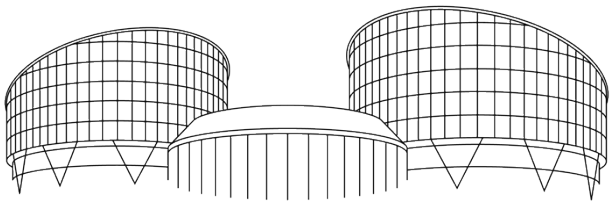

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF SZIMA v. HUNGARY

(Application no. 29723/11)

JUDGMENT

STRASBOURG

9 October 2012

FINAL

11/02/2013

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Szima v. Hungary,

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

Françoise Tulkens, *President,*
Danutė Jočienė,
Dragoljub Popović,
Isabelle Berro-Lefèvre,
András Sajó,
Işıl Karakaş,
Guido Raimondi, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 11 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 29723/11) against the Republic of Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Hungarian national, Ms Judit Szima ("the applicant"), on 28 April 2011.

2. The applicant was represented by Mr A.I. Molnár, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by Mr Z. Tallódi, Co-Agent, Ministry of Public Administration and Justice.

3. The applicant complained under Article 10 of the Convention that her conviction for some statements she had published on the Internet had amounted to a breach of her right to freedom of expression, especially in view of the fact that she could not prove the truth about the impugned allegations.

4. On 23 November 2011 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1960 and lives in Szekszárd.

6. The applicant, a retired senior police officer, was at the material time the chairperson of *Tettrekész* Police Trade Union. Between May 2007 and

July 2009 she published a number of writings on the Trade Union's website, which was effectively under her editorial control, concerning outstanding remunerations due to police staff, alleged nepotism and undue political influence in the force, as well as dubious qualifications of senior police staff.

7. The applicant was indicted for instigation to insubordination. On 29 April 2010 the Military Bench of the Budapest Regional Court found her guilty as charged and sentenced her to a fine and demotion. The court did not sustain the applicant's defence according to which the publication of such allegations belonged to the core of a trade union's activities. It held that those allegations were capable of causing insubordination and as such were hardly or not at all susceptible to any proof of their veracity.

8. The Regional Court based its judgment *inter alia* on the following statements published by the applicant on the Internet:

> (1) "The staff are regularly required to work overtime without remuneration..." "For years, clearly due allowances have not been paid to low-ranking staff..." "Currently it is almost a prerequisite of becoming a senior police officer to have a political background or to be a relative or a descendant of other senior police officers." "The senior police officers' obvious violations of the law set a bad example for the force." "This is typical of senior police officers: they commit violations and infringements, and then, if we point this out, their reaction is striking back without any principles, suing and accusing of incitement in order to counter our suggestions to renew and clean up the force." "Why are we wondering at the infringements of police officers if law-breaking and tyrannising senior police officers go unpunished?"
>
> (2) "The uninhibited infringements of the law committed by senior police officers placing themselves above the law go unpunished, and what is more, they are even decorated when, on order of the political authority in power, thousands, tens of thousands of discontented and underprivileged people are beaten by jaded police officers on the streets." "The '*Tettrekész*' Police Trade Union commiserates with those Hungarian citizens whose human dignity and human rights were violated and affronted by acts of a prostituted leadership and of our criminal 'colleagues' and apologises for that."
>
> (3) "Police staff are getting more and more underprivileged and humiliated by their own leaders." "Some senior police officers are active in trying to obtain that average citizens be punished rather than 'served and protected' by the police officers on the streets." "Some well-paid senior police officers unprofessionally incite ordinary citizens and police officers against each other." "We constantly request the review of the often unprofessional selection procedure of senior police officers, but to no avail, because there is apparently no need for a citizen-friendly police."
>
> (4) "The senior police officers again demonstrated that they were incapable of upholding the public order in a party-neutral and politically neutral way... It is proven again that the Hungarian Police's primary objective is first and foremost not to maintain public order for the taxpaying citizens but to uphold the reign of current political leaders who have led Hungary into economic and moral distress." "The reputation of the Police has reached previously unseen depths because of the acts of the unprofessional and anti-national senior police officers non-complying with the spirit of the police oath." "It is obvious that the Police's core leadership is, in an

unacceptable way, politically committed to the government of the country and that of the capital."

(5) "The Head of the National Police Department is demonstrating every day that he is much more able to write obscene poems than to lead the Police; moreover, he is considerably much better in being an obstacle to the work of '*Tettrekész'* Police Trade Union and in managing a police pop band than in cooperating with a representative trade union of the Police with the highest number of police officer members." "A chaotic and highly unprofessional leadership is ruining the rest of the Police's reputation from day to day."

9. On 8 December 2010 the Military Bench of the Budapest Court of Appeal upheld the applicant's conviction under section 357 of the Criminal Code. It held that the publication of the documents by the applicant had gone beyond her freedom of expression, given the particularities of the armed body to which she belonged. In the court's opinion, the views contained in the documents constituted one-sided criticism whose truthfulness could and should not be proven.

II. RELEVANT DOMESTIC LAW

10. Act No. XX of 1949 on the Constitution (as in force at the material time) provides as follows:

Article 59

"(1) In the Republic of Hungary everyone shall have the right to good reputation, the inviolability of his home, and the protection of privacy and personal data."

Article 61

"(1) In the Republic of Hungary everyone shall have the right to freedom of expression and to receive and impart information of public interest."

11. Act no. XLIII of 1996 on the Service of Members of Professional Staff of the Armed Forces provides as follows:

Section 18 – Freedom of expression

"(1) Members of professional staff of the police force and of the civilian national security services shall not be members of a political party and shall not engage in political activities.

(2) Members of professional staff shall not hold a position in a political party and shall not undertake public appearance in the name or interest of a political party, apart from standing as a candidate in parliamentary, European or municipal elections.

(3) Members of professional staff shall not engage in political activities at the place of service or while performing service tasks.

(4) Except for the case regulated under section 69, members of professional staff shall not criticise, or express an opinion about, a measure or order received unless they do so within the scope of their activities securing rights and interests; moreover, they shall not make statements injurious to the order and discipline of the service and shall not express a private opinion in official proceedings by using media publicity.

(5) Members of professional staff shall not produce or disseminate publications harmful to the order and discipline of the service and shall not place such posters, announcements or emblems anywhere.

(6) Announcements of the professional members' representation organisations falling within their scope of activities may be published in the locally customary manner. ..."

Section 29

"(1) For the purposes of this Act, "trade union" shall mean any representation organisation – irrespective of its actual designation – of members of professional staff, whose aim is the representation and protection of the service-related interests of members of professional staff.

(2) The trade union shall be entitled to

a) operate within the armed forces and to involve its members in its activity;

b) provide information for the members of professional staff about their rights and duties affecting their financial, social, cultural, living and service conditions;

c) represent its members vis-à-vis the organisational unit or before state organs in respect of issues affecting their service relationship or – upon authorisation – before a court or other authority or body in respect of issues affecting their living- and service conditions.

(3) The trade union shall have the right to exercise the following rights vis-à-vis the organisational unit:

a) may request information on any issues related to members of professional staff's service-related financial, social and cultural interests;

b) may communicate its position and opinion on the commander's (head's) measure (decision) concerning an issue falling under point a) to the commander in charge of the unit and may initiate consultations in such matters;

c) may, during official working hours or – in justified cases – in service hours check observance of the rules governing service and working conditions – including healthy and safe service performance – and may request information and data on the implementation of those rules, which information and data shall be provided for the trade union. Such checks may not endanger or hinder the performance of the service tasks.

(4) The trade union may draw the attention of the head of the organ in charge of the implementation of the rules to the shortcomings and omissions perceived in the course of the check. If the head fails to take the necessary action in due time, the trade union

may institute appropriate proceedings. The body having conducted the proceedings shall be obliged to inform the trade union of the findings of the proceedings.

(5) The rights specified under subsections (3)-(4) shall, in respect of issues falling into the supervisory bodies' scope of direction, be vested in the representative trade union within the given organisation. ..."

Section 69

"(1) While performing their service, members of professional staff shall be obliged to execute the orders of a supervisor or the instructions of a superior officer, unless they would commit a criminal offence thereby.

(2) Except for the case specified in subsection (1), members of professional staff may not refuse the execution of an unlawful order. Where, however, the unlawful nature of the order was recognised, it shall immediately be drawn to the superior officer's attention. If the supervisor upholds his order or the superior officer upholds his instruction, it must – upon request – be given in writing. Liability for the execution of an unlawful order or provision shall be borne solely by the issuer of the order or the instruction. ..."

Section 194 – Service complaint

"(1) Members of professional staff or – upon their authorisation and on their behalf– a representation organisation or an attorney at law may file a service complaint if they find prejudicial a service-related decision, measure or their omission, not regulated under section 195 of this Act.

(2) A service complaint against an employer's measure in connection with the termination of the service relationship, establishment of conflict of interest, or the unilateral modification of the service relationship by the armed forces affecting the member's position, shall be filed by the member of professional staff within 15 days from the communication of the employer's measure. In other cases service complaints shall be filed within the period of limitation applicable to the enforcement of the claim at issue.

(3) The complaint shall be filed with the supervisor who took (omitted to take) the decision and who shall – in case he fails to grant it – transfer the case, together with the case files, to the supervisor-commander without delay. Unless specified otherwise under the law, the supervisor-commander shall decide on the complaint within 30 days and shall communicate his decision to the complainant. This time limit may be extended on one occasion for another 30 days.

(4) No person shall be restricted in exercising his right to file a complaint. No complainant shall suffer any detriment in case his complaint is found ill-founded, except where intentional infringement of discipline, regulatory offence, or a criminal offence has been committed.

(5) The exercise of the right of complaint specified in another law shall not be affected by this Act."

Section 195 – Complaint and appeal against a decision

"(1) A first instance decision related to the service relationship and taken in proceedings conducted within the armed forces may – unless this Act provides otherwise – be challenged by a member of professional staff by filing a complaint ... or an appeal ... against the decision within 15 days from its service.

(2) Appeal against a decision brought in relation with the service obligations of a deceased member of professional staff may be lodged by a close relative.

(3) The complaint or appeal shall – unless this Act provides otherwise – be determined within 30 days by the service supervisor or the organ designated by the minister. This time-limit may be extended on one occasion for another 30 days."

12. Act No. IV of 1978 on the Criminal Code provides as follows:

Section 357 – Incitement

"(1) Anyone who incites discontent among soldiers towards a

superior, a command or in general towards the order of service or discipline, is guilty of a misdemeanour punishable by imprisonment of up to one year.

(2) The punishment shall be imprisonment for up to three years if:

a) the incitement is committed in the course of the performance of service;

b) the incitement entails considerable disadvantage for the service or discipline."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 READ IN THE LIGHT OF ARTICLE 11 OF THE CONVENTION

13. The applicant complained that the criminal proceedings conducted against her on account of some statements which she had published on the Internet, as part of her trade-union activity, amounted to a breach of her right to freedom of expression as provided in Article 10 of the Convention.

The Court considers that – against the background that the applicant is a trade-union leader – this complaint falls to be examined under Article 10 which will be interpreted in the light of Article 11 of the Convention (see *Palomo Sánchez and Others v. Spain* [GC], nos. 28955/06, 28957/06, 28959/06 and 28964/06, § 52 *in fine*, ECHR–2011).

Article 10 provides as relevant:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Article 11 provides as relevant:

> "1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society ... for the protection of health or morals or for the protection of the rights and freedoms of others ..."

14. The Government contested the applicant's arguments.

A. Admissibility

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

B. Merits

1. Arguments of the parties

a. The Government

16. The Government did not contest that there had been an interference with the applicant's freedom of expression. However, they pointed out that according to Article 10 § 2 of the Convention, this right might be subject to certain limitations. Section 18 of the Act on the Service of Members of Professional Staff of the Armed Forces restricted the freedom of expression of the armed forces' professional staff. Decision no. 8/2004. (III.25.) AB of the Constitutional Court had found this limitation to be in compliance with the Constitution. That court argued that orders and instructions might be criticised by lodging a service complaint (section 194 of the Service Act) or through a representative organisation (section 29). The assessment of criticism should be different depending on the type of service within the

armed forces and whether it had occurred in an armed conflict, state of danger or emergency, or in peace. Thus, the limitation on the right to freedom of expression was necessary to ensure the undisturbed performance of tasks of the armed forces, and could not be regarded as disproportionate in view of the specific nature of the service relationship.

17. The Government further observed that according to the Court's case-law, States had the possibility to impose restrictions on freedom of expression where there was a real threat to military discipline. However, proposals for reforms must be tolerated in the army of a democratic State.

18. As established by the domestic courts, in the present case the applicant's opinion had not been expressed in connection with the trade union's operation. The incriminated statements had gone beyond the limits of freedom of expression provided in section 29(2)(c) of the Service Act and had not concerned any proposals for reform. The domestic courts examined them thoroughly and found the incriminated statements to be devoid of factual basis and sometimes even defamatory and libellous. No intention to identify or remedy problems or anomalies had been detected in the applicant's statements; on the other hand, they had been likely to disrupt military discipline.

19. Moreover, the application of a criminal punishment could not be considered as disproportionate in the circumstances. In order to establish incitement, not only should the statement be injurious to the order and discipline of the service, but must also incite discontent among soldiers. In light of the *ultima ratio* character of criminal law, not all conduct injurious to the order and discipline of the service was sanctioned by criminal punishments. Conduct that did not reach the criminally relevant threshold of dangerousness to society was handled through disciplinary law. However, the applicant's case was different.

20. Lastly, the domestic courts had referred to the Court's case law on the matter and examined the human rights aspects of the case. They had come to the conclusion that the use of criminal sanctions in the instant case had not been disproportionate. The Government could not but endorse this view.

b. The applicant

21. The applicant submitted that she had not been active as a police officer but had only been in charge of representing the trade union in question. The impugned statements had been made exclusively in this context; and although they had been uttered in order to draw attention to issues of improving the working and living conditions of the trade union members, they could in no way be seen as offensive, defamatory or inciting to insubordination. Nevertheless, she had never been given the opportunity to prove their veracity before any competent body.

2. The Court's assessment

a. Whether there has been an interference

22. The Court notes that this issue has not been in dispute between the parties. It concludes that the applicant's conviction represented an interference with her right to freedom of expression.

Such an interference will represent a violation of the applicant's right to freedom of expression, unless it was "prescribed by law", pursued a legitimate aim and was necessary in a democratic society.

b. Prescribed by law

23. The Court observes that the applicant's conviction was based on section 357 of the Criminal Code and is therefore satisfied that it was "prescribed by law".

c. Legitimate aim

24. The Court notes that the applicant's prosecution reflected the domestic courts' conviction that her utterances had been capable of instigation to insubordination. It therefore finds that the interference pursued the legitimate aim of "prevention of disorder or crime", that is, of preserving order in the armed forces (see *Engel and Others v. the Netherlands*, 8 June 1976, § 98, Series A no. 22; *Vereinigung demokratischer Soldaten Österreichs and Gubi v. Austria*, 19 December 1994, § 32, Series A no. 302).

d. "Necessary in a democratic society"

i. General principles

25. 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" (see *Oberschlick v. Austria (no. 1)*, 23 May 1991, § 57, Series A no. 204). 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.

Moreover, Article 10 protects not only the substance of the ideas and information expressed but also the form in which they are conveyed (see *Uj v. Hungary*, no. 23954/10, § 20, 19 July 2011).

The same is true when the persons concerned are members of the armed forces, because Article 10 applies to them just as it does to other persons

within the jurisdiction of the Contracting States. However, the proper functioning of the armed forces is hardly imaginable without legal rules designed to prevent servicemen from undermining the requisite discipline, for example by writings (see *Engel and Others*, cited above, § 100; *Hadjianastassiou v. Greece*, 16 December 1992, § 39, Series A no. 252; *Vereinigung demokratischer Soldaten Österreichs and Gubi*, cited above, § 36).

26. Consequently, account must be taken of the need to strike the right balance between the various interests involved. Because of their direct, continuous contact with the realities of the country, the national courts are in a better position than an international one to determine how, at a given time, the right balance can be struck. For this reason, in matters under Article 10 of the Convention, the Contracting States have a certain margin of appreciation in assessing the necessity and scope of any interference in the freedom of expression protected by that Article (see *Tammer v. Estonia*, no. 41205/98, § 60, ECHR 2001-I, and *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 68, ECHR 2004-XI).

27. However, that margin goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court (see, *mutatis mutandis*, *Peck v. the United Kingdom*, no. 44647/98, § 77, ECHR 2003-I, and *Karhuvaara and Iltalehti v. Finland*, no. 53678/00, § 38, ECHR 2004-X). The Court's task in exercising its supervisory function is not to take the place of the national authorities but rather to review, in the light of the case as a whole, whether the decisions they have taken pursuant to their power of appreciation can be reconciled with the Convention provisions relied upon (see Bladet Tromsø *and Stensaas v. Norway* [GC], no. 21980/93, § 60, ECHR 1999-III; *Polanco Torres and Movilla Polanco v. Spain*, no. 34147/06, § 41, 21 September 2010; and *Petrov v. Bulgaria* (dec.), no. 27103/04, 2 November 2010). This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully or in good faith. The Court looks at the interference complained of in the light of the case as a whole, including the content of the statement held against the applicant and its context (see *News Verlags GmbH & CoKG v. Austria*, no. 31457/96, § 52, ECHR 2000-I).

In particular, the Court must determine whether the reasons adduced by the national authorities to justify the interference were "relevant and sufficient", and whether the measure taken was "proportionate to the legitimate aims pursued" (see *Chauvy and Others v. France*, no. 64915/01, § 70, ECHR 2004-VI). In doing so, the Court has to satisfy itself that the national authorities, basing themselves on an acceptable assessment of the relevant facts, applied standards which were in conformity with the principles embodied in Article 10 (see *Csánics v. Hungary*, no. 12188/06, § 37 *in fine*, 20 January 2009).

28. Furthermore, the members of a trade union must be able to express to their employer their demands by which they seek to improve the situation of workers in their company. A trade union that does not have the possibility of expressing its ideas freely in this connection would indeed be deprived of an essential means of action. Consequently, for the purpose of guaranteeing the meaningful and effective nature of trade union rights, the national authorities must ensure that disproportionate penalties do not dissuade trade union representatives from seeking to express and defend their members' interests (see *Palomo Sánchez and Others*, cited above, § 56). Furthermore, there is little scope for restrictions on debates on matters of public interest (see *Wingrove v. the United Kingdom*, 25 November 1996, § 58, *Reports of Judgments and Decisions* 1996-V; *Ceylan v. Turkey* [GC], no. 23556/94, § 34, ECHR 1999-IV).

29. In the present case, the Hungarian authorities were required to balance the applicant's right to freedom of expression, as guaranteed by Article 10 of the Convention, against her obligations in the context of a service relationship. As pointed out above, Article 10 of the Convention does not guarantee an unlimited freedom of expression; and the prevention of disorder within the armed forces constitutes a legitimate aim permitting a restriction of that freedom of expression. If the reasoning of the domestic courts' decisions concerning the limits of freedom of expression in cases involving the prevention of disorder – in the present case, the prevention of insubordination inside the police force – is sufficient and consistent with the criteria established by the Court's case-law, the Court would require strong reasons to substitute its view for that of the domestic courts (see, *mutatis mutandis*, *Palomo Sánchez and Others*, cited above, § 57; and *MGN Limited v. the United Kingdom*, no. 39401/04, §§ 150 and 155, 18 January 2011).

30. The Court would add that in order to assess the justification of the statements in question, a distinction needs to be made between statements of fact and value judgments, in that, while the existence of facts can be demonstrated, the truth of value judgements is not susceptible of proof. The requirement to prove the truth of a value judgment is generally impossible to fulfil and infringes freedom of opinion itself, which is a fundamental part of the right secured by Article 10 (see, for example, *Lingens v. Austria*, 8 July 1986, § 46, Series A no. 103; *Oberschlick v. Austria (no. 1)*, cited above, § 63). The classification of a statement as a fact or a value judgment is a matter which, in the first place, falls within the margin of appreciation of the national authorities, in particular the domestic courts (see *Pedersen and Baadsgaard v. Denmark* [GC], no. 49017/99, § 76, ECHR 2004-XI). However, even where a statement amounts to a value judgment, there must exist a sufficient factual basis to support it, failing which it may be excessive (see *Jerusalem v. Austria*, no. 26958/95, § 43, ECHR 2001–II).

ii. Application of those principles to the present case

31. The Court notes that, in some statements published on the website under her effective editorial control, the applicant brought up labour issues, such as outstanding remunerations, which concerned servicemen including trade union members (see paragraph 8 above, quotation 1). However, she also uttered, repeatedly, critical views about the manner in which police leaders managed the force, and accused them of disrespect of citizens and of serving political interests in general (see paragraph 8 above). For the Court, these latter views overstepped the mandate of a trade union leader, because they are not at all related to the protection of labour-related interests of trade union members. Therefore, those statements, being made outside the legitimate scope of trade union-related activities, must be considered from the general perspective of freedom of expression rather than from the particular aspect of trade union-related expressions. In this connection, the Court would reiterate that paragraph 2 *in fine* of Article 11 indicates that the State is bound to respect the freedom of association of its employees, subject to the possible imposition of lawful restrictions on the exercise by members of its armed forces, police or administration of the rights protected in that Article; however, the restrictions imposed on the three groups mentioned are to be construed strictly and should therefore be confined to the "exercise" of the rights in question, that is, these restrictions must not impair the very essence of the right to organise (see *Demir and Baykara v. Turkey* [GC], no. 34503/97, §§ 96-97, ECHR–2008). The Court will apply the same approach in the context of Article 10 and stresses that the right to freedom of expression pertains to all, including members of the armed forces.

32. In its analysis of the proportionality of the punitive measures curtailing the applicant's right to express critical views, the Court will consider the extent to which the right to freedom of expression of a member of the police force can be restricted in order to prevent disorder within the police, a hierarchically organised body where discipline is quintessential for the carrying out of its functions. For the Court, some of the impugned statements (concerning in particular outstanding remunerations) are clearly related to trade union activities and their sanctioning therefore appears difficult to reconcile with the prerogatives of a trade union leader. Moreover, the attack on the Head of the National Police Department is a pure value judgment and enjoys as such a high level of protection under Article 10.

The Court also notes that in regard to some other utterances the domestic courts, rather surprisingly, refused to accept evidence (see paragraph 7 above), which fact alone would have cast doubt on the legitimacy of the sanction imposed on the applicant, had that sanction been applied for that sole reason.

However, in any event, the Court shares the views of those courts regarding the nature of the views expressed about the practice of senior

police management. It accepts that those allegations – in particular the ones accusing senior police management of political bias and agenda, transgressions, unprofessionalism and nepotism – were, even if representing predominantly value-judgments, indeed capable of causing insubordination since they might discredit the legitimacy of police actions, all the more so since the applicant did not provide any clear factual basis for those statements. It is true that she was barred from submitting evidence in the domestic proceedings – a matter of serious concern – however, in her attacks concerning the activities of police leadership, she failed to relate her offensive value judgments to facts.

The Court finds that the protection of loyalty and the trust in the constitutionality of police leaders' actions is not a matter of administrative convenience. The applicant, as a senior police officer, had considerable influence on trade union members and other servicemen, among other things by controlling the trade union's website. As a high-ranking officer and trade union leader she should have had to exercise her right to freedom of expression in accordance with the duties and responsibilities which that right carries with it in the specific circumstances of her status and in view of the special requirement of discipline in the police force (see also *Rekvényi v. Hungary* [GC], no. 25390/94, § 43 *in fine*, ECHR 1999-III) – and this even in the face of the general interest attached to enabling criticism as to transparency, professionalism and law-abiding within the police force. The Court notes that, by entering the police, the applicant should have been aware of the restrictions that apply to staff in the exercise of their rights. Moreover, the limitations on the applicant's right to freedom of expression did not require her to exercise her profession in violation of fundamental convictions of her conscience.

In view of the margin of appreciation applicable in such cases (see paragraph 26 above), the maintenance of discipline by sanctioning accusatory opinions which undermine the trust in, and the credibility of, the police leadership represents a "pressing social need", and the reasons adduced by the national authorities to justify it are relevant and sufficient (see Sunday Times *v. the United Kingdom* (no. 1), 26 April 1979, § 62, Series A no. 30), especially in view of the relatively mild sanction imposed on the applicant – demotion and a fine – which cannot be regarded disproportionate in the circumstances.

33. The foregoing considerations are sufficient to enable the Court to conclude that there has been no violation of Article 10 read in the light of Article 11 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

34. The applicant also complained under Articles 6, 13 and 17 of the Convention that the proceedings had not been fair.

35. In so far as the applicant's complaint may be understood to concern assessment of the evidence and the result of the proceedings before the domestic courts, the Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I). In the present case, there is no appearance that the domestic courts lacked impartiality or that the proceedings were otherwise unfair or arbitrary.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

FOR THESE REASONS, THE COURT

1. *Declares* unanimously the complaint concerning Article 10 admissible and the remainder of the application inadmissible;

2. *Holds* by six votes to one that there has been no violation of Article 10 read in the light of Article 11 of the Convention.

Done in English, and notified in writing on 9 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith Registrar	Françoise Tulkens President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judge Tulkens is annexed to this judgment.

F.T.
S.H.N.

DISSENTING OPINION OF JUDGE TULKENS

1. Unlike the majority, I believe that in the present case there has been a violation of Article 10 of the Convention interpreted, as the judgment suggests, in the light of Article 11.

2. The facts are not in dispute. The applicant's offending remarks were made in her capacity as chairperson of the *Tettrekész* Police Trade Union and on the union's website, which was under her editorial control. She complained, among other things, about unpaid remuneration due to police personnel, alleged nepotism and undue political influence, as well as dubious qualifications of senior police officers (see paragraph 8). The applicant was found guilty of instigating insubordination, for which she was fined and demoted.

3. The judgment rightly points out that Article 10 of the Convention applies to the police and personnel of the armed forces, as it does to everyone within the jurisdiction of the member States. Both the right to freedom of expression guaranteed by Article 10 § 1 and the limitations and restrictions provided for in paragraph 2 must therefore be applied in the same manner and with equal rigour. In that connection, in view of certain issues raised by this case, I am unable to find that the measures taken against the applicant were proportionate to the aim pursued.

4. The majority decided at the outset that the applicant's critical remarks had overstepped the mandate of a trade union leader, because some of them were "not at all related to the protection of labour-related interests of trade union members". I wonder whether, for its part, the Court itself has not overstepped its mandate by casting this judgment on the role of a trade union leader and on the "legitimate" scope of trade-union activities. Moreover, it confines the role of a union to the protection of workers' interests *stricto sensu*, without considering that such protection could extend more broadly to criticism about alleged failings in the institution itself. In finding, without any other explication or justification, that the offending remarks had been made "outside the legitimate scope of trade union-related activities", the majority dismissed, artificially in my view, the trade-union dimension of this case to focus it purely on the right to freedom of expression.

5. A second factor also comes into play here. The majority noted that in respect of some allegations by the applicant, "the domestic courts, *rather surprisingly*, refused to accept evidence" (see paragraph 32, second sub-paragraph). They nevertheless criticised the applicant for not providing a clear factual basis for what amounted to value judgments and somewhat

oddly concluded: “It is true that she was barred from submitting evidence in the domestic proceedings – a matter of serious concern – however, in her attacks concerning the activities of police leadership, she failed to relate her offensive value judgments to facts” (see paragraph 32, third sub-paragraph *in fine*).

6. My last point concerns the harshness of the penalty. Whilst the fine may be regarded as lenient, the same cannot be said of the demotion, which in my view is a harsh sanction and, in the context of the present case, a disproportionate one.