



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

FOURTH SECTION

CASE OF DANILEȚ v. ROMANIA

(Application no. 16915/21)

JUDGMENT

Art 10 • Freedom of expression • Disciplinary sanction imposed by National Judicial and Legal Service Commission on judge on account of two posts on his Facebook page • Domestic judicial authorities' decisions delivered without weighing up competing interests at stake in accordance with criteria laid down in European Court's case-law • Insufficient evidence of impairment of dignity and honour of judicial office • Reasons not relevant and sufficient

Prepared by the Registry. Does not bind the Court.

STRASBOURG

20 February 2024

**THIS CASE WAS REFERRED TO THE GRAND CHAMBER
WHICH DELIVERED JUDGMENT IN THE CASE ON
15/12/2025**

This judgment may be subject to editorial revision.

In the case of Danileț v. Romania,

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

Gabriele Kucsko-Stadlmayer, *President*,

Tim Eicke,

Faris Vehabović,

Armen Harutyunyan,

Ana Maria Guerra Martins,

Anne Louise Bormann,

Sebastian Rădulețu, *judges*,

and Ilse Freiwirth, *Section Registrar*,

Having regard to:

the application (no. 16915/21) 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 Vasiliță-Cristi Danileț (“the applicant”), on 18 March 2021;

the decision to give notice to the Romanian Government (“the Government”) of the complaints concerning the alleged interference with the applicant’s freedom of expression and alleged damage to his professional reputation;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the association Romanian Judges’ Forum (Forumul Judecătorilor din România), which was granted leave to intervene as a third party by the President of the Section;

Having deliberated in private on 4 July and 17 October 2023 and on 16 January 2024,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The application concerns the consequences of a disciplinary sanction imposed by the National Judicial and Legal Service Commission on a judge who had posted two messages on his Facebook page (Article 10 of the Convention). It also relates to an allegation of damage to his professional reputation (Article 8 of the Convention).

THE FACTS

2. The applicant was born in 1975 and lives in Cluj-Napoca. He was represented by Ms N. Popescu, a lawyer.

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

I. THE MESSAGES POSTED BY THE APPLICANT

4. At the relevant time the applicant was a judge at Cluj County Court. He was known for his active participation in debates on democracy, the rule of law and the judiciary and enjoyed significant nationwide renown as a former member of the National Judicial and Legal Service Commission (*Consiliul Superior al Magistraturii* – “the CSM”), a former vice-president of a court, a former advisor to the Minister of Justice, a founding member of two non-governmental organisations (NGOs) working in the field of democracy and justice and the author of several articles on legal matters.

5. On 9 January 2019 the applicant posted the following message on his Facebook page:

“You might have noticed the string of efforts to attack, disrupt and discredit institutions such as the Directorate General of Information and Internal Protection, the Romanian Intelligence Service, the police, the National Anti-Corruption Directorate, the gendarmerie, the High Court of Cassation and Justice’s Public Prosecutor’s Office, the High Court of Cassation and Justice and the army. [The attacks in question] didn’t just happen randomly after ‘the abuses committed by the powers that be’. Do people realise what it would mean to weaken [these] institutions or, worse, to bring services, the police, the courts and the army back under political control? And speaking of the army, have you ever given much thought to Article 118 § 1 of the Constitution, which provides that ‘the army shall solely serve the will of the people in order to ensure ... constitutional democracy’? What would happen if one day you happened to see the army on the streets defending ... democracy, because support appears to be waning these days? Would you be surprised to know that this solution would be ... constitutional?! I think we can’t see the wood for the trees ...”

6. On 10 January 2019, again on his Facebook page, the applicant posted a hyperlink to a press article headed “A prosecutor sounds the alarm. Living in Romania today represents a huge risk. The red line has been crossed when it comes to the justice system”, which had been published on a national news website. In the interview on which the article in question was based, C.S., a prosecutor, had given his point of view on how the public prosecutor’s office was handling criminal cases and on prosecutors’ difficulties in dealing with the cases assigned to them. This second post by the applicant was accompanied by the following comment:

“Now here’s a prosecutor with some blood in his veins, speaking his mind about dangerous prisoners being freed, our leaders’ bad ideas on legislative reform, and judges and prosecutors being lynched!”

7. The first post (see paragraph 5 above) was quoted and discussed by some national media outlets the following day.

8. The second post (see paragraph 6 above) also attracted several comments.

9. On 10 January 2019 a spokesperson for the Judicial Inspection Board informed the Chief Inspector, L.N., of the content of the applicant’s two

posts. That same day the Judicial Inspection Board took up the case, of its own motion, with a view to disciplinary proceedings.

II. THE JUDICIAL INSPECTION BOARD'S DISCIPLINARY INVESTIGATION

10. On 17 January 2019 the Judicial Inspection Board opened a disciplinary investigation in respect of the applicant for impairing the honour and good reputation of the judiciary (Article 99(a) of Law no. 303/2004 on the status of judges and prosecutors – see paragraph 28 below). A judicial inspector analysed the applicant's first post (see paragraph 5 above). He observed that it had been quoted and discussed by eleven different media outlets and that it contained a suggestion by the applicant that an intervention by the army to defend democracy would be a constitutional solution. With regard to the second post (see paragraph 6 above), the judicial inspector noted that the applicant had reposted a press article and had added comments of his own, encouraging judges and prosecutors to express their views publicly on issues relating to the functioning of the justice system; criticising reforms, "lynchings" of judges and prosecutors and the adverse effects of compensatory remedies; and endorsing the subject matter of the article in question. The judicial inspector, referring to the provisions of the code of ethics for judges and prosecutors, found indications that the applicant had failed to comply with his duty of discretion and thus may have tarnished the good reputation of the judiciary.

11. On 4 February 2019 the applicant first argued before the Judicial Inspection Board that the press articles quoting his two Facebook posts should not be admitted in evidence, because they could not be attributed to him. He then pointed out that his first message had been posted in the context of the appointment of the Army Chief of Staff, so it had had no connection with his judicial activities, his professional reputation or the prestige of the judiciary. With regard to his second post, he submitted that expressing his support for the prosecutor C.S. had been an unremarkable gesture and he confirmed that he still agreed with C.S.'s point of view. He requested that the Judicial Inspection Board take statements from two journalists, a linguist, a Romanian-language teacher, a colonel (to find out how those individuals had understood the disputed posts), the prosecutor C.S. (to verify whether he had sustained any damage after the messages in issue had been posted), a judge (N.G.), an artist and an academic (to attest to the applicant's level of professional integrity and to the prestige of the judiciary before and after the two messages had been posted).

12. On 5 February 2019 the Judicial Inspection Board admitted in evidence the statement of Judge N.G. for the purpose of assessing the applicant's level of professional integrity and the prestige enjoyed by the judiciary before and after the messages in dispute had been posted. It rejected

the other statements on the grounds that they were outside the scope of the case. Judge N.G., who had said that she had not paid much attention to how the media had presented the applicant's allegations, stated that the first post in issue was inoffensive. She explained that the applicant was "an activist, a fighter and a very determined person", who posted large amounts of content. She affirmed that she had not read the second post. As to the good reputation of the judiciary before and after the first message had been posted, she said that she had noticed no change and pointed out that the message in question had not made national headline news.

13. On 12 February 2019 the applicant was interviewed by an inspector from the Judicial Inspection Board. He stated that he had made regular media contributions by appearing on television since 2003 and by posting daily messages on his Facebook page – where he had some 50,000 followers – since 2011. He explained that he had posted the first message in the context of the debate triggered by the appointment of the Army Chief of Staff and had been seeking to draw readers' attention to a highly important matter. Under the Constitution, the army was entrusted with ensuring democracy, so appointing an army leader on the basis of political criteria had potential ramifications for citizens' lives, he said, in reference to the historical events of the 1989 revolution. He claimed that his message had been neither a warning nor a call to disobey the law, but rather a mere reminder of the relevant statutory provisions. He further stated that the message had not had any connection to his judicial activities, but had expressed one of his main concerns as a citizen. According to the applicant, he could not be held responsible for the fact that some journalists had failed to understand the intended meaning of the message, and people were free to leave comments on his Facebook page. Regarding the second post, the applicant confirmed that he had been championing judicial independence and supported all initiatives to that end. Freedom of expression, he submitted, entitled him to post messages on his Facebook page provided that he did not comment on pending cases or court rulings and that he did not attack other judges or prosecutors. Lastly, he requested that several individuals who knew him (judges, journalists, students and teaching staff) be interviewed to attest to his professional integrity and to the reputation of the judiciary. The Judicial Inspection Board interviewed five judges and a clerk and rejected the applicant's other requests for evidence. Most of the individuals interviewed described the applicant as an honest judge who was highly active in the field of legal education for young people and who voiced discerning personal opinions in the public sphere.

14. On 20 February 2019 the Judicial Inspection Board decided to pursue the case, opened of its own motion, on grounds of damage to the honour and good reputation of the judiciary (Article 99(a) of Law no. 303/2004 – see paragraph 28 below), to initiate disciplinary proceedings and thus to refer the matter to the CSM's disciplinary board for judges.

III. THE DISCIPLINARY SANCTION IMPOSED ON THE APPLICANT BY THE CSM'S DISCIPLINARY BOARD FOR JUDGES

15. On 16 April 2019 the CSM's disciplinary board for judges, meeting as a nine-judge panel, noted that the applicant was absent, found it unnecessary to hear the witnesses again, took note of the Judicial Inspection Board's submissions and postponed the delivery of its decision until 7 May 2019.

16. In a decision of 7 May 2019 the disciplinary board approved the disciplinary action by a majority. It found that the applicant had committed the disciplinary offence provided for in Article 99(a) of Law no. 303/2004 and, in accordance with Article 100(b) of that same law (see paragraph 28 below), ordered his pay to be cut by 5% for two months. In reaching that finding, the disciplinary board observed that an online newspaper had published the applicant's first post (see paragraph 5 above) and then several other media outlets had published articles on that post in turn. It further noted that the applicant had posted a second message on his Facebook page concerning an article on an interview with the prosecutor C.S., to which the applicant had added a comment (see paragraph 6 above). The disciplinary board considered that the applicant had breached the rules of conduct that generally applied to judges and prosecutors and had caused harm to the justice system as a whole.

17. The disciplinary board pointed out that judges had a duty not to impair the dignity of their office or the impartiality and independence of the judiciary, along with a duty to exercise restraint each time the judiciary's authority and impartiality was at stake and a duty to express their opinions cautiously so as to avoid the risk of jeopardising public respect for and confidence in judicial bodies. In that connection, the disciplinary board referred to *Morissens v. Belgium* (no. 11389/85, Commission decision of 3 May 1988, Decisions and Reports 56, p. 127), *Wille v. Liechtenstein* ([GC], no. 28396/95, ECHR 1999-VII) and, *mutatis mutandis*, *Özpınar v. Turkey* (no. 20999/04, § 68, 19 October 2010). It considered that, unlike the factual situation considered by the Court in the case of *Baka v. Hungary* ([GC], no. 20261/12, §§ 168-76, 23 June 2016), the manner in which the applicant in the present case had presented his views was inappropriate given his office as judge and had been such as to cast doubt on the credibility of the institutions of the State. It found that, by insinuating that public institutions were politically controlled and suggesting an intervention by the army as a possible solution for ensuring democracy, the applicant had breached the duty of discretion incumbent on judges and prosecutors. Regarding the second post in dispute, the disciplinary board found that the language used, in particular the expression "a prosecutor with some blood in his veins", had overstepped the limits of decency and had been unworthy of a judge.

18. The disciplinary board considered that, despite the applicant's use of rhetorical devices, the message that he had sought to convey had been clear and easily understandable for those who had read and commented on the posts. His statements had not, therefore, been value judgments but plain defamatory allegations, with no supporting arguments, that had been such as to call in question the credibility of the institutions of the State. Accordingly, the applicant's initiative had not been aimed at starting a debate on matters of public interest or of major importance for the justice system. The disciplinary board further found that the fact that the applicant had used social media to make the statements in issue was additional evidence that he had wanted to share his messages with anyone who had access to his Facebook page. Moreover, the applicant had confirmed that intention in his statements to the Judicial Inspection Board (see paragraph 13 above). The disciplinary board considered that the defence chosen by the applicant, in particular the argument that he had voiced his opinion as an ordinary citizen, could not discharge him from disciplinary liability, because judges were required to show moderation and caution when exercising their freedom of expression – be it in the exercise of their office or in their private lives – to prevent public scepticism of the impartiality, independence and prestige of the judiciary. It considered that the manner in which the applicant had chosen to address the issue of the extension of the Army Chief of Staff's term of office and to comment on the interview with the prosecutor C.S. had been such as to upset the fair balance between his right to freedom of expression and a democratic State's legitimate interest in ensuring that civil and local-government services were in line with the aims laid down in Article 10 § 2 of the Convention. In consequence, the disciplinary board found that the applicant's opinions, which had been expressed publicly and outside the scope of his professional duties, and the manner in which he had described the events in question, using inappropriate and indecent terms, had undermined the dignity of his office and impaired the impartiality and good reputation of the judiciary.

19. Regarding the disciplinary offence committed by the applicant, the disciplinary board noted his concession that, on account of his conduct (posting the disputed messages on his Facebook page, where he had some 50,000 followers – see paragraph 13 above), he had breached the statutory provisions (see paragraph 28 below) and social norms concerning universally accepted moral values. It therefore found a disciplinary offence, committed without direct intent, that had had an impact on public confidence in and respect for judges and on the good reputation of the judiciary, because the applicant's opinions in those messages had been quoted and discussed by a significant number of media outlets, giving rise to substantial public debate. As to the sanction, the disciplinary board made reference to the damage caused to society's interactions with the justice system in general, to the actual personal circumstances of the applicant and to the educational and preventive role played by the disciplinary proceedings and noted that the

applicant's messages, which had been quoted by the media, had generated public suspicion as to whether judges and prosecutors were fulfilling their statutory duties. After taking into account the seriousness of the disciplinary offence in question, its consequences and the long-standing lack of public confidence in the justice system, it considered that an objective, dispassionate dialogue on the shortcomings of the justice system would have been preferable in the present case. Those elements, taken together, justified a sanction (a two-month, 5% pay cut for the applicant – see paragraph 16 above) that was to serve as a warning to him of the potential consequences of adopting similar behaviour in the future.

20. Three of the nine members of the disciplinary board issued a dissenting opinion, emphasising that the disciplinary offence found against the applicant was not made out. They explained that in his first message the applicant had expressed a personal opinion on a topical issue at the relevant time, namely the court-ordered suspension of the extension of the Army Chief of Staff's term of office, which had initially been upheld by the appellate court but then had been overturned by the High Court of Cassation and Justice ("the High Court"). The three judges considered that forbidding judges and prosecutors from making any critical comments on matters of public interest, without further formalities or consideration, amounted to an excessive restriction of their freedom of expression. As to the second message in dispute, they considered that, by posting a comment on an article about the prosecutor C.S. (an article that had, moreover, been discussed in a forum organised for judges and prosecutors), the applicant had committed no disciplinary offence, nor had the honour and good reputation of the judiciary been impaired. In any event, according to the statements taken by the Judicial Inspection Board, the applicant was someone who was highly active on social media and interested in issues concerning civil society – given that he was involved in legal education for young people – and whose posts had made only a neutral impression on his peers (see paragraphs 12 and 13 *in fine* above). The three judges in the minority further stated that the media's different interpretations of the applicant's posts could not be attributed to him and that the mere fact that the applicant had expressed a personal opinion on a matter of public interest, without referring to the court in which he held office or to other judges or prosecutors, was not sufficient to find that he had breached his duty of discretion. In that connection, the dissenting judges referred to the *Baka* judgment (cited above, § 165). They considered that the manner in which the applicant had expressed his opinion on a matter giving rise to significant public debate at the relevant time was not such as to impair the independence, impartiality or good reputation of the judiciary. Lastly, according to the three judges in question, the applicant had expressed value judgments with the aim of defending the rule of law and had not overstepped the limits of freedom of expression.

IV. THE APPEAL TO THE HIGH COURT AGAINST THE DISCIPLINARY SANCTION

21. The applicant appealed against his disciplinary sanction, arguing that it was unlawful and unfounded. He first pointed out that sanctions could only be imposed on judges and prosecutors for the disciplinary offences provided for in Article 99 of Law no. 303/2004 (see paragraph 28 below). He also challenged the disciplinary board's decision on the grounds that it had been based on a breach of rules of conduct, which, he argued, could no longer be used to justify a disciplinary sanction in his case, especially following legislative amendments in 2005. He then criticised the disciplinary board's vague assessment of whether the expressions he had used deserved rebuke and its failure to provide specific examples. He indicated that his first post had not sparked any debate but that certain media outlets which regularly criticised the judiciary had twisted his words in bad faith. He submitted that the aim of his message was to express the need to keep the army sheltered from any political influence and thereby prevent it from being used by leaders at a given time to "defend democracy". According to the applicant, the message was in line with what he had been teaching about the legal system for several years. He contended that there was no evidence, including in the statements taken by the Judicial Inspection Board (see paragraphs 12 and 13 *in fine* above), of any damage done to the good reputation of the judiciary. The duty of discretion, he asserted, applied only to his office of judge and to pending cases assigned to him, not to his engagement with the community.

22. Regarding his second post, the applicant confirmed that he had expressed his admiration for the prosecutor C.S. and had shown his agreement with his statements, in which C.S. defended the good reputation of the judiciary and advocated the separation of executive and judicial powers, at a time when many judges and prosecutors had spent several months protesting against what they had considered to be an attack on judicial independence by Parliament and the government by means of legislative reforms. The applicant further submitted that no sanction had ever been imposed on the prosecutor C.S. for his interview. Lastly, he claimed that the disciplinary board had refused to impose a less severe sanction on him. He stated that the Judicial Inspection Board had not brought the matter of his second post before the disciplinary board and referred, *mutatis mutandis*, to a decision of the Constitutional Court finding a provision of the law governing the profession of lawyer unconstitutional. The provision in question defined misconduct as any actions that were "such as to impair the good reputation of the profession", an expression the Constitutional Court had criticised as lacking clarity and precision. The applicant also filed his written submissions with the High Court.

23. In a judgment of 18 May 2020 the High Court dismissed the applicant's appeal and upheld the disciplinary decision adopted on 7 May

2019 (see paragraphs 16-19 above). In its examination of the lawfulness of the sanction, the High Court noted that the disciplinary board had taken into account the essential elements of the disciplinary offence provided for in Article 99(a) of Law no. 303/2004 (see paragraph 28 below) and not the aspects addressed in the code of ethics, which, contrary to the applicant's assertions, could in any event provide the basis for a disciplinary offence.

24. With regard to the merits of the disciplinary decision, the High Court observed that the disciplinary board had analysed the facts in the light of the applicant's right to freedom of expression and his duty of discretion. It considered that such duty, which was protected under Article 99(a) of Law no. 303/2004 (see paragraph 28 below), was rooted in the general principles of professional ethics (independence, impartiality and integrity) and required judges and prosecutors to exercise moderation and restraint in their professional, social and private lives. It found that it was impossible to list all activities that might breach that duty of discretion, because judges and prosecutors were required to adapt their conduct to the generally accepted moral and ethical principles of society, acting in good faith in all circumstances and displaying fairness and decency. While emphasising the need to ensure a fair balance between freedom of expression and protection of judicial authority, the High Court pointed out that judges and prosecutors had an obligation to exercise caution when expressing their views so as to preserve the right of citizens to an independent, balanced judiciary free of political influence. It considered that the manner in which the applicant had expressed himself (which had been inappropriate given his position and had been such as to cast doubt on the credibility of the institutions of the State) had upset that balance. More specifically, according to the High Court, the applicant had suggested that the institutions of the State were controlled by politicians and had therefore mentioned the possibility of the army "being mobilised". As the disciplinary board had found, such statements qualified, in the applicant's case, as overstepping the limits of freedom of expression. The High Court further noted that, contrary to the applicant's claim that his posts had not received significant media coverage (see paragraph 21 above), the disciplinary board had observed that they had been the subject of press articles in five leading media outlets and had been likely to prompt readers to draw a parallel with historical events.

25. According to the High Court, the applicant's claim that the Judicial Inspection Board's reference had contained no specific mention of his second post (see paragraph 22 above) was unfounded, because the reasoning for the disciplinary decision stated that the expression "a prosecutor with some blood in his veins", which the applicant had used in his post of 10 January 2019 (see paragraph 6 above), had significantly overstepped the limits of decency required by his office. The High Court found that neither the disciplinary board nor the court were able to examine whether the applicant's allegations were true or legally sound and thus to assess whether or not they had a factual

basis. They amounted to a personal opinion that cast doubt on the credibility of the institutions of the State (including the justice system) and to a form of expression which was inappropriate for a judge to use in the public sphere.

26. The High Court then endorsed the disciplinary board's observations concerning the applicant's lack of direct intent and how, by posting the two messages, he had accepted the risk of impairing the good reputation of the judiciary. It also pointed out that "honour", "professional integrity" and "good reputation of the judiciary" were "complex and dynamic [concepts and] could not be circumscribed or regulated rigidly". It observed that, according to the disciplinary board, it was therefore impossible to examine those three concepts by taking statements or carrying out opinion polls, as the applicant had wanted. Behaviour contrary to that required of a judge or prosecutor as in the present case had to be examined in the light of international documents, laws and recommendations. The High Court further noted that the disciplinary board had lawfully reviewed all the relevant criteria (the direct consequences of the actions, the impairment of the good reputation and prestige of the judiciary, the applicant's conduct, non-compliance with the obligations inherent in his office and use of language that overstepped the limits of decency and integrity) before imposing the sanction in issue on the applicant. Given that the applicant's inappropriate conduct had been covered in a negative light in the media and that he had positioned himself as a thought leader, a less severe sanction would have been impossible. In any event, the sanction imposed on the applicant was one of the most lenient provided for in Article 100 of Law no. 303/2004 (see paragraph 28 below).

RELEVANT LEGAL FRAMEWORK AND DOMESTIC PRACTICE

I. DOMESTIC LAW

A. The Constitution

27. The relevant provisions of the Romanian Constitution read:

Article 30 **Freedom of expression**

"(1) Freedom of expression of ideas, opinions and beliefs and freedom of creation of any kind ... shall be inviolable.

...

(2) Freedom of expression shall not be prejudicial to any individual's dignity, honour or private life or to the right to one's own image."

Article 31
Right to information

“(1) There shall be no restrictions on individuals’ right to access information of public interest. ...”

Article 118
Armed forces

“(1) The army shall solely serve the will of the people in order to ensure the sovereignty, independence and unity of the State, its territorial integrity and constitutional democracy ...”

B. Law no. 303/2004

28. Law no. 303/2004 on the status of judges and prosecutors was in force until 15 December 2022, at which time it was repealed and replaced by Law no. 303/2022. The relevant provisions of Law no. 303/2004, which are not included in the more recent legislation, read as follows at the relevant time:

Article 44

“Competitions for promotion to a higher professional grade shall be open to judges and prosecutors who were ranked in the top performance band in their most recent appraisal, who have not had any sanctions imposed on them in the past three years and who fulfil the following seniority conditions: ...”

Article 99

“Disciplinary offences shall comprise:

(a) Any behaviour that impairs the honour, the professional integrity or the good reputation of the judiciary, displayed either in or outside the exercise of professional duties;

...”

Article 100

“The following disciplinary sanctions shall be imposed on judges and prosecutors in proportion to the seriousness of the offences [that they commit]:

(a) a warning;

(b) a reduction of up to 25% of their gross monthly remuneration for a period of one year;

(c) a disciplinary transfer to another court, including at a lower level, for a period of one to three years;

(d) a suspension of duties for up to six months;

(e) a demotion;

(f) indefinite removal from office;

...”

II. INTERNATIONAL AND EUROPEAN UNION LAW MATERIALS

A. United Nations

29. The Basic Principles on the Independence of the Judiciary were adopted at the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan in 1985. They were subsequently approved by the General Assembly in Resolution 40/32 of 29 November 1985 and Resolution 40/146 of 13 December 1985. The relevant part reads:

Freedom of expression and association

“8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.”

30. On 24 June 2019 the Special Rapporteur on the independence of judges and lawyers submitted to the Human Rights Council his report on the freedom of expression, association and peaceful assembly by judges and prosecutors, both offline and online. The relevant recommendations read:

Freedom of expression

“101. In exercising their freedom of expression, judges and prosecutors should bear in mind their responsibilities and duties as civil servants, and exercise restraint in expressing their views and opinions in any circumstance when, in the eyes of a reasonable observer, their statement could objectively compromise their office or their independence or impartiality.

102. As a general principle, judges and prosecutors should not be involved in public controversies. However, in limited circumstances they may express their views and opinions on issues that are politically sensitive, for example when they participate in public debates concerning legislation and policies that may affect the judiciary or the prosecution service. In situations where democracy and the rule of law are under threat, judges have a duty to speak out in defence of the constitutional order and the restoration of democracy.”

31. The Bangalore Principles of Judicial Conduct (United Nations Office on Drugs and Crime, Vienna, 2019), in so far as their relevant parts are concerned, read:

“1.6. A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary, which is fundamental to the maintenance of judicial independence.

...

2.2. A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

...

3.1. A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.

3.2. The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

...

4.1. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

4.2. As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.

...

4.6. A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but, in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary."

32. The Non-Binding Guidelines on the Use of Social Media by Judges, prepared by the Global Judicial Integrity Network (United Nations Office on Drugs and Crime) and published in January 2019, read as follows in so far as relevant:

"16. Judges should avoid expressing views or sharing personal information online that can potentially undermine judicial independence, integrity, propriety, impartiality, the right to fair trial or public confidence in the judiciary. The same principle applies to judges regardless of whether or not they disclose their real names or judicial status on social media platforms.

...

18. Judges should be circumspect in tone and language and be professional and prudent in respect of all interactions on all social media platforms. It may be helpful to consider in respect of each item of social media content (such as posts, comments on posts, status updates, photographs, etc.) what its impact on judicial dignity might be if disclosed to the general public. The same caution applies when reacting to social media content uploaded by others.

...

23. A judge may use social media platforms to follow topics of interest. It may be worth following a diverse range of topics and commentators to avoid creating their own 'echo chambers'. However, a judge should be wary of following or liking particular advocacy groups, campaigns, or commentators where association with them could damage public confidence in the judge's impartiality or the impartiality of the judiciary in general."

B. Council of Europe

1. Committee of Ministers

33. The relevant part of the Appendix to Recommendation CM/Rec(2010)12 of the Committee of Ministers to member States on judges: independence, efficiency and responsibilities, adopted on 17 November 2010 at the 1,098th meeting of the Ministers' Deputies, reads:

“19. Judicial proceedings and matters concerning the administration of justice are of public interest. The right to information about judicial matters should, however, be exercised having regard to the limits imposed by judicial independence. The establishment of courts' spokespersons or press and communication services under the responsibility of the courts or under councils for the judiciary or other independent authorities is encouraged. Judges should exercise restraint in their relations with the media.

...

21. Judges may engage in activities outside their official functions. To avoid actual or perceived conflicts of interest, their participation should be restricted to activities compatible with their impartiality and independence.”

2. Venice Commission

34. The Report on the Freedom of Expression of Judges, adopted by the Venice Commission at its 103rd Plenary Session (19-20 June 2015), reads as follows in so far as relevant:

“80. European legislative and constitutional provisions and relevant case-law show that the guarantees of the freedom of expression extend also to civil servants, including judges. But, the specificity of the duties and responsibilities which are incumbent to judges and the need to ensure impartiality and independence of the judiciary are considered as legitimate aims in order to impose specific restrictions on the freedom of expression, association and assembly of judges including their political activities.

81. However the ECtHR has considered that, having regard in particular to the growing importance attached to the separation of powers and the importance of safeguarding the independence of the judiciary, any interference with the freedom of expression of a judge calls for close scrutiny.

...

84. In the context of a political debate in which a judge participates, the domestic political background of this debate is also an important factor to be taken into consideration when assessing the permissible scope of the freedom of judges. For instance, the historical, political and legal context of the debate, whether or not the discussion includes a matter of public interest or whether the impugned statement is made in the context of an electoral campaign are of particular importance. A democratic crisis or a breakdown of constitutional order are naturally to be considered as important elements of the concrete context of a case, essential in determining the scope of judges' fundamental freedoms.”

35. The successive amendments to Romania's justice laws have attracted the attention of the Venice Commission (see Opinion No. 924/2018 on draft

amendments to Law No. 303/2004 on the statute of judges and prosecutors, Law No. 304/2004 on judicial organisation and Law No. 317/2004 on the Superior Council for Magistracy [National Judicial and Legal Service Commission], adopted by the Venice Commission at its 116th Plenary Session, Venice, 19-20 October 2018, and Opinion No. 950/2019 on Emergency Ordinances GEO No. 7 and GEO No. 12 amending the Laws of Justice, adopted by the Venice Commission at its 119th Plenary Session, Venice, 21-22 June 2019) and the Group of States against Corruption (Interim Compliance Report, Corruption prevention in respect of members of parliament, judges and prosecutors, adopted by GRECO at its 83rd Plenary Meeting, Strasbourg, 17-21 June 2019).

3. *Consultative Council of European Judges (CCJE)*

36. Opinion No. 3 (2002) of the CCJE to the attention of the Committee of Ministers of the Council of Europe on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, reads as follows in so far as relevant:

“b. Impartiality and extra-judicial conduct of judges

27. Judges should not be isolated from the society in which they live, since the judicial system can only function properly if judges are in touch with reality. Moreover, as citizens, judges enjoy the fundamental rights and freedoms protected, in particular, by the European Convention on Human Rights (freedom of opinion, religious freedom, etc). They should therefore remain generally free to engage in the extra-professional activities of their choice.

28. However, such activities may jeopardise their impartiality or sometimes even their independence. A reasonable balance therefore needs to be struck between the degree to which judges may be involved in society and the need for them to be and to be seen as independent and impartial in the discharge of their duties. In the last analysis, the question must always be asked whether, in the particular social context and in the eyes of a reasonable, informed observer, the judge has engaged in an activity which could objectively compromise his or her independence or impartiality.”

37. The relevant parts of Opinion No. 25 (2022) of the CCJE on freedom of expression of judges reads:

“Recommendations

1. A judge enjoys the right to freedom of expression like any other citizen. In addition to a judge's individual entitlement, the principles of democracy, separation of powers and pluralism call for the freedom of judges to participate in debates of public interest, especially as regards matters concerning the judiciary.

2. In situations where democracy, the separation of powers or the rule of law are under threat, judges must be resilient and have a duty to speak out in defence of judicial independence, the constitutional order and the restoration of democracy, both at national and international level. This includes views and opinions on issues that are politically sensitive and extends to both internal and external independence of individual judges and the judiciary in general. Judges who speak on behalf of a judicial

council, judicial association or other representative body of the judiciary enjoy a wider discretion in this respect.

3. Aside from associations of judges, councils for the judiciary or any other independent body, individual judges have an ethical duty to explain to the public the justice system, the functioning of the judiciary and its values. By enhancing understanding, transparency and by helping to avoid public misrepresentations, judges may help to promote and preserve public trust in the judicial activity.

4. In exercising their freedom of expression, judges should bear in mind their specific responsibilities and duties in society, and exercise restraint in expressing their views and opinions in any circumstance where, in the eyes of a reasonable observer, their statement could compromise their independence or impartiality, the dignity of their office, or jeopardise the authority of the judiciary. In particular, they should refrain from comments on the substance of cases they are dealing with. Judges must also preserve the confidentiality of proceedings.

5. As a general principle, judges should avoid becoming involved in public controversies. Even in cases where their membership in a political party or their participation in public debate is allowed, it is necessary for judges to refrain from any political activity that might compromise their independence or impartiality, or the reputation of the judiciary.

6. Judges should be aware of the benefits as well as the risks of media communication. For that purpose, the judiciary should provide training for judges that educates them on the use of media, which can be utilised as an excellent tool for public outreach. At the same time, awareness should be raised that when posting on social media, anything they publish becomes permanent, even after they delete it, and may be freely interpreted or even taken out of context. Pseudonyms do not cover unethical online behaviour. Judges should refrain from posting anything that might compromise public trust in their impartiality or conflict with the dignity of their office or the judiciary.”

C. European Union

38. In its report on developments in Romania on judicial reform and the fight against corruption, in the context of that country’s commitments under the Cooperation and Verification Mechanism (CVM), published on 8 June 2021, the European Commission devoted a section to updates on developments in judicial reform and the fight against corruption since the October 2019 CVM report. The relevant part of the report reads:

“... Three Justice laws define the status of magistrates and organise the judicial system and the [National Judicial and Legal Service Commission]. They are therefore central to ensuring the independence of magistrates and the good functioning of the judiciary. Amendments to these Justice laws in 2018 and 2019, still in force, had a serious impact on the independence, quality and efficiency of the justice system. Major issues identified included the creation of a Section for investigating criminal offences within the judiciary (SIJ), the system of civil liability of judges and prosecutors, early retirement schemes, the entry into the profession, and the status and appointment of high ranking prosecutors. The implementation of the amended laws soon confirmed concerns, and new issues have emerged in the intervening years.

...

In the reporting period, judicial institutions reported an overall reduction in the activity of the Judicial Inspection [Board], namely fewer ex-officio disciplinary proceedings raising concerns about objectivity. However, there remain cases where disciplinary investigations and heavy sanctions on magistrates critical of the efficiency and independence of the judiciary have raised concerns. [Examples include disciplinary proceedings with proposal of preventive suspension from office until the finalisation of the disciplinary investigation and the decision of the [CSM] against judges from magistrate associations who have resisted the backwards changes of 2017-2019 and brought preliminary ruling requests to the European Court of Justice (the disciplinary investigation concern [*sic*] group conversations leaked from a private social network group); and a judge suspended for 6 months for publicly criticising the Judicial Inspection [Board] and the functioning of the SIIJ.] The delays from the part of the Judicial Inspection [Board] in examining complaints are also seen as a way to maintain pressure on the judge or prosecutor as long as the investigation is ongoing.”

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

39. The applicant submitted that the disciplinary sanction imposed by the CSM’s disciplinary board for judges on 7 May 2019 and upheld by the High Court on 18 May 2020 amounted to a disproportionate interference with his right to freedom of expression as provided for in Article 10 of the Convention, which 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 and regardless of frontiers. ...

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

A. Admissibility

40. The Court observes that the Government did not challenge the admissibility of this complaint.

41. The Court further notes that this complaint 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

42. The applicant submitted that the interference with his right to freedom of expression had not been “prescribed by law”, namely under Article 99(a) of Law no. 303/2004 on the status of judges and prosecutors (see paragraph 28 above). He argued that the relevant provision lacked clarity and precision and did not satisfy the foreseeability criterion. In that connection, he referred to a joint open letter sent to the Minister of Justice, signed by 500 judges and prosecutors, which had emphasised, in particular, the unforeseeable nature of the provisions in question (see paragraph 47 below). With regard to the aim of the interference in issue, the applicant claimed that the sanction – a pay cut for having exercised his freedom of expression on a matter wholly unrelated to his work – could not be regarded as having pursued the legitimate aim of “the protection of the rights of others” (including the protection of the independence and impartiality of the judiciary) within the meaning of Article 10 of the Convention.

43. As to whether the interference was “necessary in a democratic society”, the applicant referred to the general principles concerning expression established in the Court’s case-law and argued that he should have been afforded a higher level of protection, because his posts addressed a matter of public interest, namely the functioning of the judiciary. In that regard, he referred to the judgments in *Roland Dumas v. France* (no. 34875/07, § 43, 15 July 2010) and *Morice v. France* ([GC], no. 29369/10, § 125, ECHR 2015). Relying on the judgment in *Wille v. Liechtenstein* ([GC], no. 28396/95, § 63, ECHR 1999-VII), he asserted that the substance of his statements needed to be examined in the light of the case as a whole. He submitted that there was no evidence that they had lacked any factual basis or had overstepped the limits of acceptable criticism from a strictly professional perspective. The sanction in issue, he contended, had not been necessary and had had a chilling effect on the exercise of his freedom of expression on topics such as the independence of the institutions of the State, including the judiciary – which, moreover, had been particularly impacted by legislative amendments.

(b) The Government

44. The Government, referring to the judgment in *Baka v. Hungary* ([GC], no. 20261/12, §§ 162-64, 23 June 2016), pointed out that civil servants (including judges and prosecutors) qualified for the protection of Article 10 of the Convention but, on account of their status, also had a duty of discretion and had to show restraint in exercising their freedom of expression in all cases where the authority and impartiality of the judiciary

could be called in question. The Government did not dispute that there had been an interference with the applicant's right to freedom of expression, but asserted that it had been prescribed by law, that it had pursued a legitimate aim and that it had been necessary in a democratic society. First, with regard to the foreseeability of the law, they submitted that even though Article 99(a) of Law no. 303/2004 (see paragraph 28 above) could be interpreted in several ways, it did not conflict with the requirements of the Convention. Accordingly, they asked the Court to apply the case-law established in *Eminağaoğlu v. Turkey* (no. 76521/12, §§ 129-30, 9 March 2021), because the matter in issue concerned the rules on the conduct of members of the judiciary, for which a reasonable approach should be taken in assessing statutory precision. Second, regarding the legitimate aim, they affirmed that the disputed measure sought to ensure the independence and proper functioning of the justice system and thus the prevention of disorder and the protection of the rights of others (in this regard, the Government referred to the judgment in *Özpınar v. Turkey*, no. 20999/04, § 56, 19 October 2010), and that the national authorities had weighed in the balance the applicant's right to freedom of expression against the duty of discretion incumbent on judges and prosecutors. They averred that, in weighing up those interests, the national authorities had also performed an in-depth examination of the substance and form of the applicant's two posts and of the overall factual background before finding that he had failed to comply with his duty of discretion.

45. As to the condition of "necessity in a democratic society", the Government pointed out that the sanction complained of had been the result of opinions that the applicant had expressed in public and of the means by which he had chosen to do so. Emphasising the duty not to impair the dignity of judicial office and the impartiality of the judiciary, as well as the limits on the freedom of expression of judges and prosecutors, the Government submitted that the disciplinary board had found that the applicant had expressed himself inappropriately on social media, casting doubt on the credibility of the institutions of the State, in particular by insinuating that those institutions were politically controlled and by suggesting that the army intervene to ensure democracy, in breach of the duty of discretion by which judges and prosecutors were bound. In their opinion, the national authorities had concluded that the statements were not value judgments but rather mere disparaging remarks which had not been backed up by relevant arguments and which, given how the applicant had chosen to share them, had cast doubt on the institutions of the State. The Government further pointed out that the sanction in issue was the second-least severe possibility provided for in Article 100 of Law no. 303/2004 (see paragraph 28 above) and that it had been justified by the fact that the applicant had positioned himself as a thought leader and was one of the most read judges in south-east Europe. According to the Government, the sanction had not been disproportionate to the

legitimate aim pursued and could be regarded as being “necessary in a democratic society”. In that connection, they referred to the *Panioglu v. Romania* judgment (no. 33794/14, §§ 119 and 123, 8 December 2020).

(c) Romanian Judges’ Forum

46. The third-party intervener pointed out that the successive amendments made to the laws governing the functioning of the justice system had been criticised by the Council of Europe (see paragraph 35 above) and by several professional associations at national level for being harmful to progress in judicial independence, in particular by increasing the executive’s encroachment on the judiciary. It argued that there were several restrictions on judges’ freedom of expression and that the domestic law was not sufficiently clear and precise, because it left too much scope for interpretation. It submitted that judges’ freedom of expression in Romania was virtually inexistant and that the country adhered to none of the general principles reiterated in the *Baka* case (cited above). The domestic legislation had given rise to many investigations, such as those conducted after 2018 into the Principal Public Prosecutor, the President of the High Court and the chief prosecutor at the National Anticorruption Directorate (in that regard, the third-party intervener referred to the case of *Kövesi v. Romania*, no. 3594/19, 5 May 2020), because it enabled any conduct by a judge to be characterised as unlawful. According to the third-party intervener, there was no clear definition of the terms “honour”, “integrity” and “good reputation of the judiciary” or any settled case-law that could guide judges liable to receive a disciplinary sanction under Article 99(a) of Law no. 303/2004 (see paragraph 28 above).

47. On 23 December 2021 some 500 Romanian judges and prosecutors had signed an open letter addressed to the CSM and to the Minister of Justice asking for the contested provision to be repealed, because it did not make it possible to identify the type of conduct that would impair honour and professional integrity. The third-party intervener submitted that the manner in which the law in question was applied could potentially lead the Court to find that it was dealing with a criminal charge within the meaning of Article 6 of the Convention. The European Commission, in its report to the European Parliament and the Council of 8 June 2021, noted that there were cases where disciplinary investigations and heavy sanctions on judges and prosecutors critical of the efficiency and independence of the judiciary had raised concerns (see paragraph 38 above). The Romanian Judges’ Forum emphasised the importance of respecting judges’ right to freedom of expression and the need for such right. Any limitations to that right had to be clearly justified and to make an obvious, durable connection between the prohibited activity and the ability for a judge to perform his or her duties impartially. Judges were also members of society and could not be forced to live in a bubble, disconnected from social realities.

2. *The Court's assessment*

(a) **Whether there was an interference**

48. It is common ground between the parties that the disciplinary sanction imposed on the applicant amounted to an interference with his right to freedom of expression within the meaning of Article 10 § 1 of the Convention (see paragraphs 42 and 44 above). The Court finds no reason to hold otherwise.

(b) **Whether the interference was lawful**

49. It is undisputed in the present case that the interference in issue – the disciplinary sanction resulting from the disciplinary investigation – had a legal basis, namely Articles 99(a) and 100(b) of Law no. 303/2004 (see paragraph 28 above), and that those provisions were accessible to the applicant.

50. The question remains whether the legal rules concerned also fulfilled the requirement of foreseeability. The Court reiterates that the level of precision required of domestic legislation depends to a considerable degree on the content of the instrument in question, the field it is designed to cover and the number and status of those to whom it is addressed. Furthermore, the mere fact that a legal provision is capable of more than one construction does not mean that it does not meet the requirement implied in the notion “prescribed by law”. Lastly, it is primarily for the national authorities to interpret and apply domestic law (see *Vogt v. Germany*, 26 September 1995, § 48, Series A no. 323).

51. In the present case the Court notes that the applicant, supported by the Romanian Judges’ Forum, criticised the alleged lack of foreseeability of the terms used in Article 99(a) of Law no. 303/2004 (see paragraphs 42 and 46 above) and, in particular, such concepts as “honour”, “professional integrity” and “the good reputation of the judiciary” which, he claimed, were general in nature and could be interpreted in several ways. The Government disputed that argument (see paragraph 44 above). The Court accepts in the present case that concepts such as “honour”, “professional integrity” and “the good reputation of the judiciary” are in fact general in nature and can be interpreted in several ways. However, in the context of rules governing the behaviour of the judiciary, there should be a reasonable approach in assessing statutory precision (see, *mutatis mutandis*, *Oleksandr Volkov v. Ukraine*, no. 21722/11, § 178, ECHR 2013, and *Eminağaoğlu*, cited above, §§ 128-30). In the present case the applicant – a judge and thus an expert in the field of law – could have referred to the relevant domestic case-law to check how the concepts in issue had been interpreted, bearing in mind that, inevitably, the terms used in legislation are intended to apply to many different situations, that drafting legislation with absolute precision risks creating a certain rigidity and that many laws use relatively vague terms, whose interpretation and application

depend on practice, to accommodate the need to adapt to changing situations (see *Bouton v. France*, no. 22636/19, § 33, 13 October 2022). The Court concludes that the interference in issue was in fact “prescribed by law” within the meaning of its case-law.

(c) Whether there was a legitimate aim

52. The Court observes that the Government relied on the duty of discretion incumbent on judges and prosecutors to justify the fact that a disciplinary investigation had been conducted into the applicant and that the sanction in issue had been imposed on him (see paragraph 44 above). The duty of discretion imposed on judges and prosecutors stems from the need to maintain their independence and impartiality as well as the authority of their decisions (see paragraph 57 below). The Court thus finds that the resulting interference with the applicant’s right to freedom of expression pursued at least one of the aims recognised as legitimate by the Convention, namely to maintain the authority and impartiality of the judiciary (see, *mutatis mutandis*, *Eminağaoğlu*, cited above, § 131).

It remains to be determined whether that interference was also “necessary in a democratic society” to achieve the aim in question.

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

(i) General principles

53. The general principles to be applied when assessing the necessity of an interference with the exercise of freedom of expression have been reaffirmed by the Court multiple times (see, for example, *Baka*, cited above, § 158, and *Halet v. Luxembourg* [GC], no. 21884/18, § 110, 14 February 2023) in the following terms:

“Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual’s self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to ‘information’ or ‘ideas’ that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no ‘democratic society’. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...

The adjective ‘necessary’, within the meaning of Article 10 § 2, implies the existence of a ‘pressing social need’. In general, the ‘need’ for an interference with the exercise of the freedom of expression must be convincingly established. Admittedly, it is primarily for the national authorities to assess whether there is such a need capable of justifying that interference and, to that end, they enjoy a certain margin of appreciation. However, the margin of appreciation goes hand in hand with European supervision, embracing both the law and the decisions that apply it.

In exercising its supervisory jurisdiction, the Court must examine the interference in the light of the case as a whole, including the content of the impugned statements and

the context in which they were made. In particular, it must determine whether the interference in issue was ‘proportionate to the legitimate aims pursued’ and whether the reasons adduced by the national authorities to justify it were ‘relevant and sufficient’. In doing so, the Court has to satisfy itself that these authorities applied standards which were in conformity with the principles embodied in Article 10 and that, moreover, they relied on an acceptable assessment of the relevant facts.”

(α) The freedom of expression of judges and prosecutors

54. The Court has found that, in a democratic society, questions concerning the functioning of the justice system fall within the public interest (see *Morice*, cited above, § 128). Debates on matters of public interest generally enjoy a high level of protection under Article 10, with a particularly narrow margin of appreciation accordingly being afforded to the authorities (ibid., §§ 125 and 153). Even if an issue under debate concerning the judiciary has political implications, this is not in itself sufficient to prevent a judge from making a statement on the matter (see, *mutatis mutandis*, *Wille*, cited above, § 67). Any interference with the freedom of expression of a judge calls for close scrutiny on the part of the Court (see *Żurek v. Poland*, no. 39650/18, § 224, 16 June 2022; *Harabin v. Slovakia* (dec.), no. 62584/00, ECHR 2004-VI; *Wille*, cited above, § 64 *in fine*; and *Baka*, cited above, § 165).

55. It is true that the particular task of the judiciary in society requires judges to observe a duty of discretion. In particular, it can be expected of public officials serving in the judiciary that they should show restraint in exercising their freedom of expression in all cases where the authority and impartiality of the judiciary could be called in question (see *Wille*, cited above, § 64). The dissemination even of accurate information must be carried out with moderation and propriety. In similar contexts, the Court has on many occasions emphasised the special role in society of the judiciary, which, as the guarantor of justice, a fundamental value in a law-governed State, must enjoy public confidence if it is to be successful in carrying out its duties. It is for this reason that judicial authorities, in so far as the exercise of their adjudicatory function is concerned, are required to exercise maximum discretion with regard to the cases with which they deal in order to preserve their image as impartial judges (see *Baka*, cited above, § 164, and the cases cited therein). The speech of judges, unlike that of lawyers, is received as the expression of an objective assessment which commits not only the person expressing him- or herself, but also, through that person, the entire justice system (see *Morice*, cited above, § 168).

56. It may therefore prove necessary to protect the judiciary against destructive attacks which are essentially unfounded, especially in view of the fact that judges who have been criticised are subject to a duty of discretion that precludes them from replying (see *Prager and Oberschlick v. Austria*, 26 April 1995, § 34, Series A no. 313; *Kudeshkina v. Russia*, no. 29492/05, § 86, 26 February 2009; and *Di Giovanni v. Italy*, no. 51160/06, § 71, 9 July 2013).

57. The nature and severity of the sanctions imposed are also factors to be taken into account when assessing the proportionality of the interference. Interference with freedom of expression may have a chilling effect on the exercise of that freedom (see *Guja v. Moldova* [GC], no. 14277/04, § 95, ECHR 2008; *Morice*, cited above, § 127; and *Baka*, cited above, § 160).

58. In the context of Article 10 of the Convention, the Court must take account of the circumstances and overall background against which the statements in question were made (see, *mutatis mutandis*, *Morice*, cited above, § 162; *Wille*, cited above, § 63; and *Albayrak v. Turkey*, no. 38406/97, § 40, 31 January 2008), attaching particular importance to the office held by the applicant, his statements and the context in which they were made.

(B) The freedom to receive and impart information on the internet

59. The internet has become one of the principal means by which individuals exercise their right to freedom of expression, since it provides essential tools for participation in activities and discussions concerning political issues and issues of general interest (see *Vladimir Kharitonov v. Russia*, no. 10795/14, § 33, 23 June 2020, and *Melike v. Turkey*, no. 35786/19, § 49 *in fine*, 15 June 2021). The Court has also found that the internet plays an important role in enhancing the public's access to news and facilitating the dissemination of information in general (see *Delfi AS v. Estonia* [GC], no. 64569/09, § 133, ECHR 2015) and that, in this context, the function of bloggers and popular users of the social media may be also assimilated to that of "public watchdogs" in so far as the protection afforded by Article 10 is concerned (see *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 168, 8 November 2016).

60. However, the benefits of this information tool, an electronic network serving billions of users worldwide, carry a certain number of risks: websites are an information and communication tool particularly distinct from the printed media, especially as regards the capacity to store and transmit information, and the risk of harm posed by content and communications on the internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is certainly higher than that posed by the press (see *Société Éditrice de Mediapart and Others v. France*, nos. 281/15 and 34445/15, § 88, 14 January 2021; *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, § 91, 28 June 2018; *Cicad v. Switzerland*, no. 17676/09, § 59, 7 June 2016; and *Editorial Board of Pravoye Delo and Shtekel v. Ukraine*, no. 33014/05, § 63, ECHR 2011 (extracts)).

61. Defamatory and other types of clearly unlawful speech, including hate speech and speech inciting violence, can be disseminated as never before, worldwide, in a matter of seconds, and sometimes remain available online for lengthy periods (see *Savva Terentyev v. Russia*, no. 10692/09, § 79,

28 August 2018, and *Savcı Çengel v. Turkey* (dec.), no. 30697/19, § 35, 18 May 2021).

62. That said, the Court may also have regard to other factors that mitigate the effects of internet users' messages on the legitimate interests protected by Article 10 § 2 of the Convention. The fact that a message was posted in an environment restricted to professionals in a given field may constitute such a factor where its reach was limited enough to avoid causing significant damage, as opposed to a message accessible to all internet users (see, *mutatis mutandis*, *Kozan v. Turkey*, no. 16695/19, § 66, 1 March 2022, where the Court, among other things, took into account the fact that all the members of a Facebook group in which messages had been shared were legal professionals, that the shared messages were visible to members only (private Facebook group) and that the group was not accessible to all internet users since it did not appear in the results of online search engines).

63. The Court also reiterates that hyperlinks contribute to the smooth operation of the internet by making information accessible through linking content; they serve merely to draw readers' attention to the existence of material on another website (see *Magyar Jeti Zrt v. Hungary*, no. 11257/16, §§ 73-74, 4 December 2018). When examining whether the creation of a hyperlink amounts to the dissemination of defamatory information, the domestic court must perform an individual assessment of each specific case and hold the creator of the hyperlink liable only for relevant and sufficient reasons, determining in particular whether or not the creator endorsed the content to which the hyperlink led (*ibid.*, §§ 76-77, 80 and 83).

(ii) *Application of those principles to the present case*

64. The Court first notes that the applicant was a judge at Cluj County Court at the relevant time (see paragraph 4 above). As such, he had a duty to guarantee individual freedoms and the rule of law by contributing to the proper functioning of the justice system and thereby nurturing public confidence in that institution (see, *mutatis mutandis*, *Kayasu v. Turkey*, nos. 64119/00 and 76292/01, § 91, 13 November 2008). It could therefore be expected of the applicant that he would show restraint in exercising his freedom of expression, in a situation where the authority and impartiality of the judiciary might be called in question (see the case-law cited in paragraph 56 above). Nevertheless the Court finds that an interference with the freedom of expression of a judge in a position such as the applicant's calls for close scrutiny on its part (see the case-law cited in paragraph 54 *in fine* above).

65. The Court further observes that the disciplinary sanction in issue was based on the applicant's failure to comply with his duty of discretion and on the impairment of the dignity of judicial office and the impartiality and good reputation of the judiciary, caused by two messages that he posted on his Facebook page. In the present case, the disciplinary board found that, by

posting the first message, the applicant had – unequivocally and among thousands of readers – cast doubt on the credibility of the institutions of the State, insinuating that they were controlled by the political class and proposing as a solution that the army intervene to ensure constitutional democracy. With regard to the second message, which contained a hyperlink to an interview with the prosecutor C.S. along with a comment by the applicant, the disciplinary board found that the language used by the applicant had overstepped the limits of decency and had been unworthy of a judge (see paragraphs 16-19 above). The High Court upheld those findings following an appeal by the applicant (see paragraphs 23-26 above).

66. The Court considers that, to reach those conclusions, the domestic judicial authorities neither weighed up the various interests at stake in accordance with the criteria laid down in its case-law, nor duly analysed whether the interference with the applicant’s right to freedom of expression had been necessary (see, *mutatis mutandis*, *Tête v. France*, no. 59636/16, §§ 57-60, 26 March 2020). Such failure to weigh up the competing interests is in itself problematic in the light of Article 10 of the Convention (see, *mutatis mutandis*, *Nadtoka v. Russia*, no. 38010/05, § 47, 31 May 2016).

67. Thus, while citing the Court’s case-law, the domestic judicial authorities confined themselves to assessing the manner in which the applicant had expressed himself, without examining the expressions he had used in their broader context, namely a debate on matters of public interest (see paragraphs 16-19 and 23-26 above; see also, *mutatis mutandis*, *Mesić v. Croatia*, no. 19362/18, § 89, 5 May 2022). That said, the Court is mindful that certain expressions used by the applicant, a serving judge, may appear questionable at first glance, particularly having regard to their general nature – they suggested that several State institutions were under political “control” (see paragraphs 5 and 6 above) – and to the applicant’s duty of discretion (see the case-law cited in paragraph 55 above).

68. Regarding the first post in issue, the Court notes that it contained criticism of the alleged political influences on certain institutions, namely the police, the judiciary and the army. The applicant referred to the constitutional provisions under which the army served the will of the people (see paragraph 27 above) and he contemplated the risk of any form of political control over that institution. Through the use of rhetorical questions, he asked his readers to imagine the army one day acting against the will of the people, under the pretext of defending democracy; in his view, that was a mere detail behind which lay a more serious problem (see paragraph 5 above).

69. The Court disagrees with the Government’s argument (see paragraph 45 above) and thus considers that, resituated in their proper context (see paragraphs 70-71 below), the applicant’s statements amounted to value judgments to the effect that there would be a threat to constitutional democracy in the event that public institutions fell once more under political control. Those statements, whose truth is not susceptible of proof (see *Morice*,

cited above, § 126), therefore concerned matters of public interest relating to the separation of powers and the need to preserve the independence of the institutions of a democratic State.

70. As to whether those value judgments had a sufficient “factual basis”, the Court observes that the disciplinary bodies that dealt with the applicant’s case did not, in fact, challenge his argument that there was a major debate taking place in civil society around the extension of the Army Chief of Staff’s term of office (see paragraphs 16-19 and 23-25 above) – a decision that appears to have given rise to a court case (see paragraph 20 above).

71. In addition, before the Judicial Inspection Board, the applicant justified his statements by the potential danger of appointing an army leader on the basis of political criteria, citing the events of the 1989 revolution as an example (see paragraph 13 above). The High Court found that the disputed posts had been such as to prompt readers to make a connection with historical events (see paragraph 24 *in fine* above). In this regard, the Court refers to the general circumstances surrounding the lethal crackdown – with army support – on the demonstrations of December 1989 against the former totalitarian regime, as summarised in the case of *Association “21 December 1989” and Others v. Romania* (nos. 33810/07 and 18817/08, §§ 12-18, 24 May 2011). It further notes that the applicant was making reference to historical issues and that, in principle, participants in a debate on such issues enjoy greater freedom of expression with the passage of time (see, *mutatis mutandis*, *Smolorz v. Poland*, no. 17446/07, § 38, 16 October 2012, and the cases cited therein).

72. Regarding the second post in issue, the Court observes that the applicant posted on his Facebook page a hyperlink to a press article on a news website, containing an interview with the prosecutor C.S. about how the public prosecutor’s office was handling criminal cases and the difficulties that prosecutors were having in dealing with the cases assigned to them. The hyperlink was accompanied by a comment written by the applicant, praising the courage of the prosecutor in question in that he dared to speak openly about the release of dangerous inmates, about what he took to be bad initiatives to amend the laws organising the justice system, and about the “lynching” of judges and prosecutors (see paragraph 6 above).

73. The Court notes that the applicant’s post showed that he was endorsing the subject matter of the article in question and, in particular, the ideas expressed by the prosecutor C.S. The position taken by the applicant during the disciplinary investigation, moreover, confirmed this (see paragraph 11 above; contrast *Magyar Jeti Zrt*, cited above, §§ 78-79).

74. However, it is the Court’s view that the applicant, while endorsing the ideas expressed by the prosecutor C.S. in his interview, was seeking to take part in a debate on the problems facing Romanian judges and prosecutors at the time. That some Romanian judges and prosecutors were certainly debating the potential impact on judicial independence of the successive

amendments to legislation on judicial organisation has, moreover, been confirmed by the third-party intervener, the Romanian Judges' Forum (see paragraph 46 above), as well as by the Venice Commission (see paragraph 35 above) and by the European Commission (see paragraph 38 above); nor was this disputed by the disciplinary bodies (see paragraphs 16-19 and 23-26 above). It should be stressed that, in this type of case, the Court attaches significant weight to the domestic background against which the statements in dispute were made (see the case-law cited in paragraph 58 above).

75. Accordingly, the Court considers that the applicant's position clearly fell within the context of a debate on matters of public interest, since it concerned legislative reforms affecting the justice system (see, *mutatis mutandis*, *Žurek*, cited above, § 224; *Kozan*, cited above, § 64; *Miroslava Todorova v. Bulgaria*, no. 40072/13, § 175, 19 October 2021; *Kövesi*, cited above, § 207; and *Baka*, cited above, § 171; see also, to similar effect, paragraph 102 of the report on the freedom of expression, association and peaceful assembly by judges and prosecutors, cited in paragraph 30 above; paragraph 19 of the Appendix to the Recommendation of the Committee of Ministers to member States on judges, cited in paragraph 33 above; and paragraphs 1 to 3 of Opinion No. 25 of the CCJE, cited in paragraph 37 above). In consequence, the Court takes the view, concerning both the second and first posts, that any interference with the freedom to impart or receive information ought to have been subjected to strict scrutiny, given the narrow margin of appreciation afforded to the authorities of the respondent State in such cases (see the case-law cited in paragraph 54 above). In the Court's view, the Romanian judicial authorities failed to take these considerations duly into account.

76. That being stated, the Court reasserts the principle that it can be expected of judges and prosecutors that they should show restraint in exercising their freedom of expression, in a situation where the authority and impartiality of the judiciary could be called in question (see paragraphs 29-37 and 56 above). By using his Facebook account, which was accessible to the general public (contrast *Kozan*, cited above, § 66), the applicant had accepted a certain number of risks. Statements published on such a forum can be disseminated as never before, worldwide, in a matter of seconds, and sometimes remain available online for lengthy periods (see the case-law cited in paragraphs 59-62 above). However, as the Court has noted (see paragraphs 68-75 above), the statements in issue were not clearly unlawful, defamatory, hateful or calls to violence (contrast *Savva Terentyev*, cited above, § 79, and *Savcı Çengel*, cited above, § 35).

77. The Court further observes that the High Court found that the judicial authorities were not able to assess whether the applicant's allegations had a factual basis (contrast *Morice*, cited above, § 126) and that the applicant's personal opinion, expressed in such a manner, had unquestionably cast doubt on the credibility of the institutions of the State (see paragraph 25 above).

78. In addition, with regard to the second post in dispute, which included a hyperlink, the Court notes that the domestic judicial authorities focused their examination solely on the language used by the applicant, without conducting an individual assessment or providing relevant and sufficient reasons for finding him liable (see paragraphs 17 *in fine* and 18 *in fine* above). However, it was all the more important to examine such elements in the present case because there was no evidence that the content of the applicant's post was unlawful in any way (compare *Magyar Jeti Zrt*, cited above, § 19).

79. Regarding the expression “a prosecutor with some blood in his veins”, which was criticised by the disciplinary bodies and by the High Court (see paragraphs 18 *in fine* and 25 above), the Court is of the opinion that the applicant was seeking to emphasise the courage displayed by the prosecutor C.S., who had publicly criticised matters of public interest relating to the justice system (see paragraphs 72-73 above), and that his comments were not intended to be disparaging.

80. Lastly, with regard to the disciplinary sanction, the Court notes that the domestic judicial authorities did not take into account the danger of the chilling effect that the sanction might have (see the case-law cited in paragraph 57 above). On the contrary, they considered it positive that the sanction would discourage the applicant from making similar statements in the future (see paragraph 19 *in fine* above). Moreover, the Court attaches significant weight to the fact that the domestic judicial authorities chose not to impose the least severe sanction on the applicant (at the relevant time, a warning – see paragraph 28 above) and that this undoubtedly had a “chilling effect” in that it must have discouraged not only the applicant himself but also other judges from taking part in future public debates on matters concerning the separation of powers or the legislative reforms affecting the courts and, more generally, on matters pertaining to the independence of the judiciary (see, *mutatis mutandis*, *Žurek*, cited above, § 227; *Kozan*, cited above, § 68; and *Miroslava Todorova*, cited above, § 176, and the cases cited therein).

81. Furthermore, in the Court's view, the decision of the disciplinary board, as upheld by the High Court, did not give relevant and sufficient reasons to justify its finding that, in his posts, the applicant had impaired the dignity and honour of judicial office (contrast *Simić v. Bosnia and Herzegovina* (dec.), no. 75255/10, §§ 35-36, 15 November 2016).

82. Taken together, the foregoing considerations lead the Court to conclude that, in weighing up the competing interests at stake, the domestic judicial authorities failed to take due account of several important factors, in particular concerning the broader context in which the applicant's statements had been made, his participation in a debate on matters of public interest, whether the value judgments expressed had had a sufficient factual basis and, lastly, the potential chilling effect of the sanction. In addition, the existence of an impairment of the dignity and honour of judicial office was not sufficiently demonstrated. In their decisions, the domestic judges did not

grant the applicant's freedom of expression the weight and importance this freedom was due in the light of the Court's case-law, even though a means of communication had been used (namely a publicly accessible Facebook account) that potentially raised legitimate questions with regard to compliance by judges with their duty of discretion.

83. The Court concludes that the Romanian judicial authorities did not provide relevant and sufficient reasons to justify the alleged interference with the applicant's right to freedom of expression. There has accordingly been a violation of Article 10 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

84. The applicant complained that the investigation had damaged his professional reputation; also that the disciplinary sanction had harmed his social and professional reputation and had had a negative impact on his career. He relied on Article 8 of the Convention, which provides:

“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. The parties' submissions

1. *The Government*

85. The Government contended that Article 8 of the Convention was not applicable. They pointed out that the applicant had had his pay cut for a limited time and had not been dismissed from office (in contrast, they referred to the judgments in *Oleksandr Volkov*, cited above, § 48, and *Özpınar*, cited above, §§ 67-79). The Government requested that in the present case the Court apply the case-law established by *Denisov v. Ukraine* ([GC], no. 76639/11, §§ 128-34, 25 September 2018). Alternatively, they asked the Court to find that the interference had been in accordance with the law, that it had been based on the duty of discretion incumbent on judges and prosecutors and that it had been necessary in a democratic society.

2. *The applicant*

86. The applicant submitted that the reasons given by the High Court to justify the choice of a sanction other than the least severe one (see paragraph 28 above) had called into question his moral values, had caused him some distress and had had a significant psychological impact on him when he had been obliged to defend his right to freedom of expression after

being accused of impairing the good reputation and prestige of the judiciary, of not complying with the obligations inherent in his office, of using language that had overstepped the limits of decency and integrity and of conducting himself in an unsatisfactory manner that damaged the prestige of the judiciary (see paragraph 26 above). He submitted that the interference had had no legal basis, on account of insufficient foreseeability. He claimed that the sanction in issue had prevented him from applying for a position as judge at the Cluj Court of Appeal in 2021. He produced a copy of the decision rejecting his application for failure to meet the condition laid down in Article 44 of Law no. 303/2004, namely no disciplinary sanctions in the past three years under review (see paragraph 28 above). Lastly, the applicant submitted that his pay cut had created financial problems for him, because his two daughters at university and his mother were dependent on him and he had a bank loan to repay. In that regard, he produced documents proving that he provided for his two daughters at university, documents relating to his mother's retirement and bank statements for 2019 indicating loan repayments and other expenses.

B. The Court's assessment

1. General principles

87. The Court reiterates that the concept of “private life” is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person. It can therefore embrace multiple aspects of the person's physical and social identity. It extends in particular to a right to personal development, and the right to establish and develop relationships with other human beings and the outside world (see *Denisov*, cited above, § 95, and *López Ribalda and Others v. Spain* [GC], nos. 1874/13 and 8567/13, §§ 87-88, 17 October 2019).

88. Employment-related disputes are not *per se* excluded from the scope of “private life” within the meaning of Article 8 of the Convention. There are some typical aspects of private life which may be affected in such disputes. These aspects include (i) the applicant's “inner circle”, (ii) the applicant's opportunity to establish and develop relationships with others, and (iii) the applicant's social and professional reputation. There are two ways in which a private-life issue would usually arise in such a dispute: either because of the underlying reasons for the impugned measure (in that event the Court employs the reason-based approach) or – in certain cases – because of the consequences for private life (in that event the Court employs the consequence-based approach). If the consequence-based approach is at stake, the threshold of severity with respect to all the above-mentioned aspects assumes crucial importance. It is for the applicant to show convincingly that the threshold was attained in his or her case. The applicant has to present evidence substantiating consequences of the impugned measure. The Court will only accept that Article 8 of the Convention is applicable where these

consequences are very serious and affect his or her private life to a very significant degree (see *Denisov*, cited above, §§ 115-16), and refers to the criteria for assessing the severity or seriousness of alleged violations in different regulatory contexts (*ibid.*, § 117).

2. *Application of those principles to the present case*

89. In the present case, the Court would point out that the applicant had his pay cut by 5% for two months as part of the disciplinary procedure against him (see paragraph 16 above). Employing the reason-based approach (see paragraph 88 above), it observes that the reasoning given by the domestic judicial authorities to justify the applicant's temporary pay cut was strictly limited to the fact that he had posted the two messages in issue, and concerned the consequences of those messages, along with the applicant's behaviour and the terms that he had used which, according to those authorities, had impaired the good reputation and prestige of the judiciary (see paragraph 26 above). Those reasons therefore related to the applicant's professional conduct and had no connection to his private life (see, *mutatis mutandis*, *Denisov*, cited above, § 120).

90. The Court observes that the reasons given for the applicant's disciplinary sanction do not include anything connected to his private life. Accordingly, on the basis of the evidence and the applicant's allegations, it will examine whether the measure in question had serious negative consequences on aspects constituting his "private life" (see paragraph 88 above). Regarding the consequences of the sanction in issue on the applicant's "inner circle", he affirmed that the measure had resulted in a reduction in his income at a time when he had had several dependants and outstanding loans (see paragraph 86 above). The applicant has not produced sufficient evidence to show that a 5% cut to his monthly remuneration for a mere two months seriously affected the "inner circle" of his private life (compare *J.B. and Others v. Hungary* (dec.), nos. 45434/12 and 2 others, § 132, 27 November 2018). In the Court's view, there are no other indications that the "inner circle" of the applicant's private life was affected by the impugned measure (see, *mutatis mutandis*, *Denisov*, cited above, § 120).

91. The Court further notes that the applicant was not dismissed or otherwise removed from judicial office as a result of the disciplinary sanction and that he continued to discharge his duties as a judge within the same court, alongside his colleagues. It follows that, even if his opportunities to establish and develop relationships with other human beings, including relationships of a professional nature, might have been affected, there are no factual grounds for concluding that such effects were substantial.

92. Regarding the applicant's professional reputation, the Court observes that at no point did the domestic judicial authorities examine his performance as a judge or express any opinion as to his judicial competence and professionalism. The disciplinary decision only concerned whether he had

complied with his duty of discretion when posting the disputed messages (contrast *Oleksandr Volkov*, cited above, § 166).

93. As to the adverse impact on the applicant's career, in particular his inability to apply for a promotion in the three years following the sanction in issue, the Court would point out that a distinction needs to be made, under Article 8 of the Convention, between a far-reaching ban on taking up employment, on the one hand, and a difficult or impossible path to promotion, on the other. In the present case, the mere fact that the applicant was allegedly temporarily refused career advancement for the above-mentioned reasons would not in itself amount to an impact on his personal development or on his ability to establish relationships with the outside world such that it would affect his right to respect for his private life and thus trigger the applicability of Article 8 of the Convention (see, *mutatis mutandis*, *Briani v. Italy* (dec.), no. 33756/09, § 23, 9 September 2014).

94. As regards the applicant's social reputation in general, the Court notes that the criticism by the domestic judicial authorities did not affect a wider ethical aspect of the applicant's character and integrity. Even though the sanction was based on the findings of breaches of his duty of discretion, it did not call in question his moral values (see, *mutatis mutandis*, *Denisov*, cited above, § 129).

95. In consequence, given that the grounds for the sanction were unrelated to the applicant's "private life" and that it did not have severe negative consequences for his "inner circle", for his ability to establish and develop relationships with others or for his reputation, the Court considers that Article 8 of the Convention does not apply in the present case. The Government's objection should therefore be upheld and the complaint must be dismissed as incompatible *ratione materiae* with the provisions of the Convention pursuant to Article 35 §§ 3 (a) and 4.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

96. 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

97. The applicant specified in his submissions of 30 March 2022 that the mere finding of a violation of Articles 8 and 10 of the Convention would, in so far as he was concerned, constitute sufficient just satisfaction under Article 41 of the Convention.

98. The Government asked the Court to take note of the applicant's position and thus not to award him any compensation in respect of pecuniary or non-pecuniary damage should it find a violation.

99. Given the applicant's position, the Court considers that no award should be made in this respect (see, for example, *Miroslava Todorova v. Bulgaria*, no. 40072/13, § 216, 19 October 2021).

B. Costs and expenses

100. The applicant claimed 5,232 euros (EUR) for the costs and expenses incurred in the proceedings before the Court. He produced a detailed invoice in this regard. He further requested that the sum awarded by the Court be paid directly into his lawyer's bank account, in accordance with their written agreement.

101. The Government asked the Court to reimburse only the costs and expenses indisputably related to the proceedings before it, provided they had been actually and necessarily incurred and had been proven.

102. 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 5,232 covering costs under all heads, plus any tax that may be chargeable to the applicant. That sum is to be paid directly into the bank account of the applicant's representative (see, for example, *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 288, 15 December 2016).

FOR THESE REASONS, THE COURT

1. *Declares*, unanimously, the complaint concerning Article 10 of the Convention admissible and the complaint concerning Article 8 of the Convention inadmissible;
2. *Holds*, by four votes to three, that there has been a violation of Article 10 of the Convention;
3. *Holds*, by four votes to three,
 - (a) that the respondent State is to pay the applicant, into his representative's bank account, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 5,232 (five thousand two hundred and thirty-two euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;

- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in French, and notified in writing on 20 February 2024, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth
Registrar

Gabriele Kucsko-Stadlmayer
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) concurring opinion of Judge Rădulețu;
- (b) joint dissenting opinion of Judges Kucsko-Stadlmayer, Eicke and Bormann.

G.K.S.
I.F.

CONCURRING OPINION OF JUDGE RĂDULEȚU

(Translation)

I voted with the majority in finding a violation of Article 10 and I agree with all the arguments put forward in the reasoning under that provision. However, given the important implications that the chosen solution has on the development of the Court’s case-law in this area, I would like to emphasise some key points, which relate primarily to the applicant’s first post (see paragraph 5 of the judgment).

This case has been characterised as “borderline” because it deals with the issue of the limits to a judge’s duty of discretion. One of the challenges it poses is how to find rules applicable to this kind of situation in the Court’s case-law as it stands. Looking at the issue from this angle, three separate types of rules can be identified.

First, there are the general principles on the exercise of freedom of expression, which have been developed in the Court’s relevant case-law (see, among other authorities, *Baka v. Hungary* [GC], no. 20261/12, § 158, 23 June 2016) and apply to individuals taking part in debates on matters of public interest. These rules enable the Court to perform a strict review of proportionality and entail a narrow margin of appreciation for the national authorities.

Second, the Court has afforded the national authorities a certain margin of appreciation when it comes to the freedom of expression of civil servants in general, and more specifically judges, who are bound by a duty of discretion (*ibid.*, §§ 162-64). A judge’s freedom of expression in these circumstances is more limited because of the need to protect the authority and impartiality of the judiciary.

Third, although judges have duties and responsibilities owing to the authority and impartiality of the judiciary, the Court has established that they enjoy greater freedom of expression where they are high-ranking members of the judiciary and where their statements concern the functioning of the justice system, which is a matter of public interest (*ibid.*, §§ 165 and 166).

The present case concerns a judge who held no high-ranking position in the domestic justice system – he was a county court judge – and who expressed his opinions on a matter of public interest that had no direct link to the functioning of the justice system. Which of the three types of rules mentioned above applies in this particular case? The third type will clearly not do, because the applicant was not in one of the specific situations similar to that of the applicant in the *Baka* case.

That leaves the general principles, which cover all individuals (the first type of rules), and the specific, more restrictive rules, which apply to judges on the basis of their duty of discretion (the second type).

It is my opinion that, as the case-law currently stands, the second type of rules must be interpreted narrowly because they are exceptions to the first type (the general principles of freedom of expression). The exceptional nature of the rules based on the duty of discretion of judges prevents their scope of application from being broadened through interpretation. Until now, the Court has only applied these rules to situations in which a judge had made statements potentially calling into question the authority and independence of the judiciary, and more specifically when those statements had concerned the functioning of the justice system.

The present case, however, differs from this type of situation in that the applicant's first post did not directly address the functioning of the justice system but rather matters of public interest. Although he held judicial office, he was taking part in a debate that did not strictly relate to the justice system. That is why I believe that rigid rules of the second type, which form exceptions to the first type, are not applicable in the present case. In consequence, I share the opinion of the majority in finding that the general principles (the first type of rules) apply and that the Court must perform a more stringent review of proportionality.

In my opinion, the Court's case-law as it stands does not yet provide rules that allow for a broader interpretation of judges' duty of discretion, one that might include not only their statements on the functioning of the justice system but also any situation in which they take part in general debates on matters of public interest.

Admittedly, the applicant made his statements in fairly provocative language and using his Facebook account, which had tens of thousands of followers. But he was doing so to address a matter of public interest. Given that there is no case-law establishing clear, foreseeable rules on the scope of judges' duty of discretion in such situations, that the statements concerned a matter of public interest, and above all that the domestic judicial authorities failed to weigh up the competing interests at stake (an exercise that was theirs to perform first), the protection of the applicant's freedom of expression must prevail.

JOINT DISSENTING OPINION OF JUDGES KUCSKO-STADLMAYER, EICKE AND BORMANN

1. To our regret we are unable to agree with the majority that there has been, in the present case, a violation of the applicant’s rights under Article 10. In our view this case concerns not so much the right of a judge to express criticism of the government, but the way such criticism was expressed, and whether the applicant exercised his freedom of expression with the restraint and propriety by which he was bound as a judge.

2. The general principles on freedom of expression of judges are set out in *Baka v. Hungary* ([GC], no. 20261/12, §§ 162-67, 23 June 2016). The Court has recognised that judges, like all civil servants, enjoy protection under Article 10. However, given the prominent place among State organs that the judiciary occupies in a democratic society, the Court has reiterated that it can be expected of public officials serving in the judiciary that they should show restraint in exercising their freedom of expression in all cases where the authority and impartiality of the judiciary are likely to be called into question. The dissemination even of accurate information must be carried out with moderation and propriety. After all, the judiciary, as the guarantor of justice, a fundamental value in a law-governed State, must enjoy public confidence if it is to be successful in carrying out its duties (*ibid.*, § 164).

3. When determining whether an interference with the right to freedom of expression is proportionate to the aim of protecting the authority and impartiality of the judiciary, the national authorities must strike a fair balance between the individual’s freedom of expression and the “duties and responsibilities” referred to in Article 10 § 2. They are allowed a certain margin of appreciation (*ibid.*, § 162). By contrast, the close scrutiny applied by the Court in *Baka* was linked to the fact that the applicant had expressed his views on legislative reforms in his professional capacity as President of the Supreme Court and of the National Council of Justice, recognising that it was not only his right but also his duty as President of that Council to express his opinion on legislative reforms affecting the judiciary, after having gathered and summarised the opinions of lower courts (*ibid.*, § 168). A narrow margin of appreciation was also applied in cases where the applicants had been members of judicial councils or other representative bodies of the judiciary (see *Sarısu Pehlivan v. Türkiye*, no. 63029/19, § 42, 6 June 2023; *Żurek v. Poland*, no. 39650/18, § 222, 16 June 2022; *Eminağaoğlu v. Turkey*, no. 76521/12, § 135, 9 March 2021; and *Kövesi v. Romania*, no. 3594/19, § 205, 5 May 2020).

4. The present applicant was not in a similar position: he was a judge in a county court without special status or responsibilities. Neither was the applicant, as may be suggested by the majority’s reference to the principles set out in *Halet v. Luxembourg* ([GC], no. 21884/18, 14 February 2023 – see paragraph 53 of the judgment), a whistle-blower in the sense of being the only

person, or part of a small category of persons, aware of what is happening at work and thus best placed to act in the public interest by alerting the employer or the public at large (see also *Guja v. Moldova* [GC], no. 14277/04, § 72, ECHR 2008). We cannot therefore agree with the majority that the margin of appreciation was narrow in the present case (see paragraph 75 of the judgment).

5. In *Baka* and the subsequent case-law, the Court also relied on the fact that the statements in issue did not go beyond mere criticism from a strictly professional perspective (see *Baka*, cited above, § 171; see also *Žurek*, cited above, § 224; *Kövesi*, cited above, § 207; and *Tuleya v. Poland*, nos. 21181/19 and 51751/20, § 544, 6 July 2023). However, the statements made by the applicant in the present case were not reasoned criticisms of conditions within the judiciary or reforms affecting the judiciary, but a series of statements expressed in colourful language. Those statements concerned not only the judiciary, but also the army, including the issue of the extension of the Army Chief of Staff's term of office. This was a matter pending before the courts (see paragraph 20 of the judgment) and thus one in which the applicant should have exercised particular caution in order to protect the appearance of impartiality of the judiciary. His statements were made on Facebook, where he had about 50,000 followers, and he must have been aware that his statements would quickly spread and would potentially be used in unintended contexts.

6. In their decision to impose a sanction on the applicant, the national authorities at all levels took into account this Court's case-law and based their decision squarely on the assessment that the language he had used went beyond what was compatible with a judge's duty to express him- or herself with propriety, and that his use of such language posed a threat to public confidence in the judiciary. As a general principle, the national authorities are best placed to assess the impact of language used in the specific context of their country and local society. There are also clear limits regarding how far it is appropriate for judges at an international court like our own – who do not speak the language in which the statements were made and who are otherwise ill-equipped to assess their impact within the context of the society in question – to seek to second-guess that assessment. Furthermore, it is our view that the decision to impose a sanction on the applicant fell within the general margin of appreciation in the light of which the proportionality of an interference should be determined.

7. As mentioned by the majority in paragraph 80 of the judgment, the national authorities could have chosen a more lenient sanction. However, the sanction imposed – a 5% reduction in the applicant's salary for two months – cannot be considered excessively harsh.

8. For the above reasons we were unable to vote with the majority in finding a violation of Article 10.