minister of justice and prosecutor could have damaged the plaintiff's political, professional and teaching career. The problem of corruption was of major interest for Romanian society.

36. The court could not accept the applicant's argument that her statements concerning the incompatibility between the functions of lawyer and member of parliament had not sought to gratuitously attack the applicant or to discredit him, but had amounted to mere arguments in support of a bill. It held that the applicant was a former minister of justice, publicly perceived as a legal professional given her career as a prosecutor, and her public statement about an untrue fact, in particular an act of corruption committed by the plaintiff, had been bound to cause him non-pecuniary damage.

37. The court held further that neither the domestic nor the international norms provided for a precise way of repairing in full the non-pecuniary damage suffered by a person. Making an assessment on an equitable basis, the court concluded that the second-instance court had correctly calculated the amount of compensation granted to the plaintiff in respect of non-pecuniary damage.

38. Lastly, the court held that a large amount granted in respect of non-pecuniary damages would not deter the applicant from committing similar acts in the future. However, an order to publish the judgments which had held that the acts in question had been unlawful would do so.

VI. OTHER PERTINENT INFORMATION

39. D.Ş. was a senator and a member of parliament from December 2008 to 2015.

40. The applicant submitted to the Court three articles published on 7 March 2006, 24 February 2008 and 9 May 2009, respectively, in an unidentified newspaper, on the Internet page of the newspaper *Ziua* and on the Internet news portal *HotNews*. They stated that the applicant had initiated a bill proposing, amongst other things, that the function of lawyer be declared incompatible with the function of member of parliament and that the incompatibility in question remain in force for at least twenty years. They also stated that Parliament had not adopted the aforementioned proposal.

41. The applicant also submitted to the Court five articles published in the media between 28 September 2007 and 6 March 2009. Two of the articles stated, amongst other things, that V.P. had become a senior partner of the law practice "[D.]Ş. and Associates" in September 2007. The remaining three articles described the relationship and connections between V.P., D.Ş., the law practice "[D.]Ş. and Associates" and various major State-owned energy companies located in the constituency represented in

Parliament by V.P., including the legal-assistance contracts signed by the law practice and the energy companies in question between April 2007 and December 2008 for large legal fees.

42. On 4 August 2009 the internal audit department of one of the above-mentioned State-owned companies produced an inquiry report concerning two legal-assistance contracts signed by the company with "[D.]Ş. and Associates". The report identified several problems with regard to the way in which the contracts had been signed and implemented, and stated that the State company had suffered important financial losses. It recommended that the report be notified to the relevant authorities for further investigation.

43. The applicant submitted to the Court V.P.'s public income declarations from May 2007 to October 2009, indicating that from 2005 to 2008 V.P.'s income for his work as a lawyer had increased significantly. They also indicated that from September 2007 to 2008 he had been a senior partner of the law firm "[D.]Ş. and Associates".

44. The applicant submitted to the Court two press articles of 8 September 2009 published by the newspaper *Pandurul* and the Internet news portal *Presaonline*. The two articles first stated that the previous day a new episode had begun in the conflict between the applicant and V.P. They then reported that the applicant had stated that the function of member of parliament should be made incompatible with the function of lawyer because politicians could use their status to obtain various benefits. She had provided as an example the law practice of "[D.]Ş. and Associates", which had earned millions of euros from State-owned companies – located in a certain constituency – precisely at a time when V.P. had been both a senior partner at the law practice in question and a member of parliament representing the constituency in question.

45. Lastly, the applicant submitted to the Court an article published on 20 June 2018 on the Internet news portal *HotNews,* which stated that the Court of Cassation had convicted D.Ş. of influence peddling and had sentenced him to three years' imprisonment. According to the article, D.Ş. had been indicted for influence peddling because from October 2011 to July 2014 he had claimed and received EUR 100,000 from a private party in order to facilitate the signing of legal-assistance contracts between a law firm and a large energy company in the country.

RELEVANT LEGAL FRAMEWORK

46. The former Civil Code, in force until 1 October 2011, provided that any person who was responsible for causing damage to another would be liable to make reparation for it, regardless of whether the damage was caused through his or her own actions, through his or her failure to act or

through his or her negligence (Articles 998 and 999 – see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 68, 25 June 2019).

47. Articles 10 and 30 §§ 1 and 6 of the Constitution provide that Romania maintains and develops peaceful relations with all States and has good neighbourly relations based on the generally recognised principles and norms of international law. Freedom to express thoughts, opinions and beliefs orally, in writing, through images, or through other means of public communication is inviolable. Freedom of expression may not damage a person's honour, dignity, private life or one's right to one's image.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

48. The applicant complained that the sentence imposed on her by the final judgment of 7 November 2013 of the Court of Cassation had breached her right to freedom of expression as provided for in Article 10 of the Convention, which, in so far as relevant, reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

49. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Submissions by the parties

(a) The applicant

50. The applicant submitted that according to the Government, the defamation dispute at issue had concerned her statements of 6 September 2009 (see paragraph 59 below). However, the two appellate courts' judgments had stated that the allegedly defamatory statements had been made on 7 September 2009. The fact that the appellate courts had retained

7 September 2009 as the date of her statements meant that the statements could not have been both made and published on the same day. They could only have been published on 8 September 2009. However, the articles published on the latter date (see paragraph 25 above) had not been taken into account by the courts in their assessment of the case.

51. Those articles lacked the phrase "a clear case of corruption", which according to D.Ş. had seriously affected his public image. Furthermore, in the statements quoted in those press articles, the applicant had not claimed that D.Ş. had concluded contracts and had earned substantial amounts of money from the energy companies located in the constituency he would later represent in Parliament. She had only claimed that he had earned those sums from the energy companies located in the constituency represented in Parliament by V.P. at a time when V.P. had been both a senior partner of the "[D.]Ş. and Associates" law practice, and a member of parliament. At the same time, it was not claimed in those articles of 8 September 2009 that the applicant had ever asserted that D.Ş. had cumulatively held the positions of acting lawyer and member of parliament.

52. The factual situation presented by the applicant had shown that it had been V.P. who had cumulatively held the two positions, and not D.Ş. In her opinion, it had been inexplicable why the second-instance court had accepted D.Ş.'s argument that she had accused him of "cumulatively holding the position of lawyer and member of parliament".

53. Even though she had indicated to the Court of Cassation that it had been necessary to clarify the logical inaccuracies of the second-instance court's decision, her request had remained unanswered. Even assuming that the second-instance court had erred when it had considered 7 September 2009 as the date of the applicant's public statements, and regardless of which press reports had been taken into account for the purposes of the present case or whether they contained the phrase "a clear case of corruption", one factual element had been clear: the applicant had never referred to D.Ş. individually, but had presented and publicly criticised a mutually beneficial relationship between D.Ş and V.P. In her opinion, the two individuals had supported each other in a profitable manner.

54. Even though the applicant's public statements had concerned the relationship between two persons, only D.Ş. had taken legal action against her. It could therefore be assumed that for V. P. the same statements had been neither false nor likely to cause damage requiring a judicial response.

55. The applicant contended that her freedom of expression had been breached, as she had acted in good faith in a matter of public interest, and her statements had had a reasonable and sufficient factual basis. Her claims of September 2009 regarding the incompatibility between the status of lawyer and that of member of parliament had not aimed to gratuitously attack or discredit D.Ş. The purpose of her comments had been to bring forward new examples and arguments in support of a bill, which she had

constantly advocated over the years and even long before making any reference to the D.Ş.-V.P. relationship. It had been obvious that her statements had been of public interest since they had concerned dangers regarding public funds and questions of good governance.

56. The Court's case-law relied on by the courts and by the Government in support of their arguments had concerned cases in which the impugned statements had lacked a factual basis or had been much harsher than hers. However, in her case she had had a sufficient factual basis for her statements. She had submitted her arguments and the relevant evidence to support them before all the courts. However, the appellate courts had not taken into account the evidence proving the existence of such a reasonable factual basis. Moreover, in her opinion the last two instance courts had been unjustifiably severe – almost hostile – towards her, but inexplicably lenient towards D.Ş. None of the courts had considered that the fact that both D.Ş. and V.P. had been occupying important public posts at the time when the applicant had expressed her public criticism of their conduct, had placed them under an obligation to accept close scrutiny of their every word and deed by both journalists and the public at large.

57. The applicant submitted that the judgments of the appellate courts, in particular their assertions that freedom of expression ceased to exist where the rights concerning the dignity of others began (see paragraph 18 above), had contained arguments which had been incompatible with the Court's case-law, especially in circumstances concerning politicians.

58. The applicant contested the Government's submissions that the interference with her right to freedom of expression had been proportionate to the legitimate aim pursued. She argued that the financial penalty imposed on her and the additional financial losses suffered by her because of the public statements she had made in good faith and based on a reasonable factual basis, criticising the influence and business relationship of two politicians and lawmakers, had been not only disproportionate but also completely unjustified and in breach of the Court's case-law.

(b) The Government

59. The Government submitted that the applicant was not a journalist. Moreover, her conduct after she had made the impugned statements – she had named the persons she had been referring to when she had been asked by journalists, she had never denied or retracted her statements, she had never contested the publication of her statements in the press, and she had never contested the fact that the press had been present at the summer school where she had made the statements – clearly showed that she had consented to the publication of her statements by the press.

60. The Government acknowledged that the judgments of 3 October 2011 by the Court of Appeal (see paragraph 17-23 above) and of 7 November 2013 by the Court of Cassation (see paragraph 31-38 above)

could be viewed as an interference with the applicant's right to freedom of expression. However, the interference was provided for by law, namely Articles 998-999 of the former Civil Code (see paragraph 46 above). It also pursued a legitimate aim, in particular the protection of the plaintiff's right of reputation.

61. The Government contended that the national authorities had not exceeded their margin of appreciation when they had considered that the interference with the applicant's rights had been justified by a pressing social need. Her statements had overstepped the limits of acceptable criticism concerning a person occupying a public office.

62. Even though political debate was characterised by certain ferocity, freedom of expression had limits which would be breached in circumstances where unnecessary defamatory statements were made. In the present case, the applicant had gone beyond mere speculation and irony and had accused D.Ş. of acts of corruption by portraying him with certain certainty as a young member of parliament who had earned a fortune from signing contracts with State-owned companies. Moreover, she had argued that her statements had been justified by past press articles which had conveyed the same information.

63. Assuming that the applicant's statements could be considered to fall within the context of a public debate of general interest, Article 10 did not guarantee a right to freedom of expression without any limits, even in connection with questions of public interest. In such circumstances the party imparting such information had to act in good faith in order to provide accurate and credible information.

64. The applicant had made the statements during a presentation which she could have prepared in advance and she had answered unequivocally journalists' questions about the identity of the two members of parliament in question. Moreover, the previous statements made by journalists in past press articles concerning the same subject matter had not been reviewed by a court. Consequently, the applicant should not have portrayed the information in question as an established fact simply by relying on the presumed good faith of the journalists and on the fact that they would not have published such information without a reasonable factual basis.

65. Relying on the Court's relevant case-law, the domestic courts had examined the facts of the case by taking into account also the documents submitted by the plaintiff in support of his claims. The appellate courts had concluded that the facts imputed to D.Ş. had not been true. They had considered that in the absence of a solid and real factual basis supporting the applicant's allegations, her statements had overstepped the limits of acceptable criticism on a matter of public interest because the suggestion of acts of corruption had been made by a known public person who was respected by her peers and the public.

66. The Government acknowledged that the amount granted to D.Ş. by the courts in respect of non-pecuniary damage (approximately EUR 2,300 – see paragraph 17 above) had not been insignificant. However, they considered that it had not been excessive either. The applicant had not challenged before the last-instance court the amount the second-instance court had granted to D.Ş. in respect of non-pecuniary damage. The courts had carried out a balancing exercise between the competing interests at stake and their conclusions had not been arbitrary, given the circumstances of the case.

67. The reasons provided by the first-instance court in support of its judgment (see paragraphs 10-14 above) had not differed substantially from those of the appellate courts. The different outcome of the case before the first-instance court had been the exclusive result of that court's margin of appreciation over the facts of the case. The first-instance court had also perceived the applicant's statements as being capable of affecting D.Ş.'s reputation, even though it had eventually found in the applicant's favour. By contrast to the first-instance court, the appellate courts had only given more weight to D.Ş.'s arguments concerning his social status and to the impact the applicant's opinions could have had on the general public, given her position of former minister of justice.

68. Relying on the Court's case-law concerning statements with a potentially similar impact on the reputation of others, the Government argued that the applicant had formulated her statements with an intention to cast doubt on D.Ş.'s honesty and reputation. In circumstances where she had had the intention of alerting the public about certain possible foul play and of accusing D.Ş. directly, she had had a duty to provide a sufficient factual basis in support of her allegations. Even assuming that the applicant's statements could be viewed as a measure promoting a bill, they had still overstepped the level of acceptable criticism, since they had amounted to an accusation of a criminal offence in respect of a person who had not been under investigation or convicted.

2. The Court's assessment

69. The Court agrees with the Government that the judgments of 3 October 2011 of the Court of Appeal (see paragraph 17-23 above) and of 7 November 2013 of the Court of Cassation (see paragraph 31-38 above) amounted to an "interference" with the applicant's right to freedom of expression (see paragraph 60 above).

70. The Court also notes that the interference complained of was prescribed by law, namely Articles 998-999 of the Civil Code in force at the time (see paragraphs 9 and 46 above), and pursued the legitimate aim referred to in Article 10 § 2 of the Convention, namely the "protection of the reputation or rights of others".

71. What remains to be determined, therefore, is whether the interference was "necessary in a democratic society".

(a) General principles as regards the necessity in a democratic society

72. In this connection, the Court reiterates that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it 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. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society". As set forth in Article 10, this freedom is subject to exceptions, which must, however, be construed strictly, and the need for any restrictions must be established convincingly (see, among other authorities, *Perna v. Italy* [GC], no. 48898/99, § 39 (a), ECHR 2003-V; and *Paraskevopoulos v. Greece*, no. 64184/11, § 29, 28 June 2018).

73. The test of whether the interference was "necessary in a democratic society" requires the Court to determine whether it corresponded to a "pressing social need". The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give the final ruling on whether a "restriction" is reconcilable with freedom of expression as protected by Article 10 (see, for example, *Tuşalp v. Turkey*, nos. 32131/08 and 41617/08, § 41, 21 February 2012; and *Paraskevopoulos*, cited above, § 30).

74. The Court's task in exercising its supervisory function is not to take the place of the competent domestic courts, but rather to review under Article 10 the decisions they have taken pursuant to their power of appreciation. In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference were "relevant and sufficient" and whether the measure taken was "proportionate to the legitimate aims pursued". In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts (see *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 45, ECHR 2007-IV; and *Frisk and Jensen v. Denmark*, no. 19657/12, § 51, 5 December 2017).

75. In this connection, the Court reiterates that in order to assess the justification of an impugned statement, a distinction needs to be made 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, *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 76, ECHR 2004-XI; *Makraduli v. the former Yugoslav Republic of Macedonia*, nos. 64659/11 and 24133/13, § 62, 19 July 2018; and *Paraskevopoulos*, cited above, § 32). In exercising its supervisory jurisdiction, the Court must look at the impugned interference in the light of the case as a whole, including the status of the applicant and that of the plaintiff in the domestic proceedings, the content of the critical comments held against the applicant, as well as the context and the manner in which they were made public (see *Lykin v. Ukraine*, no. 19382/08, § 25, 12 January 2017; and *Makraduli*, cited above, § 62), bearing in mind that assertions about matters of public interest may, on that basis, constitute value judgments rather than statements of fact (see *Makraduli*, cited above, § 62) and that an applicant clearly involved in a public debate on an important issue is required to fulfil a no more demanding standard than that of due diligence as in such circumstances an obligation to prove the factual statements may deprive him or her of the protection afforded by Article 10 (see *Makraduli*, cited above, § 75, with further references).

76. When called upon to examine the necessity of an interference in a democratic society in the interests of the "protection of the reputation or rights of others", the Court may be required to ascertain whether the domestic authorities struck a fair balance when protecting two values guaranteed by the Convention which may come into conflict with each other in certain cases, namely, on the one hand, freedom of expression protected by Article 10, and on the other, the right to respect for private life enshrined in Article 8 (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 84, 7 February 2012). In order for Article 8 to come into play, however, an attack on a person's reputation must attain a certain level of seriousness and be carried out in a manner causing prejudice to personal enjoyment of the right to respect for private life (see *Axel Springer AG*, cited above, § 83; and *Bédat v. Switzerland* [GC], no. 56925/08, § 72, ECHR 2016).

77. Where the right to freedom of expression is being balanced against the right to respect for private life, the relevant criteria laid down in the Court's case-law include: (a) contribution to a debate of general interest; (b) how well known the person concerned is and what the subject of the report was; (c) prior conduct of the person concerned; (d) method of obtaining the information and its veracity; (e) content, form and consequences of the report and (f) severity of the sanction imposed (see

Von Hannover v. Germany (no. 2) [GC], nos. 40660/08 and 60641/08, §§ 108-13, ECHR 2012; *Axel Springer AG*, cited above, §§ 89-95, *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, §§ 165-66, ECHR 2017 (extracts); and *Falzon v. Malta*, no. 45791/13, § 55, 20 March 2018).

78. As regards, in particular, protection of the rights of politicians, the Court has held that while freedom of expression is important for everybody, it is especially so for elected representatives of the people. They represent the electorate, draw attention to their preoccupations and defend their interests. Accordingly, interferences with their freedom of expression call for the closest scrutiny on the part of the Court (see *Castells v. Spain*, 23 April 1992, § 42, Series A no. 236; *Lombardo and Others v. Malta*, no. 7333/06, § 53, 24 April 2007; and *Lewandowska-Malec v. Poland*, no. 39660/07, § 60, 18 September 2012).

79. The Court has also held that a distinction has to be made between private individuals and persons acting in a public context, as political figures or public figures. Accordingly, whilst a private individual unknown to the public may claim particular protection of his or her right to private life, the same is not true of public figures in respect of whom limits of critical comment are wider, as they are inevitably and knowingly exposed to public scrutiny and must therefore display a greater degree of tolerance (see *Milisavljević v. Serbia*, no. 50123/06, § 34, 4 April 2017; and *Prunea v. Romania*, no. 47881/11, § 30, 8 January 2019). A politician is certainly entitled to have his reputation protected, even when he is not acting in his private capacity, but in such cases the requirements of that protection have to be weighed against the interests of the open discussion of political issues (see, among other authorities, *Lykin*, cited above, § 26).

80. The Court has also held that Article 10 of the Convention does not, however, guarantee a wholly unrestricted freedom of expression even in respect of coverage of matters of serious public concern. Under the terms of paragraph 2 of the Article the exercise of this freedom carries with it "duties and responsibilities", which are liable to assume significance when there is a question of attacking the reputation of private individuals and undermining the "rights of others". Thereby, the information conveyed on issues of general interest is subject to the proviso that the party concerned is acting in good faith in order to provide accurate and reliable information (see *Barata Monteiro da Costa Nogueira and Patrício Pereira v. Portugal*, no. 4035/08, § 31, 11 January 2011, with further references; and *Kurski v. Poland*, no. 26115/10, § 56, 5 July 2016).

81. Lastly, the Court reiterates that where the national authorities have weighed up the freedom of expression with the right to private life in compliance with the criteria laid down in the Court's case-law, strong reasons are required if it is to substitute its view for that of the domestic

courts (see *Von Hannover*, cited above, § 107; *Axel Springer AG*, cited above, § 88; and *Frisk and Jensen v. Denmark*, cited above, § 54).

(b) Application of those principles to the present case

82. Turning to the circumstances in the instant case, the Court notes at the outset that the applicant contended that it was unclear whether the domestic courts had confined their assessment to her statements of 6 September 2009, which were published in the press on 7 September, or rather to her statements of 7 September 2009, which were published in the press on 8 September. In addition, she seemed to argue that the domestic courts had failed to examine her arguments concerning the inconsistencies in the press reports of 7 and 8 September 2009 concerning the actual content of her statements. The applicant was of the opinion that it was important to clarify those questions, given that her statements and the press articles in issue had a different content and meaning (see paragraphs 50-53 above).

83. The Court notes that the applicant herself was of the opinion that the courts had not taken into account in their assessment the press articles of 8 September 2009 (see paragraph 50 above). Moreover, D.Ş. seems to have relied on the press articles of 7 September 2009 when he brought general tort law proceedings against her (see paragraph 9 above). Furthermore, the applicant's submissions before the second-instance court (see paragraph 16 above) read in the context of the actual content of the press reports themselves (see paragraphs 7, 8 and 44 above) seem to suggest that the press reports concerned statements that had been made by the applicant on different dates. In these circumstances, even though it is true that the appellate courts considered that the date of the applicant's statements contested by D.Ş. had been 7 September 2009 (see paragraphs 18 and 32 above), in the Court's view the information in the file suggests that this had been a mere material error on the part of the courts, as the proceedings brought by D.Ş. and the domestic courts' assessment in fact concerned her statements of 6 September 2009, which were reported by the press the next day (see paragraphs 7-8 above). Also, given the applicant's submissions before the appellate courts and the content of the various press reports about the actual dates of the applicant's statements, the Court does not attach significant weight to the fact that the domestic courts had failed to examine expressly her arguments concerning the inconsistencies between the press reports of 7 and 8 September 2009 as to the actual content of her statements.

84. The Court further notes that at the time when she made the impugned statements, the applicant was a politician, a member of the PDL political party and an elected member of the European Parliament (see paragraph 5 above). Her statements were directed at both D.Ş. and V.P., two politicians who were members of a different political party and elected members of the Romanian Parliament. The statements were made at a summer school organised by the PDL and were reported in press articles

published in national newspapers. Even though the applicant's actual statements quoted by the press did not include any names, she did not contest the press reports that she had subsequently identified D.Ş. and V.P. to be the persons she had been referring to. Also, there is no indication in the case file that the applicant had been unaware that members of the press were present at the summer school organised by the PDL or that she could not have predicted that any statement she made on that occasion would be reported in the press.

85. The applicant's statements concerned some actions on the part of D.Ş. which she perceived as a "typical act of corruption by political influence" (see paragraphs 7 and 8 above). The applicant's statements were capable not only of tarnishing D.Ş.'s reputation, but also of causing him serious prejudice in both his professional and his social environment. Accordingly, the accusations against D.Ş. attained the requisite level of seriousness to be capable of undermining his rights under Article 8 of the Convention (see the case-law cited in paragraph 76 above). The Court must therefore verify whether the domestic authorities struck a fair balance between the two values guaranteed by the Convention, namely, on the one hand, the applicant's freedom of expression protected by Article 10 and, on the other, D.Ş.'s right to respect for his reputation under Article 8 (see *Axel Springer AG*, cited above, § 84).

86. The Court notes that the national courts seemed to accept that the criticism in the applicant's comments was directed not at D.Ş.'s private activities but rather at his conduct in his political capacity, that is, as an elected parliamentary representative (see paragraphs 20 and 32 above). Based on the material in the case file, the Court sees no reason to hold otherwise. As such, his conduct in that capacity was clearly of legitimate concern to the general public. In this connection, the Court has already held that the manner in which a locally elected official carries out his or her official duties and issues touching on his or her personal integrity are matters of general interest to the community (see, *mutatis mutandis*, *Sokołowski v. Poland*, no. 75955/01, § 45, 29 March 2005; *Kwiecień v. Poland*, no. 51744/99, § 51, 9 January 2007; and *Paraskevopoulos*, cited above, § 36) and that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or debate on matters of public interest (see, among other authorities, *Sürek v. Turkey* (no. 1) [GC], no. 26682/95, § 61, ECHR 1999-IV; and *Instytut Ekonomichnykh Reform, TOV v. Ukraine*, no. 61561/08, § 44, 2 June 2016). The Court considers that the aforementioned considerations are just as valid with regard to nationally elected officials, such as D.Ş.

87. Accordingly, the authorities had a particularly narrow margin of appreciation in assessing the need for the interference with the applicant's freedom of expression (see, for example, *Morice v. France* [GC],

no. 29369/10, § 125, 23 April 2015; and *Instytut Ekonomichnykh Reform, TOV*, cited above, § 50).

88. As to the content of the impugned statements, the Court observes that whereas the first-instance court regarded the applicant's comments as mere insinuations – implied sub-textual suggestions which could be misinterpreted by different people (see paragraph 12 above) –, the appellate courts considered that the applicant had made an untruthful statement of fact about D.Ş., namely that he had committed an act of corruption in his joint functions of lawyer and member of parliament (see paragraphs 18 and 32 above). The Court notes that the national courts are, in principle, better placed than an international court to assess the intention behind impugned phrases and statements and, in particular, to judge how the general public would interpret and react to them (see, *mutatis mutandis*, concerning a complaint under Article 8 of the Convention about an alleged breach of the right to reputation, *Jalbă v. Romania*, no. 43912/10, § 33, 18 February 2014). However, the Court notes that the appellate courts did not provide convincing reasons for their conclusion on the nature of the statements at issue. In view of the limited scope of their reasoning in this respect, the Court is not persuaded by their approach and cannot share their conclusion for the following reasons (see, for example and *mutatis mutandis*, *Instytut Ekonomichnykh Reform, TOV*, cited above, §§ 52-53).

89. Given the wording of the applicant's statements, the explanation contained in the relevant press articles and the contradictory findings of the domestic courts which examined the matter, the Court is of the opinion that the applicant's comments contain a combination of value judgments and statements of fact. It is persuaded that the thrust of her statements was to use the example of specific conduct by D.Ş. and V.P., which she regarded as tantamount to a "typical act of corruption by political influence", in the context of the broader concept of conflict of interest as support for an idea that she had been constantly promoting, namely the introduction of a law rendering the functions of lawyer and member of parliament incompatible. The question, therefore, is whether a sufficiently accurate and reliable factual basis proportionate to the nature and degree of the applicant's statements and allegations can be established (see *Reznik v. Russia*, no. 4977/05, § 46, 4 April 2013; and *Rungainis v. Latvia*, no. 40597/08, § 63, 14 June 2018).

90. The Court accepts that some of the applicant's statements, such as those concerning D.Ş.'s specific conduct – namely the alleged signing of very lucrative contracts with State-owned companies located in the constituency he was representing in Parliament – could be considered to lack a sufficient factual basis. Like the Court of Appeal (see paragraph 22 above), the Court notes that none of the information relied on by the applicant in her submissions – regardless whether she had obtained it from the press articles, the investigation reports, or V.P.'s public income

declarations mentioned by her (see paragraph 28 above) – suggests that D.Ş. or the law practice he had founded had signed contracts with State-owned companies located in the said constituency at a time when he was both a lawyer and a member of parliament.

91. The Court cannot ignore, however, that the applicant's statements and allegations were of a collective nature, concerned both D.Ş. and V.P., and were aimed merely at providing an example of a system of political corruption consisting in an award of contracts for legal advice by public companies rather than at accusing either D.Ş. and V.P. of genuine corruption. In addition, the available information suggested that V.P. had been both a member of parliament and an associate of the law practice founded by D.Ş. at a time when the law practice had signed lucrative legal-assistance contracts with State-owned companies located in the constituency represented in Parliament by V.P. (see paragraphs 41 and 43 above).

92. In this context, the Court takes the view that the applicant's allegations and, in particular, the expressions used, albeit perhaps inappropriately strong, could be viewed as polemical, involving a certain degree of exaggeration.

93. The Court reiterates that persons taking part in a public debate on a matter of general concern are allowed to have recourse to a degree of exaggeration or even provocation, or in other words to make somewhat immoderate statements (see *Do Carmo de Portugal e Castro Câmara v. Portugal*, no. 53139/11, § 43, 4 October 2016).

94. Under these circumstances, given the status of the applicant and D.Ş. as politicians and elected representatives of the people, the collective nature of the applicant's statements and allegations, the overall context reflected by the press reports, namely that of promoting the need for legislation establishing an incompatibility between the functions of lawyer and member of parliament, and the existence of at least a certain factual background to her statements and allegations taken collectively, the Court considers that the applicant's comments do not amount to an ill-fated gratuitous personal attack against D.Ş.

95. The Court reiterates in this connection that it is always necessary to bear in mind that political invective often spills over into the personal sphere; such are the hazards of politics and the free debate of ideas, which are the guarantees of a democratic society (see, among the most recent authorities, *Lykin*, cited above, § 29).

96. Lastly, the Court observes that the applicant was ordered to pay D.Ş. damages of EUR 2,300 and to publish the last-instance court's judgment at her own expense in five national newspapers, including three with the widest circulation in the country (see paragraph 17 above). Reiterating its view on the chilling effect that a fear of sanction may have on the exercise of freedom of expression (see, for instance, *Wille v. Liechtenstein* [GC], no. 28396/95, § 50, ECHR 1999-VII; *Nikula v. Finland*, no. 31611/96, § 54,

ECHR 2002-II; and *Elci and Others v. Turkey*, nos. 23145/93 and 25091/94, § 714, 13 November 2003), and even though the applicant has not shown whether or not she would struggle to pay the amounts required of her in order to comply with the last-instance court's judgment, the Court is of the view that, under the circumstances, the sanction imposed was capable of having a dissuasive effect on the exercise of her right to freedom of expression (see, for instance, *Lombardo and Others*, cited above, § 61; and *Ghiulfer Predescu v. Romania*, no. 29751/09, § 61, 27 June 2017).

97. In the light of the above considerations – the shortcomings in the appellate courts' reasoning when examining the case (see paragraphs 83 and 88 above) and the said courts' apparent failure to consider what consequences the possible classification of the applicant's statements as being of a collective nature could have had in the overall context in which they were made (see paragraphs 91-94 above), taken together with the chilling effect the penalty imposed on the applicant had on her freedom of expression (see paragraph 96 above) – the Court finds that the domestic courts failed to strike a fair balance between the relevant interests and to establish a "pressing social need" for putting the protection of D.Ş.'s reputation protected by Article 8 of the Convention above the applicant's right to freedom of expression under Article 10 of the Convention. The Court thus concludes that the interference with the applicant's right to freedom of expression was not "necessary in a democratic society".

98. There has accordingly been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. 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

100. The applicant claimed 4,600 euros (EUR) in respect of pecuniary damage. Her claim included 10,000 Romanian lei (RON – equivalent to approximately EUR 2,300), being the amount she had been ordered to pay to D.Ş. by the national courts in respect of non-pecuniary damage, and RON 9,899 (equivalent to EUR 2,205), being the total amount paid by her to publish the national court's judgment in three national newspapers with the widest circulation. She submitted copies of bank transfer orders and documents attesting to the payment of the amounts claimed.

101. The applicant also claimed EUR 30,000 in respect of non-pecuniary damage for the mental suffering she had experienced as a result of the public attack by D.Ş. to which she had been exposed following the sentence imposed on her by the national courts.

102. The Government did not contest that a clear link existed between the sentence imposed on the applicant and the amounts paid to D.Ş. and to the three national newspapers with the widest circulation in the country. They argued, however, that the total amount paid by the applicant in RON had amounted to only EUR 4,503 given the currency exchange rate on the dates when the applicant had actually made the payments. Consequently, they asked the Court to award the applicant only the amounts that she had actually and necessarily incurred.

103. As regards the applicant's claim in respect of non-pecuniary damage, the Government argued that there was no causal link between the alleged violation of her rights and the damage claimed, including the claim in respect of D.Ş.'s alleged public attack on her. In any event, the applicant's claim was excessive and the possible finding of a violation would constitute sufficient just satisfaction in her case.

104. The Court notes the Government's implied acknowledgement of a clear link between the sentence imposed on the applicant and the amounts paid by her to D.Ş. and to the three national newspapers with the widest circulation in the country. It also notes that according to the publicly available currency exchange rates for the dates when the applicant actually made those payments, it would appear that the EUR equivalent of those payments was 4,505. The Court, therefore, grants the applicant EUR 4,505, plus any tax that may be chargeable, in respect of pecuniary damage.

105. As regards the applicant's claim in respect of non-pecuniary damage, the Court considers that a mere finding of a violation by the Court is insufficient to compensate the applicant for the sense of injustice and frustration which she must have felt on account of the sentence imposed on her. Making its assessment on an equitable basis, the Court therefore awards the applicant EUR 2,000, plus any tax that may be chargeable, in respect of non-pecuniary damage.

B. Costs and expenses

106. The applicant also claimed EUR 5,160 for the costs and expenses, namely the lawyer's fees, incurred before the Court, to be paid directly to her representative. She submitted an agreement signed by her with her lawyer as regards the hourly rate charged by the lawyer, and a breakdown of the number of hours worked by the lawyer on the case, totalling EUR 6,120.

107. The Government argued that the Court should grant the applicant only an amount which corresponded to her actual expenses which had been proven and necessarily incurred.

108. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the amount actually claimed by the applicant for costs and expenses, the documents in its possession, the complexity of the issues discussed, and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 3,000 in respect of lawyer's fees, plus any tax that may be chargeable to the applicant, in respect of costs and expenses. This sum is to be paid directly into the bank account of the applicant's representative (see, *mutatis mutandis*, *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 288, ECHR 2016 (extracts)).

C. Default interest

109. 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. *Declares*, unanimously, the application admissible;

2. *Holds*, by five votes to two, that there has been a violation of Article 10 of the Convention;

3. *Holds*, by five votes to two,
   (a) that the respondent State is to pay, 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 4,505 (four thousand five hundred and five euros) to the applicant, plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 2,000 (two thousand euros) to the applicant, plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be paid into the bank account of the applicant's representative;
   (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 28 July 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Yonko Grozev
Deputy 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) concurring opinion of Judge Wojtyczek;
(b) dissenting opinion of Judge Ranzoni joined by Judge Mourou-Vikström;
(c) dissenting opinion of Judge Mourou-Vikström.

Y.G.R.
H.B.

CONCURRING OPINION OF JUDGE WOJTYCZEK

1. Although I have voted for the operative part of the instant judgment, I should like nonetheless to express some reservations concerning the procedure followed and also with regard to certain arguments in the reasoning.

2. The instant case was brought in connection with a dispute between private parties in a situation of conflict of two Convention rights, protected by Article 10 and Article 8 respectively. The majority rightly explains (in paragraph 85 of the judgment) that:

> "... the accusations against D.Ş. attained the requisite level of seriousness to be capable of undermining his rights under Article 8 of the Convention (see the case-law cited in paragraph 76 above). The Court must therefore verify whether the domestic authorities struck a fair balance between the two values guaranteed by the Convention, namely, on the one hand, the applicant's freedom of expression protected by Article 10 and, on the other, D.Ş.'s right to respect for his reputation under Article 8 (see *Axel Springer AG*, cited above, § 84)".

The gist of the case is therefore whether the protection accorded by the domestic courts to the personality rights of D.Ş. is compatible with the Convention. There can be no doubt that the answer to this question has a direct impact on the Convention rights, as well as the other rights and legally protected interests, of all the parties to the civil case brought at the domestic level.

The finding of a violation of Article 10 in the instant case means that the protection granted by the domestic courts to D.Ş. was in breach of the Convention and that the respondent State must provide reparation for the injury that this protection entailed for the applicant. It should be stressed that the instant judgment cannot be interpreted as establishing the veracity of the descriptive layer of the applicant's utterances, nor as granting legitimacy to their evaluative layer. Even with this caveat, however, and even if the civil proceedings cannot be reopened following a judgment by the European Court of Human Rights, the instant judgment affects D.Ş.'s position *vis-à-vis* the applicant, as well as the public's perception of the whole dispute. It is precisely in this perception that the real stake lies in most defamation cases.

Procedural justice requires that all persons who may be directly affected by a decision be heard before that decision is rendered: *audiatur et altera pars* (see my separate opinions appended to the judgments in the cases of *Bochan v. Ukraine (no. 2)* [GC], no. 22251/08, 5 February 2015; and *A and B v. Croatia*, no. 7144/15, 20 June 2019; see also P. Pastor Vilanova, "Third Parties Involved in International Litigation Proceedings. What Are the Challenges for the ECHR?" in P. Pinto de Albuquerque and K. Wojtyczek (eds.), *Judicial Power in a Globalized World, Liber Amicorum Vincent De Gaetano*, Springer 2019, pp. 377–393). This principle guides the Court's

case-law on Article 6. According to the established case-law, persons whose civil rights can be directly affected by the outcome of the proceedings have the right to be heard in the proceedings before the competent domestic court (see, in particular, the following judgments: *Le Compte, Van Leuven and De Meyere v. Belgium*, nos. 6878/75 and 7238/75, 23 June 1981, § 47, Series A no. 43; *Deumeland v. Germany*, no. 9384/81, 29 May 1986, § 77, Series A no. 100; *Ruiz-Mateos v. Spain*, no. 12952/87, 23 June 1993, § 63, Series A no. 262; *Kakamoukas and Others v. Greece* [GC], no. 38311/02, § 32, 15 February 2008; *López Guió v. Slovakia*, no. 10280/12, § 102-106, 3 June 2014; *Topallaj v. Albania*, no. 32913/03, § 68, 21 April 2016; *Ezgeta v. Croatia*, no. 40562/12, § 33, 7 September 2017; *Bursa Barosu Başkanlığı and Others v. Turkey*, no. 25680/05, § 128, 19 June 2018; and *Sine Tsaggarakis A.E.E. v. Greece*, no. 17257/13, § 40, 23 May 2019).

Fundamental standards of procedural justice should also apply in the proceedings before the Court. For this reason, all the persons who may be directly affected by the decision should be allowed to plead their case before the Court and, in particular, to present observations concerning the facts, the legal rules to be applied and the values and interests which ought to be taken into account in the process of balancing conflicting values and interests. However, the present case has been decided without hearing D.Ş. The fact that the respondent State pleaded in favour of finding no violation of Article 10 attenuates to some extent the disadvantage to D.Ş., but does not resolve the problem. His own pleadings might have brought new factual elements, identified additional values or interests at stake, or put forward arguments in defence of the final domestic judgment that were neither put forward by the respondent State nor noticed by the Court. One party to the domestic dispute has been allowed to plead before the Court while the other – equally affected by the judgment in the instant case – has been denied this right. The judgment rendered thus contains a procedural flaw and cannot be considered as procedurally just. Is it really possible to *verify whether the domestic authorities struck a fair balance between the two values guaranteed by the Convention* after hearing only one of the parties involved?

Against this backdrop, deciding the instant case entails great difficulties. Given the necessity to render a judgment, and taking into account all the evidence gathered and other material made available to the Court, I consider nonetheless that in the circumstances of this case – in spite of the procedural flaws – the arguments for finding a violation of Article 10 are stronger than the arguments against.

3. The reasoning of the case invokes once again the distinction between "statements of facts" and "value judgments". The usefulness of this distinction is however limited in practice (see point 2 of my separate opinion appended to the judgment in *Makraduli v. the former Yugoslav Republic of Macedonia*, nos. 64659/11 and 24133/13, 19 July 2018).

Utterances in natural speech often mix descriptive and evaluative elements. As the reasoning rightly acknowledges in paragraph 89,

> "the Court is of the opinion that the applicant's comments contain a combination of value judgments and statements of fact".

The same view may also be expressed in the following terms: the applicant's utterances have both descriptive and evaluative layers.

Moreover, facts may differ considerably in nature. Consequently, propositions about facts may also differ considerably in nature. Here, one should mention, in particular, social facts or institutional facts (on institutional facts, see especially J. Searle, *The Construction of Social Reality*, Penguin Books, London 1996, pp. 79-126). In order to establish such facts it may be necessary to resort to more or less subjective evaluations or, in other words, to rely on value judgments. In this context, the distinction between statements of facts and value judgments should be revisited.

The majority reiterates in paragraph 75 the view that: "[t]he 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".

This view is problematic, in that it suggests that broad discretion is to be left to the domestic courts in this respect, whereas the classification of an utterance depends upon its meaning as established among the users of a national language on the basis of the relevant linguistic rules. The decisions of the domestic courts on this issue cannot be arbitrary, but are bound by the rules of the national language. The *fiat* of a judicial decision cannot transform a proposition in the meaning of logic into an evaluative utterance, or vice versa.

In concluding that the applicant's comments contain a combination of value judgments and statements of fact, the reasoning refers in paragraph 89 to "the wording of the applicant's statements, the explanation contained in the relevant press articles and the contradictory findings of the domestic courts which examined the matter".

In my view, the wording of the applicant's statement and – to a lesser extent – the explanation contained in the relevant press articles are the relevant basis for the classification. The findings of the domestic courts are relevant to the extent that they analyse and establish, in the specific communicative context of a case, the meaning of the impugned utterances in the national language, but are of limited relevance in so far as they classify the utterance into a specific semiotic category once its meaning has been established.

4. The reasoning expresses the following views in paragraph 78:

> "As regards, in particular, protection of the rights of politicians, the Court has held that while freedom of expression is important for everybody, it is especially so for elected representatives of the people. They represent the electorate, draw attention to

> their preoccupations and defend their interests. Accordingly, interferences with their freedom of expression call for the closest scrutiny on the part of the Court (see *Castells v. Spain*, 23 April 1992, § 42, Series A no. 236; *Lombardo and Others v. Malta*, no. 7333/06, § 53, 24 April 2007; and *Lewandowska-Malec v. Poland*, no. 39660/07, § 60, 18 September 2012)".

It further refers in paragraph 84 to the fact "that at the time when she made the impugned statements, the applicant was a politician, a member of the PDL political party and an elected member of the European Parliament (see paragraph 5 above)". It also stresses in paragraph 94 "the status of the applicant as politician and elected representative of the people".

All these statements clearly suggest that the protection afforded to politicians under Article 10 is stronger than the protection granted to non-politicians. I disagree with this approach and the underlying vision of "good government" is not mine (see points 8 and 9 of my above-mentioned opinion in *Makraduli v. the former Yugoslav Republic of Macedonia*, cited above). The applicant's status as a politician is not an argument in favour of enhancing the protection for her freedom of speech. The fact that a person is a professional politician, able to reach and influence a very wide public, experienced in contacts with the press, accustomed to choosing and weighing words, well aware of all the duties and responsibilities entailed by participation in public life – and also well aware of the applicable legal rules –, is instead an argument in favour of imposing tougher limitations upon that person's freedom of speech. In any event, had the applicant not been a politician, the outcome of the instant case would have had to be the same.

In a democracy ruled by law, all citizens are equally entitled to be involved in politics or – in other words – to participate in working for the common good, and should therefore enjoy the same protection for their freedom of speech.

DISSENTING OPINION OF JUDGE RANZONI, JOINED BY JUDGE MOUROU-VIKSTRÖM

I. Introduction

1. In the present case I have come to a different conclusion from that of the majority and voted for a finding of no violation of Article 10 of the Convention for two main reasons, which I will try to briefly explain.

2. The case can be summarised as follows. The applicant, a former Minister of Justice of Romania and prosecutor, as well as being a member of the European Parliament, publicly made comments which on the following day were published in two newspapers. In one of the publications under the headline "Monica Macovei stated that the [Social Democrat Party's (*Partidul Social Democrat – PSD*)] members of parliament [V.P.] and [D.Ş.] are corrupt", the applicant was quoted *inter alia* as follows (see paragraph 6 of the judgment):

> "Take a look at the lawyers in Parliament, there are two youngsters from the PSD for example, who have [signed] contracts worth millions of euros with State companies from the constituencies they represent [in Parliament], money that they get for legal advice. This is a typical act of corruption by political influence. It is not at all different from other acts of corruption."

The applicant then named the two persons as V.P. and D.Ş. She also brought forward her idea of making the two functions of lawyer and of member of parliament incompatible. In subsequent proceedings in tort, the Court of Appeal upheld D.Ş.'s action and ordered the applicant to pay him damages of EUR 2,300 and to publish the judgment (see paragraph 17). The Court of Cassation dismissed subsequent appeals (see paragraph 31).

II. Facts

3. My first issue concerns the factual assessment. The Court of Appeal and the Court of Cassation both held that the applicant had made a defamatory statement, namely that D.Ş. had committed an act of corruption in his joint functions as lawyer and member of parliament, which was untruthful because there was no evidence proving that he had signed any such contracts while being a member of parliament. The Court of Cassation assessed this as an "untrue fact" (see paragraphs 17, 22, 32 and 36 of the judgment).

4. The majority agreed that the applicant's statement against D.Ş. lacked a sufficient factual basis (see paragraph 90). They also conceded that it was "capable not only of tarnishing D.Ş.'s reputation, but also of causing him serious prejudice in both his professional and his social environment" (see paragraph 85). However, by qualifying that statement as being of a "collective nature" (see paragraphs 91 and 94), the majority ultimately

disregarded D.Ş.'s prejudice. Even assuming that the applicant may have presented some relevant factual background for her statements concerning V.P., that could not justify including in those "statements of a collective nature" the clearly untruthful allegations against D.Ş. I agree with the appellate domestic courts' findings that, as a former Minister of Justice and prosecutor, the applicant could not and should not have been unaware of the fact that an accusation of an act of corruption was particularly serious, given the severe consequences such an accusation could have on a person's private and professional life (see paragraphs 20-22 and 35-36).

5. Although I acknowledge the context of the applicant's statements, namely that of promoting the need for legislation establishing an incompatibility between the functions of lawyer and member of parliament (see paragraph 94), this context cannot justify making unsubstantiated allegations or singling out a specific person as "corrupt" without sufficient factual basis. Otherwise, individual persons could be indiscriminately and falsely defamed simply because the statements were put into an "overall context". That does not tally with the idea of individual justice.

6. I likewise disagree with the majority's attempt to downplay the allegation of "corruption" as mere "exaggeration", "polemical", "provocation" or "somewhat immoderate statements" (see paragraphs 92 and 93). To describe someone as corrupt has a meaning that goes beyond that. It is a serious allegation that even borders on the imputation of a criminal act, particularly given the high amounts mentioned by the applicant ("millions of euros") and the statement that this kind of corruption "is not at all different from other acts of corruption" (see paragraphs 7 and 8).

III. General principles and their application

7. My second issue relates to the majority's approach and, therefore, to the general principles and their application. To my mind, the judgment shows that there are some inconsistencies in the Court's case-law under Article 10, in particular in cases where freedom of expression comes into conflict with other rights protected by the Convention, such as the right to respect for private life enshrined in Article 8.

8. On the one hand, the test of whether the interference with freedom of expression was "necessary in a democratic society" requires the Court to determine whether it corresponded to a "pressing social need". While the contracting States have a certain margin of appreciation in assessing whether such a need exists, the Court is empowered to give the final ruling on whether a restriction can be reconciled with Article 10 (see paragraph 73 of the judgment with further references).

On the other hand, the Court's task is not to take the place of the national courts, but rather to review, in the light of the case as a whole, whether the decisions they had taken pursuant to their power of appreciation were

compatible with the relevant provisions of the Convention. This is all the more true where the national authorities had to balance two conflicting interests. When the Court is called upon to examine whether the domestic courts struck a fair balance between two values guaranteed by the Convention, such as Article 10 against Article 8, its role is more reserved than in the assessment of the necessity of a restriction under Article 10 alone. Where the exercise of striking a balance between two conflicting Convention rights has been undertaken by the national courts according to the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see paragraph 80; see also, in particular, *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, §§ 90-92, ECHR 2015; *Axel Springer AG v. Germany* [GC], no. 39954/08, § 88, 7 February 2012; and *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 104-107, ECHR 2012).

9. In a situation of balancing competing rights, to my mind, the Court's primary task is not to establish itself the pertinent facts for determining whether the interference with an applicant's freedom of expression corresponded to a "pressing social need". Its task is likewise not to make its own free balancing exercise. Although opinions may differ on the outcome of such an assessment, the Court's role is limited to ascertaining whether the domestic courts have weighed up a person's freedom of expression with another person's right to respect for private life in accordance with the criteria established in the Court's case-law and whether the respective outcome is acceptable or, at least, neither arbitrary nor manifestly unreasonable (see in this respect, for example, *Hamesevic v. Denmark*, no. 25748/15, § 43, 16 May 2017). The Court should not lightly find that the domestic courts' decisions were arbitrary or manifestly unreasonable, because that constitutes quite a high threshold.

10. The requirement for "European supervision" does not mean that, in determining whether an impugned measure struck a fair balance between the relevant interests, it is necessarily the Court's task to conduct the proportionality assessment afresh. On the contrary, the Court has generally understood the margin of appreciation to mean that, where the independent and impartial domestic courts have carefully examined the facts, applying the relevant human rights standards consistently with the Convention and its case-law, and adequately balanced the applicant's personal interests against the more general public interest in the case, it is not for it to substitute its own assessment of the merits (including, in particular, its own assessment of the factual details of proportionality) for that of the competent national authorities. The only exception to this is where there are shown to be strong reasons for doing so (see *Ndidi v. the United Kingdom*, no. 41215/14, § 76, 14 September 2017).

11. However, in the present case, the majority indeed conducted such a fresh assessment and concluded that the domestic courts had failed to strike a fair balance between the relevant interests, albeit without convincingly explaining in what respect the domestic assessment had been deficient and which elements decisively tipped the balance in favour of the applicant's Article 10 rights compared to D.Ş.'s Article 8 rights. In this connection, it is to be recalled that, as a matter of principle, these rights deserve equal respect (see *Couderc and Hachette Filipacchi Associés*, cited above, § 91, and *Egill Einarsson v. Iceland*, no. 24703/15, § 37, 7 November 2017).

12. Moreover, the majority found that the domestic courts had not established a "pressing social need" for putting the protection of D.Ş.'s reputation above the applicant's right to freedom of expression, but without the majority themselves having found "strong reasons" for substituting their own view for that of the domestic courts. Even if a "pressing social need" is a relevant element in the Court's supervision of the balancing of competing Convention rights performed by domestic courts, I cannot help but notice that the majority did not themselves establish such a "pressing social need" for their different outcome of the balancing exercise, namely for putting the applicant's right to freedom of expression above the protection of D.Ş.'s reputation.

13. In this regard, it is appropriate to have a short look at the majority's assessment compared to the assessment at national level.

14. While the majority were of the opinion that the applicant's comments contained a combination of value judgments and statements of fact (see paragraph 89), they agreed with the national courts that some of the applicant's statements, in particular those concerning D.Ş.'s specific conduct – namely the alleged signing of very lucrative contracts with State-owned companies located in the constituency he was representing in Parliament –, lacked a sufficient factual basis (see paragraph 90). However, by qualifying these unproven statements as being of a "collective nature", the majority downplayed the importance of this element in the balancing exercise and finally even disregarded it (see my observations in paragraphs 3-5 above).

15. Apart from that, I would observe that the Court of Appeal had already taken into account the aspects mentioned by the majority, namely that D.Ş. was a public figure (see paragraph 19), that the applicant's statements and the bill referred to by her were matters of public interest (see paragraphs 19 and 21) and that there was a political context justifying a heightened level of permissible criticism (see paragraphs 19 and 22).

16. The appellate courts had also taken account of the sanction imposed (order to pay damages of EUR 2,300 and to publish the judgment; see paragraphs 17, 23 and 37-38). However, the Chamber majority, simply by referring to the "circumstances", held that that sanction was capable of having a dissuasive or chilling effect (see paragraphs 96 and 97), but they

failed to explain to what extent the sanction, which was not of a penal nature, actually affected the applicant and why in the specific circumstances of the case its consequences were "chilling". Unfortunately, in the Court's case-law all too often such a chilling effect is attributed to various kinds of sanctions, without the Court making a real assessment of the specifics of a given case. If every sanction, even a small amount of damages, were indistinctively considered to have a chilling effect, this criterion would appear like a "trump card" for finding a violation of Article 10 and thereby adversely affecting the rights under Article 8.

17. In view of the above, the aspects referred to by the majority, to my mind, cannot constitute "strong reasons" for departing from the assessment made and the balance struck by the national appellate courts.

18. Does the overall context of the applicant's statements consist of "strong reasons" for the Court to substitute its own assessment for that of the domestic courts? Not in my opinion. I believe that the majority over-emphasised this context, and in any event it could not justify making false allegations of corruption against D.Ş. In this respect, I refer again to my considerations on the facts issue (see paragraphs 3-6 above).

IV. Conclusion

The majority in the present case unnecessarily acted like a fourth-instance court, making their own fresh interpretation and assessment of the facts. Even if their own weighing-up of the relevant criteria were tenable, that should not have been decisive, as long as the balancing exercise conducted at national level and the conclusions reached by the appellate courts were likewise arguable or justifiable, based on relevant and sufficient reasons. In such a situation, where opinions as to the outcome of an assessment may reasonably differ, the Court lacks "strong reasons" to substitute its own view for that of the domestic courts. Consequently, and having regard to the margin of appreciation enjoyed by the national courts, no violation of Article 10 should have been found.

DISSENTING OPINION OF JUDGE MOUROU-VIKSTRÖM

(Translation)

1. To complement Judge Ranzoni's dissenting opinion, which I have joined, I wish to make the following observations to explain why, in my view, there has been no violation of the applicant's right to free expression.

This is a classic defamation case involving high-ranking politicians in Romania. It does not contain any novel aspect and can be easily disposed of by referring to the Court's line of settled case-law in such matters. It involves weighing up two conflicting rights, namely those guaranteed by Article 8 and Article 10 of the Convention, to determine whether the domestic courts struck a fair balance between diverging interests: the freedom of expression of Monica Macovei and the protection of the private life of D.Ş. (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, ECHR 2012; *Axel Springer AG v. Germany (no. 2)*, no. 48311/10, 10 July 2014; *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, ECHR 2015; and *Perinçek v. Switzerland* [GC], no. 27510/08, ECHR 2015 (extracts)).

One of the aspects of the case is that the applicant and the individuals concerned by her allegations are public figures and that the alleged acts of misconduct are directly related to the functioning of the country's institutions and their ethics. However, should this element, even though it puts the general interest at the heart of the discussion, justify a significant reduction in the level of protection of reputations? Is this a price to be paid by all those who have political responsibilities? I do not believe so. It must not be overlooked that the accusations of corruption concerned fraudulent acts falling within the criminal spectrum under domestic law (see *White v. Sweden*, no. 42435/02, 19 September 2006; *Sanchez Cardenas v. Norway*, no. 12148/03, 4 October 2007; and *Pfeifer v. Austria*, no. 12556/03, 15 November 2007).

2. The question before the Chamber was, in my view, relatively straightforward: did the domestic courts, by finding against Monica Macovei for her remarks, unfairly stifle her public speech, in so far as she was merely pursuing the commendable aim of denouncing reprehensible conduct?

The impugned remarks made by Monica Macovei in public and relayed the next day in the press were in no way equivocal as to her intention to denounce, in particular, two individuals who had committed precise acts, of a serious nature, constituting criminal offences, or as to the negative impact that those remarks would necessarily have on the reputation and honour of those concerned. I disagree with the majority, who have taken the view that these are allegations of a collective nature and reproach the domestic courts for failing to establish a "pressing social need" to justify placing the

protection of D.Ş.'s reputation above the applicant's right to freedom of expression. While the Court rightly finds that the limits of permissible criticism are broader *vis-à-vis* politicians, the facts of the case show that the remarks were not mere criticism, hyperbole or exaggeration but constituted serious accusations.

3. Thus, while denouncing corrupt practices is a right and even a duty for a political figure, such allegations must, however, comply with two rules in order to remain within the scope of freedom of expression:

– They must remain general, amounting to "value judgments", as characterised in the Court's case-law. If Monica Macovei had merely deplored practices that were unacceptable in Parliament without mentioning any names, she would not have fallen foul of the law. She would thus have met a pressing social need without infringing the rights guaranteed by Article 8 of the Convention. She could also have denounced acts of corruption to the authorities responsible for prosecuting such offences.

– If they are targeted, *ad hominem* and capable of tarnishing a person's reputation, such remarks must be truthful. This is reflected in the expression *exceptio veritatis*: there is no defamation if the factual allegation is true (and, of course, if it is not a breach of privacy). But here the national authorities did not find the reality of the allegations to be proven, in spite of the means of investigation at their disposal and the simplicity of demonstrating the existence of a contractual relationship.

4. There is nothing to suggest that the judicial authorities failed to perform a proper assessment of the veracity of the allegations.

Therefore, in conclusion, I take the view that the decision of the domestic courts cannot be called into question.