CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIFTH SECTION

CASE OF RUMYANA IVANOVA v. BULGARIA

(Application no. 36207/03)

JUDGMENT

STRASBOURG

14 February 2008

FINAL

14/05/2008

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 Rumyana Ivanova v. Bulgaria,

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

Peer Lorenzen, *President,*
Snejana Botoucharova,
Volodymyr Butkevych,
Margarita Tsatsa-Nikolovska,
Rait Maruste,
Javier Borrego Borrego,
Renate Jaeger, *judges,*

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 22 January 2008,

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

PROCEDURE

1. The case originated in an application (no. 36207/03) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Ms Rumyana Dencheva Ivanova, a Bulgarian national who was born in 1952 and lives in Sofia ("the applicant"), on 14 November 2003.

2. The applicant was represented by Ms N. Kovacheva and Ms Z. Kalaydzhieva, lawyers practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Kotseva, of the Ministry of Justice.

3. The applicant alleged that the criminal proceedings leading up to her conviction and punishment for having written a newspaper article had infringed her rights to a fair trial and to freedom of expression.

4. On 6 March 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the case

1. The applicant and the newspaper

5. The applicant is a journalist by profession. At the relevant time she was employed as a reporter at *24 Hours*, one of the leading national daily newspapers. She continues to work there at present.

2. The Information on Non-Performing Credits Act of 1997

6. Following a serious banking crisis in 1996-97, during which a number of banks were sunk into insolvency by, *inter alia*, non-performing and unsecured loans extended to corporate and individual clients, the Bulgarian legislature enacted a comprehensive package of bank reform legislation (see *Capital Bank AD v. Bulgaria*, no. 49429/99, § 45, 24 November 2005). Part of that package was the Information on Non-Performing Credits Act of 1997 ("Закон за информация за необслужвани кредити"), which stipulated that the Bulgarian National Bank should compile a list of all bank borrowers with loans that had been due for more than six months, send this list to the Chief Prosecutor's Office, the Ministry of Internal Affairs, the tax and customs authorities, and the National Assembly, and publish it in a special bulletin. The persons on this list were colloquially referred to as "credit millionaires".

7. On 21 January 1998 the head of the banking supervision department of the Bulgarian National Bank presented the list to the chairman of the National Assembly.

3. Mr M. D.

8. Between 1994 and 1997 Mr M. D. was a Member of Parliament elected on the ticket of the political party *Movement for Rights and Freedoms*. He was deputy chairman of the Economy Committee and a member of the Budget and Finance Committee of the National Assembly. In the spring of 2001 he became involved with the newly formed coalition *National Movement Simeon II*, which won the parliamentary elections on 17 June 2001. During the 1990s Mr M. D. was a member of and shareholder in a number of commercial companies. Between 1995 and 2001 his name was mentioned in at least twenty-four reports in national newspapers.

4. The previous publication alleging that Mr M. D. was a "credit millionaire" and his tort action against Media Holding AD

9. On 22 January 1998 *Trud*, a leading national daily newspaper, published an article under the headline 'Credit millionaires disclosed' and the caption 'Several incumbent and former members of Parliament appear on the list'. In the article the newspaper reported on the handover of the list of "credit millionaires" to the chairman of the National Assembly the previous day and mentioned, *inter alia*, that several companies connected with the name of Mr M. D. were on the list. According to the article, the company Maxcom Holding owed 3.2 billion old Bulgarian levs (BGL) to one bank, the company FBK Maxcom owed BGL 9.4 billion to another bank, and the company Maxcom OOD was indebted in an amount of BGL 7.8 billion.

10. On 30 January 1998 Mr M. D. issued civil libel proceedings against the publisher of *Trud*, Media Holding AD. He said that the allegation made in the article that he was a "credit millionaire" was not true. He further averred that this allegation seriously tarnished his reputation as a public figure and a Member of Parliament. He sought BGL 10,000,000 in non-pecuniary damages.

11. In a judgment of 9 January 1999 the Sofia City Court dismissed the action. It held that Mr M. D.'s allegations had not been supported by any evidence and were therefore unsubstantiated. Neither party had attended either of the hearings in the case. Mr M. D. had not sought leave to adduce any evidence. He had therefore not proven his claim that he had suffered any damage on account of the impugned article. Apparently Mr M. D. did not appeal and the judgment entered into force on 9 March 1999.

B. The impugned article

12. On 3 August 2001 the parliamentary group of the *National Movement Simeon II* held a closed-doors meeting in the National Assembly in order to discuss, *inter alia*, the candidates for the position of deputy Minister of Finance in charge of customs. For this reason the applicant, who at that time worked as a parliamentary reporter, went, together with other journalists, to the National Assembly lobby. There they met Members of Parliament, who told them that Mr M. D. was being considered for the above-mentioned position. One of the MPs apparently said that his candidacy would probably not be approved because the Prime Minister was wary of the fact that Mr M. D.'s name featured on the list of "credit millionaires". At that point the applicant called the editor of *24 Hours* and said that she would prepare an article on the topic. She also telephoned Mr N., the press officer of the customs administration, asking him whether Mr M. D.'s name was on the list of "credit millionaires". Mr N. replied that

as far as he knew that was so, and referred the applicant to the *Full list of credit millionaires,* published by the *Trud* publishing house in 1998. It was stated in the preface of that publication that two companies linked with Mr M. D. – FBK Maxcom and Maxcom OOD – were on that list. The applicant checked in an electronic law database and found that Mr M. D. had been a member (first directly, and after 1993 through another company) of the company Vitaplant OOD, which was also among the debtor companies on the list. After unsuccessfully trying to contact Mr M. D. by telephone, she wrote an article about the story.

13. According to the applicant, in the meantime other journalists from *24 Hours* had contacted various institutions which could have had information on the matter (the Chief Prosecutor's Office, the Ministry of Internal Affairs, the National Assembly, the Ministry of Finance, the Bulgarian National Bank) and all of them had confirmed that Mr M. D. featured on the list of "credit millionaires".

14. The article, which appeared on page eight of the 4 August 2001 issue of *24 Hours* under the headline "Foreign Company to Run Customs under Concession?" and the applicant's byline, was worded as follows:

> "The King's men were intensely discussing whether to hire a Western company to run the customs administration, Members of Parliament say. The idea became topical because of difficulties with the selection of a strong candidate for the position of deputy Minister of Finance in charge of supervising the customs administration. The proposal that Mr M. D. is tapped for the position has not yet been approved by the Prime Minister. Simeon Saxe-Coburggotski was concerned about the fact that [Mr M. D.]'s name is on the list of credit millionaires, confided sources close to him. In the official document dated 21 January 1998 and signed by the head of the Bank Supervision [department of the Bulgarian National Bank], [Ms E. M.], [Mr M. D.] appears as a debtor. Three of his companies – Maxcom Holding, FBK Maxcom and Maxcom OOD –, had debts totalling 20,400,000 levs. The uncertainties about [Mr M. D.] have brought the name of [Mr E. D.] on to the agenda. However, the idea was for him to have operational control over customs, while the concession is awarded to the Western company."

15. The article was accompanied by photographs of Mr M. D. and Mr E. D. with their names in the captions.

16. Later that day the applicant got in touch with Mr M. D. and was told that the statements in her article were not true.

17. After the first printed copies of the newspaper were circulated, Mr M. D. called *24 Hours*' editor and said that he was not a shareholder in Maxcom Holding, FBK Maxcom, or Maxcom OOD. The editor then decided to amend the article in the subsequent printed copies of the newspaper. The new version, which featured solely the picture of Mr M. D., but not that of Mr E. D., read as follows:

> "The King's men were discussing whether to hire a Western company to run the customs administration, Members of Parliament say. The idea became topical because of difficulties with the selection of a strong candidate for the position of deputy Minister of Finance in charge of supervising the customs administration. The proposal

that Mr M. D. is tapped for the position has not yet been approved by the Prime Minister.

According to insiders, Simeon Saxe-Coburggotski received reports that [Mr M. D.] is on the list of credit millionaires. In the official document dated 21 January 1998 and signed by the head of the Bank Supervision [department of the Bulgarian National Bank], [Ms E. M.], [Mr M. D.] appears as a debtor.

Mr M. D. categorically denied this. He said 'I am not a debtor, but a creditor'.

According to former Members of Parliament, the allegations that he was a credit millionaire were being spread by people who wanted to smear his name. Ill-wishers used the similarity between the names of [Mr M. D.]'s companies and the names of those companies featuring on the list of credit millionaires. This was done to foil his candidacy for the position of deputy Minister of Finance. In recent days the name of [Mr E. D.] has been brought on to the agenda. However, the idea was for him to have operational control over customs, while the concession is awarded to the Western company."

18. The first version of the article was featured in 5,205 copies of the newspaper, 5,079 of which were sold. The second version was featured in 230,817 copies, 202,568 of which were sold.

19. Two days later, on 6 August 2001, *24 Hours* ran an additional article including the response from Mr M. D. The article, which appeared on page ten, was under the caption 'You are wrong' and its headline was '[M. D.]: I am not a credit millionaire!'. It read as follows:

"In an article on page eight of issue 208 of this year, under the headline 'Foreign Company To Run Customs under Concession?', [the applicant] links my name to companies which feature on the list of credit millionaires.

This statement does not correspond to the truth.

I reiterate that I have never been a shareholder, member or manager in the companies Maxcom Holding, FBK Maxcom, or Maxcom OOD, nor can I be in any other way linked with debtor companies. Recently some of the newspapers in the country have been trying to participate in an orchestrated campaign to smear my reputation.

To my displeasure I notice that *24 Hours*, a newspaper which I respect, has joined in the foul attack.

In my opinion, the publication of unauthentic, unverified and incorrect information does no honour to your newspaper and offends its readers."

20. Alongside the article there was a photograph of Mr M. D. with his name in the caption.

21. Shortly after these events Mr M. D. announced that he had withdrawn his candidacy for the post of deputy Minister of Finance.

C. The proceedings against the applicant

22. On 8 October 2001 Mr M.D. lodged a criminal complaint against the applicant with the Sofia District Court. He alleged that the statements made in the article were not true. In particular, he had never been a shareholder, member, or manager of the companies mentioned in the article – Maxcom Holding, FBK Maxcom or Maxcom OOD –, nor did he appear as an individual on the list of "credit millionaires". In his view, by writing the article containing the untrue statements the applicant had committed libel, contrary to Articles 147 § 1 and 148 §§ 1 (2) and 2 of the Criminal Code of 1968 (see paragraphs 32 and 33 below). He further alleged that he had suffered substantial non-pecuniary damage as a result of the applicant's act, and sought compensation in the amount of 10,000 new Bulgarian levs (BGN). He declared that he would donate any award made by the court to a church.

23. On 28 November 2001 the judge-rapporteur at the Sofia District Court sent a copy of the criminal complaint to the applicant, invited her to file a reply, and set the case down for trial.

24. In her reply the applicant said that the allegations made in the criminal complaint were untrue and unproven. The article did not consist of her own statements; she had simply relayed information coming from Members of Parliament. This information had been verified through all available sources. The applicant had been certain that Mr M. D. had indeed been a "credit millionaire", which was the actual vilifying circumstance, not the mere fact that he was involved in certain companies.

25. The trial took place on 25 March, 10 April, 15 May, 19 June and 16 September 2002. The Sofia District Court admitted in evidence a number of documents produced by the applicant and Mr M. D., and questioned several witnesses, one of whom was Ms N., a journalist who had been in the National Assembly on 3 August 2001 (see paragraph 12 above). While initially giving leave to the applicant to adduce evidence relating to Mr M. D.'s links with companies which had failed to repay bank loans, the court later revoked its order and refused to admit such evidence, holding that these matters could be elucidated through the evidence already gathered. The court also gave leave to the applicant to call one of the Members of Parliament whom she had talked to on 3 August 2001. She tried to secure his presence, but failed to do so. She accordingly left it to the discretion of the court to subpoena him, but refused to name him. Her counsel said that even though the MPs who had spoken to the applicant had been named in Ms N.'s testimony, that did not allow the unequivocal identification of this witness and hence precluded a request to summon him. The court held that, failing clear identification of the witness, it was impossible to subpoena him. It added that the defence had had ample opportunity to secure his presence, but had failed to do so.

26. In a judgment of 16 September 2002 the Sofia District Court found the applicant guilty of having divulged a vilifying fact about another person in a publication, contrary to Article 147 § 1 and Article 148 §§ 1 (2) and 2 of the Criminal Code of 1968 (see paragraphs 32 and 33 below). The court applied Article 78a of the Code (see paragraph 34 below) and replaced the applicant's criminal liability with an administrative fine of BGN 500. The court further ordered the applicant to pay Mr M.D. BGN 2,000 plus interest from 4 August 2001 until settlement, as compensation for his injured reputation, and awarded him BGN 550 in costs. The court described the facts set out in paragraphs 12-19 above, except the part concerning Mr M. D.'s indirect membership of Vitaplant OOD at the time when it had taken out bank loans which it had failed to repay, and held as follows:

> "...The *actus reus* of the offence of defamation is characterised by the divulging of vilifying – and untrue – circumstances relating to a specific individual. The expression used by [the applicant] – 'credit millionaire' – is derived from the Information About Non-Performing Credits Act [of 1997], on the basis of whose section 3 the administration of the [Bulgarian National Bank] has published a list of all debtors, persons who have outstanding credits. Therefore the expression 'credit millionaire' has a negative connotation and presupposes intolerance and extremely negative public attitudes. These are people who have prospered financially due to credits from financial institutions which they have failed to repay. In this sense, from a moral point of view these persons do not enjoy a good reputation and are perceived as dishonest. The law bans these persons from holding certain official posts.
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> The above characterises the expression used by [the applicant] – 'credit millionaire' – as vilifying and damaging to the public reputation of the person [in respect of whom it is used] and the esteem of his personality. The vilifying circumstance has been divulged through the press to a large number of readers. The fact that the first version of the article had a smaller circulation than the second, which also contained [Mr M. D.'s] rebuttal, is of no consequence, because the circulation of the printed material has no impact on the criminality of the act.
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> The act has been committed wilfully, the form of *mens rea* being recklessness. [The applicant] realised the criminality of her act and its injurious consequences, and accepted that they would occur. [She] pursued another aim, which is not unlawful – informing the newspaper's readers of the latest news about the candidates for the post of deputy Minister of Finance in the Saxe-Coburggotski cabinet –, but was aware that the information published was untrue and did not correspond to the actual facts. The court's findings in this respect are based on the fact that [the applicant] did not carry out a proper journalistic enquiry before publishing her story.
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> No regulations for conducting a journalistic enquiry were in existence at the time when the article was published. Accordingly, in his or her work each journalist had to abide by and comply with the settled customary rules in the branch, which are in line with Articles 39 to 41 of the [Constitution of 1991 – see paragraph 31 below], which contain requirements and restrictions in the exercise of the rights proclaimed thereby. In the instant case, it was established that [the applicant] had not carried out the required comprehensive and thorough journalistic enquiry, as required by the rules of investigative journalism, that is, to receive confirmation from two independent sources.

The first of [the applicant]'s sources was a Member of the majority in Parliament, who conveyed the information relating to [Mr M. D.] off the record, citing no sources, that is, it was unclear whether he had obtained it through his participation in a parliamentary committee or also through unofficial channels. He should have therefore, according to best journalistic practice, been considered an unreliable source. This fact obliged [the applicant] to duly check the information she had received through other, public and reliable, sources and not trust completely what she had heard in Parliament. The information received from [Mr N.] did not in fact constitute another dependable source of information. The latter relied on the publication of the *Trud* publishing house *The Full List of Credit Millionaires*, in whose preface [Mr M. D.] had been identified as a debtor through three of his companies – FBK Maxcom, Maxcom Holding and Maxcom OOD. [The applicant] was therefore under the obligation to check whether [Mr M. D.] indeed owned shares in these companies, because the mere linking of his name to the companies in a publication was not enough to perceive the information as authentic. This conclusion is reinforced by the fact that the publication in issue gave the names of the companies, not of their shareholders, for which reason the statement in its preface was not confirmed by its contents. However, [the applicant] did not take the requisite steps to verify the facts alleged by [Mr N.] and the publication's preface. She merely established, after a check in the *APIS* information system, that [Mr M. D.] was a shareholder in the company Vitaplant [OOD], which also featured on the list of persons with outstanding credits. The company Vitaplant [OOD] was not, however, among the companies connected to [Mr M. D.]'s name in the publication's preface, and that should have prompted [the applicant] to double-check her assumptions. However, [the applicant] assumed that the link uncovered by her was sufficient to corroborate the statement that [Mr M. D.] was a credit millionaire. She thus failed to comply with her duty of thoroughly verifying the information through reliable, independent sources. [The applicant] did not check whether the statement in the [publication's] preface that [Mr M. D.] was connected to three debtor companies corresponded to the truth, which was mandatory. The fact that she works at a daily newspaper does not absolve her of the obligation to carry out thorough journalistic enquiries. She had access to information in the register of companies, which is public, in order to check the veracity of the information she had gathered. Not only did [the applicant] not do that, but in her article she relied on a document with which she had not been duly acquainted – the official list of borrowers compiled by the [Bulgarian National Bank]. The statement in her article that the three companies – Maxcom Holding, Maxcom OOD and FBK Maxcom – were companies of [Mr M. D.] was not supported by due journalistic enquiry. Her source, [Mr N.], relied on the publication of *Trud*, which in fact means that [the applicant]'s information was solely based on the preface of the list, which was not enough, considering that this information had not been verified either.

The readers' right to be informed of so-called 'hot news' does not absolve the article's author from checking carefully the accuracy of her publication. The fact that [the applicant] did not take the necessary steps in this direction confirms the court's conclusion that her act was wilful. There must be a balance between the reader's right to information and the rights of the persons affected by journalistic materials. The one responsible for this balance is the author, who must abide by the rules of investigative journalism. It is beyond doubt that the time and means available to a journalist on a daily newspaper for a proper enquiry concerning a current issue are greatly limited, but [the applicant] was bound to do what was possible to verify the information she had gathered. In the case at hand [the applicant] had enough time to consult the register of companies, so as to report on the rumours heard in the lobby of the Parliament building and at the same time to present the actual facts. It is precisely [the

applicant]'s passivity in respect of this second element which makes her act criminal. The lack of a full enquiry into the facts, performed with due journalistic care, and the applicant's own statement that she did not carry out a full enquiry into Mr M. D.'s involvement in the companies mentioned in the article, allow [the court to conclude] that she was not confident that her allegations were true. On the contrary, the fact that [the applicant] is an experienced journalist, maintains contacts with colleagues of hers from other media, with whom she exchanges information concerning such news, allows [the court to conclude] that she knew that information about outstanding credits of [Mr M. D.] had been published before. She was therefore aware that the two newspapers which had published similar articles had also published refutations, and had apologised to [Mr M. D.] for the untruthfulness of their allegations. [The applicant] did not do all she was professionally bound to do in respect of the specific enquiry, which points to intent. She allowed herself to rely on sources which she had not checked, but which made her article look persuasive and objective.

CONCERNING THE PENALTY:

In determining the type and quantum of punishment the court had regard to the following:

The court is of the view that all necessary prerequisites for replacing [the applicant]'s criminal liability and imposing an administrative punishment on her are in place. The offence committed by her is punishable by a fine. [The applicant] has not been previously convicted of a publicly prosecutable offence and exonerated of criminal liability... For this reason, the court is of the view that [the applicant] should be exonerated of criminal liability and punished administratively by a fine.

In determining the amount of the fine the court had regard to [the applicant]'s means, earned as a journalist, as well as to certain mitigating circumstances, such as a critical attitude to her act, cooperation in establishing the facts, [and] good character. All of these favour a lower fine, that is [BGN] 500.

The court contemplated the possibility ... of imposing an additional punishment, but accepted that this is not necessary as the fine is sufficient to reform and deter [the applicant] and the general public.

CONCERNING THE CIVIL CLAIM:

The existence of damage resulting from the offence under Article 147 § 1 of the [Criminal Code of 1968] is an unrebuttable presumption and, in view of the court's finding that the applicant acted with *mens rea*, the only outstanding issue is the quantum of damage. It is beyond doubt that the publication authored by [the applicant] damaged [Mr M.D.]'s reputation and public esteem. He should therefore be compensated for that damage. At the same time it has not been proved beyond doubt that the article has affected [Mr M. D.]'s business relations with his partners, [or] has hindered his prospective career in the executive, that is, has prevented him from being appointed to a high-ranking position. [His] allegations in this respect remained a mere conjecture, lacking clear distinction between reality and possibility. All averments in a criminal complaint are subject to proof at trial, including the quantum of the damage. For this reason, the lack of evidence leads to the conclusion that [Mr M. D.]'s claim for BGN 10,000 is unproven. [The claimant] is not relieved of the burden of proving the exact quantum of the sustained damage, irrespective of his statement in the criminal complaint that the amount will be donated for charitable purposes.

> The court ruled in equity, as required by [the law] and the established case-law, accepting that [the applicant] should be ordered to pay [Mr M. D.] the amount of BGN 2,000 as compensation for the non-pecuniary damage suffered as a result of the offence. [The applicant] is to pay interest on this amount at the legal rate from 4 August 2001 until settlement. ..."

27. On 15 October 2002 the applicant appealed to the Sofia City Court. She argued, *inter alia*, that the lower court had erred in varying its order giving her leave to present evidence on the ground that that evidence had already been adduced by the private prosecuting party. It had thus restricted her capacity to prove the veracity of her allegations against Mr M. D. The lower court had also erred in accepting that she had acted with *mens rea*, which was excluded on account of, in particular, the fact that there had been prior publications stating that Mr M. D. was a "credit millionaire". The applicant finally stated that her conviction and sentence were contrary to, *inter alia*, Article 10 of the Convention. A journalist had the right to impart information received from others acting in their official capacity, which is how it was received in this case. She was under no obligation to verify publicly disclosed information. She had received the information from a Member of Parliament, immediately after a discussion within his parliamentary group on the matter, and had simply passed it on.

28. In a supplementary memorial of 24 March 2003 the applicant further said that she had not committed the *actus reus* of defamation, as Mr M. D. was indeed a "credit millionaire", which was the actual vilifying circumstance, not the fact that he had been involved in certain companies. This fact was further evidenced by the judgment dismissing his tort action against Media Holding AD. The evidence presented merely proved that he was not on the list of "credit millionaires" as a physical person. It was therefore still possible that he could have been one through participation in certain companies, as she had tried to prove. The lower court's findings in respect of, *inter alia*, Mr M. D.'s direct and indirect participation in the companies mentioned were likewise erroneous. The court had also incorrectly held that the applicant had acted recklessly. She personally, and also her colleagues, had made numerous checks through various sources, which had led them to believe, in good faith and in line with the rules of investigative journalism, that Mr M. D. was a "credit millionaire". The alleged insufficiency of the verification could only indicate negligence, not intent. Finally, the fact that the impugned information had previously been made public excluded defamation.

29. The Sofia City Court held a hearing on 31 March 2003. It admitted in evidence a number of documents produced by the applicant with a view to establishing Mr M. D.'s participation in Vitaplant OOD, refused certain other evidentiary requests by the applicant, and heard the parties' arguments.

30. In a final judgment of 19 May 2003 the Sofia City Court noted the facts set out in paragraphs 12-16 above, including the part relating to Mr M. D.'s participation in Vitaplant OOD at the time when it had taken out bank loans which it had failed to repay, and upheld the applicant's conviction and sentence in the following terms:

> "... The parties are not in dispute about the facts [established by the court]. There is also no dispute about the [lower court]'s finding that the statement that a given person is a 'credit millionaire' because companies owned by him appear on the [Bulgarian National Bank]'s list of debtors with 'bad credits' is objectively vilifying for him or her. [The applicant's] defence raises legal arguments, which outline two disputed questions. The first is whether there is defamation where the facts set out in the publication are untrue, but the conclusion made on their basis is true on other grounds. The defence argues that [Mr M. D.] is in fact a 'credit millionaire', not on account of the companies cited in the publication, but because of [his involvement in] another company – Vitaplant OOD. The second is whether an individual who owns a share in a company with outstanding credits can be deemed a 'credit millionaire'. The view of [the court] on these questions is as follows:
>
> The expression 'credit millionaire' is not legally defined. It has entered the journalistic vernacular and is used in everyday speech to describe individuals who have acquired large amounts of money as a result of the use, by them personally or by physical or legal persons connected with them, of unsecured bank credits, which have remained unpaid and have been listed by the [Bulgarian National Bank] as unrecoverable. The expression is pejorative, because it implies that the people in question are supposedly responsible for the crisis in the banking system and the so-called 'draining' of the banks – generally persons who have become rich in a criminal way. A list of 'credit millionaires' as an official document emanating from the [Bulgarian National Bank] has never existed. There exists a list of the persons with outstanding credits as of 1997, which has been compiled pursuant to the Information on Non-Performing Credits Act [of 1997]. This Act requires the [reportable] credits to exceed 5,000 German marks – it does not concern only credits with seven or more figures. According to [the Act], the list is published in a special bulletin, which is not covered by bank secrecy and is sent to the Chief Prosecutor's Office, the Ministry of Internal Affairs, the tax and customs authorities and the National Assembly. After its receipt at the National Assembly on 21 January 1998 the list was made available to journalists and was published in full or in part as a list of the "credit millionaires". In fact, the vilifying circumstance is not to own specific companies, but to be a 'credit millionaire'. In the view of the [court], however, such a dissection of the statement in [the applicant]'s publication and the application of paragraph 2 of Article 147 of the [Criminal Code of 1968] to one of the resulting parts cannot be made, for the following reasons. Readers are not bound to accept journalistic statements uncritically. An abundance of specifically alleged facts in support of those statements is key to persuading readers that they are truthful. Such facts in the case at hand are the citing of an official document featuring [Mr M. D.]'s name (untrue) and the citing of specific companies owned by [Mr M. D.] with specific debts (also untrue). There is no doubt that without these untrue allegations the statement that [Mr M. D.] is a credit millionaire would have been uncorroborated and unconvincing and its refutation would have presented no problem for him. It would be wrong to divide an averment containing a vilifying circumstance into two parts for a second reason: the damage to the reputation and the public esteem of a defamed person is not a constant value. The degree of that damage may vary significantly. In

the instant case, where there is a statement that an individual is a 'credit millionaire' because of his involvement in companies which have received credits, the [court] considers that the greater the amount of the outstanding credits, the more numerous the companies having received them, the more direct the connection of the individual with these debtor companies, and, last but not least, the noisier the public scandal, the more vilifying is the statement. [Mr M. D.] would suffer a lesser degree of defamation if the amount of the outstanding credits was one and not twenty million levs, if the article had cited one unknown company instead of three companies which had become notorious because of their link with criminal investigations, and if [Mr M. D.] had not been indicated as [their] sole owner instead of merely a shareholder [in them].

Because of the meaning implied in the expression 'credit millionaire' the [court] considers that in the event of a credit taken by a company, an individual could be deemed as having profited therefrom, in the range of millions of levs, only if [his or her] connection with that company is direct, and not through the intermediary of participation in companies which in turn participate in other companies, and if the shareholding is big enough to allow a substantial amount of the credit to pass on to him. The link may likewise exist through participation in the management [of these companies]. At the time when the credit was received [Mr M. D.] did not participate directly in Vitaplant [OOD]. He was neither a manager of that company, nor a substantial shareholder. The credit itself was not in an amount which would make him a 'millionaire'.

The arguments relating to the existence of a civil judgment dismissing a tort action by Mr M. D. against Media Holding AD are irrelevant, as from the reasons of this judgment it is apparent that the action had not been supported by evidence of the non-pecuniary damage sustained, whereas the civil courts are under no obligation to gather such evidence. This judgment is not binding on the criminal court.

The arguments relating to the lack of *mens rea* are unfounded. The court considers that the [lower court] has correctly accepted as true [the applicant]'s statements that she had verified the information from two independent sources – the Members of Parliament and [Mr N.], after which she had assured herself of its veracity from the existence of numerous prior publications in different newspapers. In spite of that, the defamation was committed recklessly. [The applicant] has disregarded her duty to check the information she imparts with the only reliable source – the public register of companies – to which she had access. The opinion of the MPs was unofficial, as established by the testimony of [the applicant]'s colleagues, whereas [Mr N.], not having his own information, referred [the applicant] to the publication of *Trud*. This leads to the conclusion that [the applicant] was aware of the possibility that the vilifying information might not be accurate, but disregarded this concern in order to get her story to print as soon as possible."

II. RELEVANT DOMESTIC LAW

A. The Constitution of 1991

31. The relevant provisions of the Constitution of 1991 read as follows:

Article 39

"1. Everyone is entitled to express an opinion or to publicise it through words, written or oral, sound, or image, or in any other way.

2. This right shall not be used to the detriment of the rights and reputation of others, or for the incitement of a forcible change of the constitutionally established order, the perpetration of a crime, or the incitement of enmity or violence against anyone."

Article 40 § 1

"The press and the other mass media shall be free and not subject to censorship."

Article 41

"1. Everyone has the right to seek, receive and impart information. The exercise of that right may not be directed against the rights and the good name of other citizens, nor against national security, public order, public health or morals.

2. Citizens shall have the right to information from state bodies or agencies on any matter of legitimate interest to them, unless the information is a state secret or a secret protected by law, or it affects the rights of others."

B. The Criminal Code of 1968

32. Article 147 of the Criminal Code of 1968, as in force since March 2000, provides as follows:

"1. Whoever divulges a vilifying fact about another or imputes an offence to him or her shall be punished for defamation by a fine ranging from three to seven thousand levs, as well as by a public reprimand.

2. The perpetrator shall not be punished if he or she proves the truth of the divulged facts or the imputed offence."

33. If the defamation is committed through a publication, it is punishable by a fine ranging from five to fifteen hundred levs, as well as by a public reprimand (Article 148 §§ 1 (2) and 2 of the Code, as in force since March 2000). Since March 2000 all instances of defamation are privately prosecutable offences (Article 161 of the Code, as in force since March 2000). In 2005 an unofficial collection of the case-law of the Sofia District

Court and the Sofia City Court in defamation cases was published (*Обида и клевета в практиката на Софийския районен съд*, Сиби, 2005 г.); it reported the case against the applicant at p. 400.

34. Article 78a of the Code, as in force at the relevant time, allowed the courts to replace convicted persons' criminal liability with an administrative punishment – a fine ranging from BGN 500 to BGN 1,000 – if (i) the offence of which they had been convicted was punishable by up to two years' imprisonment or a lesser penalty, in respect of an intentional offence, (ii) they had not been previously convicted of a publicly prosecutable offence and their criminal liability had not been previously replaced by an administrative punishment, and (iii) the damage caused by the criminal act had been made good. Along with the fine the court could impose occupational disqualification of up to three years.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 §§ 1 AND 3 (d) OF THE CONVENTION

35. The applicant alleged that the proceedings leading up to her conviction had not been fair. She asked the Court to find a violation of Article 6 §§ 1 and 3 (d), the relevant parts of which provide:

> "1. In the determination of ... any criminal charge against him, everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...
>
> ...
>
> 3. Everyone charged with a criminal offence has the following minimum rights:
>
> ...
>
> (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ..."

A. The parties' submissions

36. The Government argued that the national courts had allowed and taken into account all relevant pieces of evidence. They had admitted in evidence all documents presented by the applicant and had given her leave to call all witnesses requested by her. The courts had given ample reasons

why they had refused to accede to some of the applicant's evidentiary applications, finding them irrelevant for the proper disposal of the case.

37. The applicant said that the domestic courts had acted in breach of the fundamental rule that the burden of proof lay on the prosecution. Mr M. D. had not shouldered this burden. He had not produced a certificate from the Bulgarian National Bank showing that he did not feature on the list of "credit millionaires" through certain companies of his. Nor had he adduced evidence of the applicant's guilt. At the same time, the courts had rejected the applicant's evidentiary requests, whose aim had been to fill the gaps in the prosecution's case and ascertain the truth. The first-instance court had not discussed her evidence showing that Mr M. D. did indeed feature on the list of "credit millionaires" through his participation in Vitaplant OOD. The appellate court had accepted that this was so, but had nevertheless held that Mr M. D. had been defamed. The appellate court's ruling that despite the existence of two independent sources the applicant was under a duty to verify her information in the register of companies had rendered the trial unfair, because no rule existed requiring journalists to consult this register. The appellate court had furthermore not discussed the argument that criminal liability was personal, whereas journalists worked and checked information in teams. The first-instance court had also erred in not calling two Members of Parliament to testify about the information they had given to the applicant in the National Assembly. The same court had erroneously varied its ruling allowing the presentation of evidence on Mr M. D.'s involvement in certain companies.

B. The Court's assessment

1. Admissibility

38. The Court considers that this complaint, being closely linked with the complaint under Article 10 of the Convention (see paragraph 46 below), is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

39. The Court starts with the general observation that it is not its function to deal with errors of fact or law allegedly committed by the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I), as it is not a court of appeal from these courts (see, among many other authorities, *Cornelis v. the Netherlands* (dec.), no. 994/03, ECHR 2004-V (extracts)). Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility

of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz*, cited above, ibid.). In addition, a requirement for defendants in defamation proceedings to prove to a reasonable standard that the allegations made by them were substantially true does not, as such, contravene the Convention (see *McVicar v. the United Kingdom*, no. 46311/99, § 87, ECHR 2002-III; and *Steel and Morris v. the United Kingdom*, no. 68416/01, § 93, ECHR 2005-II).

40. Turning to the specific allegations made by the applicant, the Court notes the following.

41. The applicant found fault with the Sofia District Court's failure to gather evidence on and establish whether Mr M. D. had indirectly been a member of Vitaplant OOD – a company featuring on the list compiled by the Bulgarian National Bank (see paragraphs 6, 25 and 26 above). However, the Court notes that this omission was rectified on appeal. The Sofia City Court admitted evidence on this point and found that Mr M. D. had indirectly participated in that company. However, it went on to hold that this indirect participation had not rendered the applicant's statement non-defamatory, as her statement that Mr M. D. was a "credit millionaire" had been made on the basis of his alleged ownership of three other companies (see paragraphs 29 and 30 above). The Court cannot countenance a challenge to this ruling, which it does not find arbitrary.

42. The applicant further criticised the Sofia District Court's failure to summon the Member of Parliament as witnesses of its own motion (see paragraph 25 above). However, according to the Court's settled case-law, Article 6 § 3 (d) leaves it to the national courts to assess whether it is appropriate to call witnesses (see, among many other authorities, *Perna v. Italy* [GC], no. 48898/99, § 29, ECHR 2003-V). Seeing that the applicant did not name this Member of Parliament, the national court can hardly be criticised for not calling him to the witness stand. In any event, in view of the grounds on which the applicant was found guilty, it does not appear that his testimony would have been decisive for her conviction or acquittal (ibid., §§ 31 and 32).

43. In so far as the applicant complained about the manner in which the Sofia District Court and the Sofia City Court had assessed the evidence and had established the facts, as well as about the manner in which the Sofia City Court had interpreted her duty to carry out a proper journalistic enquiry, the Court observes that it is not its function to deal with errors of fact or law allegedly committed by a national court (see paragraph 39 above). It does not consider that the domestic court's judgments were arbitrary and reiterates that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see, among many other authorities, *Thorgeir Thorgeirson v. Iceland*, judgment of 25 June

1992, Series A no. 239, p. 25, § 58; and *Casado Coca v. Spain*, judgment of 24 February 1994, Series A no. 285-A, p. 18, § 43).

44. In the light of the above considerations, the Court does not consider that the proceedings against the applicant were unfair.

45. There has therefore been no violation of Article 6 §§ 1 and 3 (d) of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

46. The applicant complained that her conviction had been an unjustified interference with her right to freedom of expression. She relied on Article 10 of the Convention, which provides, as relevant:

> "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. The parties' submissions

47. The Government said that journalists' freedom of expression should not be exercised by damaging individuals' reputations. It was therefore material in each case to assess whether the journalists had abided by their duty to ensure that the information they intended to publish was accurate. This had not happened in the instant case; the public had been misled, because the information contained in the applicant's article had not corresponded to the truth. It was beyond doubt that if journalists were relying on an official document they were not required to verify its accuracy. However, the applicant had neither acquainted herself with the official list of "credit millionaires", nor checked the register of companies to see whether Mr M. D. had any involvement in the companies mentioned by her. She had trusted her sources without bothering to verify whether their information was accurate and without taking account of the fact that the book published by *Trud*, and especially its preface, did not have the character of an official publication. The applicant had thus not carried out a proper journalistic enquiry before informing the public that Mr M. D. was a "credit millionaire". She had moreover supported her allegation with specific but untrue statements, which had given rise to the false impression

that this information had been verified and authentic. She had admitted her failure to carry out a proper verification at the trial.

48. The Government further submitted that the applicant's statement, which had undoubtedly been negative and had led to grave public disapproval of Mr M.D., had been presented as a statement of fact. Its publication should therefore have been based on serious proof. Both levels of court had allowed the parties to the case to adduce evidence on this issue and had based their judgments on the finding that the allegation by the applicant was not true. The Sofia District Court had given ample reasons on this point and the Sofia City Court had specifically addressed the question of Mr M. D.'s being a "credit millionaire" on account of his participation in another company.

49. The Government finally laid emphasis on the fact that the remedy used by Mr M. D. – a criminal complaint coupled with a claim for damages – was completely ordinary and available to any individual whose reputation had come under attack. It was also material that the courts had waived the applicant's criminal liability and had imposed only an administrative punishment. The amount of damages awarded to Mr M. D. had also not been unreasonable.

50. The applicant said that in a democratic society it was not necessary to resort to penal sanctions to curtail freedom of expression. Criminal law had an unduly chilling effect on freedom of expression. This was of special relevance for journalists, who did not have their own sources but relied on others to provide them with information. Criminal liability was also problematic because journalists worked in teams, whereas penal sanctions were individual.

51. In the applicant's view, the requirement for defendants in defamation proceedings to prove that their statements were true was disproportionate. In such proceedings the courts were only concerned with the truth of the impugned statements and did not examine the reputation of those allegedly defamed. This reputation was unwarrantedly assumed to be good. This led to situations of abuse of rights and led to *de facto* no-fault liability.

52. The applicant further argued that the courts had not taken into account the degree to which the impugned allegations had actually impacted on Mr M. D.'s reputation and had erred in holding that he had been defamed because of a simple mistake in the names of the companies through which he had featured on the bad debtors' list. The impugned publication had not materially influenced Mr M.D.'s standing in society. Its purpose had rather been to inform the public about the candidates for the post of deputy Minister of Finance. The availability of public information on this topic was more important than the fact that Mr M. D. was featured on the list through one rather than another company. The applicant's error in that regard had been induced by the Members of Parliament who had tipped her off. The finding that the applicant's statement had not corresponded to the truth had

been erroneous, as the only part which had not been true had been the name of the company owned by Mr M. D., not the fact that he was a "credit millionaire".

53. The Government's statement that the applicant had not consulted the list compiled by the Bulgarian National Bank conflicted with the findings of the Sofia City Court, which had said that Mr M. D. had featured on that list through Vitaplant OOD, a statement proved by the applicant. The Sofia City Court's ruling that the applicant was bound to check her information in the register of companies was excessive. No such obligation existed and, moreover, such a verification would have been unfeasible, in view of the amount of time it would have consumed. The domestic courts had erred in not calling the Members of Parliament to whom the applicant had spoken. Their names had become apparent from the testimony of Ms N., the other journalist present in the National Assembly lobby on 3 August 2001. These MPs, one of whom was a business associate of Mr M. D., had in fact tricked the applicant into providing inaccurate information, with the aim of procuring a judgment saying that Mr M. D. was not a "credit millionaire" and thus concealing his involvement in Vitaplant OOD. The Sofia City Court had gathered evidence on Mr M. D.'s participation in Vitaplant OOD and had made findings in that respect. Mr M. D. had not really suffered any prejudice to his reputation because he had, through that company, taken out loans and failed to repay them, as evidenced by certain contracts which he had himself produced in court.

B. The Court's assessment

1. Admissibility

54. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

55. It is not in dispute between the parties that the applicant's conviction constituted an interference by a public authority with her right to freedom of expression. The Court sees no reason to hold otherwise. Such interference will breach the Convention if it fails to satisfy the criteria set out in the second paragraph of Article 10. The Court must therefore determine whether it was "prescribed by law", pursued one or more of the legitimate aims listed in that paragraph and was "necessary in a democratic society" to achieve that aim or aims.

56. The Court finds, and this was not disputed, that the interference was "prescribed by law", the applicant's conviction having been based on Articles 147 and 148 of the Criminal Code (see paragraphs 26, 32 and 33 above). The Court further finds that the interference pursued one of the legitimate aims set out in paragraph 2 of Article 10: the protection of "the reputation or rights of others", namely of Mr M. D.

57. It remains to be established whether the interference was "necessary in a democratic society". In this respect, the following general principles emerge from the Court's case-law (see, as a recent authority, *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, §§ 68-70 and 76 *in limine*, ECHR 2004-XI, with further references):

(a) The necessary-in-a-democratic-society test requires the Court to determine whether the interference complained of 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 the legislation and the decisions applying it, even those given by independent courts. 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.

(b) 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 in accordance with their margin of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully or in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole, including the content of the comments held against the applicants and the context in which they made them.

(c) 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, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10.

(d) In assessing the proportionality of an interference, the Court has to make a distinction between statements of fact and value judgments in that, while the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The classification of a statement as one of 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.

58. The Court notes that in the instant case the applicant, a newspaper journalist, was convicted and punished for having written an article (see

paragraphs 5, 12 and 14 above). The case therefore concerns in particular the freedom of the press. The Court has emphasised on numerous occasions the essential role played by the press in a democratic society. It has pointed out that, although the press must not overstep certain bounds, in particular in respect of the reputation and rights of others, its duty is to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest, and that not only does the press have the task of imparting such information and ideas, the public also has a right to receive them. The national authorities' margin of appreciation is thus circumscribed by the interest of a democratic society in enabling the press to play its vital role of "public watchdog" (see, as a recent authority, *Radio France and Others v. France*, no. 53984/00, § 33, ECHR 2004-II, with further references).

59. The Court also notes that the article in issue in the present case was reporting facts relating to the candidacy of a well-known politician (see paragraph 8 above) for the position of deputy Minister of Finance. The matter was apparently considered serious enough to warrant a meeting of the ruling coalition's parliamentary group (see paragraph 12 above). There can be no doubt that this was a question of considerable public interest and that the broadcasting of information about it formed an integral part of the task allotted to the media in a democratic society (ibid., § 34).

60. It should further be observed that, being a politician and a candidate for public office, Mr M. D. had inevitably and knowingly laid himself open to public scrutiny (see *Lingens v. Austria*, judgment of 8 July 1986, Series A no. 103, p. 26, § 42; and *Oberschlick v. Austria (no. 1)*, judgment of 23 May 1991, Series A no. 204, p. 26, § 59), in particular as regards issues touching on his financial integrity.

61. Article 10 of the Convention does not, however, guarantee wholly unrestricted freedom of expression even with respect to press coverage of matters of serious public concern and of political figures. Under the terms of paragraph 2 of the Article the exercise of this freedom carries with it "duties and responsibilities", which also apply to the press. These "duties and responsibilities" are liable to assume significance when, as in the present case, there is a question of attacking the reputation of named individuals and undermining the "rights of others". By reason of the "duties and responsibilities" inherent in the exercise of the freedom of expression, the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they are acting in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism (see, *mutatis mutandis*, Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, § 65, ECHR 1999-III).

62. The statement that Mr M. D. featured on the list compiled by the Bulgarian National Bank through his ownership of three specifically named companies was clearly an allegation of fact and as such susceptible to proof

(see, among many other authorities, *McVicar*, § 83; *Steel and Morris*, §§ 90 *in fine* and 94, both cited above; and *Panev v. Bulgaria*, no. 35125/97, Commission decision of 3 December 1997, unreported). Unlike the remainder of the article, that statement was phrased in a way which left no doubt that it emanated from the applicant, not from the Members of Parliament who had tipped her off on doubts relating to Mr M. D.'s candidacy for deputy Minister of Finance. It was couched in terms which suggested that the information provided by the applicant was directly based on the official list drawn up by the Bulgarian National Bank, not on other publications, such as that of *Trud* (see paragraph 14 above). It cannot therefore be said that the applicant was reporting what others had said and had simply omitted to distance herself from it (see, *mutatis mutandis*, *Radio France and Others*, cited above, § 38; *Thoma v. Luxembourg*, no. 38432/97, §§ 63 and 64, ECHR 2001-III; and *Pedersen and Baadsgaard*, cited above, § 77). Having adopted the offending allegations as her own, she was liable for their truthfulness.

63. As already noted (see paragraph 41 above), in the ensuing proceedings the applicant was allowed to adduce evidence of the truth of her averment (see, by contrast, *Colombani and Others v. France*, no. 51279/99, § 66, ECHR 2002-V). In view of the nature of that averment, that task was not unreasonable or impossible (see, by contrast, *Thorgeir Thorgeirson*, cited above, p. 28, § 65 *in fine*). However, she was only able to prove that Mr M. D. featured on the Bulgarian National Bank's list through the company Vitaplant OOD, not through the companies Maxcom Holding, FBK Maxcom and Maxcom OOD, cited in the article (see paragraphs 14, 25, 29 and 30 above). The Sofia City Court held that this did not render her statement non-defamatory, because it was one thing to allege that an individual was a "credit millionaire" because of his indirect involvement in one company and quite another to say that he fully owned three companies which appeared on the bad debtors' list. The Court sees no reason to question that finding.

64. The Court must further examine whether the research done by the applicant before the publication of the untrue statement of fact was in good faith and complied with the ordinary journalistic obligation to verify a factual allegation. The Court's case-law is clear on the point that the more serious the allegation is, the more solid the factual basis should be (see *Pedersen and Baadsgaard*, cited above, § 78 *in fine*). The applicant's allegation appears quite serious (see, *mutatis mutandis*, *Thoma*, cited above, § 57) and therefore required substantial justification, especially seeing that it was made in a popular and high-circulation national daily newspaper (see paragraphs 5 and 18 above). The Court notes on this point that the domestic courts unequivocally found that the applicant had not sufficiently verified her information prior to its publication. These courts established that in her desire to get the news out quickly she had failed to consult trustworthy

sources, preferring to rely on sources which could not, according to best journalistic practice, be deemed dependable (see paragraphs 26 and 30 above). The Court sees no reason to reach a different conclusion.

65. Special grounds are required before the media can be dispensed from their ordinary obligation to verify factual statements that are defamatory of private individuals. Whether such grounds exist depends in particular on the nature and degree of the defamation in question and the extent to which the media can reasonably regard their sources as reliable with respect to the allegations (see, among other authorities, *McVicar*, § 84; and *Pedersen and Baadsgaard*, § 78, both cited above). The Court notes on this point that the preface of *Trud*'s publication clearly did not amount to an official report. The applicant was accordingly not entitled to rely on it unconditionally, (see, by contrast, Bladet Tromsø *and Stensaas*, §§ 66, 68, 71 and 72; and *Colombani and Others*, § 65, both cited above). Nor could she unreservedly rely on the informal statements made by two Members of Parliament in the National Assembly lobby. That conclusion does not change even if the situation is examined as it presented itself to the applicant at the material time rather than with the benefit of hindsight (see Bladet Tromsø *and Stensaas*, cited above, §§ 66 *in fine* and 72). The domestic courts, which specifically dealt with this point, found that, even if the "time and means available to a journalist in a daily newspaper for a proper enquiry concerning a current issue [we]re greatly limited", the applicant had still not adequately verified the facts from reliable sources and had thus failed to comply with the customary rules of investigative journalism, publishing facts which she knew or ought to have known were dubious (see paragraphs 26 and 30 above). The Court sees no reason to hold otherwise. Nor does it consider that the applicant was dispensed on other grounds from properly verifying her information.

66. It is true that shortly after its publication the offending article was amended because of the complaint by Mr M. D. (see paragraph 17 above). However, the amendment did not detract from the fact that the article's original version had been made known to a considerable number of readers (see, *mutatis mutandis*, *Radio France and Others*, cited above, §§ 35 and 38 *in fine*). It is also true that two days later the newspaper published Mr M. D.'s response (see paragraph 19 above). However, this response, while indicative of the newspaper's willingness to rectify the situation, did not fully wipe out the damage inflicted on Mr M. D.'s reputation. In any event, these developments, which took place only after the newspaper and the applicant had been made aware of the defamatory nature of the allegations, do not show that the applicant was concerned with verifying their truth or reliability to a high standard before writing her article (see *McVicar*, cited above, § 86).

67. In assessing the necessity of the interference, it is also important to examine the way in which the domestic courts dealt with the case, and in

particular whether they applied standards which were in conformity with the principles embodied in Article 10 of the Convention (see paragraph 57 above). A perusal of the judgments by the Sofia District Court and the Sofia City Court (see paragraphs 26 and 30 above) reveals that they fully recognised that the present case involved a conflict between the right to impart information and protection of the reputation or rights of others, a conflict they resolved by weighing the relevant considerations.

68. Having regard to the foregoing, the Court is satisfied that the reasons adduced by the national courts for convicting the applicant were relevant and sufficient within the meaning of its case-law. In this connection, the Court observes that it is unable to follow the applicant's argument that the very use of criminal-law sanctions in defamation cases is in violation of Article 10. In view of the margin of appreciation left to Contracting States by that provision, a criminal measure as a response to defamation cannot, as such, be considered disproportionate to the aim pursued (see *Radio France and Others*, cited above, § 40; and *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 59, ECHR 2007-...). Nor is it contrary to the Convention to require the defendant to prove, to a reasonable standard, that her allegations were substantially true (see paragraph 39 above). It should also be observed that the proceedings were instituted on the initiative of Mr M. D., not by a State authority (see, by contrast, *Raichinov v. Bulgaria*, no. 47579/99, § 50 *in fine*, 20 April 2006), and that, though they started as criminal, they ended with a mere administrative punishment (see paragraphs 26 and 34 above).

69. The Court must finally ensure itself that the penalty to which the applicant was subjected did not upset the balance between her freedom of expression and the need to protect Mr M. D.'s reputation (see *Cumpănă and Mazăre v. Romania* [GC], no. 33348/96, § 111, ECHR 2004-XI). It considers that the sanction imposed on the applicant – an administrative fine of BGN 500[1], plus an order to pay Mr M. D. compensation amounting to BGN 2,000[2] and to reimburse his costs (BGN 550[3]) – does not, in the specific circumstances of the case, appear excessive. The Court attaches particular weight to the fact that, as already noted, after convicting the applicant, the Sofia District Court waived her criminal liability and imposed an administrative punishment, opted for the minimum fine possible, taking into account the applicant's earnings and certain other mitigating circumstances, and refrained from ordering the applicant's occupational disqualification (see paragraphs 26 and 34 above and compare and contrast *Cumpănă and Mazăre*, cited above, §§ 37, 112, 113 *in fine* and 118). It also awarded only one fifth of the damages sought by Mr M. D. and gave cogent reasons for its ruling on this point (see paragraphs 22 and 26 above), in line

1. Equivalent to 255.65 euros
2. Equivalent to 1022.58 euros
3. Equivalent to 281.21 euros

with this Court's case-law that an award of damages for defamation must bear a reasonable relationship of proportionality to the injury to reputation suffered (see *Tolstoy Miloslavsky v. the United Kingdom*, judgment of 13 July 1995, Series A no. 316-B, pp. 75-76, § 49; and *Steel and Morris*, cited above, § 96). The fact that the court ordered the applicant to pay Mr M. D.'s costs, which were not unreasonably high, was not disproportionate either (see *McVicar*, cited above, § 81).

70. In sum, in view of the reasons adduced by the national courts for convicting the applicant and of the relative lenience of the punishment imposed on her, the Court is satisfied that the authorities did not overstep their margin of appreciation.

71. There has therefore been no violation of Article 10 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 6 §§ 1 and 3 (d) of the Convention;

3. *Holds* that there has been no violation of Article 10 of the Convention.

Done in English, and notified in writing on 14 February 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President