



Sanction imposed on judge for Facebook posts concerning matters of public interest infringed his freedom of expression

In today's **Chamber judgment**¹ in the case of [Danileț v. Romania](#) (application no. 16915/21) the European Court of Human Rights held, by a majority (four votes to three), that there had been:

a violation of Article 10 (freedom of expression) of the European Convention on Human Rights

The case concerned a disciplinary sanction imposed on a judge by the National Judicial and Legal Service Commission for posting two messages on his Facebook account.

The Court found that the domestic courts had failed to give due consideration to 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, the question whether the value judgments expressed had been sufficiently based in fact and, lastly, the potentially chilling effect of the sanction. In addition, the existence of an attack on the dignity and honour of the profession of judge had not been sufficiently demonstrated. In their decisions, the national courts had not granted the applicant's freedom of expression the weight and importance such a 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 might have raised legitimate questions with regard to judges' compliance with their duty of restraint. Consequently, the Romanian courts had not given relevant and sufficient reasons to justify the alleged interference with the applicant's right to freedom of expression.

In addition, the Court held that Article 8 of the Convention was not applicable in the present case and declared, unanimously, the complaint under that head inadmissible.

Principal facts

The applicant, Vasilică-Cristi Danileț, is a Romanian national who was born in 1975 and lives in Cluj-Napoca (Romania). At the relevant time, Mr Danileț was a judge at Cluj County Court. He was well known for actively taking part in debates and enjoyed a certain nationwide renown.

In January 2019 Mr Danileț posted two messages on his Facebook page, which had roughly 50,000 followers, and for which, in May of that year, the National Judicial and Legal Service Commission (*Consiliul Superior al Magistraturii* – CSM) imposed a disciplinary penalty on him, consisting in a two-month, 5% pay cut. The CSM based its decision on Article 99(a) of Law no. 303/2004 on the status of judges and prosecutors.

As to the first message (see paragraph 5 of the judgment), which was republished and commented on by numerous media outlets, the CSM found that Mr Danileț had – unequivocally and before readers in the thousands – cast doubt on the credibility of public institutions, insinuating that they were controlled by the political class and proposing as a solution that the army intervene to ensure constitutional democracy. It considered that Mr Danileț had impaired the honour and good

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

reputation of the judiciary, and that he had breached his duty of restraint in a manner that had been apt to tarnish the good reputation of the judiciary.

In his second message (see paragraph 6 of the judgment), Mr Danileț had posted on his Facebook page a hyperlink to an article in the press entitled “A prosecutor sounds the alarm. Living in Romania today represents a huge risk. The red line has been crossed when it comes to the judiciary” and had published a comment 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 on the way the judicial system was organised, and about the lynching of judges. The CSM considered that the language used in Mr Danileț’s published comment had overstepped the limits of decency and had been unworthy of a judge.

In May 2020 the High Court dismissed Mr Danileț’s appeal and upheld the CSM’s decision.

Complaints, procedure and composition of the Court

Before the Court, Mr Danileț complained of a violation of his right to freedom of expression (Article 10 of the Convention). He further submitted that the disciplinary sanction had damaged his social and professional reputation and had had a negative impact on his career (Article 8 of the Convention).

The application was lodged with the European Court of Human Rights on 18 March 2021.

Judgment was given by a Chamber of seven judges, composed as follows:

Gabriele **Kucsko-Stadlmayer** (Austria), *President*,
Tim **Eicke** (the United Kingdom),
Faris **Vehabović** (Bosnia and Herzegovina),
Armen **Harutyunyan** (Armenia),
Ana Maria **Guerra Martins** (Portugal),
Anne Louise **Bormann** (Denmark),
Sebastian **Rădulețu** (Romania),

and also Andrea **Tamietti**, *Section Registrar*.

Decision of the Court

Freedom of expression

The Court took the view that the national courts had 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. Thus, while citing the Court’s case-law, the national courts had confined themselves to assessing the manner in which the applicant had chosen to express himself, without examining the expressions he had used in their broader context, namely a debate on matters of public interest.

As to the first message, the Court found that it contained criticism of the political influences to which certain institutions were allegedly subject, namely the police, the judiciary and the army. The applicant had referred to the constitutional provisions under which the army was subject to the will of the people and contemplated the risk of any form of political control over that institution. Through the use of rhetorical questions, he invited his readers to imagine the army acting against the will of the people, someday, under the pretext of protecting democracy; in his view, this was a mere detail behind which lay a more serious problem. Resituated in their proper context, the applicant’s statements amounted to value judgments to the effect that there would be a danger to constitutional democracy in the event that public institutions fell once more under political control.

Those statements therefore concerned matters of public interest relative to the separation of powers and the need to preserve the independence of the institutions of a democratic State.

Concerning the second message, the Court considered that the applicant's position clearly fell within the context of a debate on matters of public interest, as it concerned legislative reforms affecting the judicial system.

The Court took the view, concerning both the second and first messages, that any interference with the freedom to impart or receive information ought to have been subjected to strict scrutiny, with a correspondingly narrow margin of appreciation being afforded to the authorities of the respondent State in such cases. In the Court's view, the Romanian courts had failed to take these considerations duly into account.

That being stated, the Court reasserted the principle that it could be expected of judges that they should show restraint in exercising their freedom of expression, as the authority and impartiality of the judiciary were likely to be called in question. However, in the present case, the statements at issue were not clearly unlawful, defamatory, hateful or calls to violence.

Moreover, the Court attached significant weight to the fact that the national courts had chosen not to impose the least severe sanction on the applicant (which, at the relevant time, was a warning), which had undoubtedly had a "chilling effect" in that it must have discouraged, not only the applicant himself, but other judges as well, from taking part, in the future, in the public debate 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.

Furthermore, 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 messages, the applicant had impaired the dignity and honour of the profession of judge.

The Court concluded that, in weighing up the competing interests at stake, the domestic courts had failed to give due consideration to 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, the question whether the value judgments expressed in the present case had been sufficiently based in fact and, lastly, the potentially chilling effect of the sanction imposed. In addition, the existence of an attack on the dignity and honour of the profession of judge had not been sufficiently demonstrated. In their decisions, the national courts had not granted the applicant's freedom of expression the weight and importance such a 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 might have raised legitimate questions with regard to judges' compliance with their duty of restraint.

Consequently, the Romanian courts had not provided relevant and sufficient reasons to justify the alleged interference with the applicant's right to freedom of expression. **It followed that there had been a violation of Article 10 of the Convention.**

[Right to respect for private life / right to reputation](#)

The Court found that the grounds for the sanction were unrelated to the applicant's "private life" and that it had not had severe negative consequences for his "inner circle", for his ability to form and develop relationships with others or for his reputation. Consequently, it held that Article 8 of the Convention was not applicable in the present case and declared, unanimously, the complaint under that head inadmissible.

Just satisfaction (Article 41)

The Court took due note of the applicant's position that, in his view, the finding of a violation would constitute sufficient just satisfaction. It therefore did not award him any compensation in respect of pecuniary and non-pecuniary damage in connection with the finding of a violation.

It nevertheless held that Romania was to pay him 5,232 euros in respect of costs and expenses.

Separate opinions

Judge Rădulețu expressed a concurring opinion. Judges Kucsko-Stadlmayer, Eicke and Bormann expressed a joint dissenting opinion. These opinions are annexed to the judgment.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.