



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

THIRD SECTION

CASE OF AVRAM AND OTHERS v. MOLDOVA

(Application no. 41588/05)

JUDGMENT

STRASBOURG

5 July 2011

FINAL

05/10/2011

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

In the case of Avram and Others v. Moldova,

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

Josep Casadevall, *President*,

Corneliu Bîrsan,

Alvina Gyulumyan,

Ján Šikuta,

Luis López Guerra,

Nona Tsotsoria,

Mihai Poalelungi, *judges*,

and Marialena Tsirli, *Deputy Section Registrar*,

Having deliberated in private on 7 June 2011,

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

PROCEDURE

1. The case originated in an application (no. 41588/05) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by five Moldovan nationals, Ms Ala Avram, Elena Vrabie, Eugenia Buzu, Ana Moraru and Alina Frumusachi (“the applicants”), on 7 November 2005.

2. The applicants were represented by Mr V. Gribincea, a lawyer practising in Chişinău. The Moldovan Government (“the Government”) were represented by their Agent, Mr V. Grosu.

3. The applicants alleged, in particular, a breach of Article 8 of the Convention on account of their secret filming and the broadcasting of the video on national television.

4. On 20 October 2009 the Court decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1979, 1976, 1979, 1979 and 1979 respectively and live in Chişinău. Three of the applicants are journalists, one is a teacher of French and another is a librarian. They are friends.

A. The background to the case

6. At the time of the events the first two applicants were employed by a newspaper specialising in investigative journalism. The newspaper was involved in numerous scandals and lawsuits. In October 2002 its editor in chief was arrested on charges of corruption. According to the applicants, after that event two of them developed close relationships with the four police officers involved in the arrest of the editor in chief and one of them was even involved in a romantic relationship with one of the four police officers. According to the applicants, the police officers in question provided them with material for their work at the newspaper. The Government disputed the factual circumstances concerning the close relationship between the applicants and the four police officers.

7. In January 2003 a person calling himself Petrus came to the headquarters of the newspaper employing the first two applicants and offered to sell a video containing explicit images of a priest engaged in promiscuous behaviour. It appeared later that Petrus was member of a criminal gang and that the video in question had been used to blackmail the priest. The information was passed on to the four police officers and on 25 January 2003 three of the applicants helped the police officers to apprehend Petrus. One applicant was remunerated for her assistance and, on 27 January 2003, wrote a receipt to the Ministry of Internal Affairs. The Government disputed the applicants' submissions concerning the arrest of Petrus and the applicants' involvement therein. They confirmed the fact that one of the applicants had received money from the Ministry of Internal Affairs, however, without specifying the consideration for the payment.

8. Also in January 2003 one of the first two applicants became acquainted with a person named S.D., who was involved in a dispute with the Municipal Council about which the applicant wrote an article. On 31 January 2003 all the applicants, the four police officers and S.D. spent the evening in a sauna near Chişinău. The Government disputed the allegation that the four police officers had spent time in a sauna with the applicants and with S.D.

9. On 7 May 2003 the first applicant was allegedly contacted by one of the four police officers and was asked not to publish an article about illegalities at the Ministry of Internal Affairs due to appear the next day. The police officer took the applicant to a store, apparently specialising in electronics, where he showed her a video of her and the other applicants filmed on 31 January 2003 in the sauna and threatened to have it broadcast on national television if his conditions were not met and added that copies of the video would be sent to the applicants' parents. He also allegedly threatened her with imprisonment and violence and warned her that her collaboration with the police would be made public. The first applicant informed the police officer in question that it was too late to stop the

article's publication since the material had already been sent to the printing house. On 8 May 2003 the article in question was published.

10. On 10 May 2003 at 7.30 p.m. the national television service broadcast a programme dedicated to the phenomenon of corruption and the moral character of journalists from the newspaper employing the applicants. The programme was presented by the president of the national television service and S.D. was a guest. The guest was presented as a businessman who alleged that he had bribed the second applicant to secure the publication of material. He also described his and the applicants' evening in the sauna on 31 January 2003, and stated that one of the applicants had stolen money from the pocket of his trousers and that the applicants intended to kidnap his child for ransom. S.D. also alleged that the newspaper employing the applicants belonged to an opposition leader. The programme continued with footage from a black and white video filmed in the sauna. The applicants were seen in their underwear, apparently intoxicated, using obscene language. Two of the applicants were kissing and touching one of the men, and one of them was performing an erotic dance. The face of the male was covered in the video, whereas those of the applicants were not and the video was paused from time to time in order to allow them to be recognised more easily. The video appears to have been shot from a static camera and at least one of the male participants appears to have been aware of the filming, since he gave the "thumbs up" sign to the camera when none of the applicants was looking. A copy of the receipt issued to the Ministry of Internal Affairs was also shown in the programme and offensive terms with meanings such as "low class prostitutes" were employed when images of the applicants were shown. The programme continued with footage from a video of the arrest of the editor in chief of the newspaper employing the applicants. According to the applicants, that video had been part of a criminal case-file and not for public use. This information was not disputed by the Government. On 13 May 2003 the programme was broadcast again by the national television service.

B. The unsuccessful attempt to have criminal proceedings instituted

11. On 17 and 20 May 2003 the first applicant lodged a criminal complaint about the blackmail which she and her colleagues had been subjected to and about the abuse of power committed by the four police officers. She submitted, in particular, that the police officers had invited her and her colleagues to a sauna and secretly filmed them, after which they had attempted to blackmail them with the video.

12. In examining the complaint the Prosecutor's Office questioned four of the applicants, all of whom gave similar accounts of the facts of the case and accused the four police officers of the secret filming and blackmail. The police officers were questioned too, and all denied having had close

relationships with the applicants and going with them to a sauna on 31 January 2003. They denied any implication in the secret filming, the allegations of blackmail and those concerning the transmitting of the video to the national television service. S.D. submitted that the video had been shot with his camera and that one of the applicants had accidentally switched the camera on and placed it on a shelf. He had discovered the video several months later and decided to take it to the national television service allegedly in order to prevent one of the applicants from kidnapping his child. He alleged not to have known the applicants' male friends who had been with them in the sauna on 31 January 2003.

The Prosecutor's Office inquired with the Ministry of Internal Affairs whether the first applicant had ever received money in exchange for collaborating with the police and, in particular, whether she had helped bring about the arrest of a person called Petrus. In reply the Ministry of Internal Affairs did not answer the first question and stated that the Ministry had the right to have secret collaborators and remunerate them. The Ministry also informed the Prosecutor's Office that there were no records on anyone named Petrus in its database.

13. On 20 June 2003 the Prosecutor's Office rejected the first applicants' criminal complaint and refused to initiate criminal proceedings on the ground that the complaint was ill-founded. The first applicant appealed.

14. On 24 July 2003 the hierarchically superior Prosecutor's Office quashed the above-mentioned decision on the ground that the investigation had not been thorough. In particular, it noted that the lower Prosecutor's Office had failed to determine how the receipt issued by one of the applicants to the Ministry of Internal Affairs was transmitted to the national television service. It was also noted that the payment of money to that applicant was to be checked with the Ministry of Finance, the administrator of the public funds.

15. On 5 September 2003 the Prosecutor's Office again dismissed the first applicant's criminal complaint on the ground that the receipt of 27 January 2003 did not constitute a State secret and that its disclosure to the national television service was not an offence. As to the complaint concerning the alleged abuse of power by the four police officers, it was also found to be ill-founded because it had not been established that the applicants had ever assisted in bringing about the arrest of Petrus. The first applicant appealed against this decision and submitted, *inter alia*, that what she was remunerated for by the Ministry of Internal Affairs had not been established. She also submitted that the investigators had failed to examine the original video from the sauna and that they had failed to examine the complaint about blackmail.

16. On 19 February 2004 the Centru District Court quashed the Prosecutor's decision of 5 September 2003 on the ground, *inter alia*, that

the Prosecutor's Office had failed to examine the first applicant's complaint concerning blackmail.

17. On 2 June 2004 the Prosecutor's Office again dismissed the criminal complaint lodged by the first applicant on the ground that the dissemination of defamatory information was not an offence under Moldovan law. The first applicant challenged the decision before the hierarchically superior prosecutor. However, the appeal was dismissed on 3 June 2005 and a subsequent appeal was finally dismissed by the Centru District Court on 28 July 2005. On 19 October 2005 the Supreme Court of Justice dismissed an extraordinary appeal lodged by the first applicant.

C. The civil proceedings

18. In the meantime, all the applicants lodged an action with a civil court seeking compensation for the breach of Article 8 of the Convention by the Ministry of Internal Affairs and the national television service. They complained about the unlawful secret filming by the police in the sauna, the disclosure of the applicants' collaboration with the police and the broadcasting of the video from the sauna on national television. The applicants also complained about the defamatory nature of some of the statements made on the programme aired on national television on 10 May 2003. For the alleged breaches they sought compensation in amounts varying between 9,000 and 45,000 euros.

19. On 21 July 2006 the Centru District Court upheld the part of the applicants' action against the national television service concerning the broadcasting of the video from the sauna and the defamatory statements made during the programme of 10 May 2003. The court considered that there was no public interest in broadcasting the video from the sauna. The rest of the applicants' action was dismissed as ill-founded, the court finding that the applicants had failed to prove that the video had been shot by the four police officers. The applicants appealed.

20. On 18 December 2007 the Chişinău Court of Appeal upheld the applicants' appeal against the judgment of the Centru District Court of 21 July 2006 and found the Ministry of Internal Affairs responsible for the filming in the sauna on 31 January 2003, for blackmailing the applicants and for handing to the national television of the video of the sauna scene and of a copy of the receipt issued to the Ministry of Internal Affairs to one of the applicants. The finding was based on the statements made by all the applicants during the criminal investigation, on the fact that the programme of 10 May 2003 contained images from the video of the arrest of the editor in chief of the newspaper employing two of the applicants, a video which was not publicly available (see paragraph 10 above) and on the presence in the programme of a copy of a receipt issued by one of the applicants. The judges of the Court of Appeal also recognised the man making a "thumbs

up” sign in the video (see paragraph 10 above) as being one of the four police officers. The court also found the national television service responsible for broadcasting the video from the sauna. The court ordered the defendants to pay the applicants non-pecuniary damage varying between 8,000 Moldovan lei (MDL) (the equivalent of 480 euros (EUR)) and MDL 20,000 (the equivalent of EUR 1,200) and compensation for costs and expenses in the amount of MDL 42,697 (the equivalent of EUR 2,560). All the parties lodged appeals on points of law.

21. On 1 August 2008 the Supreme Court of Justice gave a final ruling in the case. It found the statements made during the programme of 10 May 2003 to the effect that the applicant journalists had been bribed to publish an article and that they intended to kidnap a child defamatory. The court also found that the disclosure by the Ministry of Internal Affairs of one of the applicants’ collaboration with the police by way of disclosing a receipt written by her had breached her right to respect for her private life. A similar breach with regard to all the applicants was found in respect of the broadcasting of the video of the sauna scene on national television without their consent and in the absence of a public interest justification. The court also found that the secret filming in the sauna constituted an unjustified interference with the applicants’ right to privacy as guaranteed by Article 8 of the Convention. However, relying on the outcome of the criminal investigation, the court found that there was insufficient evidence to conclude that the secret filming of the sauna scene had been carried out by employees of the Ministry of Internal Affairs. At the same time the court concluded that the Ministry of Internal Affairs was responsible for unlawfully transmitting to the national television service secret video material from a criminal case file, namely, a video of the arrest of the editor in chief of the newspaper employing the first and second applicants.

22. The Supreme Court ordered the national television service to pay each applicant MDL 3,600 (the equivalent of EUR 214) for non-pecuniary damage caused by the broadcasting of the video of the sauna scene. It also ordered the guest on the programme of 10 May 2003, S.D., to pay the second applicant MDL 1,800 (the equivalent of EUR 107) for defamation and the Ministry of Internal Affairs to pay MDL 3,600 (the equivalent of EUR 214) to the first applicant for disclosing her collaboration with the police. The court also ordered the defendants to pay the applicants MDL 42,697 (the equivalent of EUR 2,560) for costs and expenses. In reducing the amounts awarded by the Court of Appeal, the Supreme Court of Justice argued that the awards had to be in compliance with Article 7/1 of the old Civil Code, in force at the time of the events (see paragraph 23 below).

II. RELEVANT DOMESTIC LAW

23. The relevant provisions of the 1964 Civil Code, in force until 12 June 2003:

Article 7. Protection of honour and dignity

“(1) Any natural or legal person shall be entitled to apply to the courts to seek the withdrawal of statements which are damaging to his or her honour and dignity if the person who made such statements cannot prove that they are true.

(2) Where such information was made public by a media body, the court shall compel the publishing office of the media body to publish, not later than 15 days after the entry into force of the judicial decision, a withdrawal of the statements in the same column, on the same page or in the same programme or series of broadcasts.”

Article 7/1. Compensation for non-pecuniary damage

“(1) Damage caused to a person as a result of circulation of statements which do not correspond to reality and are damaging to his or her honour or dignity shall be compensated by the responsible natural or legal person.

(2) The amount awarded shall be determined by the court in each case and shall be between [1,350 lei and 3,600 lei] if the information has been circulated by a legal person and between [180 lei and 1,800 lei] if the information has been circulated by a natural person.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

24. The applicants claimed that there had been a violation of Article 8 of the Convention in this case. The relevant part of Article 8 provides as follows:

“1. Everyone has the right to respect for his private ... life...

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

A. Admissibility

25. The Government first submitted that the application was inadmissible in respect of the second, third, fourth and fifth applicants on grounds of non-exhaustion of domestic remedies. In particular, the Government argued that those applicants should also have attempted to have criminal proceedings initiated as a result of the secret filming in the sauna.

26. The applicants disagreed with the Government and argued that under the provisions of the Criminal Procedure Code in force at the material time, the offence allegedly committed by the four police officers was within the category of offences which did not require an express complaint from the victim in order to trigger a criminal investigation by the Prosecutor's Office. In any event, the second, third, fourth and fifth applicants had intended to intervene as victims after the formal initiation of criminal proceedings. However, they had not been able to do so because the Prosecutor's Office had refused to initiate criminal proceedings and dismissed the complaints as manifestly ill-founded after a superficial preliminary investigation.

27. The Court reiterates that an individual is not required to try more than one avenue of redress when there are several available (see, for example, *Airey v. Ireland*, 9 October 1979, § 23, Series A no. 32). It clearly appears from the facts of the case that all the applicants initiated civil proceedings against the Ministry of Internal Affairs complaining, *inter alia*, about their alleged secret filming by four police officers (see paragraph 18 above). The Government have not argued that such a procedure is ineffective in respect of the alleged breach of the applicants' rights guaranteed by Article 8. In any event, the facts of the case show that no criminal proceedings were initiated after the first applicant had complained to the Prosecutor's Office about the actions of the police and after the other applicants had been questioned by the prosecutors. The Court considers, therefore, that it was reasonable for the other applicants to consider that a criminal complaint lodged by them would have had similar prospects of success (see, *mutatis mutandis*, *Castravet v. Moldova*, no. 23393/05, § 25, 13 March 2007). In the light of the above, the Court does not consider that the applicants have failed to exhaust the domestic remedies and, therefore, the Government's objection must be dismissed.

28. The Government also submitted that the applicants had lost their victim status as a result of being compensated in the civil proceedings.

29. The Court reiterates that a decision or measure favourable to an applicant is not in principle sufficient to deprive him or her of victim status unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see *Amuur v. France*, 25 June 1996, § 36, *Reports of Judgments and Decisions* 1996-III).

30. In the instant case it is true that the Supreme Court of Justice held that there had been a violation of the applicants' right to respect for their private lives as a result of the broadcasting of the video of the sauna scene and of the defamation of one of them and that it awarded them compensation. That said, the Court finds that the question of the applicants' victim status as regards the redress for the violation of their right is inextricably linked to the merits of the complaint. Therefore, it considers that both questions should be joined and examined together.

31. The Court further notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

32. The applicants asserted that the secret filming of them in the sauna amounted to an interference with their right to respect for their private lives which was not in accordance with the law and was not necessary in a democratic society. According to them, the domestic authorities had erred in not finding that the video of the sauna scene had been shot by the police officers. One of the four police officers could be seen in the video of the sauna scene, a fact retained by the Court of Appeal in its judgment of 18 December 2007. Despite that, the Prosecutor's Office and the Supreme Court of Justice had wrongfully found that the four police officers had not been at the sauna. The applicants further submitted that the investigation into their complaint about the secret filming was not effective and that the prosecutors' decisions had been based on hasty and ill-founded conclusions. According to the applicants, the broadcasting of the sauna scene on national television had had a major negative impact on their lives. They had been debased in the eyes of their families and their friends and one of them had even been sacked from work.

33. The applicants lastly argued that the compensation awarded by the Supreme Court of Justice in respect of the broadcasting of the video of the sauna scene and the defamation had not been adequate and proportionate to the severity of the breaches of their right to respect for their private lives. In support of this contention the applicants cited cases in which the Court had found breaches of Article 8 of the Convention and in which the awards had been considerably higher than those made by the Supreme Court of Justice in their case. In their view, as a result of the insufficient amount of compensation awarded by the Supreme Court of Justice they still had victim status under Article 8 of the Convention.

34. Referring to the problem of the alleged secret filming and of the effectiveness of the investigation thereof, the Government submitted that there had been no interference with the applicants' right to respect for their private lives in this case because the Prosecutor's Office had found that the sauna scene had not been secretly filmed by the police and that the filming had been carried out with S.D.'s camera. In the Government's opinion, the applicants' attempt to re-argue the merits of the criminal and the civil domestic proceedings in respect of the above-mentioned alleged breach amounted to a fourth-instance type of complaint.

35. In so far as the amount of the compensation awarded by the Supreme Court of Justice for the broadcasting of the video of the sauna scene and for the applicants' defamation is concerned, the Government submitted that the Supreme Court had complied with the domestic legislation, which fixed a limit for the amount of compensation to be awarded in defamation cases. In the absence of similar case-law of the Court in Moldovan cases, the Supreme Court could not have done otherwise.

2. *The Court's assessment*

(a) **General principles**

36. The Court has previously held that the notion of "private life" within the meaning of Article 8 of the Convention is a broad concept which includes, *inter alia*, the right to establish and develop relationships with other human beings (see *Niemietz v. Germany*, 16 December 1992, § 29, Series A no. 251-B). It encompasses elements such as sexual life (see, for example, *Dudgeon v. the United Kingdom*, 22 October 1981, § 41, Series A no. 45), the right to live privately and away from publicity and unwanted attention. In construing the scope of private life, it is important to have in mind the notion of personal autonomy and human dignity.

37. Furthermore, private life, in the Court's view, includes a person's physical and psychological integrity; the guarantee afforded by Article 8 of the Convention is primarily intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings (see, *mutatis mutandis*, *Niemietz* cited above, § 29, and *Botta v. Italy*, 24 February 1998, § 32, *Reports of Judgments and Decisions* 1998-I). There is therefore a zone of interaction of a person with others, even in a public context, which may fall within the scope of "private life" (see, *mutatis mutandis*, *P.G. and J.H. v. the United Kingdom*, no. 44787/98, § 56, ECHR 2001-IX, and *Peck v. the United Kingdom*, no. 44647/98, § 57, ECHR 2003-I).

(b) Application of the general principles to the present case

38. There is no doubt and it is undisputed among the parties that the matters complained of in the present case fall within the ambit of protection of Article 8. In this respect the Court sees no reason to depart from the conclusion of the national courts, which acknowledged that there had been interference with the applicants' right to privacy in respect of both the secret filming of them and the broadcasting of the video on television and the defamation. The Court shares this opinion and does not consider it necessary to re-examine the compatibility of that interference with the requirements of the Convention. The Court also notes that the domestic courts awarded the applicants compensation for non-pecuniary damage and considers that the principal issue is whether the awards made were proportionate to the damage the applicants sustained and whether, in applying the provisions of Article 7/1 of the old Civil Code, which limited the amount of compensation payable to victims of defamation, the Supreme Court of Justice fulfilled its positive obligation under Article 8 of the Convention.

39. The Government submitted that the Supreme Court had no other solution but to apply the provisions of Article 7/1 of the old Civil Code and that the maximum compensation under that provision was awarded to the applicants. The provision appears to have been applied by analogy to the defendants who have not been found liable of defamation.

40. The Court points from the outset that a State which awards compensation for a breach of a Convention right cannot content itself with the fact that the amount granted represents the maximum under domestic law. If a State chooses to apply its domestic legislation in dealing with alleged breaches of Convention rights, it shall ensure that the legislation in question is compatible with the Convention and the Court's case-law.

41. As regards the situation which arose in the instant case, the Court recalls that it is not the first time when the Supreme Court was called to deal with situations where the domestic law did not provide for a remedy against a breach of a Convention right. In particular, it recalls that in a decision of 21 November 2007 the Moldovan Supreme Court of Justice found a breach of Article 3 of the Convention and stated that while there was no domestic legislation giving the applicant a right to compensation, the Convention should be applied directly as it was part of the domestic legal system and had precedence over domestic legislation (see *Ciorap v. Moldova (no. 2)*, no. 7481/06, § 13, 20 July 2010).

A similar situation occurred in several other cases concerning the quashing of final judgments contrary to the principle of legal certainty. In those cases the Moldovan Supreme Court of Justice applied Article 6 and Article 1 of Protocol No. 1 to the Convention directly and awarded damages comparable to those awarded by the Court. For instance, in its judgment of 25 January 2006 in the case of *Ungureanu v. the Sangerei Municipal*

Council, the Supreme Court awarded compensation for non-pecuniary damage of EUR 1,500 (see *Ungureanu v. Moldova* (dec.), no. 78077/01, 3 October 2006). In *Guranda v. Moldova* ((dec.), no. 28412/03, 20 March 2007), the Supreme Court awarded, in a judgment of 21 February 2007, compensation for non-pecuniary damage of EUR 4,400. In *Cumatrenco v. Moldova* ((dec.), no. 28209/03, 20 March 2007) the Supreme Court applied the provisions of the Convention directly and awarded EUR 4,850.

42. In the light of the above considerations, the Court is not persuaded that in applying directly the provisions of Article 8 of the Convention when dealing with the merits of the case, the Supreme Court of Justice did not have instruments available other than Article 7/1 of the old Civil Code when deciding the issue of compensation. On the contrary, such an approach clearly ran contrary to the domestic case-law cited above in which the Supreme Court had relied directly on the Court's practice to compensate breaches of Convention rights.

43. Be that as it may, the Court considers that the amounts awarded by the Supreme Court of Justice to the applicants were too low to be considered proportionate with the gravity of interference with their right to respect for their private lives. According to the applicants, the broadcasting of the video on national television has dramatically affected their private, family and social lives and the Court sees no reasons to doubt that. In such circumstances the Court considers that the applicants can still claim to be victims of a violation of Article 8 of the Convention and therefore dismisses the Government's preliminary objection concerning the applicants' victim status.

44. There has, accordingly, been a breach of Article 8 of the Convention in this case.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

45. In their initial application the applicants had also complained under Article 6 of the Convention. However, in their observations on the admissibility and merits, they asked the Court not to proceed with the examination of this complaint. Therefore and in the absence of any special circumstances regarding respect for the rights guaranteed by the Convention or its Protocols, the Court considers that it is no longer justified to continue the examination of this part of the application within the meaning of Article 37 § 1 (a) of the Convention.

46. Accordingly this part of the application should be struck out.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

47. 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

48. The first and the second applicants claimed EUR 40,000 and EUR 50,000 respectively in respect of non-pecuniary damage. The other applicants claimed EUR 15,000 each also in respect of non-pecuniary damage. The amounts claimed by the first and the second applicants were higher because they were named in the programme of 10 May 2003. Moreover the second applicant was also falsely accused of stealing money from S.D. In June 2003 the second applicant's father died of a heart attack, which she believes to have been caused by the sauna scandal, and several months later she divorced.

49. The Government disagreed and submitted that the applicants had already been compensated by the Supreme Court. Therefore, they considered that the applicants were not entitled to any compensation.

50. Having regard to the violations found above, the Court considers that an award of compensation for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards EUR 5,000 to the first applicant, EUR 6,000 to the second applicant and EUR 4,000 to each of the remaining applicants.

B. Costs and expenses

51. The applicants also claimed EUR 1,573.63 for the costs and expenses incurred before the domestic courts and EUR 7,789.6 for those incurred before the Court.

52. The Government disputed the amounts claimed for the applicants' legal representation and invited the Court to dismiss the claim.

53. The Court reiterates that in order for costs and expenses to be included in an award under Article 41, it must be established that they were actually and necessarily incurred and are reasonable as to quantum (see, for example, *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 62, ECHR 1999-VIII). In the present case, regard being had to the itemised list submitted by the applicants and the above criteria, the Court awards them jointly EUR 1,500 for costs and expenses.

C. Default interest

54. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Joins to the merits* the Government's preliminary objection concerning the applicants' victim status and *declares* admissible the complaint under Article 8 of the Convention;
2. *Decides* to strike out the complaint under Article 6 of the Convention;
3. *Holds* that there has been a violation of Article 8 of the Convention and *dismisses* in accordance the Government's above-mentioned objection;
4. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention:
 - (i) to Ms Avram – EUR 5,000 (five thousand euros) for non-pecuniary damage;
 - (ii) to Ms Vrabie – EUR 6,000 (six thousand euros) for non-pecuniary damage;
 - (iii) to Ms Buzu – EUR 4,000 (four thousand euros) for non-pecuniary damage;
 - (iv) to Ms Moraru – EUR 4,000 (four thousand euros) for non-pecuniary damage;
 - (v) to Ms Frumusachi – EUR 4,000 (four thousand euros) for non-pecuniary damage;
 - (vi) to the applicants' representative – EUR 1,500 (one thousand five hundred euros) for costs and expenses;
 - (b) that the above amounts shall be converted into the national currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (c) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 5 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Deputy Registrar

Josep Casadevall
President

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

J.C.M.
M.T.

CONCURRING OPINION OF JUDGE POALELUNGI

I share the view of the other members of the Chamber that there has been a violation of Article 8 of the Convention in the present case; however, I do not find the outcome of the case fully satisfactory, for the reasons set out below.

The applicants had two distinct complaints before the domestic authorities:

- (a) that they had been secretly filmed by the police in a sauna during moments of a private nature and later blackmailed with the video; and
- (b) that the national television service had broadcast the video of the sauna scene.

The prosecutors and the domestic courts dismissed the first complaint, virtually without carrying out any form of investigation, but upheld the second one and awarded compensation to the applicants in respect of that complaint only.

Before the Court the applicants submitted two distinct complaints:

- (a) that the authorities had failed to discharge their positive (procedural) obligation under Article 8 by failing to properly investigate the allegations that they had been secretly filmed by the police; and
- (b) that the compensation awarded by the Supreme Court of Justice for the broadcasting of the sauna scene on national television was insufficient.

I regret that the Chamber completely disregarded the first complaint, holding that the applicants had been compensated by the domestic courts in respect of all of their grievances and that the only issue worth examining was the amount of compensation.

The Chamber should also have addressed the applicants' first complaint and given a clear answer as to whether the Government had a positive obligation to investigate the applicants' allegations about the secret filming and, if so, whether the Government discharged that obligation.

I do understand that, unlike under Articles 2 and 3 of the Convention, the positive obligations under Article 8 should be limited and that the State should not be required under that provision to investigate petty complaints concerning breaches of privacy. This case, however, is more serious than that since the applicants were journalists working for a newspaper which had expressed opinions critical of the Government. Moreover, there is strong *prima facie* evidence that the applicants' secret filming in the sauna was organised by agents of the State. The video was later broadcast on national television in a programme presented by the president of the national television service and remarks about the opposition being behind the newspaper employing the applicants were made. The facts clearly suggest that the authorities were directly involved in this case and that they not only failed to investigate the applicants' allegations but, on the contrary, created obstacles and hindered the investigation in every possible way.

In such a context, I would not treat the applicants' complaint concerning the State's failure to investigate the circumstances of their secret filming as a petty case of voyeurism but rather as a serious assault on the freedom of speech.

It is a pity that the applicants did not complain also under Article 10 of the Convention. However, the principles applicable in that Article could have been referred to in the examination of their complaint under Article 8.

It is true that some might have reservations in respect of the applicants' professional conduct, but this should not be an obstacle to their enjoyment of their rights guaranteed by Article 8 of the Convention.