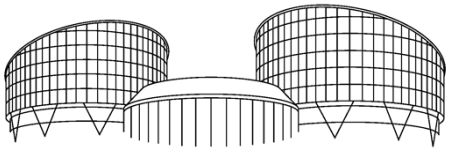

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF IORDAN v. THE REPUBLIC OF MOLDOVA

(Application no. 10870/15)

JUDGMENT

Art 8 • Positive obligations • Private life • Domestic courts' refusal to punish, in administrative offence proceedings, a journalist for disseminating in good faith allegedly untrue statements suggesting acts of corruption by the applicant, a judge • Limited extent of balancing exercise by the domestic courts between competing Art 8 and 10 rights largely due to applicant's choice of a criminal law remedy rather than the civil defamation one • Application by the domestic courts of a number of the Court's case-law criteria • Not shown by applicant that the respondent State failed to discharge its positive obligation to secure effective means of protection of his reputation

Prepared by the Registry. Does not bind the Court.

STRASBOURG

22 May 2025

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 Iordan v. the Republic of Moldova,

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

Mattias Guyomar*, President*,
Stéphanie Mourou-Vikström,
Andreas Zünd,
Diana Sârcu,
Kateřina Šimáčková,
Mykola Gnatovskyy,
Vahe Grigoryan*, judges*,
and Martina Keller, *Deputy Section Registrar,*

Having regard to:

the application (no. 10870/15) against the Republic of Moldova lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Moldovan national, Mr Iurie Iordan ("the applicant"), on 23 February 2015;

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

the parties' observations;

Having deliberated in private on 29 April 2025,

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

INTRODUCTION

1. The case concerns a complaint under Article 8 of the Convention about the refusal of the domestic courts to punish, in administrative offence proceedings, a journalist for disseminating allegedly untrue statements about the applicant.

THE FACTS

2. The applicant was born in and lives in Chișinău. He was represented by Mr V. Oltu, a lawyer practising in Chișinău.

3. The Government were represented by their Agent, Mr D. Obadă.

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

5. At the time of the events the applicant was a judge at the Chișinău Court of Appeal. On 27 March 2013 at around 12.40 p.m., during a lunch break, a self-employed journalist (B.), was at the Chișinău Court of Appeal to follow the developments of a case. He saw the applicant and "wanted to see which car he would leave in". B. started filming the applicant from a window of the court as the applicant left the building; he then witnessed a meeting between the applicant and two individuals near the premises of the Court of Appeal. The short video sequence that B. filmed and commented while filming shows the applicant talking to the two individuals near their car. The woman then

handed the applicant an envelope, from which he removed the contents, put them in his pocket and handed her what appeared to be a banknote.

6. The journalist commented on the events as they unfolded in the following manner:

> "Let's see which car the judge will leave in.
>
> Interesting, what is [she] handing over? A bribe?
>
> These people are litigants from Căușeni.
>
> The judge is counting ... he has taken the money out of the envelope ... [and] put it into his pocket. Was he giving the woman change?
>
> *Horrible! In plain sight, near the doors of the Chișinău Court of Appeal, litigants talking to a judge. I think that they have seen that they are being filmed. [That's why] they are looking so serious.*
>
> *This is revolting [and requires the attention of] the [anti-corruption centre] and the Prosecutor General's Office. Because appealing to the [High Council of the Judiciary] would be useless, they don't see or hear anything, they are accomplices.*
>
> *I was hoping to see which car the judge would leave in, but instead I saw how he is [earning] the money for his car, villa and probably other expensive things which he could not afford with his salary.*
>
> Instead of going to lunch after half a day of hard work, the judge is talking to litigants. And receiving envelopes from them. And now he does not know what to do and how to turn this around [since] he has been filmed. *Suddenly he is feeling ashamed.*
>
> *And all of this can be seen and filmed from the windows of the Chișinău Court of Appeal.*
>
> *He will say that these individuals owed him money and that they are his relatives. Who knows what he will invent when he is asked to give an explanation? Relatives from Căușeni?*"

The video ended with the applicant re-entering the Court of Appeal building and B. asking him:

> "Who were you talking to, Judge [Iordan]? Were they litigants? Parties to [one of] your cases? Do you know them or have you just met them? What did you discuss with the litigants? Were you planning something? Don't you want to talk to me?"

The applicant proceeded to his office without replying.

7. Some three hours after that incident, B. published the video on his YouTube channel, accompanied by the following text:

> "A judge caught (*surprins*) while receiving an envelope.
>
> It happened on 27 March 2013, in the back yard of the Chișinău Court of Appeal. The judge went out in civilian clothes, met with a couple whose car was registered in Căușeni, received an envelope from the woman, took out its contents and put them in his pocket. Then he gave the envelope back to the woman together with a piece of paper, which looked like a red banknote.
>
> When they saw that they were being filmed, they turned their backs and remained standing there, unsure of what to do, for several minutes. When he returned to the court

> building, the judge did not want to say anything about what had been observed and filmed."

The video provoked dozens of comments, many of which treated the applicant's bribe-taking as an established fact, demanded his resignation and a prison sentence, and made general comments about the corrupt Moldovan justice system.

8. Approximately three hours after the video was published, B. received a phone call. The woman on the phone told him that she was the person in the video; that she was the wife of the applicant's brother, who was also present during the meeting; that she had handed the applicant a receipt for paying a land tax bill in his stead; and that the applicant had returned to her the sum paid for the tax.

9. Later that day, the Chișinău Court of Appeal issued a press release giving essentially the same explanation for the event filmed. The text added that the applicant had not replied to B.'s questions because B. had been an injured party in a previous case in which the applicant had been the rapporteur and the accused had been acquitted. The press release noted, without referring to any legal text, that a judge was not allowed to talk to parties outside of court sessions, even when the proceedings had already ended.

10. At an unknown time later that day B. updated his initial post by adding, at the beginning of the accompanying text, the word "Update:" and a summary of his telephone conversation with the applicant's sister-in-law. The title of the news item was also changed and read as follows: "A judge caught while receiving an envelope (they say that there was a receipt inside)".

11. At 11 p.m. on the same date B., acting as the host of a live programme on a private television channel, talked about the events. He first reported his telephone conversation earlier that day with "a woman who told [him] that she was [the applicant's] sister-in-law and that [he] had misunderstood what had happened", recounting her explanation of the events. He added that the comments that could be heard in the video were those that he had made at the time of filming and went on to say:

> "Since we still do not have a verdict, or any certainty in this case, I thought I would start today's programme by showing you the [video] once more, especially for those who have not seen it yet, or not seen it in full, and invite you to comment on what can be seen in it, what you think is going on or what you know is going on, because maybe you know this judge ... or these two [individuals]..."

The video clip was accompanied by a caption saying: "They brought him a receipt in an envelope". It was not broadcast in full – the parts quoted in italics in paragraph 6 above were not shown. B. also referred during the programme to the above-mentioned press release issued by the Chișinău Court of Appeal. Following B.'s invitation to call or text the phone numbers indicated, a number of people called and sent SMS messages, generally expressing their revulsion towards the justice system in the Republic of

Moldova, or joking that bribes were already being given not with money, but with receipts.

12. On 4 April 2013 the applicant filed a complaint with the Prosecutor General's Office and the Botanica police inspectorate, stating the above-mentioned facts and asking for B. to be held responsible for breaching Article 70 of the Code of Administrative Offences (see paragraph 17 below). He referred to the initial publication of the video as well as to its reproduction in the late-night television show.

13. On 1 May 2013 an officer drew up an administrative-offence report, finding B. guilty of breaching Article 70 of the Code of Administrative Offences by disseminating via social media false information defaming the applicant, namely that he had taken a bribe from litigants. He was fined 1,600 Moldovan lei (equivalent to approximately 85 euros at the time). B. appealed in court, arguing that he had not knowingly made untruthful statements. He had only made assumptions based on what he had witnessed, questioning whether there had been an act of corruption or whether the individuals might have been the judge's relatives. In none of his comments had he firmly stated that he had known that it had been an act of corruption.

14. After an initial court decision in favour of B. and the higher court's remittal of the case for a retrial, on 22 May 2014 the Botanica District Court set aside the decision fining B. for the administrative offence. The court noted, in particular, that in order to find a breach of Article 70 of the Code of Administrative Offences, it had to be proved that false information about the victim had been deliberately disseminated. It had not been proved that, at the time of posting the video, B. had known the facts as subsequently presented by the applicant. B. had had no way of knowing such details, since the applicant had refused to answer his questions, thus preventing the journalist from exercising his right to obtain information. Moreover, he had been asking himself questions, not making firm statements. Lastly, the court noted that the applicant had been filmed in a public place; his refusal to answer the journalist's questions had led to suspicions concerning the event captured on video.

15. The applicant appealed against the decision and repeated his earlier arguments, including the ones concerning the late-night television show.

16. In a final decision of 17 September 2014 the Bălți Court of Appeal upheld the lower court's decision. It found that the first-instance court had correctly set aside B.'s administrative-offence report because no offence had been committed. It had not been established in court that B. had known the real facts of the case at the time of publishing the relevant video; this excluded the possibility that he had deliberately disseminated false information. Referring *inter alia* to Article 10 of the Convention, the court noted that B. had not firmly stated that he had witnessed an act of corruption, but rather had asked questions about what he had witnessed and made assumptions. Moreover, the applicant had refused to answer the journalist's questions,

which therefore had not dispelled his suspicions about what had happened. He had been filmed in a public space and thus B. had had the right to film the events. B.'s actions had also lacked the intentional element, that of willingly disseminating information known to be false.

RELEVANT LEGAL FRAMEWORK

17. Article 70 of the Code of Administrative Offences reads as follows:

Article 70. Slander

"Slander, or deliberately disseminating false information which defames another person, when coupled with ... serious consequences, shall be punished by [a fine or unpaid community work]."

18. Under Article 16 of the Civil Code, as it read at the relevant time, as well as under section 7 of Law no. 64 on freedom of expression (in force since 9 October 2010), everyone had the right to the protection of his or her honour, dignity and professional reputation and was able to request the rectification or denial of untrue statements about himself or herself, the publication of a reply, and compensation for the pecuniary and non-pecuniary damage suffered.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

19. The applicant complained that there had been a breach of Article 8 of the Convention as a result of the domestic courts' refusal to punish B. Article 8 reads as follows:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

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

A. Admissibility

20. The Government argued that the applicant had not exhausted available domestic remedies. He had asked for B. to be convicted of an administrative offence, which required proof of deliberately disseminating false information about the victim. B. had neither known for certain that his assumptions had been wrong nor deliberately disseminated them while knowing that they had not been true. Accordingly, in the absence of the mandatory intentional

element, the criminal complaint had clearly been inappropriate in the present case. Another, more effective remedy had been available to the applicant in that situation, namely bringing a civil court action for defamation, which he had not used (see paragraph 18 above). Civil courts were "the most competent to strike a fair balance between the competing interests involved in this case, and not administrative litigation courts". The Government submitted examples of civil courts striking such a fair balance in previous cases and referred to the Court's decision in *Yakub Saygılı v. Turkey* ((dec.), no. 42914/16, 11 July 2017).

21. The applicant argued that he had used one of the available domestic remedies and had not been under an obligation to use another one. He added that while both remedies offered the possibility of obtaining compensation from B., the administrative remedy was more effective, as it could result in the person having to pay a fine or do unpaid community work, "as a measure of coercion and a means of correction and rehabilitation applied in the name of the law".

22. The Court considers that the arguments brought up by the Government in support of their preliminary objection concern above all the scope of the respondent State's positive obligations under Article 8 of the Convention and, if such obligations were at issue in the present case, the question whether they were discharged through the provision of a choice of possible remedies available to the applicant (see *Cakmak v Turkey* (dec), no. 45016/18, §§ 52 and 53, 7 September 2021). However, those are issues to be examined on the merits of the case.

23. Regarding the issue of exhaustion of domestic remedies, the Court reiterates that, in the event of there being a number of domestic remedies which an individual can pursue, that person is entitled to choose, for the purpose of fulfilling the requirement of exhaustion of domestic remedies, a remedy which addresses his or her essential grievance (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 177, 25 June 2019).

24. The Court notes that, unlike in *Yakub Saygılı* (cited above), there was no established practice of the domestic courts in the Republic of Moldova at the relevant time treating complaints based on Article 70 of the Code of Administrative Offences as ineffective. It is true that complaints under that provision involved a higher burden of proof than in the case of civil proceedings, requiring evidence of the intention to disseminate information which the person knew to be false. However, it is for the courts to establish in each case, on the specific facts, whether such a high standard has been met, and the applicant had the right to submit relevant evidence and arguments capable of persuading the courts. In this connection, the Court observes, for instance, that late at night on 27 March 2013, B. posted a part of the relevant video again, repeating in a more cautious manner the implied accusation of corruption, while being aware of the explanations given by the applicant's sister-in-law and in a press release issued by the Chișinău Court of Appeal

(see paragraph 11 above). Accordingly, having used one available domestic remedy (Article 70 of the Code), the applicant did not have to also institute separate civil proceedings to protect his rights.

25. The Court further 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

26. The applicant complained that by refusing to punish B. for the false statements about the applicant, the domestic courts had failed to observe his right to the protection of his honour and reputation. He was not a politician, but a judge, which imposed additional obligations on those wishing to criticise him, in order to protect public confidence in the judiciary. B. had continued with his defamatory statements even after becoming aware of the facts as explained by the applicant's sister-in-law. As a result of the posted video, the applicant had had to explain himself to the Judicial Inspectorate and to his colleagues at the Court of Appeal.

27. The Government acknowledged that the present case engaged the State's positive obligations under Article 8 of the Convention. They argued that the domestic courts had struck a fair balance between the two competing rights: the journalist's freedom of expression and the protection of the applicant's honour. B.'s video and comments had referred to a matter of high public interest, which was whether a judge had taken a bribe. They had been published by a journalist and thus attracted a high level of protection in accordance with the Court's case-law. Moreover, news was a perishable commodity and to delay posting the video might have deprived it of all value and interest. As a civil servant, the applicant had to submit to an increased level of criticism, especially as the judiciary was subjected to intense scrutiny by the public in respect of the manner of carrying out its duties. Furthermore, B. had added the explanations given by the applicant's sister-in-law, thus allowing the public to form an informed opinion about the event. As established by the domestic courts, B. had never firmly stated that this had been an act of corruption, but had only asked himself questions and answered them, while making assumptions as to what he had been witnessing. The applicant had refused to reply to the journalist's questions immediately after the meeting with the two individuals outside. The Government noted that B., a journalist and civic activist, was "well known for resorting to exaggeration and even provocation when addressing public officials". This implied that the applicant should have "shown due diligence and reacted in a proper manner in order to dispel any bribe-related suspicions" the journalist might have had. In that situation, the domestic courts had rightly concluded that his refusal to reply had prevented the journalist from exercising his role of receiving

information and that freedom of expression prevailed over the applicant's right to protect his professional reputation. Moreover, it was only natural that the event in question had been discussed again on a television programme hosted by B. later that evening, given its high public interest. B.'s bad faith or intention to deliberately disseminate false information about the applicant had not been proved in the courts. Lastly, the applicant had not suffered any serious damage to his reputation, having been cleared by the Judicial Inspectorate and subsequently promoted.

2. The Court's assessment

28. The Court observes that in cases such as the present one, what is in issue is not an act by the State but the alleged inadequacy of the protection afforded by the domestic courts to the applicant's private life. It reiterates that the positive obligation inherent in Article 8 of the Convention may oblige the State to adopt measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. The applicable principles are, nonetheless, similar and regard must be had to the fair balance that has to be struck between the relevant competing interests (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 98-99, 7 February 2012, with further references).

29. The Court has previously identified a number of criteria to be employed when balancing the two competing rights under Articles 8 and 10 of the Convention, which include the following: the subject of the publication and its contribution to a debate of public interest; how well known the person concerned is; the prior conduct of the person concerned; the content, form and consequences of the publication; and, where appropriate, the manner in which the relevant information was obtained (see *Couderc and Hachette Filipacchi Associés*, no. 40454/07, § 93, ECHR 2015). It will apply these criteria in the present case in so far as they are relevant.

30. In particular, the Court reiterates that distorting the truth, in bad faith, can sometimes overstep the boundaries of acceptable criticism: a correct statement can be qualified by additional remarks, by value judgments, by suppositions or even insinuations, which are liable to create a false image in the public mind. Thus, the task of imparting information necessarily includes duties and responsibilities, as well as limits which the press must impose on itself spontaneously. That is especially so where a media report attributes very serious actions to named persons, as such "allegations" comprise the risk of exposing the latter to public contempt (see *Mesić v. Croatia (no. 2)*, no. 45066/17, § 67, 30 May 2023).

31. In the present case, it was undisputed between the parties, and the Court agrees, that B.'s video could potentially affect adversely the applicant's reputation and that, therefore, the complaints engaged the State's positive obligation under Article 8 of the Convention to protect it. The Court will

therefore focus on whether the authorities complied with their positive obligations.

32. Both during the domestic proceedings and before the Court the applicant complained about the video and comments made by B. on social media, as well as the further dissemination of that content during a late-night television programme which he hosted. The Court will examine whether the respondent State discharged its positive obligations in respect of both publications, notably by looking into how the domestic courts balanced the two competing rights in the light of the criteria mentioned in paragraph 29 above and having regard to the Government's position that the availability of civil defamation proceedings, not tried by the applicant, secured the requisite protection.

33. The Court notes that on the day of the events, B. witnessed and filmed an encounter between a judge and two individuals. Since one of the individuals could be seen handing the judge an envelope and the judge returning a banknote to that person, the journalist suspected that the meeting involved an act of corruption. The judge, approached by the journalist, had refused to answer any questions about that meeting, although no specific rule apparently prevented him from replying (see paragraphs 9 and 16 above). Therefore, the journalist had remained in doubt and published the video on social media. The applicant's complaint is not about the publication of the video itself, but rather about the comments made therein, which in his view clearly suggested that he had taken a bribe.

34. The Court observes that the domestic courts applied a number of the criteria mentioned in paragraph 29 above, such as the fact that the publication concerned a matter of high public interest (potential corruption on the part of a judge and thus public confidence in the functioning of the judiciary); the special protection that must be afforded to journalists when they report on such matters of public interest; and the actions of both the journalist (who mostly commented and made assumptions based on what he had witnessed) and the applicant (who, while not obliged to reply to the journalist's questions, accepted the risk of far-reaching assumptions if he remained silent, given the circumstances).

35. It is true that, apart from dealing with the question whether the journalist had deliberately made an untrue statement, the courts did not analyse additional relevant elements, such as what steps the journalist had taken both to attempt to verify his assumptions, aside from asking questions to the judge, and, when he found out about the alternative version of the facts, to report it to his audience (see *Oleg Balan v. the Republic of Moldova*, no. 25259/20, § 43, 14 May 2024).

36. At the same time, the Court must note that this somewhat limited extent of the balancing exercise between the two competing rights was largely due to the applicant's choice of remedy. Unlike in civil defamation cases, Article 70 of the Code of Administrative Offences required that in order for

a person to be found in breach of that provision, sufficient evidence had to be found that that person had known that the statement was untrue and had deliberately made it anyway. Much of the domestic courts' analysis rightly focused on these elements, since they were decisive in the proceedings chosen by the applicant.

37. The Court notes that the standard of proof for finding someone in breach of Article 70 of the Code of Administrative Offences, a provision of penal law nature, appears to have been quite high. Imposing a high burden of proof for the application of punishments of penal nature is both compatible with the Convention requirements and consistent with the trend towards decriminalisation in the sphere of defamation law, as promoted by the Parliamentary Assembly of the Council of Europe (see Resolution 1577 (2007), "Towards decriminalisation of defamation"; see also *Yakub Saygılı*, cited above, § 41).

38. In the circumstances of the case, the Court does not see any reason to question the domestic courts' finding that the high standard of proof required to find someone in breach of Article 70 CAO had not been attained. In the absence of arbitrariness or a manifestly deficient approach, it is not for the Court to replace the domestic courts in examining the evidence before them. It is true that the domestic courts did not specifically deal with the fact that, a few hours before the second publication, B. had found out about an alternative explanation for the events he had filmed. However, having examined the entirety of the facts, the Court considers that there is nothing in the file to undermine the overall assessment made by the domestic courts. In particular, B. in good faith took a number of steps aimed at fully informing the public of all the facts available, notably by inserting the relevant caption, mentioning both the phone call and the statement by the Court of Appeal and explaining that the situation was still unclear (see paragraph 11 above).

39. At the same time, the applicant himself submitted that he had chosen to seek B.'s punishment under a legal provision which was essentially of criminal nature "... as a measure of coercion and a means of correction and rehabilitation applied in the name of the law" (see paragraph 21 above). However, Article 8 of the Convention cannot be seen as imposing on States the positive obligation to provide for criminal law remedies for every type of encroachment on reputation.

40. The applicant has not claimed that the possibility to bring a civil defamation action under Article 16 of the Civil Code (see paragraph 18 above) was for some reason inaccessible or ineffective or would otherwise fail to secure the protection of his reputation. In particular, he has not disputed that in defamation proceedings the courts would need to examine the question of the journalist's good faith (both in respect of the initial publication, prior to his receiving information about an alternative explanation of the facts, and in respect of the television broadcast, when the video and the journalist's comments were adapted to reflect that explanation) and assess the balance to

be found between the latter's freedom of expression and the applicant's right to protection of his reputation.

41. In these circumstances, the applicant has not shown that the respondent State has failed to discharge its positive obligation under Article 8 of the Convention to secure effective means of protection of the applicant's reputation. There has accordingly been no violation of that provision.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 22 May 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Martina Keller Deputy Registrar	Mattias Guyomar President