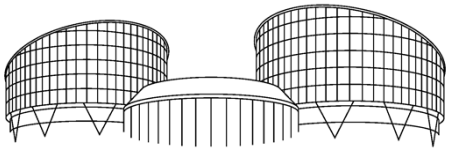

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF PRICOPE v. ROMANIA

(Application no. 60183/17)

JUDGMENT

Art 10 • Freedom of expression • Applicant's sanctioning in civil defamation proceedings for articles written about a local businessman and public figure • Lack of relevant and sufficient reasons • Amount of damages awarded capable of having a "chilling effect" • Interference not "necessary in a democratic society"

STRASBOURG

30 May 2023

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 Pricope v. Romania,

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

Gabriele Kucsko-Stadlmayer*, President*,
Faris Vehabović,
Iulia Antoanella Motoc,
Branko Lubarda,
Anja Seibert-Fohr,
Ana Maria Guerra Martins,
Anne Louise Bormann*, judges*,
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 60183/17) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Sterian Pricope ("the applicant"), on 4 August 2017;

the decision to give notice to the Romanian Government ("the Government") of the above application;

the parties' observations;

the decision to uphold the Government's objection to examination of the application by a Committee;

Having deliberated in private on 9 May 2023,

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

INTRODUCTION

1. The application concerns civil defamation proceedings instituted against the applicant in connection with his criticism of a local businessman's allegedly corrupt economic activities, which the applicant believed had contributed to the downfall of the local automobile industry. The Government were given notice of the application under Article 10 of the Convention.

THE FACTS

2. The applicant was born in 1962 and lives in Voineşti. He was represented by Mr F.I. Popescu, a lawyer practising in Câmpulung Muscel, Argeş County.

3. The Government were represented by their Agent, Ms O.F. Ezer, of the Ministry of Foreign Affairs.

4. The facts of the case may be summarised as follows.

I. BACKGROUND TO THE CASE

5. The applicant, an economist by profession, had, for thirty years prior to the lodging of the present application, been a contributor to a local television station and to the online publication *bitpress.ro*, owned by the S.P. company and catering mainly for the local community from Câmpulung. He wrote a series of articles concerning alleged acts of corruption supposedly committed by P.V., a local businessman and the owner of another local newspaper in circulation at that time, *Evenimentul Muscelean*. In those articles the applicant wrote about alleged connections between P.V.'s business interests and the bankruptcy of the local automobile factory A. (hereinafter "the A. factory") – the main local industry. P.V. was also one of the former managers of the A. factory, where the applicant himself had worked in the past as chief accountant.

II. THE ARTICLES WRITTEN BY THE APPLICANT

6. Excerpts of the most relevant articles written by the applicant, as highlighted by P.V. in his claim for damages (see paragraph 13 below), read as follows.

7. An article published on 20 September 2011 concerned the supply of sports equipment by P.V. to the local sports club and stated:

> "**[P.V.], the boss of *Evenimentul Muscelean*, sells judo suits**
>
> The latest purchase of the Muscel Câmpulung Sports Club is a set of equipment consisting of Adidas shoes (10 pairs) and judogi suits for the Judo Section (10 suits).
>
> The products were bought via the electronic public auction system from the only registered bidder, [the A.A.G. company] of Câmpulung, whose boss, [P.V.] (first on the left in the photograph), is known more for trading in car parts and construction material, and for publishing the local bi-weekly newspaper *Evenimentul Muscelean*. The purchase prices were the highest quoted ..."

8. An article published on 8 November 2011 set out the history of *Evenimentul Muscelean* and explained P.V.'s contribution as follows:

> "[P.V.], a simple worker in [the A. factory] and one of those characters who became rich off the defunct factory after the revolution [of 1989], founded *Evenimentul Muscelean* in Câmpulung, together with N.B., another 'character' of the local press."

9. In an article published on 2 February 2012 the applicant described a local television documentary which gave more details about the tendering procedure for the purchase of the sports equipment from P.V.'s company (see paragraph 7 above). The procedure was described as having been arranged illegally between the parties beforehand. The relevant parts read as follows:

> "Although the accusations were aimed at the management of public money by the Muscel Sports Club, the reaction came from [P.V.], the 'racketeer' [*căpuşa*, "the tick"] who benefited from that transaction. He filed a complaint with National Audiovisual Council against the television station Muscel TV, claiming that he had not been given

the opportunity to present his point of view and that the material broadcast had harmed his image as a public figure and his honour as a businessman. The documentary had been broadcast live and everyone had had an opportunity to intervene, but the businessman had not done so and had not submitted any material to be broadcast. In fact, the great journalist from Câmpulung runs like hell from journalists he does not control, and even his own newspaper omitted to carry any statement from him.

However, at the National Audiovisual Council meeting held on 24 January [2012], after examining the information gathered on the basis of the complaint and the evidence submitted on behalf of Muscel TV, the members of the Council did not find any breaches of the [applicable law]. As a result, the complaint filed by [P.V.] was dismissed as unsubstantiated.

Even in Câmpulung people no longer pay attention to the former mechanical fitter.

[P.V.], a former simple mechanical fitter at [the A. factory], went into business selling car parts, at a time when illicit trade was rife in the factory. As he developed [his business] in cahoots with some of the former managers, his company, [A.A.G.], became one of the major phantom businesses which contributed to the bankruptcy of the A. factory, a bankruptcy that ruined thousands of Muscelians. According to national press reports, [P.V.] was selling Andorria engines to the A. factory, receiving in return vehicles and spare parts at prices which were several times lower than market prices. He also made billions in cash from 'compensation' received in the form of vehicles and spare parts in return for advertisements published in his newspaper, whose distribution was limited to Câmpulung!

...

As evidence of the character of the former hammerman from [the A. factory] turned big media owner, it is telling that on Christmas Eve, in order to give the impression of being a good Samaritan, he started a campaign to help the poor, threatening the honourable people of Câmpulung that he would publish their names in his newspaper if they did not contribute to his campaign. Despite the risk of seeing their names published in the troublesome newspaper, many refused, as people give help when and where they want to and not at the behest of an individual like [P.V.]. To give one more example, that individual complained to the [National Audiovisual Council] that he had not been able to exercise his right of reply, while he himself, the moralising wolf and indignant complainant, denies that right to those he tarnishes [in the newspaper] as he sees fit or as his interests dictate. The latest such example is that of a townswoman who wished to exercise her right of reply but was thrown out of the *Evenimentul Muscelean*'s offices and threatened that the police would be called. There might be something to do with the police as well, who knows?"

10. In an article published on 13 November 2013 the applicant wrote about an exhibition organised by a local museum in honour of the person who had been manager of the A. factory from 1957 to 1982. The relevant excerpts read as follows:

"**[P.V.], one of those who contributed to the bankruptcy of [the A. factory], now laments for the factory**

...

The newspaper *Evenimentul Muscelean* was also among the organisers [of the exhibition]. Its owner, [P.V.], through his company [A.A.G.], made the Muscel factory

a victim of his racketeering, thus contributing to its bankruptcy. That newspaper has been publishing a series about the memories of veterans of [the A. factory] for a while now. However, according to the editor-in-chief, M.B., very few of those who were contacted for the series agreed to participate. This is proof that most Muscelians do not forget or forgive those who destroyed one of the most beautiful chapters of Romanian industry and, because of that, they do not fall into the hypocritical trap set by [P.V.], the person who, because of his modest status, used to be called 'the director in tennis shoes', and who now hypocritically pretends to lament the fate of the factory..."

11. On 6 March 2014 the applicant wrote an article describing a documentary which had been published a few days earlier and had been widely circulating on the Internet concerning alleged irregularities committed by the A. factory's management and employees which had contributed to its bankruptcy. He explained that that documentary contained:

"a list of some of the companies which had sucked money from [the A. factory] [*au căpuşat*], whose owners are walking around freely in Câmpulung posing as honourable businessmen, such as, for example, [P.V.], the owner of company A.A.G. and of the moralising newspaper *Evenimentul Muscelean*.

...

You can read that article on 4Tuning.ro."

12. In the article published on 2 July 2014 the applicant referred to an action in damages lodged against the newspaper *Evenimentul Muscelean*. In that context, he wrote as follows about P.V.:

"[P.V.], the Oltenian who 'spits' at Câmpulung!

[P.V.], a simple mechanical fitter at [the A. factory], started his career as a businessman with a small undertaking which acted as middleman for the sale of car parts produced by the former [A. factory]. Later, his relationship with [the A. factory] took on dubious proportions, including, for instance, the 'compensation' received for the advertisement placed in the newspaper *Evenimentul Muscelean* which he had founded during the time when [the A. factory] was being depleted through unprofitable business dealings which, incidentally, constituted the prologue to its resounding bankruptcy (see http://www.4tuning.ro). *Evenimentul Muscelean* claims to be a 'media school', but in practice, oftentimes, those being criticised are not contacted for their point of view, and the right of reply is only honoured at the whim of the editorial team and of the owner. The rubbish thus published, allegedly justified by the critical role of the editors, is accompanied by headlines which, perhaps, are on a par with the intellectual level of the owner, [P.V.], like 'Licking the baton in the police station'. Over the years, not only private individuals but also the local community as a whole have fallen victim to the slander and insults uttered by *Evenimentul Muscelean*. For instance, the editorial from edition number 1877/2014, written by the editor-in-chief, Ms M.B., said that Muscelians were 'cowards' and 'gossips [and] nosy snitches, completely lacking any sense of responsibility'. Of course, these categories do not include the owner, [P.V.], the one who 'spits' at the town where he made his fortune, although he is originally from T., Olt County."

III. PROCEEDINGS FOR DAMAGES

A. First set of proceedings

13. On 13 June 2014 P.V. lodged a civil action for damages against the applicant and the S.P. company (see paragraph 5 above). He accused the applicant of having tarnished his reputation through the above articles and of having affected his public image as a businessman, damaging the credibility of his company. He attached the articles to his application (save for the one quoted in paragraph 12 above). He referred in particular to the articles published on 20 September 2011, 2 February 2012 and 13 November 2013 (see paragraphs 7, 9 and 10 above). On 22 September 2014 P.V. extended his action to include the article published on 2 July 2014 (see paragraph 12 above).

14. The applicant defended himself, arguing that he had acted in good faith and explaining, for each article, where he had found the information and what had motivated him to write it. He gave online sources, such as the information published on the website of the public auction, and an article published on 28 February 2006 in the national newspaper *România Liberă* concerning the contribution of "shell companies" (*firme căpuşă*) to the bankruptcy of the A. factory and which had been referred to by many other national and local newspapers before his articles had been published.

15. He further argued that his articles concerned only P.V. in his capacity as a public figure and not his private life. He also explained his choice of words for each article and pointed out that he had not used any words that could be considered insulting or denigrating.

16. He also claimed that P.V.'s real motivation for lodging the action had been to intimidate him.

17. On 21 April 2015 the Argeş County Court dismissed the action. The relevant parts of its decision read as follows:

> "In the present case, the court finds that the terms and expressions used in the articles published by the defendants fall within the limits of permissible criticism, which are broader with regard to politicians, public officials, etc. referred to in that capacity than to an ordinary individual.
>
> It appears from the pleadings and documents in the file that the images and material published by the defendants concern the plaintiff in his capacity as a well-known public figure, (a politician, former director of [the A. factory], businessman and press owner), as has been established by judicial investigations and the national and local press.
>
> The plaintiff considers that, as a result of this material and these press articles, he has suffered damage to his right to dignity and to his image.
>
> The court finds that where there is a conflict between freedom of expression and the protection afforded by domestic law to the reputation of public figures, those individuals inevitably and knowingly lay themselves open to *strict scrutiny of their every word and deed by the public (journalists and the public at large), which is*

necessarily entitled to be informed on matters of public interest, and they must be tolerant of attacks or criticisms made against them.

...

It should be noted that in this case, [the applicant's] reaction, in his capacity as a journalist, was given in the context of certain demonstrations that took place in his field of activity at [the A. factory] against the plaintiff's management with a view to resolving the shortcomings in that area, an aspect that was widely publicised in the national and local press.

As a result, the actions found to have been carried out by the defendant cannot be considered unlawful, as the conditions for incurring civil liability in tort are not met."

18. P.V. appealed and in a final decision of 9 December 2015 the Piteşti Court of Appeal found that the lower court had failed to examine the whole factual context and to respond to all the allegations brought before it. It quashed the decision and sent the case back to the County Court.

B. Second set of proceedings

19. The Argeş County Court re-examined the case and, in a decision of 18 April 2016, found in favour of P.V. The court described the articles in question and reiterated the requirements for incurring civil liability under domestic law, making reference to Article 30 of the Constitution (freedom of speech), Articles 73 and 75 of the Civil Code (the right to a person's own image and the limits of its protection), and Article 10 of the Convention. The court's reasoning went as follows:

"The court considers that the ... articles mentioned above convey the idea that the plaintiff contributed to the bankruptcy of [the A. factory] through illegal activities, such as: 'he made the former [A.] factory a victim of his "racketeering", thus contributing to its bankruptcy'; '[P.V.] destroyed one of the most beautiful chapters of Romanian industry by making the former [A.] factory a victim of his "racketeering" and contributed to its bankruptcy, and hypocritically pretends to lament the fate of the factory'; 'a list of some of the companies which had sucked money from [factory A.] [*au căpuşat*], whose owners are walking free in Câmpulung posing as honourable businessmen such as, for example, [P.V.]', [and that these expressions] constitute unlawful actions.

The court also considers that the deprecating expressions used to depict the plaintiff, such as: 'spits at Câmpulung' and 'on a par with the intellectual level of the owner, [P.V.]', and 'Licking the baton in the police station', breach the plaintiff's right to dignity.

...

The court considers that the other expressions from the articles, mentioned in the complaints, do not constitute unlawful actions. ...

The court observes that the plaintiff is known in the town of Câmpulung; he is the manager of several local businesses and he is also active in the cultural and sporting life of the community.

> Consequently, the court considers that the actions which it has found to be unlawful caused harm to the plaintiff, bearing in mind the unfavourable comments published by the defendant about him."

20. For those reasons, the court ordered the applicant and the S.P. company to pay P.V. 5,000 Romanian lei (RON – about 1,100 euros (EUR) at that time) for the damage caused to his reputation and RON 2,000 for the costs and expenses incurred (about EUR 440). The applicant informed the Court that on 15 February 2017 the whole sum had been paid to P.V.; he had covered RON 3,500 of the sum himself (approximately EUR 770 at the time of the payment) and the company S.P. had covered the remaining amount.

21. The applicant appealed and in a final decision of 8 February 2017 the Piteşti Court of Appeal upheld the County Court's ruling. The Court of Appeal made reference, in general terms, to the Court's case-law in respect of Article 8 – notably the protection of reputation and the use of defamatory statements in press articles – and in respect of Article 10 – notably the obligation of journalists to report on matters of public interest, the difference between statements of fact and value judgments, the requirement of a factual basis and journalists' good faith. The court's reasoning went as follows:

> "The court also finds as a matter of fact that all the articles in question were aimed at offending [P.V.] and harming his reputation, honour and the right to his image, all on the pretext of pursuing the so-called public interest and reporting alleged general matters of concern to Romanian society.
>
> ...
>
> ... in the present case [the applicant] acted in bad faith when he published those articles.
>
> ...
>
> Firstly, in the present case, the court considers that [the applicant] cannot seek the protection of Article 10 of the Convention as a journalist, because he does not have that status: he is an economist and did not study journalism, whereas journalists have a special status which consists of rights and obligations that they have to comply with when they publish their articles.
>
> Specifically, in addition to what has been said above, [the applicant] should have studied [journalism], which would have developed his knowledge and the necessary skills, as well as cognitive abilities specific to the profession of journalist, and he should have adhered to the journalists' code of professional ethics or conduct.
>
> On the contrary, according to [the applicant], any person who posts an article and expresses his or her opinions should automatically acquire the status of a journalist, which is obviously absurd.
>
> Secondly, it has not been proved that at the time when the articles were published they replicated information from the national media or that they had a factual basis.
>
> The [applicant] should have said that he had taken the information from the national media when he published the articles, in accordance with his obligations; moreover, the factual basis must be real – and not imaginary – and actually proved by the individual who published the articles.

When reference is made to actual facts, if the statements are based on official reports, the press has an obligation to check the accuracy of the information using other sources as well.

..."

RELEVANT LEGAL FRAMEWORK

22. Article 1349 of the Romanian Civil Code provides that a person with discernment is liable for all damage caused by his or her actions or inactions and is required to make full reparation (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 70, 25 June 2019).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

23. The applicant complained that the court decisions ordering him to pay damages for the articles he had written about P.V. and the domestic courts' findings that he was not entitled to the protection afforded to journalists had infringed his right to freedom of expression. Although he relied on several Articles of the Convention (Articles 6, 8, 10 and 11), the Court, which is master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114, 124 and 126, 20 March 2018), will examine the complaint solely from the standpoint of Article 10 of the Convention (see, *mutatis mutandis*, *Staniszewski v. Poland*, no. 20422/15, § 35, 14 October 2021), which, in so far as relevant, reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority ...

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

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

B. Merits

1. The parties' submissions

(a) The applicant

25. The applicant reiterated that the articles in question had concerned matters of public interest and had referred exclusively to P.V.'s actions, attitudes and behaviour as a public figure. As for the factual basis of his statements, he pointed out that he had taken the information from the national press. Moreover, several criminal investigations had been started into the activity of the companies which had allegedly contributed to the bankruptcy of the A. factory, including a company belonging to P.V., but they had all become time-barred.

26. He contended that he had not breached the limit of acceptable criticism and that the expressions used had been meant to attract the readers' attention. In any event, P.V. should have been more tolerant of criticism, as he was a journalist himself.

27. He further argued that the sanction imposed on him had had a chilling effect and affected his reputation and dignity. Moreover, he submitted that the courts had failed to justify and explain how they had reached the amount he had been ordered to pay.

28. The applicant lastly pointed out that in its final decision of 8 February 2017 (see paragraph 21 above), the Court of Appeal had denied him protection for the sole reason that he was not a "professional journalist" although such a status was not required by domestic law.

(b) The Government

29. The Government admitted that the final decision of 8 February 2017 had constituted interference with the applicant's right to freedom of expression but argued that that interference had been prescribed by law, had pursued the legitimate aim of protecting the reputation of P.V., and had been justified for the purposes of Article 10 of the Convention.

30. They pointed out that the domestic courts had examined the articles written by the applicant and, after weighing all the interests involved, had found that the applicant's statement had lacked a factual basis and that he had breached the limits of acceptable criticism.

31. While admitting that the discussions pertained to a matter of public interest, they reiterated that freedom of expression was not unlimited and argued that the applicant should have been more rigorous in his journalistic research before publishing the offending information. His good faith had not been proved, as he had not verified the information allegedly taken from the national media.

32. Lastly, the Government asserted that the damages the applicant and the company S.P. had been ordered to pay had not been excessive and had

been the result of a careful examination of the whole factual context by the domestic courts.

2. The Court's assessment

33. The Court notes that the parties agreed that the measures imposed on the applicant following the final decision of 8 February 2017 of the Piteşti Court of Appeal (see paragraph 21 above) constituted interference with his right to freedom of expression as guaranteed by Article 10 § 1 of the Convention (see paragraphs 23 and 29 above). It has no reason to find otherwise.

34. It follows that the Court needs to examine whether the interference was justified in accordance with Article 10 § 2 of the Convention, that is, whether it was "prescribed by law", whether it pursued one or more of the legitimate aims set out in that paragraph and whether it was "necessary in a democratic society" in order to achieve those aims (see, amongst other authorities, *NIT S.R.L. v. the Republic of Moldova* [GC], no. 28470/12, § 151, 5 April 2022).

(a) Whether the interference was prescribed by law and pursued a legitimate aim

35. The Court observes that the interference was prescribed by the Civil Code (see paragraph 22 above). Furthermore, it can accept that the interference pursued the legitimate aim of protecting the reputation and rights of others, notably of P.V.

(b) Whether the interference was necessary in a democratic society

36. It remains to be determined whether the interference was "necessary in a democratic society".

(i) General principles

37. The Court refers to the general principles set out in its case-law for assessing the necessity of an interference with freedom of expression (see *Morice v. France* [GC], no. 29369/10, §§ 124-27, ECHR 2015; *Baka v. Hungary* [GC], no. 20261/12, §§ 158-61, 23 June 2016; and *Balaskas v. Greece*, no. 73087/17, §§ 37-39, 5 November 2020, with further references).

38. In addition, the Court reiterates that 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 and on an accurate factual basis and that they provide reliable and precise information in accordance with journalistic ethics (see *Fressoz and Roire v. France* [GC], no. 29183/95, § 54, ECHR 1999-I, and *Falter Zeitschriften GmbH v. Austria (no. 2)*, no. 3084/07, § 37,

18 September 2012). Although the press must not overstep certain bounds, in particular in respect of the reputation and rights of others, its duty is nevertheless to impart, in a manner consistent with its obligations and responsibilities, information and ideas on all matters of public interest (see, among other authorities, *Erla Hlynsdóttir v. Iceland (no. 3)*, no. 54145/10, § 62, 2 June 2015).

39. Whilst it is true that editorial discretion is not unbounded, journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see *Perna v. Italy* [GC], no. 48898/99, § 39 (a), ECHR 2003-V, and *Ahmet Hüsrev Altan v. Turkey*, no. 13252/17, § 214, 13 April 2021) and the methods of objective and balanced reporting may vary considerably; it is therefore not for this Court, or for the national courts, to substitute their own views for those of the press as to what reporting techniques should be adopted (see *Jersild v. Denmark*, 23 September 1994, § 31, Series A no. 298). Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog" (see Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, § 62, ECHR 1999-III, and *Falter Zeitschriften GmbH*, cited above, § 38).

40. The Court reiterates that it has already had occasion to lay down the relevant principles which must guide its assessment in cases where it needs to balance a person's right to "respect for his private life" against the public interest in protecting freedom of expression (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 95-99, ECHR 2012, and *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, §§ 90-93, ECHR 2015 (extracts)). It has held that in order for Article 8 to come into play, an attack on a person's reputation must attain a certain level of seriousness and in a manner causing prejudice to personal enjoyment of the right to respect for private life (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012, *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, § 76, 27 June 2017, *A. v. Norway*, no. 28070/06, § 64, 9 April 2009, *Kunitsyna v. Russia*, no. 9406/05, § 42, 13 December 2016, *Beizaras and Levickas v. Lithuania*, no. 41288/15, § 117, 14 January 2020, and *Balaskas*, cited above, §§ 37 and 40)**.** It has also identified a number of criteria in the context of balancing the competing rights (see *Von Hannover*, cited above, §§ 109-13, and *Axel Springer AG*, cited above, §§ 90-95). The relevant criteria thus defined – in so far as they are pertinent in the present case – include the contribution to a debate of public interest, the degree of notoriety of the person affected, the subject of the news report, the prior conduct of the person concerned, the content, form and consequences of the publication, the way in which the information was obtained and its veracity, and the severity of the sanction imposed on the journalists or publishers (see, *mutatis mutandis*, *Couderc and Hachette Filipacchi Associés*, cited above, § 93).

41. In exercising its supervisory function, the Court's task is not to take the place of the national courts, but rather to review, in the light of the case as a whole, whether the decisions they have taken pursuant to their power of appreciation are compatible with the provisions of the Convention relied on (see *Axel Springer AG*, cited above, § 86). Where the balancing exercise between the rights protected by Articles 8 and 10 of the Convention has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (ibid., §§ 87-88, with further references).

42. Lastly, the Court reiterates that a distinction needs to be made between statements of fact and value judgments. While the existence of facts can be demonstrated, the truth of value judgments is not susceptible of proof. The requirement to prove the truth of a value judgment is impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 (see *Mika v. Greece*, no. 10347/10, § 31, 19 December 2013). However, where a statement amounts to a value judgment, the proportionality of an interference may depend on whether there exists a sufficient "factual basis" for the impugned statement: if there is not, that value judgment may prove excessive. In order to distinguish between a factual allegation and a value judgment it is necessary to take account of the circumstances of the case and the general tone of the remarks, bearing in mind that assertions about matters of public interest may, on that basis, constitute value judgments rather than statements of fact (see *Morice*, cited above, § 126, with further references).

(ii) Application of those principles in the present case

43. The Court notes that, as the domestic courts also recognised (see paragraphs 17, 19 and 21 above), the present case concerns a conflict between competing rights – on the one hand, respect for the applicant's right to freedom of expression, and on the other, P.V.'s right to respect for his private life – requiring an assessment in conformity with the principles laid down in the Court's relevant case-law, quoted in paragraph 40 above.

44. The Court has examined the articles published by the applicant, and not only those specifically referred to by the Argeş County Court in its decision of 18 April 2016 finding the applicant liable for defamation (see paragraph 19 with reference to paragraphs 9-12 above). It finds that the allegations that P.V. had contributed to the bankruptcy of the local A. factory and that he despised the local community were capable of tarnishing his reputation and of causing him prejudice in both his professional and his social environment. The accusations therefore attained a level of seriousness which could cause prejudice to P.V.'s personal enjoyment of his rights under Article 8 of the Convention (see *Axel Springer AG*, cited above, § 83).

45. The Court reiterates that in cases concerning a conflict between the right to one's reputation and the right to freedom of expression, domestic courts hearing defamation claims are expected to perform a balancing exercise between those two rights, applying the criteria established in the Court's relevant case-law, summarised in paragraphs 40-42 above, and basing their decisions on relevant and sufficient reasons. The Court will therefore examine the domestic proceedings from this perspective.

(α) Contribution to a debate of public interest

46. The Court has already held that the public interest relates to matters which affect the public to such an extent that it may legitimately take an interest in them, which attract public attention, or which concern the public to a significant degree, especially in that they affected the well-being of citizens or the life of the community. This is also the case regarding matters which can give rise to considerable controversy, which concern an important social issue, or which involve a problem that the public would have an interest in being informed about (see *Couderc and Hachette Filipacchi Associés*, cited above, § 103, with further references).

47. In its final decision of 8 February 2017, the Court of Appeal did not deny that the applicant had written on a subject of general interest, but questioned his real motives for doing so (see paragraph 21 above).

48. The Court cannot but observe that the applicant's articles concerned a matter of public interest, notably the downfall of the most important local industry and the role allegedly played in that respect by corruption and bad management.

(β) Degree of notoriety of the person affected and his prior conduct

49. The Court observes that P.V. was a local businessman and media owner who was active in the social and cultural life of the community (see paragraphs 5 and 19 above). It can thus be inferred that P.V. was, on account of his position, a public figure in the local community where the articles in question were available (see, *mutatis mutandis*, *Verlagsgruppe News GmbH v. Austria (no. 2)*, no. 10520/02, § 36, 14 December 2006), a fact on which he himself relied in his application to the domestic court (see paragraph 13 above). He was therefore subject to wider limits of acceptable criticism than ordinary individuals. No other uncontested information is available in the file concerning P.V.'s prior conduct.

(γ) The content, form and consequences of the publication, the way in which the information was obtained and its veracity

50. The Court notes that the articles in question did not concern aspects of P.V.'s private life. They referred to his professional activity and his alleged contribution to the bankruptcy of the A. factory.

51. In its decision of 18 April 2016, the County Court found that certain statements made by the applicant had been offensive to P.V. (see paragraph 19 above). However, when making its assessment, the County Court did not rely on the criteria laid down in the Court's case-law, quoted in paragraphs 40 and 42 above. For instance, it did not establish whether the remarks in question were statements of fact or value judgments and did not establish whether the applicant should have proved the veracity of, or the existence of a factual basis for, any of those statements. Such an approach is incompatible in itself with the principles emerging from Article 10 (see, *mutatis mutandis*, *Gheorghe-Florin Popescu v. Romania*, no. 79671/13, § 32, 12 January 2021).

52. In its final decision of 8 February 2017, the Court of Appeal corrected some of those shortcomings, finding that that the applicant had acted in bad faith and that he had failed to demonstrate the existence of a factual basis for his assertions (see paragraph 21 above).

53. However, the Court is unable to assess how the Court of Appeal reached that conclusion. In this connection, it must be noted that the applicant made reference to some of his sources in the articles themselves (see paragraphs 11 and 12 above). He also indicated his sources in his defence plea and further explained his motivation for writing the articles and his choice of terms (see paragraphs 14 and 15 above). There is no reference to those explanations in the domestic courts' decisions, nor is there any indication that the courts engaged with them.

54. Furthermore, the domestic decisions are rather vague concerning the content of the applicant's obligation to prove the veracity of his statements and also concerning what else he was expected to bring as evidence (see paragraph 21 above and, *mutatis mutandis*, *Kurski v. Poland*, no. 26115/10, § 56, 5 July 2016). Furthermore, the Court finds no valid reasoning in the Court of Appeal's decision justifying denying the applicant the protection of Article 10 and holding him to different standards from those applied to any other journalists, in particular given that he reported on matters of public interest (see paragraph 48 above and, *mutatis mutandis*, *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 166, 8 November 2016, *Falzon v. Malta*, no. 45791/13, §§ 6 and 57 *in fine*, 20 March 2018, and *Gelevski v. North Macedonia*, no. 28032/12, §§ 6 and 22, 8 October 2020).

55. Moreover, bearing in mind the content of the articles in question and the submissions made by the applicant in the domestic proceedings, the Court cannot find any convincing reasoning in the domestic decisions justifying the conclusion that the applicant had acted in bad faith.

56. In the absence of a domestic assessment (see the case-law cited in paragraph 41 above), the Court observes that at least some of the expressions discussed by the County Court in its decision of 18 April 2016 may be described as value judgments: "[P.V.] spits at Câmpulung", "on a par with the intellectual level of the owner, [P.V.]", and "Licking the baton in the

police station". The Court must also reiterate that in appropriate circumstances assertions about matters of public interest may constitute value judgments rather than statements of fact (see *Morice*, cited above, § 126) and that, in any event, journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 71, ECHR 2004-XI, and the case-law cited in paragraph 39 above).

57. In the light of the nature and content of the impugned expressions, as well as the fact that they had been used in an ongoing debate of public interest concerning P.V.'s alleged role in the downfall of the local industry and his apparent impunity, the Court considers that they are not of such a nature as to overstep the limits of what is considered to be acceptable criticism.

58. As to the consequences of the articles in question, the Court notes that none of the domestic courts pointed to any specific negative impact or effects the articles might have had for P.V.'s professional reputation or life. Even assuming that his reputation did suffer because of those articles, the Court doubts that the consequences suffered by him were sufficiently serious to override the public's interest in receiving the information contained in them (see, *mutatis mutandis*, *Ţiriac v. Romania*, no. 51107/16, § 98, 30 November 2021, *Stancu and Others v. Romania*, no. 22953/16, § 147, 18 October 2022, *Matalas v. Greece*, no. 1864/18, § 58, 25 March 2021, and *Balaskas*, cited above, § 60).

(δ) Severity of the sanction imposed on the applicant

59. The Court observes that the applicant was ordered to pay P.V. about EUR 1,100 in damages (see paragraph 20 above). Reiterating its view on the chilling effect that the fear of sanctions may have on the exercise of freedom of expression (see, for instance, *Wille v. Liechtenstein* [GC], no. 28396/95, § 50, ECHR 1999-VII), and even though part of the sum was paid by the S.P. company and the applicant has not shown whether or not he struggled to pay the remaining amount (see paragraphs 20 and 27 above), the Court is nevertheless of the view that, under the circumstances, the sanction imposed was capable of having a chilling effect on the exercise of the applicant's right to freedom of expression (see, for instance and *mutatis mutandis*, *Lombardo and Others v. Malta*, no. 7333/06, no. 7333/06, § 61, 24 April 2007).

(ε) Conclusion

60. In the light of the above, the Court considers that the national courts' decision to restrict the applicant's freedom of expression was not supported by relevant and sufficient reasons for the purposes of the test of "necessity" under Article 10 § 2 of the Convention. The interference was therefore not necessary in a democratic society within the meaning of Article 10 of the Convention (see, *mutatis mutandis*, *Paraskevopoulos v. Greece*,

no. 64184/11, § 43, 28 June 2018, *Stancu and Others*, cited above, § 149, *Matalas*, cited above, § 61, and *Balaskas*, cited above, §§ 62-64).

There has accordingly been a violation of that Article.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicant claimed 3,500 Romanian lei (RON) – which he estimated to be equivalent to 734 euros (EUR) – in respect of pecuniary damage, representing the amount he had paid to P.V. in damages (see paragraph 20 above), and EUR 20,000 for non-pecuniary damage caused by the breach of his Article 10 rights.

63. The Government accepted that the applicant could be reimbursed for the amount paid to P.V. Additionally, they submitted that the finding of a violation could constitute sufficient just satisfaction for the non-pecuniary damage incurred by the applicant and that, in any event, the amount he sought in this respect was excessive and unjustified.

64. The Court notes that the applicant paid P.V. RON 3,500 (see paragraph 20 above). Having regard to the violation found (see paragraph 60 above), it considers that that amount should be reimbursed by the respondent State. It therefore awards the applicant EUR 734 in respect of pecuniary damage (see, *mutatis mutandis*, *Becker v. Norway*, no. 21272/12, § 88, 5 October 2017).

65. Furthermore, the Court considers that the applicant must have sustained non-pecuniary damage which cannot be compensated for solely by the finding of a violation. Having regard to the nature of the violation found and making its assessment on an equitable basis, as is required by Article 41 of the Convention, the Court awards him EUR 7,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

66. The applicant also claimed RON 10,266 – which he estimated to be equivalent to EUR 2,125 – for the costs and expenses incurred before the domestic courts and for those incurred before the Court. He sent invoices justifying those expenses.

67. The Government contested the genuineness and necessity of some of the expenses claimed by the applicant.

68. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,125 covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. Declares the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 734 (seven hundred and thirty-four euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 2,125 (two thousand one hundred and twenty-five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 30 May 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti Registrar	Gabriele Kucsko-Stadlmayer President