GRAND CHAMBER

CASE OF DANILEŢ v. ROMANIA

PART I

(Application no. 16915/21)

JUDGMENT

Art 10 • Freedom of expression • Disciplinary sanction imposed on judge by National Judicial and Legal Service Commission for posting two messages on his Facebook page • Sufficiently precise legal basis • Consolidation by Grand Chamber of case-law principles with regard to freedom of expression of judges and prosecutors on internet and social media, with certain clarifications and definition of set of criteria that take into account limits imposed on such freedom by duty of discretion inherent in their office • Application to present case of new enumeration of review criteria: weighing up of various interests at stake and taking account of content and form of each of applicant's two messages, context in which they were posted, their consequences, capacity in which applicant posted them, nature and severity of sanction imposed on him and chilling effect on profession as a whole, and procedural safeguards afforded to him • Remarks made by applicant on matters of public interest, whether or not directly related to functioning of justice system • Remarks not such as to upset requisite reasonable balance between, on the one hand, degree to which applicant, as judge, could be involved in society to defend constitutional order and State institutions and, on the other, need for him to be and be seen as independent and impartial in his duties • Reasons neither relevant nor sufficient • Interference not meeting "pressing social need"

STRASBOURG

15 December 2025

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In the case of Danileţ v. Romania,

The European Court of Human Rights, sitting as a Grand Chamber composed of:
Arnfinn Bårdsen, *President*
Lado Chanturia,
Ioannis Ktistakis,
Kateřina Šimáčková,
María Elósegui,
Gilberto Felici,
Saadet Yüksel,
Lorraine Schembri Orland,
Andreas Zünd,
Frédéric Krenc,
Davor Derenčinović,
Mykola Gnatovskyy,
Oddný Mjöll Arnardóttir,
Sebastian Răduleţu,
Gediminas Sagatys,
Stéphane Pisani,
Úna Ní Raifeartaigh, *judges*,
and Abel Campos, *Deputy Registrar*,

Having deliberated in private on 18 December 2024, 14 May and 15 October 2025,

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

PROCEDURE

1. The case originated in an 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 Vasilică-Cristi Danileţ ("the applicant"), on 18 March 2021.

2. The applicant was represented by Ms N.-T. Popescu and Ms M.-C. Ghirca-Bogdan, lawyers practising in Bucharest. The Romanian Government ("the Government") were represented by their Agent, Ms O.-F. Ezer, of the Ministry of Foreign Affairs.

3. The applicant complained, in particular, that there had been a violation of Article 10 of the Convention, on account of the finding that he was liable for a disciplinary offence for posting two messages on his Facebook page.

4. The application was allocated to the Fourth Section of the Court, pursuant to Rule 52 § 1 of the Rules of Court. The Government were given notice of the application on 5 October 2021.

5. On 20 February 2024 a Chamber of the Fourth Section composed of Gabriele Kucsko-Stadlmayer, President, Tim Eicke, Faris Vehabović, Armen Harutyunyan, Ana Maria Guerra Martins, Anne Louise Bormann, Sebastian Răduleţu, judges, and Ilse Freiwirth, Section Registrar, delivered its judgment. It declared, unanimously, the complaint concerning Article 10 of the Convention admissible and the complaint concerning Article 8 of the Convention inadmissible. The Chamber also held, by four votes to three, that there had been a violation of Article 10 of the Convention. A concurring opinion by Judge Răduleţu and a joint dissenting opinion by Judges Kucsko-Stadlmayer, Eicke and Bormann were annexed to the judgment.

6. On 20 May 2024 the Government requested that the case be referred to the Grand Chamber. That request was granted by a panel of the Grand Chamber on 24 June 2024.

7. The composition of the Grand Chamber was determined in accordance with Article 26 §§ 4 and 5 of the Convention and Rule 24. When Marko Bošnjak's term as President of the Court came to an end, Arnfinn Bårdsen took over the presidency of the Grand Chamber in the present case (Rule 10).

8. The applicant and the Government each submitted written observations on the merits of the case (Rule 59 § 1).

9. Observations were also received from Media Defence, the Romanian Association of Judges and Prosecutors (AMR), the Association of Judges for the Defence of Human Rights (AJADO), Transparency International Romania (TI-Ro), the Foundation for the Defence of Citizens Against State Abuse (FACIAS) and CEU Democracy Institute, which had been granted leave by the President of the Grand Chamber to submit written comments as third parties (Article 36 § 2 of the Convention and Rules 71 § 1 and 44 § 3). The Romanian Judges' Forum, whose leave to intervene as a third party in the proceedings before the Chamber (Rule 44 § 3) was extended to the proceedings before the Grand Chamber, also submitted written comments.

10. In accordance with Rule 34 §§ 3 and 4, the President of the Grand Chamber granted leave to the applicant and Ms N.-T. Popescu, at their request, to use the Romanian language in the oral proceedings before the Court.

11. A hearing took place in public in the Human Rights Building, Strasbourg, on 18 December 2024.

There appeared before the Court:

(a) *for the Government*
Ms O.-F. EZER, Ministry of Foreign Affairs, *Agent*,
Ms A.-M. BĂRBIERU, Permanent Delegation of Romania
to the Council of Europe, *Co-Agent*,
Ms L.-C. IORDACHE, Ministry of Foreign Affairs,
Mr C.-M. DRĂGUȘIN, Judge, member of the National
Judicial and Legal Service Commission, *Advisers*;

(b) *for the applicant*
Ms N.-T. POPESCU,
Ms M.-C. GHIRCA-BOGDAN, *Counsel*,
Mr V.-C. DANILEȚ, *Applicant*.

The Court heard addresses by Mr V.-C. Danileţ, Ms M.-C. Ghirca-Bogdan, Ms N.-T. Popescu and Ms O.-F. Ezer, and also the replies of Ms M.-C. Ghirca-Bogdan and Ms O.-F. Ezer to questions put by judges.

INTRODUCTION

12. The application concerns, with regard to Article 10 of the Convention, the disciplinary sanction imposed on the applicant, a judge, for posting two messages on his Facebook page.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

13. The applicant was born in 1975 and lives in Sânmartin.

14. The applicant joined the judiciary in 1998. At the relevant time, namely in January 2019, he was a judge at Cluj County Court. He was known for his active participation in debates on democracy, the rule of law and the justice system. He 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 adviser to the Minister of Justice, a legal educator, 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, and as a result of expressing his views on social media.

15. The applicant is currently retired but has indicated that he remains active in the field of human-rights awareness-raising.

A. The applicant's posts

16. In January 2019 the applicant posted two messages on his Facebook page, where he had some 50,000 followers. The messages were quoted and discussed by some media outlets and gave rise to a plethora of comments.

17. The first message, which was posted on 9 January 2019, read (translation by the Registry):

> "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 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 preserve ... constitutional democracy'? What would happen if one day the army could be seen out 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 ..."

18. As the applicant would subsequently state before the Judicial Inspection Board (see paragraph 20 below), his first message was posted in the context of the extension of the Army Chief of Staff's term of office by a presidential decree of 28 December 2018. The Ministry of Defence subsequently applied to the Bucharest Court of Appeal on 14 January 2019 to have the execution of that decree suspended. Its application was initially granted by the Court of Appeal but then declared inadmissible by the High Court of Cassation and Justice ("the High Court") in a final judgment of 9 April 2019.

19. The second message, which was posted on 10 January 2019, included 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. The article in question consisted in an interview with C.S., a prosecutor. In it, C.S. expressed his view on how the public prosecutor's office was handling criminal cases and on prosecutors' difficulties in dealing with the cases assigned to them. The hyperlink was accompanied by the following comment by the applicant about the article (translation by the Registry):

> "Now here's a prosecutor with some blood in his veins (*sânge în instalaţie*), speaking his mind about dangerous prisoners being freed, our leaders' bad ideas on legislative reform, and judges and prosecutors being 'lynched'!"

B. Disciplinary sanction imposed on applicant by CSM's Disciplinary Board for Judges

1. Proceedings before the Judicial Inspection Board

20. On 10 January 2019 – that is, the same day the second message was posted – the Judicial Inspection Board, referring to Article 99 (a) of Law no. 303/2004 on the rules governing judges and public prosecutors (see paragraph 43 below), took up the case, of its own motion, with a view to disciplinary proceedings against the applicant for impairing the honour and image of the justice system. Seven days later it opened an investigation into the matter. The judicial inspectors analysed the content of the two messages. With regard to the first message, which had been quoted and discussed by 11 different media outlets, the inspectors considered that it contained a suggestion by the applicant that an intervention by the army to defend democracy would be constitutionally acceptable. As to the second message, in which the applicant had shared a link to a press article, the inspectors noted that he had added comments of his own, in which he had encouraged 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 inspectors concluded that there were indications that the applicant had failed to comply with his duty of discretion and that this had been capable of tarnishing the image of the justice system.

21. In his pleadings before the Judicial Inspection Board the applicant pointed out that his first message had been posted in the context of the extension of the Army Chief of Staff's term of office and thus had no connection with his judicial activities, his professional integrity or the image of the justice system. He further stated that his second message was intended to express his support for the prosecutor C.S. and to confirm that he still agreed with C.S.'s view. He requested that the Judicial Inspection Board take evidence that could testify to his level of professional integrity and the image of the justice system before and after the two messages in issue had been posted.

22. The Judicial Inspection Board took evidence from several witnesses. Most of them described the applicant as an honest judge who was highly active in the field of legal education for young people and who expressed discerning personal opinions in the public sphere.

23. The judicial inspectors also interviewed the applicant. He told them that his remarks had been made in the context of a public debate on the extension of the Army Chief of Staff's term of office by a presidential decree of 28 December 2018 – a situation that had triggered an institutional dispute between the Ministry of Defence and the President's Office. He reiterated

that he had been expressing himself as an ordinary citizen and not as a judge, adding that the confirmation of the Army Chief of Staff's appointment was a highly important matter for Romanian society because such an appointment on the basis of political criteria could, in his opinion, have ramifications for citizens' lives. He specified that his message had been neither a warning nor a call to disobey the law. He stated that he regularly expressed his views in the media, and had done so by appearing on television since 2003 and by posting daily messages on his Facebook page – where he had some 50,000 followers – since 2011. Regarding the support he had expressed for the prosecutor C.S., the applicant asserted that he championed judicial independence and that he backed all initiatives to that end.

24. The Judicial Inspection Board decided to pursue the case, opened of its own motion, for impairing the honour and image of the justice system – a disciplinary offence under Article 99 (a) of Law no. 303/2004. It thus initiated disciplinary proceedings, referring the matter to the CSM's Disciplinary Board for Judges ("the Disciplinary Board").

2. Proceedings before the CSM's Disciplinary Board for Judges

25. A hearing was held on 16 April 2019, in which the Disciplinary Board noted that the applicant was absent and found it unnecessary to hear evidence from the witnesses again. It also filed the Judicial Inspection Board's submissions, and postponed the delivery of its decision until 7 May 2019.

26. In a decision of 7 May 2019 the Disciplinary Board, made up exclusively of judges, 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 43 below), ordered his pay to be cut by 5% for two months – a sanction intended to deter him from adopting similar behaviour in the future.

27. Noting that several media outlets had published the applicant's messages, 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 justice system, and a duty of discretion, both of which the applicant had breached. The members of the Disciplinary Board considered that the applicant, in his first message, had been insinuating that public institutions were controlled by politicians and had been proposing as a potential solution that the army intervene to preserve democracy. As to the second message, they noted that he had used the expression "*sânge în instalaţie*" (see paragraph 19 below), a form of words which, they found, had overstepped the limits of propriety and had been unworthy of a judge.

28. In the view of the Disciplinary Board, the posts in issue did not express value judgments but plain defamatory allegations, with no supporting arguments, such as to call into question the credibility of the State institutions. The applicant had chosen to disseminate those allegations to anyone who had access to his Facebook page, thus undermining the dignity of his office and impairing the impartiality and image of the justice system. The Disciplinary Board further considered that the fact that the applicant had expressed his views as an ordinary citizen did not discharge him from disciplinary liability, given his duty of discretion as a judge. It found that he had committed a disciplinary offence without direct intent and that such offence had had an impact on public confidence in – and respect for – the courts and on the image of the justice system, because his opinions as formulated in those messages, which had a readership of 50,000, had been quoted and discussed by a significant number of media outlets, giving rise to substantial public debate.

29. Three of the nine members of the Disciplinary Board issued a dissenting opinion. They explained that in his first message the applicant had expressed a personal opinion on a topical issue at the relevant time, namely the extension of the Army Chief of Staff's term of office, the suspension of which had initially been granted by the Court of Appeal but later overturned by the High Court (see paragraph 18 above). The dissenting judges considered that forbidding judges and prosecutors outright from making any critical comments on matters of public interest amounted to an excessive restriction of their freedom of expression. In their view, the media's different interpretations of the applicant's messages could not be attributed to him, and the mere fact that he 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.

3. Appeal against the disciplinary sanction to the High Court

30. The applicant appealed against his disciplinary sanction. He first pointed out that sanctions could be imposed on judges and prosecutors only for the disciplinary offences provided for in Article 99 of Law no. 303/2004 (see paragraph 43 below). He then challenged the Disciplinary Board's decision, arguing that it had been based on a breach of rules of ethical conduct. He also criticised the Disciplinary Board's assessment of whether his remarks were objectionable, arguing that it was vague and lacked specific examples. Regarding his first message, he asserted that it had not triggered a debate but that certain media outlets which, according to him, regularly criticised the justice system had misinterpreted his statements in bad faith. He submitted that the message in question was in line with what he had been teaching about the law for several years and that there was no evidence to suggest that the image of the justice system had been impaired. As to the second post in issue, the applicant confirmed that he had expressed his admiration for the prosecutor C.S. and had shown support for his statements, pointing out that he had been seeking to protect the image of the justice system and to champion the separation of executive and judicial powers. Lastly, he complained about the fact that the Disciplinary Board had refused to impose a less severe sanction on him.

31. In a judgment of 18 May 2020 the High Court dismissed the applicant's appeal as unfounded.

32. Examining the lawfulness of the impugned decision, the High Court noted, after quoting Article 99 (a) of Law no. 303/2004 (see paragraph 43 below), that the disciplinary body had observed that the duty of discretion by which judges and prosecutors were bound under Article 90 § 1 of Law no. 303/2004 (see paragraph 43 below) was reproduced in Article 17 of the Code of Ethics for Judges and Prosecutors (see paragraph 45 below). Where a judge's conduct was found to be incompatible with that Code of Ethics, it was reviewed under the procedure laid down in Articles 64 and 65 of the Regulations on the Organisation and Operations of the CSM (see paragraph 48 below). Such a review could only take place if the constituent elements of a disciplinary offence had not been made out. As regards the bearing of the above-mentioned provisions on the present case, the High Court found:

> "57. ... [A] reading of the impugned decision's reasoning as a whole shows that the disciplinary body examined whether, in the light of the factual situation, the constituent elements of the disciplinary offence defined in Article 99 (a) of Law no. 303/2004 had been made out, and not whether the provisions of the Code of Ethics for Judges and Prosecutors, as approved by plenary decision no. 328/2005 of the National Judicial and Legal Service Commission, had been infringed."

33. As to the merits of the appeal, the High Court found that the Disciplinary Board had analysed the facts in the light both of the applicant's right to freedom of expression and of his duty of discretion. To specify the scope of that duty and the interest it served to protect, the High Court stated, in particular:

> "66. With regard to freedom of expression, it is beyond dispute that judges, as private citizens, enjoy an inviolable right to such freedom. However, according to the very wording of Article 10, paragraph 2, of the Convention, the exercise of that freedom, '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'. Accordingly, the inviolable nature of the right to freedom of expression is not absolute and, in the case of judges, freedom of expression is limited by a duty of discretion, and that limitation is inherent in the rules governing the office of judge or prosecutor, as the European Court of Human Rights has observed in its case-law relating to the restrictions on the freedom of expression of individuals in the civil service (see *Morissens v. Belgium*).
>
> 67. As noted in the case-law (judgment no. 128 of 27 May 2019) of the High Court of Cassation and Justice, sitting as a five-judge bench, the purpose of the disciplinary offence defined in Article 99 (a) of Law no. 303/2004 is to ensure compliance with the duty of discretion incumbent on judges and prosecutors. This duty is in practice a product of the profession's general ethical principles (independence, impartiality and integrity) and entails moderation and restraint in one's professional, social and private life. The duty of discretion also requires judges and prosecutors to align their conduct with the moral and ethical principles recognised as such by society and to act in all circumstances in good faith and with fairness and propriety, it being specified that in practice it is impossible to list in legislation all behaviour that may amount to a breach of the duty of discretion. The applicant's argument – that the disciplinary body based its decision solely on a subjective assessment of the conduct expected of judges and prosecutors because there were no clear rules defining what they were or were not allowed to post on Facebook – thus cannot but be dismissed."

34. As regards the necessity of limiting the applicant's right to freedom of expression, the High Court held:

> "68. It should nevertheless be stated that the disciplinary body rightly found that the limits imposed on the right to freedom of expression were necessary to ensure a fair balance between the exercise of freedom of expression and, in the case of judges and prosecutors, the need to protect the authority of the judiciary. Judges and prosecutors thus have an obligation to exercise caution and impartiality in expressing their opinions, respecting the right of citizens to an independent, politically neutral, impartial and upright justice system.
>
> 69. According to the terms of the impugned decision, which need not be reproduced in the present judgment, the defendant enjoys a right to freedom of expression that is nevertheless limited by the duty of discretion inherent in the office of judge or prosecutor, which is intended to ensure a fair balance, in line with the branches of State, between the exercise of that fundamental personal right and the prevailing legitimate public interest associated with the justice system, seen as a public service."

35. According to the High Court, the manner in which the applicant had expressed himself was inappropriate and unsatisfactory given his position and was such as to cast doubt on the credibility of State institutions. It had thus upset the requisite balance between the right and the duty in question.

36. With regard to the applicant's message of 10 January 2019, the High Court found:

> "73. As regards the judge's comment on an article published on the website ziare.com, the disciplinary body rightly considered that the form of words he used – 'Now here's a prosecutor with some blood in his veins (*sânge în instalaţie*)' – significantly overstepped the limits of propriety inherent in the office he held, such office requiring restraint and moderation in order to avoid impairing the image of the justice system. In such circumstances, the applicant's claims that the reasoning in the impugned decision makes no reference to the posted remarks cannot be accepted. With regard to the grounds of appeal, it should be noted that the applicant

justified his conduct by his capacity as a citizen playing an active role in promoting the proper functioning of the justice system and the rule of law, but that he did not make any specific criticism of the factors [which had been] taken into account by the disciplinary body concerning the form of words used and the requirements applicable to the conduct of judges and prosecutors in that regard. For these reasons, the argument that no sanction was imposed on the author of the article, which is not the subject of the present dispute, cannot be allowed."

37. As to the message of 9 January 2019, the High Court stated:

"70. With regard to the disciplinary offence in issue in the present case, the decision finds fault with the judge for the manner in which he specifically expressed himself, which upset the aforementioned fair balance. The High Court endorses the reasoning of the disciplinary body, which considered that the defendant had expressed himself in an unprincipled, unsatisfactory manner for someone in his position, thereby potentially casting doubt on the credibility of certain State institutions. It is thus clear from the facts referred to in point II.A of the present judgment that, having regard to the content of the opinions expressed and the manner in which he expressed them, the judge in question was suggesting that State institutions were politically biased and alluding to the possibility of '*the army deploying on the streets*' as a solution for preserving constitutional democracy.

...

74. Furthermore, the disciplinary body rightly considered that both the opinion expressed by the judge, according to which efforts were being made to dismantle and discredit important State institutions, and the rhetorical question regarding the deployment of the army on the streets as a possible constitutional solution, clearly overstepped the limits of permissible freedom of expression for a judge, in a manner capable of undermining the image of the justice system. In the light of the comments left by those who saw the judge's opinion on his Facebook page, his message appears to have been such as to prompt readers to make a connection with other historical events, as is moreover apparent from the opinions expressed in the online comments."

38. Regarding the truthfulness of the applicant's allegations in his message of 9 January 2019, the High Court found:

"75. In the context of disciplinary proceedings, the issue of whether the elements included in the judge's messages were true, constitutional, lawful or well-founded cannot be examined from the perspective of whether they had a factual basis, since neither the disciplinary body nor the appellate court has jurisdiction to rule on the questions of fact and law addressed in the opinions expressed publicly by the judge.

76. From a disciplinary point of view, however, it is relevant that the judge, in a message to the general public that attracted online-media attention, expressed a personal opinion that called into question the credibility of State institutions, in particular the institutions of the justice system, and proposed a solution that could not be regarded as an appropriate public view for a judge."

39. The High Court then endorsed the Disciplinary Board's observations concerning the applicant's lack of direct intent and the manner in which he had accepted the risk of impairing the image of the justice system by posting the two messages in issue on his Facebook page, where he had some 50,000 followers. As to the effects of the behaviour imputed to the applicant, the High Court stated:

"81. Contrary to the applicant's assertions, and in line with the reasoning of the disciplinary body, it must be concluded that the commission of the acts in issue led to a decline in the requisite public confidence in – and respect for – judicial office. The image of the justice system, both as a system and as a service for protecting the legal order, was thus impaired, since the judge's statements were quoted in the media, with headlines referring to his proposed solution for defending constitutional democracy, and generated heated public debate.

82. This effect is unequivocally reflected in the media's interpretation and coverage of the applicant's opinions. It is significant that the media understood and reported that the judge had disseminated the idea that the army should deploy on the streets to defend constitutional democracy – an idea that the rhetorical question in the Facebook post of 9 January 2019 clearly conjures up.

...

85. The [above-mentioned] effect can even be seen in the manner in which online media outlets took up the judge's opinions concerning the implied solution to the events reported – opinions which, as stated above, were not appropriate for a judge, who is a representative of the justice system and whose individual behaviour reflects on the public image and reputation of that system."

40. The High Court pointed out that the concepts referred to in Article 99 (a) of Law no. 303/2004, namely "honour", "professional integrity" and the "image of the justice system", were "complex and dynamic" in nature and could not be precisely defined or circumscribed. Like the Disciplinary Board, it considered that it was impossible to examine them on the basis of testimony or opinion polls, as the applicant had requested. As to whether the applicant's behaviour deviated from that required of a member of the judiciary, the High Court noted that the issue had to be settled in the light of the criteria set out in various international documents, primary legislation, secondary legislation or other recommendations, the forms and legal force of which varied but which, taken as a whole, defined the conduct expected of a "diligent judge". In the circumstances of the case, it found that the Disciplinary Board had reviewed all the relevant criteria (the direct consequences of the actions, the damage caused to the image and reputation of the justice system, the applicant's conduct, non-compliance with the obligations inherent in his office, and the type of language used) before imposing a disciplinary sanction.

41. As to the sanction imposed on the applicant, the High Court explained:

"88. The fact that the disciplinary body did not apply the least severe disciplinary sanction – a warning –, but rather the second lightest sanction provided for in Article 100 of Law no. 303/2004, is justified by the following arguments, which were rightly relied on in the impugned decision: (i) the acts committed had the direct and immediate consequences of impairing the image and reputation of the justice system, one of the fundamental pillars of a State governed by the rule of law; (ii) the judge's behaviour could have cast doubt among public opinion as to whether he complied with the obligations inherent in his office; (iii) the form of words used overstepped the limits of the propriety and integrity required of judges; (iv) the judge, through his inappropriate conduct, impaired the image and reputation of the justice system – in terms both of authority and of appearance of impartiality – and thus deviated from what is expected of a 'diligent judge', who acts in the public interest when administering justice and defending the general interests of society and who behaves in line with the specific requirements of his or her professional duties and ethical standards.

89. Without denying the applicant's extensive professional experience, it should be noted that the criticisms made in the appeal submissions are incapable of invalidating any of the arguments taken into account in imposing the disciplinary sanction in the individual case. Given that the judge's inappropriate behaviour was perceived and disseminated in a negative light in the public sphere, as is clear from the facts referred to in point II.A of the present judgment, and given that the judge concerned plays a role in shaping public opinion, since his posts are among the most read of any judge in south-eastern Europe, there is no justification for imposing only the least severe disciplinary sanction on him on account of the damage caused to the justice system by the acts described.

90. At the same time, it should be noted that in quantitative terms the sanction ordered was close to the minimum provided for in Article 100 (b) of Law no. 303/2004, since only a 5% reduction was imposed, versus a maximum reduction of 25%, for a period of only two months, as opposed to a maximum duration of one year. The fact that the sanction was thus adapted to the individual case shows that, in the light of the circumstances, the aim of the disciplinary proceedings was considered to have been satisfied by imposing the second lightest sanction, but reducing it to the minimum amount provided for by law."

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. The Constitution

42. 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 on the rules governing judges and public prosecutors

43. Law no. 303/2004 on the rules governing judges and public prosecutors ("Law no. 303/2004") was in force from 27 September 2004 to 15 December 2022, at which time it was repealed and replaced by Law no. 303/2022 (see paragraph 44 below). The relevant provisions of Law no. 303/2004, as applicable at the material time, read as follows:

Article 10

"Judges and prosecutors shall not publicly express their opinion on ongoing proceedings or cases transferred for public prosecution ..."

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 90

"1. Judges and prosecutors are required to refrain from any act that may undermine their dignity in the performance of their duties and in society. ..."

Article 99

"Disciplinary offences shall comprise:

(a) any behaviour that impairs the honour, the professional integrity or the image of the justice system, displayed either in or outside the performance of professional duties;

(b) any breach of the legal provisions on incompatibilities and prohibitions concerning judges and prosecutors;

(c) any dishonourable conduct [by judges or prosecutors], in the performance of their duties, towards colleagues, other staff members of the court or public prosecutor's office of assignment, judicial inspectors, lawyers, experts, witnesses, parties to a dispute or representatives of other institutions;

(d) any participation in public activities of a political nature or any expression of political convictions in the performance of official duties;

(e) any unjustified refusal to accept requests, applications, pleadings or other documents submitted by parties to proceedings;

(f) any unjustified refusal to discharge an official duty (*îndatorire de serviciu*);

(g) any failure by a prosecutor to comply with instructions given in writing and in accordance with the law by the prosecutor to whom he or she reports;

(h) any repeated failure [by a judge or prosecutor] to comply with the legal provisions concerning expeditious case processing or any repeated delays in the execution of tasks (*lucrari*), for reasons attributable to him or her;

(i) any failure to comply with the duty to withdraw from a case, where the judge or prosecutor knows that there is a statutory reason for such withdrawal, and any repeated and unjustified requests to withdraw from a given case which have the effect of delaying the hearing;

(j) any failure to observe the secrecy of deliberations or the confidentiality of deliberation documents or other information of the same nature of which [the judge or prosecutor in question] gained knowledge in the performance of duties, with the exception, under the conditions provided for by law, of information of public interest, where such behaviour does not constitute a criminal offence;

(k) any repeated and unjustified absences or absences that directly affect the work of the court or the public prosecutor's office;

(l) any interference with the work of another judge or prosecutor;

(m) any unjustified failure to comply with administrative provisions or decisions of an administrative nature taken in accordance with the law by the head of the court or the public prosecutor's office, or with other administrative obligations provided for by statutes or regulations;

(n) any use of office, outside the regulated legal framework applicable to all citizens, to obtain favourable treatment from the authorities, to intervene in the settlement of applications, or to seek or agree to serve personal interests or the interests of family members or other persons, where the alleged behaviour does not constitute a criminal offence;

(o) any failure to comply with the provisions on random case assignment;

(p) any hindering of the judicial inspectors' investigations by any means;

(q) any participation, whether direct or through an intermediary, in pyramid or similar financial arrangements, gambling or investment schemes involving non-transparent funds;

(r) any failure [by a judge or prosecutor] to draft or sign judgments or prosecution documents produced in judicial proceedings, for reasons attributable to him or her, within the statutory time-limits;

(s) any use of inappropriate expressions in judgments or prosecution documents produced in judicial proceedings or any use of grounds manifestly contrary to legal reasoning, which may impair the image of the justice system or the dignity of the office of judge or prosecutor;

(ş) any failure to comply with the decisions of the Constitutional Court or the decisions of the High Court of Cassation and Justice delivered following an appeal for the purposes of clarifying the law;

(t) any performance of duties in bad faith or with gross negligence, where such behaviour does not constitute a criminal offence; a disciplinary sanction shall not preclude criminal liability."

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;

..."

44. On 16 December 2022 Law no. 303/2022 on the rules governing judges and public prosecutors ("Law no. 303/2022") repealed and replaced Law no. 303/2004. Article 4 of Law no. 303/2022 provides, *inter alia*, that judges and prosecutors must comply with the code of ethics applicable to their profession. In addition, Article 271 of Law no. 303/2022 reads:

Article 271

"Disciplinary offences shall comprise:

(a) any breach of the legal provisions on incompatibilities and prohibitions;

(b) any dishonourable conduct [by judges or prosecutors], in the performance of their duties, towards colleagues, other staff members of the court or public prosecutor's office of assignment, judicial inspectors, lawyers, experts, witnesses, parties to a dispute or representatives of other institutions;

(c) any participation in public activities of a political nature or any expression of political convictions in the performance of official duties;

(d) any unjustified refusal to accept requests, applications, pleadings or other documents submitted by parties to proceedings;

(e) any unjustified refusal to discharge an official duty (*îndatorire de serviciu*);

(f) any failure by a prosecutor to comply with instructions given in writing and in accordance with the law by the prosecutor to whom he or she reports;

(g) any repeated failure [by a judge or prosecutor] to comply with the legal provisions concerning expeditious case processing or any repeated delays in the execution of tasks (*lucrari*), for reasons attributable to him or her;

(h) any failure to comply with the duty to withdraw from a case, where the judge or prosecutor knows that there is a statutory reason for such withdrawal, and any repeated and unjustified requests to withdraw from a case;

(i) any failure to observe the secrecy of deliberations or the confidentiality of deliberation documents or other information of the same nature of which [the judge or prosecutor in question] gained knowledge in the performance of duties, with the exception, under the conditions provided for by law, of information of public interest;

(j) any repeated and unjustified absences or absences that directly affect the work of the court or the public prosecutor's office;

(k) any interference with the work of another judge or prosecutor;

(l) any unjustified failure to comply with administrative provisions or decisions of an administrative nature taken in accordance with the law by the head of the court or the public prosecutor's office, or with other administrative obligations provided for by statutes or regulations;

(m) any use of office, outside the regulated legal framework applicable to all citizens, to obtain favourable treatment from the authorities, to intervene in the settlement of applications, or to seek or agree to serve personal interests or the interests of family members or other persons;

(n) any failure to comply with the provisions on random case assignment;

(o) any hindering of the judicial inspectors' investigations by any means;

(p) any participation, whether direct or through an intermediary, in pyramid or similar financial arrangements, gambling or investment schemes involving non-transparent funds;

(q) any failure [by a judge or prosecutor] to draft or sign judgments or prosecution documents produced in judicial proceedings, for reasons attributable to him or her, within the statutory time-limits;

(r) any use of inappropriate expressions in judgments or prosecution documents produced in judicial proceedings or any use of grounds manifestly contrary to legal reasoning, which may impair the image of the justice system or the dignity of the office of judge or prosecutor;

(s) any performance of duties in bad faith or with gross negligence."

C. Code of Ethics for Judges and Prosecutors

45. The relevant provisions of the Code of Ethics for Judges and Prosecutors, as approved by decision no. 328/2005 of the CSM, read as follows:

Article 9

"(1) Judges and prosecutors must perform their duties impartially and make decisions objectively and free of any influence.

(2) Judges and prosecutors must refrain from any conduct, act or demonstration that may undermine confidence in their impartiality."

Article 17

"Judges and prosecutors are required to refrain from any act that may undermine their dignity in the performance of their duties and in society."

D. Statutory provisions governing disciplinary and ethics-related proceedings against judges and prosecutors

46. The Judicial Inspection Board is an organisation within the CSM. It is headed by a Chief Inspector, who is appointed from among judges and whose responsibilities include informing the CSM of any alleged disciplinary offences by judges or prosecutors in the performance of their duties. The Chief Inspector is assisted by a Deputy Inspector (prosecutor); both are appointed for a three-year term, renewable once only. The Judicial Inspection Board is made up of judicial inspectors who are appointed, by the Chief Inspector following a competition, for a three-year term, renewable once only. Judicial Inspection Board members are placed on leave *ex officio* from their ordinary judicial duties in the national courts. Under Articles 44 to 47 of Law no. 317/2004 on the CSM, in force at the relevant time, the Judicial Inspection Board could take up a case with a view to proceedings into alleged disciplinary offences by judges or prosecutors, either of its own motion or upon application by any person concerned. The Judicial Inspection Board would then conduct a disciplinary investigation into the allegations, following which it could either order the case to be discontinued or initiate disciplinary proceedings by referring the matter to one of the CSM's disciplinary boards (namely the Disciplinary Board for

Judges or the Disciplinary Board for Prosecutors). Law no. 317/2004 was repealed on 15 December 2022. Articles 44 to 48 of Law no. 305/2022, which is currently in force, contain similar provisions to those described above.

47. The rules governing disciplinary proceedings before the CSM's Disciplinary Board for Judges or for Prosecutors are described in the Court's judgment in *Cotora v. Romania* (no. 30745/18, § 24, 17 January 2023).

48. According to the Regulations on the Organisation and Operations of the CSM, as approved by plenary decision no. 1073/2018 of the CSM ("the CSM Regulations"), the CSM's Disciplinary Boards also deal with cases in which judicial inspectors have observed indications of a breach of the rules of conduct set out in the Code of Conduct for Judges and Prosecutors (Article 64 of the CSM Regulations). Any final decisions finding a breach of the rules of ethics for judges and prosecutors are added to the employment file of the judge in question (Article 65 of the CSM Regulations).

E. Case-law of the Constitutional Court

49. In judgment no. 326 of 21 May 2019 the Constitutional Court, ruling on the matter of the foreseeability of Article 99 (a) of Law no. 303/2004, found that the reason the legislature had not listed all situations that could constitute disciplinary offences within the meaning of that Article was that the rule in question had to be abstract in nature and it was for those responsible for applying it to identify the specific situations. Referring to the Court's case-law (including, among other authorities, *Sud Fondi S.r.l. and Others v. Italy*, no. 75909/01, § 109, 20 January 2009), the Constitutional Court further explained that a law could still satisfy the requirement of foreseeability even if the person concerned had to take appropriate legal advice to assess, to a degree that was reasonable in the circumstances, the consequences which a given action could entail. It also considered that the freedom of expression of judges and prosecutors was circumscribed by the general principals of ethics, which entailed independence, impartiality and integrity, and required judges and prosecutors to behave in line with those values. Accordingly, given the necessarily abstract nature of the legal rule, the legislature could not list all acts that might impair the honour, professional integrity or image of the justice system. The Constitutional Court therefore dismissed the objection that Article 99 (a) of Law no. 303/2004 was unconstitutional.

F. Other domestic case-law

1. Disciplinary proceedings against judges or prosecutors

50. The parties each adduced several examples from domestic case-law. In particular, the Government produced several domestic judicial decisions delivered prior to the events in the present case. They can be summarised as follows.

51. One of the judgments concerned a challenge by a judge against an administrative decision prohibiting the publication of divergent opinions without the consent of the court president. The Bucharest Court of Appeal found that judges and prosecutors had a duty of discretion, but that such duty could not completely restrict their freedom of expression. It further specified that it was prohibited to use improper critical expressions capable of undermining public confidence (judgment no. 2924 of 20 June 2018, delivered in case no. 1290/2/2018).

52. In another case, which concerned the manner in which judges and prosecutors should manage their Facebook accounts, the High Court found that that social-media platform was a "virtual public space" and that judges and prosecutors therefore had an obligation not to post crude, lewd or insulting comments or expressions about identified or identifiable individuals. It considered the use of such expressions in that case (without, however, identifying them in the judgment), and found that they had undermined the integrity, the ethics and the proper, dignified and discreet conduct of judges, who were required to preserve the image of the justice system for the purposes of Article 99 (a) of Law no. 303/2004 (judgment no. 55 of 26 March 2018, delivered in case no. 2270/1/2017).

53. Lastly, one of the judgments submitted concerned a televised statement made by a judge as a member of the CSM about the professional activities of other CSM members and of certain judges and prosecutors. The Bucharest Court of Appeal pointed out that the duty of discretion and the relevant case-law of this Court in matters of freedom of expression of judges and prosecutors were applicable in the case. It then concluded that the remarks by the judge in question had in fact concerned the functioning and reform of the justice system – that is, matters of public interest – and that the limits of freedom of expression had not been overstepped (judgment no. 5085 of 5 December 2018, delivered in case no. 8647/2/2018).

54. The applicant, for his part, produced several decisions by the Judicial Inspection Board to discontinue proceedings, two of which were delivered before January 2019. The decisions in question can be summarised as follows.

55. Regarding a Facebook post on 11 August 2018 by a judge in support of police officers who had brutally repressed an anti-government protest, the Judicial Inspection Board noted, after examining the accusations in the light of the provisions of Article 99 (a) of Law no. 303/2004 and the duty of discretion, that the message in dispute had been posted in the context of an extensive debate across society on a topical issue and that no disciplinary offence had been committed by the judge in question who, in its view, had not failed to comply with any professional obligations (decision no. 6293/2018 of 7 December 2018).

56. In addition, with regard to a Facebook post on 7 October 2018 by a judge criticising "the country's homosexual orientation", the Judicial Inspection Board noted that the message, which had been written in the context of a referendum on same-sex marriage, in fact expressed the disappointment of the judge in question that the ban on such marriage had been rejected. In its view, that situation was within the acceptable limits of freedom of expression (decision no. 7848 of 28 November 2018).

2. Other disciplinary proceedings against the applicant

57. Prior to the present case, the CSM found that the applicant had breached his duty of discretion by posting remarks via his Facebook account, in July and August 2018, in response to an interview with the Minister of Justice concerning the appointment of the chief prosecutor of the National Anti-Corruption Directorate and a potential amendment to criminal-law provisions. The CSM considered that the applicant had reacted scathingly to a representative of the Ministry of Justice, had used sarcastic language and had expressed his own point of view on the legal issue raised by the Minister of Justice, thereby impairing judicial impartiality. The disciplinary body found that the applicant had thus breached ethical standards (Article 9 § 2 of the Code of Ethics for Judges and Prosecutors). It subsequently notified the Human Resources Department and the Judicial Inspection Board of that finding (CSM decision no. 583 of 16 April 2019,

upheld in High Court judgment no. 5057 of 2 November 2023, delivered in case no. 6781/2/2019).

58. In another case, the High Court upheld a decision by the CSM not to punish the applicant for choosing to give an interview on legislative matters. In that case, the CSM had considered that the applicant had not overstepped the limits imposed by his duty of discretion, and that the mere fact that newspapers had published extracts of the interview in question was not, in itself, capable of impairing the impartiality and image of the justice system (High Court judgment no. 192 of 2 November 2020, delivered in case no. 1639/1/2020).

59. Ruling on an appeal by the applicant, the High Court additionally set aside a CSM disciplinary decision of 25 May 2022 ordering his indefinite removal from judicial office on account of his involvement in political activities which had been run by two entities deemed by the CSM to be comparable to political organisations (Article 99 (d) of Law no. 303/2004). It appears from the reasoning in the High Court's judgment that the disciplinary body had erroneously treated two NGOs as political organisations and that the applicant had not in fact taken part in any political activities or breached his duty of discretion (High Court judgment no. 30 of 13 February 2023, delivered in case no. 1735/1/2022).

II. INTERNATIONAL MATERIAL

A. Council of Europe

1. Committee of Ministers of the Council of Europe

60. 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 1098th meeting of the Ministers' Deputies, reads, in so far as relevant:

> "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. European Commission for Democracy through Law (Venice Commission)

61. The Report on the freedom of expression of judges, adopted by the Venice Commission at its 103rd Plenary Session held in Venice on 19 and 20 June 2015 (CDL-AD(2015)018), reads, 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 [European Court of Human Rights] 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."

62. The successive amendments to Romania's legislation on justice have attracted the attention of both the Venice Commission (see Opinion No. 924/2018 on draft amendments to Law No. 303/2004 on the statute of [rules governing] judges and [public] 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)

63. 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, 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."

64. Opinion No. 25 (2022) of the CCJE to the attention of the Committee of Ministers of the Council of Europe on freedom of expression of judges states, *inter alia*:

"15. As a general rule or practice, most member States prohibit or call on judges to refrain from commenting on their own and other judges' pending or ongoing proceedings. Some member States extend this rule to decided cases, including those of other judges. However, some make an exception for the discussion of case law as part of judges' academic work, as a law teacher or in a professional environment. In many States, judges are subject to the ethical or conventional obligation not to reply to public criticism of their cases.

...

69. Subject to some exceptions, private communication should not be subject to restrictions on freedom of expression. Private communication is understood as taking place bilaterally or in a closed group to which

access has to be permitted by the judge, including person-to-person messaging services or closed social platform groups.

...

72. Judges have to make sure that they maintain the authority, integrity, decorum and dignity of their judicial office. They should be mindful that language, outfit, photos and the disclosure of other personal details might infringe the reputation of the judiciary. Allowing judges to share private details, such as lifestyle or family bears some risks in this regard. Whether an expression potentially compromises the reputation of the judge or the judiciary should be assessed in the light of the circumstances of the case.

73. Judges should not engage in social media in a manner that can negatively affect the public perception of judicial integrity, e.g. acting as influencers."

The Opinion also includes the following recommendations:

"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.

..."

65. Opinion No. 27 (2024) of the CCJE to the attention of the Committee of Ministers of the Council of Europe on the disciplinary liability of judges, in so far as relevant, reads (footnotes omitted):

V. Grounds for disciplinary liability

"...

26. Judges have the right to freedom of expression under Article 10 of the ECHR [European Convention on Human Rights] as further specified in Opinion No. 25 (2022). The legitimate exercise by judges of their rights under Article 10 of the ECHR must not give rise to disciplinary liability. The right to freedom of expression includes the right of judges to speak out publicly about disciplinary proceedings against themselves or their colleagues. Grounds for disciplinary liability must not derogate either from a judge's entitlement to private and family life in accordance with Article 8 of the ECHR.

27. In each member state, the law should define expressly and as far as possible in specific terms, the grounds on which disciplinary proceedings against judges may be initiated. The possibility of introducing *ad hoc* grounds that apply retroactively must be ruled out. Vague provisions (such as the 'breach of oath' or 'unethical behaviour') lend themselves to an overbroad interpretation and abuse, which may be dangerous for the independence of the judges. The regular publication of disciplinary decisions may help further clarify the legislative provisions.

...

29. The CCJE stresses the importance of a threshold criterion to demarcate misconduct that potentially justifies the imposition of disciplinary sanctions from other forms of misbehaviour.

30. Ethical standards should be clearly distinguished from misconduct that justifies disciplinary sanctions. Since the purpose of a code of ethics is different from that achieved by a disciplinary procedure, a code of ethics should not be used as a tool for disciplining judges. Where ethical standards and professional rules of conduct converge with respect to extrajudicial conduct potentially compromising the public trust in the judiciary the threshold criterion helps distinguish between behaviour that is unethical and behaviour that should be subject to disciplinary liability.

...

VII. Disciplinary sanctions against judges

39. In most states there is an exhaustive list of potential disciplinary sanctions for judges. However, some interpretative leeway remains for the application of sanctions on a case-by-case basis. In all states, the principle of proportionality applies to the determination of the appropriate sanction. Sanctions may include a warning, reprimand, appropriate fine, reassignment, suspension from office, early (compulsory) retirement and dismissal.

40. The CCJE reiterates that disciplinary sanctions should be clearly defined in law, easily accessible and enumerated in an exhaustive list. The principle of proportionality must guide the decision. It requires a balancing exercise between the seriousness of the offence and its consequences on the one hand, and the quality and the amount of the sanction on the other. The dismissal of a judge should only be ordered as a last resort in exceptionally serious cases. A transfer and/or redeployment (even on a temporary basis) of a judge, or a demotion can only be justified in cases of serious judicial misconduct. The CCJE advocates against reduction of salary as a disciplinary sanction because judges must be remunerated equally for like work.

41. All mitigating and aggravating factors of the individual case must be taken into account in order to clearly determine the responsibility of the judge in light of the specific circumstances under which the disciplinary offense was committed.

42. In all cases, the potential 'chilling effect' that a certain sanction may have on the individual judge and on other judges must be considered when assessing the adequate sanction.

43. The CCJE stresses that certain measures that are intended to or may have the same effect as disciplinary sanctions should be handled as such with all judicial rights and procedural safeguards applying. This also applies to any measure whatever its form which is intended to sanction a judge."

4. European Court of Human Rights

66. Article VI of the Resolution on judicial ethics, adopted by the Plenary Court on 21 June 2021, reads:

Expression and contacts

"Judges shall exercise their freedom of expression in a manner compatible with the dignity of their office and their loyalty to the institution of the Court. They shall refrain from expressing themselves, in whatever form and medium, in a manner which may undermine the authority and reputation of the Court or give rise to reasonable doubt as to their independence or impartiality. This applies equally to the exercise of judicial function, representation of the Court, and to academic or other public or private activities outside of the Court. They shall proceed with the utmost care if using social media."

B. United Nations

67. 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."

68. On 24 June 2019 the Special Rapporteur on the independence of judges and lawyers submitted a report to the Human Rights Council containing several recommendations. The relevant ones 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."

69. The Bangalore Principles of Judicial Conduct (United Nations Office on Drugs and Crime, Vienna, 2019) and the Commentary on those Principles read, in so far as relevant:

"... 1.2. A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute that the judge has to adjudicate.

[Extract from the Commentary on the Bangalore Principles relating to the interpretation of Principle 1.2: '31. ... While a judge is required to maintain a form of life and conduct more severe and restricted than that of other people, it would be unreasonable to expect him or her to retreat from public life altogether into a wholly private life centred on home, family and friends. The complete isolation of a judge from the community in which the judge lives is neither possible nor beneficial.']

...

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.

...

2.4. A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process, nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.

[Extract from the Commentary on the Bangalore Principles relating to the interpretation of Principle 2.4: '70. Proceedings remain before a judge until the appellate process has been completed. Proceedings could also be regarded as being before the judge whenever there is reason to believe that a case may be filed; for example, when a crime is being investigated but no charges have yet been made, when someone has been arrested but not yet charged or when a person's reputation has been questioned and proceedings for defamation threatened but not yet commenced.']

...

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.

[Extract from the Commentary on the Bangalore Principles relating to the interpretation of Principle 4.6: '136. A judge should not involve himself or herself inappropriately in public controversies. The reason is obvious. The very essence of being a judge is the ability to view the subjects of disputes in an objective and judicial manner. It is equally important for judges to be seen by the public as exhibiting that detached, unbiased, unprejudiced, impartial, open-minded and even-handed approach which is the hallmark of a judge. If a judge enters the political arena and participates in public debates—either by expressing opinions on controversial subjects, entering into disputes with public figures in the community, or publicly criticizing the Government—he or she will not be seen to be acting judicially when presiding as a judge in court. The judge will also not be seen as impartial when deciding disputes that touch on the subjects about which the judge has expressed public opinions; nor, perhaps more importantly, will he or she be seen as impartial when public figures or Government departments that the judge has previously criticized publicly appear as parties, litigants or even witnesses in cases that he or she must adjudicate.']"

70. 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, in so far as relevant:

"5. Use of social media by individual judges should maintain the moral authority, integrity, decorum, and dignity of their judicial office.

6. Judges should be aware of, and take into consideration, practical aspects of online forms of expression and association. These aspects include a potentially greater reach in terms of publicity or amplification to larger

networks, and greater permanence of statements, as well as the potentially significant implications of relatively small and casual actions (such as 'liking') or otherwise relaying information presented by others.

...

8. Where the Bangalore Principles of Judicial Conduct and the Commentary refer to judges' ability to educate the public and the legal profession or engage in public commentary, that may include the use of social media in addition to other forms of communication.

9. Judges should ensure that the level of their social media use does not adversely impact their capacity to perform judicial duties with competence and diligence.

...

12. Judges may use their real names and disclose their judicial status on social media, provided that doing so is not against applicable ethical standards and existing rules.

...

14. Judges should have regard to the range of social media platforms and should recognize that, with some platforms, it may be beneficial to separate private and professional identities. Understanding how the various social media platforms operate and what type of information may be necessary or appropriate to share on various social media platforms would be an appropriate area for the training of judges.

Content and behaviour on social media

15. Existing principles relating to the dignity of the courts, judicial impartiality and fairness apply equally to communications on social media.

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.

17. Judges should not engage in exchanges over social media sites or messaging services with parties, their representatives or the general public about cases before or likely to come before them for decision.

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.

...

25. Judges should be aware that concepts like 'friending', 'following', etc., in the social media context, can differ from traditional usage and may be less intimate or engaged. However, where the degree of interaction, online or otherwise, becomes more personally engaged or intimate, judges, should continue to observe the Bangalore Principles of Judicial Conduct, necessitating, in appropriate situations, circumspection, disclosure, disqualification, recusal, or other actions similar to those established for conventional offline relationships.

26. Judges should periodically monitor past and present social media accounts and should take steps to review content and relationships as and when necessary.

27. Judges should develop and consistently apply an appropriate etiquette for removing and/or blocking followers/friends/etc., especially where failure to do so would reasonably create an appearance of bias or prejudice.

28. It is prudent and wise for judges to exercise due care and diligence when creating online friendships and connections and/or accepting online friend requests.

...

32. Judges are advised to acquaint themselves with the security and privacy policies, rules, and settings of the social media platforms they use, periodically review them, and exercise caution, with a view to ensuring personal, professional, and institutional integrity and protection.

33. Regardless of the settings, it is advisable for judges not to make any comment or engage in any conduct on social media that might be embarrassing or improper were it to become public knowledge.

34. Judges should be aware of the risks and propriety of sharing personal information on social media. ...

35. Judges should be aware that how they are perceived on social media may be based not only on their active use of social media, but also based on what information they receive and from whom they received it, even if the contact was not requested by them.

36. Irrespective of whether they use social media or not, judges should be wary of how they behave in public because photos or recordings may be taken that can be spread quickly on social media platforms."

C. European Union

71. 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 (footnotes omitted):

"Three Justice laws define the [rules governing judges and prosecutors] and organise the judicial system and the [CSM]. They are therefore central to ensuring the independence of [judges and prosecutors] 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 (SIIJ), 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 [judges and prosecutors] critical of the efficiency and independence of the judiciary have raised concerns. 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."

72. The European Commission report of 22 November 2022 on progress in Romania under the Cooperation and Verification Mechanism includes a section on the Judicial Inspection Board and the disciplinary proceedings it conducted with regard to judges and prosecutors. The relevant part of the report reads:

"In 2021 and 2022 the number of disciplinary actions registered by the [CSM] has remained broadly stable. However, there remain cases where disciplinary investigations and resulting sanctions imposed on [judges and prosecutors] appear to have been linked to the voicing of critical opinions on rule of law issues. Such investigations have been opened by the Judicial Inspection [Board] either ex officio or at the request of the [CSM]. The CJEU [Court of Justice of the European Union] has made clear that judicial independence could be undermined if the disciplinary regime is diverted from its legitimate purposes and used to exert political control over judicial decisions or pressure on judges. In addition to the cases mentioned in the Rule of Law report 2022, other disciplinary investigations against judges were perceived as a form of pressure and retaliation for sentences given, notably in high-level corruption-related cases.

Although public information regarding disciplinary cases at the Judicial Inspection [Board] was lacking for the past three years, predictability and transparency has [*sic*] been increased through the decision of the [CSM]

to publish, in anonymised format, disciplinary decisions that have become final and breaches of the code of ethics on a portal accessible to [judges and prosecutors] only.

This 2018 [CMV] recommendation [for the CSM 'to appoint immediately an interim team for the management of the Judicial Inspection [Board] and within three months to appoint through a competition a new management team in the Inspection [Board]'] has become obsolete. The new leadership of the Judicial Inspection [Board] has now the opportunity to ensure disciplinary investigations are no longer used as an instrument to exert pressure on the activity of judges and prosecutors, in line with the case-law of the CJEU. The Commission will continue to look at the operation in practice in the framework of the Rule of Law Reports."

D. Inter-American Court of Human Rights

73. In its judgment in *López Lone et al. v. Honduras* ((preliminary objection, merits, reparations and costs), 5 October 2015, Series C No. 302), which concerned, *inter alia*, the freedom of expression of four judges (Adan Guillermo López Lone, Luis Alonso Chévez de la Rocha, Ramón Enrique Maldonado Barrios and Tirza del Carmen Flores Lanza), who had publicly criticised a *coup d'état* against President Zelaya Rosales and against whom disciplinary proceedings had been brought for their statements, the Inter-American Court of Human Rights found, unanimously, that there had been a violation of their right to freedom of expression under Article 13(1) of the American Convention on Human Rights (ACHR). A non-official brief prepared by the Secretariat of the Inter-American Court of Human Rights summarised the case as follows (original English):

"...

Articles 23 (right to participate in government), 13 (freedom of expression), 15 (right of assembly) and 16 (freedom of association) in relation to Articles 1(1) (obligation to respect and ensure rights) and 2 (obligation to adopt domestic measures) of the ACHR: Thee [*sic*] Inter-American Court emphasised the strong relationship between political rights, freedom of expression, the right of assembly and freedom of association, and how these rights, taken together, are central to democracy. It considered that in situations of institutional breakdown, for example after a *coup*, the relation- ship [*sic*] between these rights is even more important; particularly when exercised together in order to protest a breach of the constitutional order and democracy. The [Inter-American] Court noted that statements or actions in favour of democracy must have the maximum possible protection and, depending on the circumstances, could have an impact on some or all of these rights. The right to defend democracy is part of the right to participate in public affairs, which also involves the exercise of other rights such as freedom of expression and the right of assembly.

In ruling on the right to participate in politics, freedom of expression and the right of assembly of persons exercising judicial functions, the [Inter-American] Court noted that there was a regional consensus on the need to restrict the participation of judges in partisan political activities, especially, considering that in some States in the region, any participation in politics, except voting in elections, was prohibited in broader terms. The [Inter-American] Court stressed that restricting the participation of judges, in order to protect their independence and impartiality, was compatible with the ACHR. Similarly, it noted that the [European Court of Human Rights] had held that certain restrictions on the freedom of expression of judges are necessary in all cases where the authority and impartiality of the judiciary may be challenged (citing *Wille v. Liechtenstein* [GC], 28396/95, § 64, 28 October 1999, Information Note 11; and *Kudeshkina v. Russia*, 29492/05, § 86, 26 February 2009, Information Note 116).

However, the Inter-American Court held that the power of States to regulate or restrict these rights is not discretionary. Any limitations on the rights enshrined in the ACHR must be interpreted restrictively. A restriction on judges' participation in partisan political activities should not prevent judges from participating in all discussions of political issues. In this regard, there could be situations where a judge, as a citizen of society, believes he has a moral duty to express himself.

> Accordingly, the [Inter-American] Court established that restrictions that ordinarily limit the right of judges to participate in partisan political activities do not apply to situations of serious democratic crisis, such as that in the instant case. It would be contrary to the independence inherent in State powers to deny judges the right to speak up against a coup. Moreover, the mere fact that disciplinary proceedings had been initiated against the judges for their actions against the *coup* could have a chilling effect and thus constitute an undue restriction of their rights.
>
> Therefore, [the Inter-American Court considered that] the disciplinary proceedings against Mr. López Lone and Mr. Chévez de la Rocha constituted a violation of their freedom of expression, right of assembly and political rights, while the proceedings against Ms. Flores Lanza and Mr. Barrios Maldonado constituted a violation of their freedom of expression and political rights. The [Inter-American] Court also concluded that, due to their removal from the judiciary, Mr. López Lone, Mr. Chévez de la Rocha and Ms. Flores Lanza were no longer able to participate in the AJD [Association of Judges for Democracy], and thus their dismissal also constituted an undue restriction on their freedom of association. ..."

III. COMPARATIVE-LAW MATERIAL

74. It can be seen from the material before the Court on the legislation and practice in the Council of Europe member States, and in particular from a survey of 35 member States, that the duty of discretion is a fundamental principle intended to ensure that judges and prosecutors maintain high standards of integrity, impartiality and professionalism. That duty applies to both their professional and their private conduct. In three member States it applies even after resignation or retirement. The duty of discretion is enshrined in law in 22 member States and is provided for in binding and non-binding codes of conduct and charters of ethics in 13 member States. The survey confirms that the freedom of expression of judges and prosecutors is limited by their duty of discretion.

75. With regard to public debate, 15 member States require that judges and prosecutors exercise restraint in order to protect the integrity of the justice system. Two member States take a relatively liberal approach in that regard and three others have adopted more restrictive measures. Judges and prosecutors are generally required to exercise caution and to avoid public statements that could undermine public confidence in the justice system. Political statements are strictly prohibited in ten member States. Twelve member States, however, adopt a more flexible approach regarding academic freedom, allowing judges to take part in teaching and research activities, but in moderation, and provided that they maintain their impartiality and do not disclose confidential information. Public remarks about pending cases are discouraged in general in 21 member States.

76. When using social media, judges and prosecutors are required to maintain high standards of professionalism and discretion so as to safeguard the integrity of the judiciary. In nine member States, for example, given the inherently public nature of online platforms, judges and prosecutors are advised to conduct themselves as if their statements were accessible to a wide readership, regardless of their privacy settings or their target audience. In seven member States, moreover, the same principles of moderation apply to both personal and professional social-media accounts. Eighteen member States also consider the language used on these platforms to be an important factor in compliance with judicial standards, emphasising the need to avoid expressions that may undermine public confidence in the impartiality and dignity of the judiciary.

THE LAW

I. SCOPE OF THE CASE BEFORE THE GRAND CHAMBER

77. According to the Court's case-law, the "case" referred to the Grand Chamber is the application as it has been declared admissible by the Chamber (see *Fedotova and Others v. Russia* [GC], nos. 40792/10 and 2 others, § 83, 17 January 2023, and *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 78, 27 November 2023, with further references).

78. The Court notes that the Chamber, in its judgment of 20 February 2024, declared the applicant's complaint under Article 8 of the Convention inadmissible and solely his complaint under Article 10 admissible. Accordingly, the case referred to the Grand Chamber concerns the merits of the Article 10 complaint.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

79. The applicant argued 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:

> "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. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 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. Chamber judgment

80. In a judgment of 20 February 2024 the Chamber held, by a majority (see paragraph 5 above), that there had been a violation of Article 10 of the Convention. It acknowledged that judges and prosecutors had a duty of discretion and that the applicant had made the remarks in issue on his Facebook page, which was open and accessible to the general public. It nevertheless found that the domestic judicial authorities had neither weighed up the various interests at stake in accordance with the criteria laid down in the Court's case-law, nor duly analysed whether the interference had been necessary. They had merely assessed the manner in which the applicant had expressed himself, without examining the expressions he had used in the context of a debate on a matter of public interest.

81. Regarding the applicant's first message, the Chamber examined his remarks in context and found that they amounted to value judgments on a matter of public interest, relating to the separation of powers and the need to preserve the independence of the institutions of a democratic State. As to the second message in issue, the Chamber considered that the applicant's remarks fell within the context of a debate on a matter of public interest, since they concerned legislative reforms relating to the justice system. Any interference with the freedom to impart or receive information therefore ought to have been subjected to strict scrutiny, given the narrow margin of appreciation afforded to the authorities of the respondent State. The Chamber further

observed that, by using the expression "a prosecutor with some blood in his veins", the applicant had been praising the courage displayed by a prosecutor who had expressed public criticism on matters of public interest relating to the justice system, and that his comments had not been intended to be disparaging.

82. As to the sanction, the Chamber noted that it was not the least severe and that sufficient reasons had not been given to establish that the dignity and honour of judicial office had been impaired. It further observed that the sanction had 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 legislative reforms involving the courts and, more generally, on matters pertaining to the independence of the justice system. Judge Răduleţu expressed a concurring opinion and Judges Kucsko-Stadlmayer, Eicke and Bormann expressed a joint dissenting opinion.

B. The parties' submissions

1. The applicant

83. The applicant specified at the outset that, alongside his work as a judge, he was a former member of the CSM and had been known in his country for several years as a highly active figure in the field of legal education and as the author of a series of publications on the independence of the justice system, judicial impartiality and ethics for judges and prosecutors. He explained that he gave classes to the general public, and occasionally to journalists, on how the legal system worked, the rule of law and human rights, and stated that he had trained some 500 people so that they too could pass on that legal knowledge. He also submitted that he enjoyed a certain renown in the media and across the country more generally, indicating that he currently had some 100,000 Facebook followers.

84. The applicant further stated that the national context in the period leading up to the posts in issue was characterised by such factors as the controversy surrounding the amendment of the legislation on justice, which had been commented on at both national and European levels, and the public debate on the appointment of a new Army Chief of Staff, which had highlighted the dangers of a political dispute.

85. In the applicant's view, the interference with his right to freedom of expression in the present case was not foreseeable. He referred in that regard to the wording "any behaviour that impairs the honour, the professional integrity or the image of the justice system" used in Article 99 (a) of Law no. 303/2004 (see paragraph 43 above), and the wording "any act that may undermine ... dignity in the performance of ... duties" (see paragraph 45 above) used in the Code of Ethics for Judges and Prosecutors. He submitted that those provisions did not allow a clear distinction to be made between acts and deeds that might infringe the Code of Ethics, which laid down ethical standards, and acts and deeds that could give rise to disciplinary proceedings. He pointed out that the domestic judicial authorities used both formulations together, as they had done in the present case. According to the applicant, the duty of discretion was in fact the result of a case-law development which did not, in his view, satisfy the foreseeability requirement. He also criticised the above-mentioned provisions as very vague and thus capable of being applied to any judge or prosecutor in any sphere, whether private or professional. In addition, he argued that there were no foreseeable legal provisions on the use of social media by judges and prosecutors, apart from the ban on discussing pending cases on such fora (see paragraph 43 above).

86. The applicant referred to several decisions by the Judicial Inspection Board to discontinue proceedings in cases where judges and prosecutors had expressed their opinions publicly and had been the subject of disciplinary investigations (see paragraphs 54-56 above). Those decisions, he submitted, supported the argument that the national authorities enjoyed discretion in deciding what type of expression was covered by Article 99 (a) of Law no. 303/2004.

87. As to the proportionality of the interference, the applicant submitted that the two posts in issue concerned matters of public interest, meaning that the authorities should have a narrow margin of appreciation. Regarding his first message, he asserted that the extension of the Army Chief of Staff's term of office had given rise to considerable debate in the media long before he had posted his message. In his view, the message concerned adherence to the rule of law. He referred in that regard to paragraph 31 of the Commentary on the Bangalore Principles of Judicial Conduct and to the context described above (see paragraph 84 above). Without disputing that he had a duty of discretion, the applicant argued that he had acted without bias, in order to highlight the dangers of political influence with respect to the functioning of fundamental State institutions and the need to comply with the Constitution, particularly regarding the principle of the separation of powers in a democratic State. His intention had been to ask readers to imagine the army one day deploying on the streets against the will of the people under the pretext of preserving democracy.

88. In addition, the applicant submitted that the judicial proceedings brought on 14 January 2019 – that is, after he had posted his message – seeking to suspend the effects of the decree extending the Army Chief of Staff's term of office had concerned only procedural matters, not the issues he had addressed in his post. Furthermore, he claimed to have been representing "the voice of the justice system" in his post on account of his renown, and therefore the national authorities had a narrow margin of appreciation. He further submitted that the sanction imposed on him was not the least severe option and had been recorded permanently in his employment file. In his view, it had thus had a chilling effect on any judges or prosecutors wishing to express their views publicly.

89. As to the expression "*sânge în instalaţie*", the use of which in his second post had been criticised by the national authorities, the applicant argued that its intended meaning could be conveyed properly only in the Romanian language. He disputed the Government's argument that the expression was used by uneducated individuals, asserting that it was employed quite often by Romanians to commend someone's courage and that it had notably been used by bloggers, politicians and civil servants. In support of his argument, he submitted 23 press articles in which the expression in question had been used, for example, by a minister to refer to police officers who had failed a professional examination, by journalists to praise an athlete's boldness or to criticise a former judge, by bloggers with reference to judges who had not ordered a defendant's detention, and also in a blood-donation campaign. The applicant reaffirmed that he had used the expression in issue to emphasise the courage of the prosecutor C.S., who had dared to criticise politicians for amending the legislation on justice.

90. The applicant concluded, on the basis of the foregoing, that the reasons given by the domestic judicial authorities to impose a sanction on him were neither relevant nor sufficient.

2. The Government

91. The Government acknowledged that there had been an interference with the applicant's right to freedom of expression. They submitted, however, that the interference in question was prescribed by law, pursued legitimate aims and was necessary in a democratic society.

92. In their view, the legal basis for the disciplinary sanction imposed on the applicant was accessible and foreseeable. In that connection, they referred to the judgment in *Eminağaoğlu v. Turkey* (no. 76521/12, § 130, 9 March 2021), arguing that it concerned a similar situation governed by comparable statutory provisions and that the Court had proceeded on the assumption that the interference in issue was prescribed by law. The Government submitted that Article 99 (a) of Law no. 303/2004 concerned compliance with the duty of discretion and that relevant case-law to that effect had been accessible to the applicant on the respective websites of the High Court, the CSM and the Judicial Inspection Board, as well as on the Romanian courts' online case-law portal. They also referred to the Constitutional Court's judgment of 21 May 2019 (see paragraph 49 above) and to examples of domestic judicial rulings they considered most relevant to the present case (see paragraphs 50-53 above).

93. In addition, referring to the judgment in *Panioglu v. Romania* (no. 33794/14, § 119, 8 December 2020), the Government asked the Court to take account of the applicant's personal circumstances – namely, the fact that he had been a judge, had translated the Bangalore Principles into Romanian, had been a legal educator, notably an instructor at the National Judicial and Legal Service Institute, and a former member of the CSM, and had also been the subject of other disciplinary investigations. He had thus been capable of foreseeing the disciplinary consequences both of his remarks and of the use of coarse expressions in his messages.

94. The Government further pointed out that the legislation applied in the present case had since been repealed and that the disciplinary offence in question had not been included in the current legislation. They specified that the current legislation did, however, refer to an obligation for judges and prosecutors to comply with the relevant Code of Ethics, which prohibited behaviour that might undermine their dignity in the performance of their duties (see paragraph 44 above).

95. As regards the intended purpose of the interference, the Government submitted that it pursued at least one legitimate aim for the purposes of Article 10 of the Convention, namely maintaining the authority and impartiality of the judiciary.

96. As to the necessity of the interference and the context in which the remarks in issue had been made, they argued that the domestic judicial authorities had correctly applied the disciplinary sanction provided for by law after weighing in the balance the applicant's right to freedom of expression against his duty of discretion.

97. With regard to the first message, which had been posted by the applicant on 9 January 2019, the Government submitted that it did not relate to the functioning of the justice system, but rather to an institutional dispute between two public authorities (the Ministry of Defence and the President's Office) over the extension of the Army Chief of Staff's term of office – a matter, they indicated, that could have come before the courts. They argued that that dispute was a political issue because it had concerned two representatives of different political parties, pointing out in that connection that Recommendation no. 5 of Opinion No. 25 (2022) of the CCJE (see paragraph 64 above) prohibited judges and prosecutors from expressing their views on such matters. The Government further stated that the message in issue made reference to political control over the army, emphasising that it had the potential to be read by the applicant's 50,000 Facebook followers and had been quoted and discussed by much of the media.

98. According to the Government, the message in question amounted to a symbolic call to arms to preserve democracy. They further alleged that the applicant had expressed his views on an issue that was already a topic of public debate concerning a legal challenge to a presidential

decree, meaning that the matter was pending or could have come before the courts. In the Government's view, his actions therefore contravened both Principles 2.4 and 4.6 of the Bangalore Principles (see paragraph 69 above) and paragraph 15 of Opinion No. 25 (2022) of the CCJE (see paragraph 64 above). In addition, the applicant had made provocative remarks and, in any event, the manner in which he had expressed himself and the consequences of his message had overstepped the limits of his freedom of expression. According to the Government, the applicant should have exercised caution and foreseen the consequences of his message, particularly given his status as an "influencer" with a large number of Facebook followers.

99. Regarding the second message, which had been posted on 10 January 2019, the Government submitted that the translation of the expression "*sânge în instalație*" as "to have blood in one's veins" was inaccurate, because it did not reflect the coarseness of the Romanian expression used by the applicant. A closer equivalent, they submitted, would be the English-language expression "to have balls". They accepted that the message in question concerned the functioning of the justice system, but argued that the domestic legal authorities had imposed a sanction on the applicant – who, in their view, had set himself up as an influencer in the field of justice – solely for using that coarse, crude expression. They pointed out that the domestic legal authorities were better placed than the Court to assess the coarseness of the expression in question and enjoyed a margin of appreciation in that regard, referring to paragraphs 72 and 73 of Opinion No. 25 (2022) of the CCJE (see paragraph 64 above) and paragraph 18 of the Non-Binding Guidelines on the Use of Social Media by Judges (see paragraph 70 above). The Government submitted in that regard that the joint dissenting opinion appended to the Chamber judgment supported their position.

100. As to the proportionality of the interference, the Government argued that the applicant had received the second lightest sanction, and that it had not had a chilling effect on other judges and prosecutors wishing to express their views within the limits permitted by their freedom of expression and by their responsibilities. In that connection, they referred to four subsequent judicial rulings in which no sanction had been imposed on the judges or prosecutors under examination, respectively, for issuing a study on the justice system, for publishing an article on a "siege on the justice system", for signing a letter protesting against the amendment of the legislation on justice or for making public remarks on matters relating to the justice system. In the Government's view, the disciplinary sanction imposed in the present case had been supported by extensive reasoning and had been set after weighing up the interests at stake. According to the Government, there had therefore been no violation of Article 10 of the Convention.

3. Third-party submissions

(a) Romanian Judges' Forum

101. The third-party intervener submitted that the successive amendments to the laws governing the functioning of the justice system had had negative effects for judicial independence, in particular by increasing the executive's encroachment on the judiciary. Those amendments had attracted criticism from several international organisations, associations and legal professionals operating in Romania.

102. It explained that Romania had adopted a very restrictive approach to judges' freedom of expression, especially in relation to political activities. The domestic law which imposed those restrictions was not sufficiently foreseeable, because it left too much scope for interpretation and made it possible to characterise any conduct by a judge as unlawful. According to the Romanian Judges' Forum, there was no clear definition available to guide judges and prosecutors with

regard to the terms “honour”, “integrity” and “image of the justice system” or any settled case-law or established practice by the Judicial Inspection Board to help them assess whether they were liable to receive a disciplinary sanction under Article 99 (a) of Law no. 303/2004. As a result, many investigations had been carried out since 2018 against judges and prosecutors, some of whom held senior positions.

103. The third-party intervener submitted that 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 above-mentioned provision to be repealed, because it did not make it possible to identify the type of behaviour that would impair honour and professional integrity. The statutory provision in question had been subsequently repealed (see paragraph 44 above). The European Commission, in its report to the European Parliament and the Council of 8 June 2021, had also noted concerns as to cases where disciplinary investigations had been brought against, and heavy sanctions imposed on, judges and prosecutors who had been critical of the efficiency and independence of the judiciary (see paragraph 71 above). In addition, referring to the judgment of the Court of Justice of the European Union (CJEU) of 11 May 2023 in *Inspecţia judiciară* (C-817/21, EU:C:2023:391) and to the report of the European Commission to the European Parliament and the Council of 22 November 2022 (see paragraph 72 above), the third-party intervener indicated that certain disciplinary proceedings brought against judges and prosecutors by the Judicial Inspection Board, often of its own motion, had been regarded as a form of pressure on, or even political control over, judicial activity.

104. The Judges’ Forum emphasised the fact that Romanian society had previously been governed by a totalitarian regime, asserting that civic attitudes had not yet been fully developed and that public opinion did not turn quickly against decisions that could undermine the rule of law or the independence of the justice system. In the view of the third-party intervener, the need to respect judges’ right to freedom of expression was all the more crucial in that context. Any limitations to that right therefore had to be clearly justified and there had to be a clear connection between the prohibited activity and the ability for a judge to perform his or her duties impartially. In that connection, the third-party intervener pointed out that judges were also members of society and could not be forced to live in a bubble, disconnected from social realities.

(b) Media Defence

105. The third-party intervener, emphasising the press’s role of imparting information to the public on public-interest matters, which in turn the public had a right to receive, submitted that judges, thanks to their expertise, were an important source of information for journalists when it came to complex or technical subjects. While judges had to comply with their duty of discretion, they should not be prohibited from participation in discussions with members of the press on matters of public interest with the aim of informing the public and raising awareness. In the view of the third-party intervener, restrictions on judges’ free expression could affect the ability of journalists to access certain information and should therefore be subject to close scrutiny by the Court. In that connection, Media Defence referred to Recommendations nos. 1 and 2 of Opinion No. 25 (2022) of the CCJE (see paragraph 64 above), and to the submission of the International Commission of Jurists to the UN Special Rapporteur on the independence of judges and lawyers, which all encouraged judges to engage with the public.

106. The third-party intervener pointed out that any limitations on judges’ freedom of expression should have a clear, precise and reasonably foreseeable legal basis. In particular, the

legal framework should indicate the scope of the discretion conferred on the relevant State authorities and the manner of its exercise, having regard to the legitimate aim sought to be achieved, to allow judges to regulate their behaviour accordingly.

107. While noting the differences between the present case and the cases of *Baka v. Hungary* ([GC], no. 20261/12, 23 June 2016) and *Żurek v. Poland* (no. 39650/18, 16 June 2022), the third-party intervener submitted that, even where judges did not occupy high-level positions in the judiciary, the State authorities should be afforded only a narrow margin of appreciation concerning restrictions to their right to freedom of expression on matters of public interest, such as those relating to the rule of law and democracy. The third-party intervener further referred to the report of the Special Rapporteur on the independence of judges and lawyers to the Human Rights Council (see paragraph 68 above) and to relevant Council of Europe documents (see paragraphs 60-65 above). The mere fact that certain matters might have political implications should not prevent judges from exercising their right to freedom of expression.

108. In the view of Media Defence, the decisive question in determining the extent to which judges' freedom of expression should be protected was whether it contributed to a debate on a matter of public interest. Moreover, the factors to be taken into consideration in the balancing exercise involving the interests at stake should be the nature of the content and the tone used, the context, the method of reporting and the sanction imposed.

(c) Romanian Association of Judges and Prosecutors (AMR), Association of Judges for the Defence of Human Rights (AJADO), Transparency International Romania (TI-Ro) and Foundation for the Defence of Citizens Against State Abuse (FACIAS)

109. These organisations first submitted that, under international instruments, judges had to exercise their freedom of expression with caution and moderation in order both to preserve their independence and appearance of impartiality and to ensure society's confidence in the justice system and judicial bodies. Article 10 § 2 of the Convention, in particular, expressly provided that restrictions could be imposed on the right to freedom of expression in order to maintain the authority and impartiality of the judiciary.

110. The organisations further submitted that judges' freedom of expression was governed by a body of rules consolidated at international level, and more particularly at the level of the Council of Europe and the European Union. Concepts such as those found in the relevant Romanian legislation could not, as a matter of principle, be considered unforeseeable since the law sought to protect the authority and impartiality of the justice system and was addressed to professionals who were trained to apply and interpret legal texts.

111. According to the organisations, the freedom of expression of judges and prosecutors should be limited in cases of public speech with political overtones that was unrelated to the functioning of the justice system. In such circumstances, the duty of discretion should be given precedence in order to protect the authority and impartiality of the judiciary. Furthermore, there was no uniform approach to the issue at hand among the Council of Europe member States. The national authorities in those States should therefore be afforded a wide margin of appreciation in determining how much involvement in politics judges and prosecutors should have. In addition, given the recent history of the States of Eastern Europe, there was, in the view of the organisations, an imperative to strengthen public awareness of the principle of the separation of powers and of the impartiality and independence of the justice system. That would justify limiting the freedom of speech of judges and prosecutors in the political sphere.

112. The organisations further submitted that public statements by judges on potentially contentious issues, even of general public interest, could not be protected by freedom of expression in cases in which they implicitly contained the "preferable" solution to such disputes, because, in their view, the judiciary's impartiality was at stake.

113. Lastly, they submitted that the limitation of judges' freedom of expression in the event of public speech using improper terms was permitted by international standards. They further asserted that national authorities were better placed to evaluate the potentially improper nature of the terms used. According to the organisations, the interpretation and comprehension difficulties to which the translation of certain expressions gave rise was a strong argument for affording the national authorities a wide margin of appreciation.

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114. Drawing on a study of national legal systems and European Union law, the third-party intervener submitted that there were three key aspects to the issue of the freedom of expression of judges and prosecutors. First, it was generally accepted that judges and prosecutors could be subject to an enhanced duty of discretion, including when expressing themselves on social media, so as to protect the authority and impartiality of the judiciary, but the duty of discretion could not, however, be interpreted as prohibiting individual or collective public statements. Second, in rule-of-law crises, that "enhanced" duty of discretion was replaced by an "enhanced" freedom of expression for judges, because such situations justified a duty for judges and prosecutors to speak out in defence of the rule of law, including with expressions that might breach their duty of discretion. Lastly, the CJEU had not yet had to adjudicate cases concerning the limits of freedom of expression for judges and prosecutors in such situations, but it had nevertheless in recent cases taken such a contextual factor into account in assessing the compliance of domestic measures with EU law (notably in the cases of Poland and Romania).

115. In addition, the third-party intervener referred to the rules applicable to French judges and prosecutors, the basic principles of which had recently been summarised by the French National Legal Service Commission (*Conseil supérieur de la magistrature*) in an opinion of 13 December 2023 for the French Minister of Justice. According to that opinion, the duties of judges and prosecutors were subject to a strict interpretation when such professionals expressed their views on their own or their peers' judicial activities in the performance of their duties, but greater freedom was afforded to them outside that context – provided that they complied with their duty of discretion. In that connection, judges and prosecutors remained bound by their ethical obligations when exercising the rights afforded to all citizens, especially when using social media and reporting on their profession, a situation which required them to be especially vigilant and not to be crude, virulent or careless. In the French system, the duty of discretion did not preclude individual or collective public statements. Furthermore, the duty of judges to speak out in defence of the rule of law and judicial independence when those values were under threat was a principle that had been recognised by several Presidents of the Court and by the President of the CJEU.

116. The third-party intervener also referred to EU law and, in particular, to the Code of Conduct for Members and former Members of the Court of Justice of the European Union (C2021/397/01), which provided that judges were required to perform their duties with complete independence, integrity, dignity and impartiality and with loyalty and discretion, and to act in a manner which did not adversely affect the public perception of their impartiality. Outside their institution, judges were required to refrain from making any statements which might harm their

reputation and to act and express themselves with the restraint that their office entailed. With regard to the CJEU's case-law, the third-party intervener referred to the *Connolly* judgment (CJEC, 6 March 2001, C-274/99 P, EU:C:2001:127), and stated that it had recently been cited in the *Real Madrid* case (CJEU, 4 October 2024, C-633/22, *Real Madrid Club de Fútbol*, EU:C:2024:843, paragraphs 45-53). In its view, that case confirmed that, under both EU law and Convention law, legal and disciplinary action against judges and prosecutors on account of public remarks on matters of public interest outside the professional sphere was only ever rarely justified, especially where those judges or prosecutors were speaking out in defence of the rule of law in the context of a democratic crisis. In addition, legal writers had emphasised the importance that the CJEU attached to using a contextual approach in cases concerning breaches of the rule of law. The CJEU had dealt with several cases concerning judicial independence in Romania, in which it had notably examined measures that raised the question whether certain practices were compatible with the principles of the rule of law and the primacy of EU law. Lastly, several legal articles published by Romanian scholars between 2022 and 2024 reported the pressure and abuses of power to which Romanian judges and prosecutors had been subjected from 2017 onwards. Moreover, that situation had been confirmed by the United States Department of State in a 2023 Country Report on Human Rights Practices in Romania.