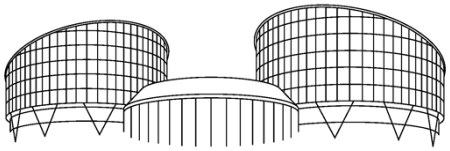

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF ȚIRIAC v. ROMANIA

(Application no. 51107/16)

JUDGMENT

Art 8 • Private life • Dismissal of general tort law claim brought by well-known public figure in respect of allegedly defamatory press article on business practices affecting the public tax collection system • Fair balance struck by domestic courts between competing interests at stake, with due regard to Court's case-law

STRASBOURG

30 November 2021

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 Țiriac v. Romania,

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

Yonko Grozev, *President,*
Tim Eicke,
Faris Vehabović,
Iulia Antoanella Motoc,
Armen Harutyunyan,
Pere Pastor Vilanova,
Jolien Schukking, *judges,*
and Andrea Tamietti, *Section Registrar,*

Having regard to:

the application (no. 51107/16) 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 Ioan Țiriac ("the applicant"), on 24 August 2016;

the decision to give notice to the Romanian Government ("the Government") of the complaint concerning an alleged breach of the applicant's right to honour and reputation, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 9 November 2021,

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

INTRODUCTION

1. The applicant complained about a breach of his right to honour and reputation, alleging that the domestic courts had failed to protect his rights following an allegedly defamatory press article. He relied on Article 8 of the Convention.

THE FACTS

2. The applicant was born in 1939 and lives in Monte Carlo. He was represented by Mr N. Mîndrilă, a lawyer practising in Bucharest.

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

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant is a well known former professional tennis player, former president of the Romanian Olympic Committee, current president of the Romanian Tennis Federation, prominent national and international businessman, and is estimated to be one of the richest persons in Romania.

I. THE PRESS ARTICLE

6. On 14 July 2010 a journalist, S.M., published an article about several prominent national businessmen, including the applicant, in the national newspaper *Financiarul* under the headline "Fifteen multimillionaires and their debts of a quarter of a billion lei to the State – The recipe for business success is guaranteed when the businesses are funded by public funds or taxes are not paid". Citing information published by *Forbes* magazine on the net worth of the richest millionaires in the country and information recorded by the Ministry of Finance about their debts, the article presented a table listing the net worth of the top fifteen millionaires in Romania alongside a table listing the debts they owed to the State budget. According to these tables only two other people had net worth and debts higher than the applicant's.

7. Alongside photographs of other persons mentioned in the article, it also contained two of the applicant. The first was accompanied by the following text in bold type: "Ioan Țiriac – Debts owing to the [State] budget: 5,907,675 – shareholder of the financial banking group U.Ț."

8. The second photograph was accompanied by a table of three companies and the amounts they owed to the State budget, the headline "The millionaire Ioan Țiriac [and his] partnerships with media [companies] that have [left] holes in the State [budget]", and the following text:

> "Considered until recently the richest Romanian, Ioan Țiriac has been overtaken by D.P. and I.N., but maintains his position at the top of the millionaires' [list] and at the top of the debtors' [list] owing to the debts accumulated by the companies in which he was or still is a direct shareholder. The 900 million euros (EUR) fortune is not sufficient to cover the holes [left] in the State [budget] by his partnership with the mentor of the P. trust, A.S., in the company M.E.C.B. S.R.L. which owes 5,586,833 lei to the State budget. Another debt of the companies in which Ioan Țiriac is involved is of only 312,637 lei through company U.C.S.R. S.A. The millionaire has [additional] debts also through the company P.A.M. S.A."

9. The article also stated, among other things:

> "The successful millionaires [included] in the rankings of the main magazines [may be] 'filthy rich', but their businesses are on shaky ground. The debts of the companies in which they are shareholders in their own names are more than a quarter of a billion lei and the number of companies in the portfolio goes down every day. Meanwhile [the National Agency for Fiscal Administration (*Agenţia Naţională de Administrare Fiscală* – ANAF)] is counting the debts of the closed companies and the millionaires are counting the money in their personal offshore accounts.
>
> The success stories of millionaires also have another side not seen in the 'cover story' type of materials where they display their financial strength. Romania's millionaires find themselves in a new position where the companies in which they were or are shareholders are in debt. The ANAF's inability to pursue and foreclose on the companies before they are left without assets is already proven. And the country's 'rich' take full advantage of the shortcomings of the system for collecting [taxes]. This is why the Ministry of Finance [is starting] to take measures aimed at covering

> the budget deficit [with the help of] private persons by [imposing] higher taxes on incomes and properties or by cutting wages, in the case of public servants. The winding road of the debt foreclosure process stops with the forced disposal of the assets (usually the measure does not cover the hole created in the State budget) without the personal liability of the shareholders being engaged. With the money earned through these companies, the millionaires set up new companies and start the race against the ANAF inspectors, who are trailing them by several steps every time, all over again. Among the millionaires from whom the State has slim chances of seeing [back] any money we mention here ... Ioan Țiriac with [a debt over] 5.9 million lei to a net worth of EUR 900 million.
>
> The famous character linked to the financial massacres from BID and FNI, S.O.V., is teaching the millionaires how to transfer their businesses offshore in order to patent the deals with public funds without debts to the State.
>
> The current government's inability to collect companies' debts causes [the need] for imposing measures by which the entire population [must] endure new taxes aimed at covering 'the arrogance' of the in-debt millionaires. In the meantime, the businessmen give 'business' lessons and display their wealth in the rankings of magazines, but their fortunes make them winners also in the 'major debtors to the State budget' [category]".

10. Under the sub-heading "Connected to public funds", the article stated further:

> "As if it were not enough that they no longer pay their debts to the State, a large majority of the businessmen are directly connected to public funds deals ..."

11. Finally, under the sub-heading "How the State gets the dust on the drum?", the article read:

> "To get rid of the debts easily, the businessmen transfer the companies to foreign associates, natural or legal persons, where State control is almost impossible to be achieved. This is how it is easy for the millionaires to deregister the companies and to relocate them or to merge them so that the trail of the debts goes cold. The legal tricks are numerous and only the first fifteen millionaires have already closed over two hundred companies where they were registered as shareholders in their own names by deregistration, insolvency or liquidation... The millionaire Ioan Țiriac also held shares in the companies I.Ț.A. S.A. and F.C.N. S.A. which have been buried together with their debts after they were taken over by different shareholders, like in the case of the football club."

II. FIRST-INSTANCE COURT PROCEEDINGS

A. The applicant's claim

12. On 11 October 2010 the applicant brough general tort law proceedings against S.M. and the company owning the newspaper, namely S.C. M.C.P. S.R.L., and claimed 130,000 euros in respect of non-pecuniary damage because the article had breached his rights to personal image, honour and dignity. He argued that the sections of the article referring expressly to him and the companies he was involved in and their debts had contained biased, insulting, defamatory, inexact, clearly ill-intentioned and

untruthful statements exceeding the acceptable limits of freedom of expression.

13. As demonstrated by the evidence in the case file, he had not had any connection to the company M.E.C.B. S.R.L. since 2003. Therefore, S.M.'s allegations concerning his profit because of the company's unpaid debt to the State had been unjustified. Also, U.C.S.R. S.A. and P.A.M. S.A. had had as a minority shareholder the banking group U.Ț. and not the applicant. In addition, I.Ț.A. S.A. had been neither "buried" nor "deregistered, declared insolvent or liquidated by numerous legal tricks". The latter company had been transformed from a shares company into a company limited by guarantee and had remained active and free of any debt to the State budget.

14. In addition, the applicant had been a minority shareholder in the company F.C.N. S.A. and not its administrator or director. He had not been involved in the company's management or administration and the national courts had dismissed in 2008 an application by the ANAF to hold the company's administrator personally responsible for its bankruptcy.

15. S.M. had ignored the basic rules of journalism, starting with the duty to provide accurate and reliable information to readers. He had written a general article about several persons, some of whom were famous, with the clear aim of confusing readers. The layout of the article's paragraphs mentioning the applicant had reflected S.M.'s intention to misinform and confuse. It had been aimed at giving people the idea that the recipe for guaranteed business success of the persons mentioned in the article had consisted in relying on public funds for their businesses or in not paying their taxes so that the State would allegedly get the "dust on the drum".

16. The applicant argued further that he was an important businessman who had succeeded in transforming his name into a brand with a reputable national and international image. However, the limits of acceptable criticism were less wide in his case than in the case of politicians or public servants because he had not held any public office or position or represented public interests.

17. His rights had not been affected by the part of the article discussing tax payments as such, but by the part blaming him for actions for which he could not be considered responsible. It had been well known that a partner or shareholder in a company could not be identified with that company.

18. S.M. could have used other expressions to convey his criticism. He could have limited his discourse to presenting the facts and the laws that had been breached without portraying the applicant as "winner in the major debtors to the State budget [category]", responsible for deals with public funds or for not paying his taxes.

19. Lastly, the applicant argued that in its examination of the case, the court had to take account of his good business reputation and the deeply negative and immediate impact of the article on his reputation given that it had been published in a newspaper specialising in business.

B. The first-instance judgment

20. On 2 May 2013 the Bucharest County Court dismissed the applicant's claim, relying on the principles set out in the Court's case-law concerning the freedom of expression of journalists.

21. It held that S.M. had acted in good faith and had tried to inform the public about a matter of general interest, namely the debts owed to the State budget by the companies in which high-profile national businessmen were involved.

22. The article had been a combination of statements of fact and value judgments concerning the applicant's actions. Statements concerning the applicant's status as a past or present shareholder in various companies which had not paid their taxes, which were statement of facts, had been combined with statements that the applicant had left "holes" in the State budget and that he had been one of the State's major debtors, which were value judgments.

23. Both the statements of fact and value judgments had had a sufficient factual basis. Even though not entirely accurate, S.M.'s statements had relied on information provided by the National Trade Office about companies in which the applicant had been or remained a shareholder and information available on the ANAF's website about the debts those companies owed to the State.

24. It was true that according to the available evidence, the applicant had been only an indirect shareholder in three of the companies mentioned in the article, namely M.E.C.B. S.R.L., U.C.S.R. S.A. and P.A.M. S.A. However, the article's initial portrayal of the applicant as a current or former direct shareholder of these companies was eventually watered down at a later stage in the article by stating that the applicant had been involved in these companies.

25. It was equally true that I.Ț.A. S.A. was not deregistered and continued to operate and that S.M. had been misled by the fact that the company had been transformed from a shares company into a company limited by guarantee. However, journalistic freedom of expression could involve a certain level of exaggeration and even provocation and according to the Court's case-law, partially inexact factual information could not cancel the protection afforded by Article 10 of the Convention in circumstances where, as in the present case, the article touched on matters of public interest and the journalist's bad faith had not been proven.

26. As far as F.C.N. S.A. was concerned, the applicant himself admitted that he was a shareholder of this company (see paragraph 14 above). It was irrelevant that he was not a major shareholder or an administrator or director and was not involved in its management or administration as long as S.M. had not made such statements. S.M. stated only that F.C.N. S.A. had been

buried together with its debts after it had been taken over by various shareholders.

27. The applicant was a public figure, a former internationally famous sports person and currently a successful businessman, whose participation in social and economic life was well known. Thus, as in the case of politicians, the level of acceptable criticism was wider in the case of public persons than in the case of a private individual because the former inevitably and constantly exposed themselves to a closer scrutiny of their every act and gesture and had to show a greater level of tolerance.

28. Finally, the court held that the company which owned the newspaper, S.C. M.P.C. S.R.L. (see paragraph 12 above) could not be held liable for S.M.'s actions because he had exercised his right to freedom of expression lawfully.

III. SECOND-INSTANCE COURT PROCEEDINGS

A. The applicant's appeal

29. The applicant appealed against the judgment. He reiterated the arguments he had made before the first-instance court (see paragraphs 12-19 above).

30. In addition, he contended that the article had been written in an intentionally confusing manner. Firstly, it had created a link between all the businessmen mentioned, even though they had not been linked by any commercial partnerships warranting collective statements about them. It had failed to clarify the individual circumstances and had created the misleading impression that all of them had been involved both in deals with public funds and in not paying their debts. Moreover, it had stated that the applicant had maintained "his position ... at the top of the debtors' [list] owing to the debts accumulated by the companies in which he [had been] or still [was] a direct shareholder" (see paragraph 8 above), without presenting any evidence or the precise names of the companies in question or clarifying whether the debts had been accumulated when the applicant was a shareholder or afterwards.

31. Furthermore, there had been no explanation as to what the company M.E.C.B. S.R.L.'s debts represented and when they had been accrued. The statements about this company (see paragraph 8 above) had not been properly researched because the applicant had never been a direct shareholder or in a position allowing him to decide and control its operations. Therefore, the association of his name with that of A.S. could be explained only by an intention to misinform and to expose the applicant to public contempt.

32. The fact that the press covered private events and actions involving him could not make the applicant a subject of public interest but rather one

that enjoyed publicity. Therefore, he had been entitled to the same protection of his privacy as an ordinary person. The allegations made in the article had been even more serious for a reputable businessperson and had had much wider implications because many national and international companies had taken up and identified with his name.

B. The second-instance judgment

33. On 28 April 2015 the Bucharest Court of Appeal, sitting as a three-judge bench after a two-judge bench had been evenly divided on the outcome, dismissed unanimously the applicant's appeal by relying on the principles and criteria set out in the Court's case-law to be considered when carrying out a balancing exercise between a journalist's right to freedom of expression and a person's right to respect for his or her private life.

34. It held that the newspaper *Financiarul* published a yearly ranking of the wealthiest national businessmen. As a result, it had also wished to publish an article that would identify whether persons included in this ranking had been shareholders in companies with high unpaid debts owing to the State. Thus, the article had touched on an issue of public interest and had intended to inform the public about the fact that even companies counting the wealthiest persons in the country among their shareholders could still have debts owing to the State.

35. The article stated of the applicant that he had been and remained a shareholder of these companies and not that he had contributed to the creation of their debts or to making their financial situation worse. It had not been a journalistic investigation about the reasons or the shareholders' actions that had caused the debts, but had rather tried to draw the public's attention to the fact that even though the country had millionaires, they were associates or shareholders in companies that had failed to pay their dues.

36. As regards the article's title and the manner in which it had been written, the court held that the journalist had proven that the debts of the companies mentioned in it had been covered by many other press articles since 2001 and that their existence had been known. In addition, the article had been a combination of statements of facts and value judgments that had to be examined separately. The statements of fact concerning the applicant's status as a past or present shareholder in various companies and the existence of these companies' debts had been combined with the journalist's personal opinion that the applicant had had "partnerships with media [companies] that [had left] holes in the State [budget]" (see paragraph 8 above).

37. The court took the view that S.M.'s above-mentioned statements of fact had been supported by a sufficient factual basis given that, according to the information provided by the ANAF, all the companies mentioned in the article had been registered as owing debts to the State in 2010 and the

National Trade Office had confirmed that the applicant had been a direct or indirect shareholder of these companies.

38. It was irrelevant that S.M. had not clarified whether the applicant had been a direct minority or majority shareholder in some of the companies. It could not be required of a journalist to perform the role of investigator and it was acceptable for him or her therefore to present partially inexact information as long as he or she acted in good faith.

39. As to the value judgment associating the applicant's name with companies which were State debtors, the court held that it had been triggered by the applicant's past or present partner or shareholder status in those companies. However, this association had not amounted to an accusation that the applicant had been responsible for the existence of those companies' debts given that the article had made it clear that the debts belonged to those companies and that some of the debts had been accrued after the applicant had ceased to have connections with the companies.

40. The court held further that as long as the article had not accused the applicant of actions rendering the companies in question insolvent, it could not be said that S.M. had tried to tarnish the applicant's honour and reputation, but rather to inform the public about a matter of general interest.

41. In assessing S.M.'s good faith, the court held that the impact of his value judgments had not been so significant as to defame the applicant, given that the information presented in the article had not been new and the applicant had not presented any evidence that his businesses or his activities had been negatively affected.

42. The court took the view that the level of acceptable criticism was higher in the case of public persons acting in their business capacity than in the case of private individuals, because the former exposed themselves willingly and inevitably to a closer scrutiny by the press of their every act and gesture and had to display a greater level of tolerance. They were certainly entitled to the protection of their reputation, even outside the bounds of their private life, but the need for such protection had to be balanced against the need for a free debate on financial matters and any restrictions imposed on such a debate had to be narrowly construed.

43. Lastly, the court concluded that since S.M. had exercised his right to freedom of expression lawfully, there was no need for it to also examine the civil liability of the company which owned the newspaper (see paragraph 12 above).

IV. LAST-INSTANCE COURT PROCEEDINGS

A. The applicant's appeal on points of law

44. The applicant appealed on points of law against the judgment. He reiterated the arguments he had made before the first and second-instance courts (see paragraphs 29-32 above).

45. In addition, the applicant argued that the second-instance judgment had been contradictory. Even though the court had acknowledged that the value judgments expressed by the journalist had been defamatory and in bad faith, it had concluded subjectively and without relying on any objective criteria that they had not had a sufficiently strong impact to defame the applicant and tarnish his image. Also, the court considered that the applicant had failed to prove the negative impact of the journalist's value judgments, even though the impact had consisted in suffering caused to an individual and therefore could not be proven.

46. The court had also assessed the evidence incorrectly, because it had ignored the fact that the applicant had not been registered as an associate in any of the companies mentioned in the article and that the defamatory statements about him ranking among the State's largest debtors had concerned himself personally. The only company the applicant had shares in had not had any debts owing to the State. Likewise, the court had held that the article had concerned matters of public interest and had not considered the applicant responsible for the existence of the debts, even though it had accepted that the journalist had acted in bad faith and it had been clear that the article had referred to companies "buried" in debt. In addition, the court had ignored the fact that the article could have used language and expressions that had not been offensive. Likewise, it had disregarded the rules and regulations imposing on journalists the duty to provide accurate and reliable information and to verify the information provided; it had categorised the applicant as a public person even though he had not held any public office; and it had deemed "inexact" information that had been completely false.

47. Lastly, the applicant argued that the second-instance court had misinterpreted and applied incorrectly the relevant national law concerning civil liability (see paragraph 58 below) and that the entire journalistic undertaking had been aimed at offending him publicly rather than at informing the public.

B. The last-instance judgment

48. By a final judgment of 16 October 2015 (made available to the applicant on 21 April 2016), the High Court of Cassation and Justice, sitting

as a bench of three judges, dismissed the applicant's appeal on points of law by a majority.

49. The court held that the applicant's claims to the effect that the second-instance court had acknowledged S.M.'s bad faith in writing the article (see paragraphs 45 and 46 above) were clearly ill-founded. The lower court had not held that the journalist's statements had been offensive. On the contrary, it had essentially held that the article's subject had been of general public interest, that the information in it had not been new and that S.M.'s factual statements had had a sufficient factual basis. It had also observed that the article's scope had been to inform the public and not to tarnish the applicant's image and that the impact of S.M.'s value judgments had not been significant enough to defame the applicant and had not had a negative impact on his business activities (see paragraph 41 above).

50. The court stressed that the second-instance court's reasoning had to be assessed overall. The lower courts had examined the journalist's attitude in writing the article in detail and they had not considered that the only elements capable of discerning S.M.'s good or bad faith had been whether his statements had defamed the applicant or their negative impact.

51. The court held that it could only examine the applicant's arguments concerning the lawfulness of the second-instance court's assessment of the lawfulness of S.M.'s actions and not his arguments concerning the lawfulness of the second-instance court's assessment of the damage allegedly suffered by him. The reason for that was that once they had established that S.M.'s actions had been lawful, it was unnecessary for the lower courts to examine the other conditions that had to be met for a person's civil liability to be engaged.

52. The court held further that the applicant's criticism concerning the incorrect assessment of the evidence by the second-instance court (see paragraph 46 above) also fell outside the scope of its assessment.

53. As to the applicant's arguments that the lower court had incorrectly applied the criteria set out in the Court's case-law when carrying out the balancing exercise between his and S.M.'s rights, the court held that the lower court had correctly established, in line with the Court's case-law, that the level of acceptable criticism was wider in the case of public persons, such as the applicant, much like in the case of politicians and public servants. Given that the article concerned matters of public interest, imposing a general obligation on the journalist to dissociate himself from the content of some of the statements that could be perceived as defamatory by the applicant could not be reconciled with the role of the press to impart information on issues of public concern.

54. The applicant's remaining criticism about the balancing exercise conducted by the second-instance court concerned the interpretation of the facts and evidence by that court and not the lawfulness of its judgment.

Therefore, it fell outside the scope of an appeal on points of law, which was an extraordinary remedy, and of the court's assessment.

55. The applicant's arguments in his appeal on point of law had not relied on allegations that the lower court had ignored the principles set out in the Court's case-law when conducting its balancing exercise between the parties' rights. He had merely contended that the second-instance court's interpretation of these principles given the factual circumstances of the case had been incorrect. Also, in his appeal on points of law the applicant had reiterated many of the facts he had relied on in his application before the first-instance court and had not focused his arguments only on issues concerning the lawfulness of the second-instance court's judgment.

56. Finally, the court held that the lower court had interpreted and applied correctly the relevant national and international norms given the context of the case. However, it was not competent to conduct a review of the concrete assessment carried out by the lower court or of the applicant's allegations about mistakes committed by S.M. in his article or the untruthfulness of the information provided therein.

57. The separate opinion written by one of the members of the bench did not touch on any of the points raised by the applicant concerning the balancing exercise conducted by the lower court with regards to the competing rights at stake.

RELEVANT LEGAL FRAMEWORK

58. Articles 998 and 999 of the former Civil Code provided that any person who was responsible for causing damage to another would be liable to make reparation for it, regardless of whether the damage was caused through his or her own actions, through his or her failure to act or through his or her negligence (see *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 68, 25 June 2019).

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

59. The applicant complained about a breach of his right to honour and reputation, alleging that the domestic courts had failed to protect his rights, had assessed the circumstances of the case incorrectly and had denied him the possibility of obtaining compensation for the non-pecuniary damage suffered by him.

He relied on Article 8 of the Convention, which, in so far as relevant, reads as follows:

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

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

A. Admissibility

1. Applicability of Article 8 of the Convention

60. The Court reiterates that the right to protection of reputation is a right which is protected by Article 8 of the Convention as part of the right to respect for private life (see *Polanco Torres and Movilla Polanco v. Spain*, no. 34147/06, § 40, 21 September 2010, and *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012). In order for this provision to come into play, however, 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*, cited above, § 83). This requirement covers social reputation in general as well as professional reputation in particular (see *Denisov v. Ukraine* [GC], no. 76639/11, § 112, 25 September 2018, with further references).

61. In the instant case the Court considers that the statements made in the article (see paragraphs 6-11 above), which seem to suggest that the applicant, a businessman, was essentially conducting his business in a manner which ultimately affected the State's budget, attained the requisite level of seriousness for Article 8 of the Convention to come into play. It follows that this provision applies to the present case.

2. Other grounds of inadmissibility

62. 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

63. The applicant argued that the courts had failed to strike a fair balance between the competing rights at stake and had assessed incorrectly the criteria for carrying out such an exercise.

64. The right to freedom of expression carried with it duties and responsibilities that journalists had to comply with in order to be afforded the full protection of Article 10 of the Convention. They included, among other things, the obligation to publish only information whose truthfulness had been verified, to consult the opinion of all the parties concerned, to

observe the presumption of innocence principle and refrain from giving verdicts.

65. Reiterating the arguments he had made before the first and second-instance courts (see paragraphs 13-14 and 30-32 above), the applicant contended that the article had included some deliberately offensive, unfounded, inaccurate, unverified and malicious assertions that had gone far beyond the limits of acceptable criticism and had been aimed at discrediting him in the eyes of the public. These assertions had been even more serious because they could have affected the image of the several reputable national and international companies associating their names with his. As a private citizen he was entitled to the full protection of his image, honour and dignity. He was not a public figure within the meaning of the Court's case-law and the level of acceptable criticism in his case was significantly lower than in the case of politicians or other public figures.

66. It was a well known fact that a company's direct or indirect shareholder could not be identified with the company itself or the actions of its management. Also, the journalist could have phrased his criticism differently and could have confined it to a presentation of the facts and legal norms that had been breached without categorising the applicant as one of the largest debtors to the State budget who funded his activities with public funds.

(b) The Government

67. The Government acknowledged that the decision of the courts to dismiss the applicant's action against S.M could be viewed as an interference with his right to respect for his private life. Nevertheless, the courts had struck a fair balance between the competing rights at stake and their decision had been lawful, had pursued a legitimate aim, namely the protection of the freedom of expression of the press, and had been necessary in a democratic society.

68. As also established by the courts, S.M. had acted in good faith when writing the article, had taken reasonable steps to verify the information presented to the public and his statements had been supported by a sufficient factual basis, including information from public sources such as the ANAF and the National Trade Office.

69. The article had concerned a well known public figure who received media attention on a regular basis and a matter of public interest, namely the business practices of some of the richest persons in the country and their effect on the State budget.

70. The article had not relied on information obtained unlawfully and had not used vulgar or inappropriate language capable of discrediting the applicant or tarnishing his image. In addition, the applicant had not put forward any evidence capable of proving beyond a reasonable doubt that he

had suffered any negative consequences following the publication of the article.

71. The national authorities had complied with their positive obligation to put in place an adequate legal framework capable of protecting a person's reputation. The applicant had not only had the possibility of bringing general tort law proceedings against S.M., but he had also had the possibility of requesting that the newspaper publish a reply to the article in question. None of the evidence available suggested that he had used the latter option or that the proceedings brought by him against S.M. had been unfair.

2. The Court's assessment

(a) General principles

72. The Court reiterates that in cases of the type being examined here, 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 applicants' private life. While the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, § 98, ECHR 2012). The boundary between the State's positive and negative obligations under Article 8 does not lend itself to precise definition; the applicable principles are, nonetheless, similar. In both contexts regard must be had to the fair balance that has to be struck between the relevant competing interests (ibid., § 99).

73. Where the complaint raised before the Court is that rights protected under Article 8 have been breached as a consequence of the exercise by others of their right to freedom of expression, due regard should be had, when applying Article 8, to the requirements of Article 10 of the Convention (see, for instance, *Sousa Goucha v. Portugal*, no. 70434/12, § 42, 22 March 2016). Thus, in such cases the Court will need to balance the applicant's right to "respect for his private life" against the public interest in protecting freedom of expression, bearing in mind that no hierarchical relationship exists between the rights guaranteed by the two Articles (ibid.).

74. The Court has already had occasion to lay down the relevant principles which must guide its assessment in this area (see *Von Hannover (no. 2)*, cited above, §§ 95-99, and *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, §§ 90-93, ECHR 2015 (extracts)). It

has thus identified a number of criteria in the context of balancing the competing rights (see *Von Hannover (no. 2)*, 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 instant 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, and the content, form and consequences of the publication (see, *mutatis mutandis*, *Couderc and Hachette Filipacchi Associés*, cited above, § 93).

75. In this context, the Court reiterates that, although the press must not overstep certain bounds, regarding in particular protection 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. 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 *Axel Springer AG*, cited above, § 79).

76. The Court has also emphasised that the press's contribution to a debate of public interest cannot be limited merely to current events or pre-existing debates. Admittedly, the press is a vector for disseminating debates on matters of public interest, but it also has the role of revealing and bringing to the public's attention information capable of eliciting such interest and of giving rise to such a debate within society (see *Couderc and Hachette Filipacchi Associés*, cited above, § 114).

77. 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).

78. Furthermore, 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 v. France* [GC], no. 29369/10, § 126, ECHR 2015, with further references).

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

79. Turning to the instant case the Court notes at the outset that the applicant blamed the journalist of making remarks in the article which suggested that the applicant had been involved in and profited from deals with public funds and not paying his debts to the State (see paragraph 65 above).

80. The Court notes in this connection that the domestic courts dealing with the case examined the circumstances in which the journalist's statements were made and whether they could be justified. Nevertheless, the applicant disagreed with their decision. The Court must therefore review where the national authorities have struck a fair balance between the competing rights at stake in conformity with the criteria laid down in the Court's case-law (see paragraphs 74 and 77 above).

(α) Contribution to a debate of general interest

81. The Court reiterates that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on matters of public interest. The margin of appreciation of States is thus reduced where a debate on a matter of public interest is concerned (see *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 167, 27 June 2017). In order to ascertain whether a publication concerning an individual's private life is not intended purely to satisfy the curiosity of a certain readership, but also relates to a subject of general importance, it is necessary to assess the publication as a whole and to examine whether, having regard to the context in which it appears, it relates to a question of public interest (see *Couderc and Hachette Filipacchi Associés*, cited above, § 102).

82. In this connection, the Court specifies 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 its attention or which concern it to a significant degree, especially in that they affect the well-being of citizens or the life of the community. This is also the case with regard to matters which are capable of giving 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 (ibid. § 103, with further references).

83. In the instant case, the Court notes that the national courts found that the impugned press article concerned a subject of public interest because it intended to bring to the public's attention the existence of companies owing significant debts to the State which counted among their shareholders some of the wealthiest national businessmen (see paragraphs 21, 34 and 53 above). In addition, they noted that the debts of these companies had been the subject of other press articles well before the article in question was published (see paragraph 36 above).

84. The Court considers that the article touched on matters connected to the business activities and practices of some of the wealthiest persons in the country and their effect on the system of public tax collection. It also notes that the effects of such business activities and practices were already the subject of a debate in the national press when the article was published. Therefore, the Court sees no reason to doubt that an article of its kind was capable of contributing to a debate of general interest on the moral integrity of the business activities and practices of these businessmen and the functioning of the public tax collection system (see, *mutatis mutandis*, *Verlagsgruppe News GmbH v. Austria (no. 2)*, no. 10520/02, § 37, 14 December 2006).

(β) Degree of notoriety of the person affected and the subject of the report

85. The Court reiterates that it is necessary to distinguish between private individuals and persons acting in a public context, as political figures or public figures (see *Couderc and Hachette Filipacchi Associés*, cited above, § 118). The limits of acceptable criticism are wider in respect of a politician, targeted in this capacity, than in respect of a private individual unknown to the public (see *Petrina v. Romania*, no. 78060/01, § 40, 14 October 2008). This principle applies not only to politicians, but to every person who is part of the public sphere, whether through their actions or their position (see *Couderc and Hachette Filipacchi Associés*, cited above, § 121, with further references).

86. The Court notes that the national courts found that the applicant was a famous former professional sportsperson and currently a successful businessman whose name was very familiar to the general public (see paragraphs 27, 42, and 53 above).

87. Like the domestic courts, the Court considers that the applicant was amongst other things a business magnate who either used to or continued to own, manage or control some of the country's most prestigious enterprises. Indeed, he himself relied on the fact that several reputable national and international companies had associated their names with his (see paragraph 65 above).

88. The Court reiterates that business magnates, who own and manage some of the most prestigious enterprises in a country, are by their very position in society public figures even if they do not seek to appear on the

public scene (see *Verlagsgruppe News GmbH (no. 2)*, cited above, § 36). It follows that, in spite of his personal view that he was not a public figure, the applicant belonged to the group of public figures who cannot claim protection of their right to respect for their private life in the same way as private individuals unknown to the public (compare *Axel Springer AG*, cited above, § 99, and *Ernst August von Hannover v. Germany*, no. 53649/09, § 50, 19 February 2015).

89. As to the subject of the article, the Court notes, like the national courts, that it concerned the applicant's professional activities and involvement as direct or indirect shareholders in companies with significant debts to the State. It merely discussed the applicant's and other businessmen's business connections and activities, without mentioning any details of his private life (see *mutatis mutandis*, *Sabou and Pircalab v. Romania*, no. 46572/99, § 39, 28 September 2004). Also, while the applicant's situation was clearly used as an example to illustrate the points made by the journalist, the Court notes that the article was not personally and exclusively focused on him but rather on the more general topic of business practices affecting the system of public tax collection.

(γ) Prior conduct of the person concerned

90. The Court notes that the national courts did not examine the applicant's prior conduct in relation to the media, but have simply pointed out that the applicant's participation in social and economic life was well known (see paragraph 27 above).

91. Therefore, it considers that the applicant's prior conduct in relation to the media has not had any consequences for the outcome of the balancing exercise conducted with regard to the competing rights at stake (see, *mutatis mutandis*, *Fuchsmann v. Germany*, no. 71233/13, § 49, 19 October 2017).

(δ) Content, form and consequences of the publication

92. The Court reiterates that in exercising their profession, journalists make decisions on a daily basis through which they determine the dividing line between the public's right to information and the rights of others to respect for their private lives. They thus have primary responsibility for protecting individuals, including public figures, from any intrusion into their private life. The choices that they make in this regard must be based on their profession's ethical rules and codes of conduct (see *Couderc and Hachette Filipacchi Associés*, cited above, § 138). Even though the journalists enjoy the freedom to choose, from the news items that come to them, which they will deal with and how they will do so, this freedom is not devoid of responsibilities (ibid. § 139 *in fine*).

93. In the present case, the Court observes that the national courts did not find that the article contained offensive or degrading content in relation to the applicant. Also, they took the view that it had not accused him or suggested that he had been responsible for the debt of the companies or that he had contributed to its creation or to the worsening of their financial situation (see paragraphs 39-40 above). Moreover, the courts were of the opinion that the statements made therein were a combination of value judgments and statements of fact which, given the overall content and message of the article, were supported by a sufficient factual basis (see paragraphs 22-23 and 36-37 above). Furthermore, they held that there was no actual indication that the article's statements had had any consequences for the applicant's reputation or that they had negatively affected his businesses or activities (see paragraph 41 above). While the courts agreed with the applicant's arguments to the effect that some of the statements in the article had lacked sufficient accuracy, clarity or precision (see paragraphs 23, 25 and 38 above), they found nevertheless that these erroneous statements could not be deemed to have been made in bad faith or to have affected the applicant's rights given the article's content, the nature of the subject discussed, and the source of S.M.'s information (see paragraphs 38, 41, and 50 above).

94. Having regard to the information in the case file, the Court finds no reason to disagree with the domestic courts' assessment. It notes that the article, despite the applicant's claims, did not contain any personal insults or disparaging remarks or any completely unsubstantiated allegation, regardless of whether they were value judgments or statements of fact. Moreover, it did not seem to accuse the applicant of any specific conduct or involvement in allegedly corrupt or unlawful actions that could have engaged his criminal liability (contrast and compare *Constantinescu v. Romania*, no. 28871/95, § 73, ECHR 2000-VIII, and *Jalbă v. Romania*, no. 43912/10, § 38, 18 February 2014).

95. The Court note further that when writing the article S.M. had relied on other press articles and on information provided by official sources, namely the ANAF and the National Trade Office (see paragraphs 36-37 above). Given that the information from the official sources does not seem to have been contested at the time S.M. published the article, the Court sees no reasons why the journalist could not have regarded it as credible and relied on it without checking its accuracy. The Court reiterates its view that the press should normally be entitled, when contributing to public debate on matters of legitimate concern, to rely on the content of official reports without having to undertake independent research. Otherwise, the vital public-watchdog role of the press may be undermined (see *Tănăsoaica v. Romania*, no. 3490/03, § 50, 19 June 2012).

96. Even assuming that the inaccuracies contained in some of S.M.'s statements could be viewed to be a sign of some minor negligence on his

part, the Court sees no reason to doubt that he acted in good faith when publishing the article and the information therein or to consider this factor on its own sufficient grounds to suspect the journalist of having deliberately acted in breach of professional ethics.

97. Also, the fact that the form and manner in which the article was written and that some of the expressions contained therein were, to all intents and purposes, designed to be provocative and to attract the public's attention cannot in itself raise an issue under the Court's case-law (see *Axel Springer AG*, cited above, §§ 81 and 108). The Court reiterates that persons taking part in a public debate on a matter of general concern are allowed to have recourse to a degree of exaggeration or even provocation, or in other words to make somewhat immoderate statements (see *Monica Macovei v. Romania*, no. 53028/14, § 93, 28 July 2020).

98. Furthermore, the Court is unable to discern any concrete consequences for the applicant's reputation and private life or negative impact on his business activities. Even assuming that it may be presumed that the publication of the article in a national newspaper arguably specialising in business matters (see paragraphs 6 and 19 above) and without the applicant being consulted prior to its publication might have affected the applicant to some extent, the Court has serious doubts that these consequences were sufficiently serious as to override the public's interest in receiving the information contained therein. In this connection, the Court notes that the applicant has not argued, and in any event has not provided any evidence, that a possible request to be granted a right to reply addressed to the journalist or the newspaper's owner after the article was published had been ignored or denied or would have failed to mitigate the negative consequences he might have felt.

(ε) Conclusion

99. In the light of the above the Court considers that the national courts conducted a thorough balancing exercise between the competing rights at stake in conformity with the criteria laid down in the Court's case-law. Having regard to the margin of appreciation available to the national authorities when weighing up divergent interests, the Court sees no strong reasons to substitute its view for that of the domestic courts (see paragraph 77 above). It could not be said therefore that by dismissing the applicant's claim, the courts have failed to comply with the positive obligations incumbent on the national authorities of protecting the applicant's right to private life under Article 8 of the Convention (see, *mutatis mutandis*, *Von Hannover (no. 2)*, cited above, § 126, and *Petrie v. Italy*, no. 25322/12, §§ 46-54, 18 May 2017). 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 30 November 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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Andrea Tamietti Registrar	Yonko Grozev President