



## Blanket immunity for former President of Moldova in defamation proceedings against him breached the Convention

In today's **Chamber** judgment<sup>1</sup> in the case of [Urechean and Pavlicenco v. the Republic of Moldova](#) (application nos. 27756/05 and 41219/07) concerning presidential immunity and defamation proceedings, the European Court of Human Rights held, by four votes to three, that there had been:

**a violation of Article 6 § 1 (right of access to court) of the European Convention on Human Rights.**

The two applicants, politicians of opposition parties, complained that they could not bring libel actions against the then president of their country on account of his immunity. The Moldovan courts held that the President of the Republic enjoyed immunity and could not be held liable for opinions which he expressed in the exercise of his mandate.

The Court found that, in the circumstances of the applicants' case, a fair balance had not been struck between the competing interests involved, namely between the public's interest in protecting the President's freedom of speech in the exercise of his functions and the applicants' interest in having access to a court to obtain a reasoned answer to their complaints. In particular, the Moldovan courts had not addressed the question of whether the then President of Moldova had made the statements about the applicants in the exercise of his mandate. Nor did the relevant constitutional provision define the limits of presidential immunity in libel actions. That provision was therefore both absolute and perpetual in that the President could not be held liable after he left office. The Court considered that conferring such blanket immunity on the Head of State in the application of the rule of immunity was to be avoided.

This is the first occasion on which the Court has had to address the immunity from civil suit from which the president of a country benefits, as opposed to such immunity for members of parliament.

### Principal facts

The applicants, Serafim Urechean and Vitalia Pavlicenco, are Moldovan nationals who were born in 1950 and 1953 respectively and live in Chişinău.

Both applicants, politicians of opposition parties, attempted to sue the (then) President of the Republic of Moldova, V. Voronin, for allegedly defamatory statements which he had made about them in the course of televised interviews in 2004 and 2007. Mr Voronin had accused Ms Pavlicenco of belonging to the KGB and Mr Urechean, Mayor of Chişinău at the time, of creating a powerful mafia-style system of corruption.

The first-instance courts dismissed the applicants' action on the grounds that, under the Constitution and by way of an exception to the ordinary rules governing civil responsibility, the President of the Republic enjoyed immunity and could not be held liable for opinions which he expressed in the exercise of his mandate. The applicants' appeals were dismissed and the judgments at first instance were upheld in February 2005 and June 2007.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

## Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (access to court), the applicants alleged that they could not bring libel actions against the then president of their country on account of his immunity and that they had therefore been denied their right of access to a court for the determination of their civil rights. Mr Urechean submitted in particular that the then President's accusations against him were part of ongoing systematic harassment to which he had been subjected. Ms Pavlicenco contended that the accusation about her belonging to the KGB had been extremely defamatory and had been aired at prime-time on a television channel with national coverage and that she had requested airtime to express her views, without success.

The applications were lodged with the European Court of Human Rights on 26 July 2005 and 10 September 2007.

Judgment was given by a Chamber of seven judges, composed as follows:

Josep **Casadevall** (Andorra), *President*,  
Luis **López Guerra** (Spain),  
Ján **Šikuta** (Slovakia),  
Dragoljub **Popović** (Serbia),  
Kristina **Pardalos** (San Marino),  
Valeriu **Grițco** (the Republic of Moldova),  
Iulia Antoanella **Motoc** (Romania),

and also Stephen **Phillips**, *Section Registrar*.

## Decision of the Court

This is the first occasion on which the Court has had to address the immunity from civil suit from which the president of a country benefits, as opposed to such immunity for members of parliament. The Court has had to examine many cases concerning the limitation of the right of access to court on account of parliamentary immunity. In those cases it acknowledged that the long-standing practice for States generally to confer varying degrees of immunity on parliamentarians pursued the legitimate aim of protecting free speech in Parliament and maintaining the separation of powers between the legislature and the judiciary. However, the broader an immunity, the more compelling must be its justification.

The Court, drawing on the principles established in those cases concerning parliamentary immunity, held that in the circumstances of the applicants' case a fair balance had not been struck between the competing interests involved, namely between the public's interest in protecting the President's freedom of speech in the exercise of his functions and the applicants' interest in having access to a court to obtain a reasoned answer to their complaints.

In the first place, the domestic courts had not addressed the question of whether the President of Moldova had made the statements about the applicants in the exercise of his mandate. They had confined themselves to a reading of the relevant constitutional provision, which itself did not define the limits of the immunity. That provision was both absolute in that it could not be made to yield to other imperatives, and perpetual in that the President could not be held liable after he left office. Indeed, the application of the rule of immunity in this manner served to confer blanket immunity on the Head of State. The Court considered that such blanket inviolability and immunity were to be avoided.

Nor were there any alternative means of redress available to the applicants for the allegedly defamatory statements made by the then President. The Government submitted that another means of redress for the applicants, being politicians, was to resort to the media to counter the

President's allegations about them. However, given the administrative practice of censorship on State television at the time, as found in the case of *Manole and Others v. Moldova* (no. 13936/02, ECHR 2009), the Court was not persuaded that the applicants had had at their disposal an effective means of responding to the accusations made against them by the Head of State.

### Just satisfaction (Article 41)

The Court held that the Republic of Moldova was to pay Ms Pavlicenco 3,600 euros (EUR) in respect of non-pecuniary damage and EUR 5,289.60 for costs and expenses.

### Separate opinion

Judges Šikuta, Pardalos and Grițco expressed a joint dissenting opinion which is annexed to the judgment.

*The judgment is available only in English.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.