

# European Court of Human Rights

## Grand Chamber

### Case of Danileț v. Romania (II)

(Application no. 16915/21)

#### PART II

#### 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

#### C. The Court's assessment

##### 1. *Whether there has been an interference*

117. It is not in dispute between the parties that the applicant's disciplinary sanction constituted an interference with his right to freedom of expression, as guaranteed by Article 10 § 1 of the Convention. The Court sees no reason to hold otherwise (see, in the same vein, *Delfi AS v. Estonia* [GC], no. 64569/09, § 118, ECHR 2015; *Halet v. Luxembourg* [GC], no. 21884/18, § 108, 14 February 2023; and *Sanchez v. France* [GC], no. 45581/15, § 122, 15 May 2023).

118. Such interference would be in breach of the Convention unless it was "prescribed by law", pursued one or more of the legitimate aims referred to in the second paragraph of Article 10 and was "necessary in a democratic society".

## 2. Whether the interference was lawful

### (a) General principles

119. The Court reiterates that the expression “prescribed by law” in the second paragraph of Article 10 not only requires that the impugned measure should have a legal basis in domestic law, but also refers to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects (see, among other authorities, *Delfi AS*, cited above, § 120; *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 142, 27 June 2017; *NIT S.R.L. v. the Republic of Moldova* [GC], no. 28470/12, § 158, 5 April 2022; and *Sanchez*, cited above, § 124).

120. As regards the requirement of foreseeability, the Court has repeatedly held that a “law” within the meaning of Article 10 § 2 is a norm formulated with sufficient precision to enable a person to regulate his or her conduct. That person must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty. A law which confers a discretion is thus not in itself inconsistent with the requirement of foreseeability, provided that the scope of the discretion and the manner of its exercise are indicated with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference (see *Magyar Kétfarkú Kutya Párt v. Hungary* [GC], no. 201/17, § 94, 20 January 2020, and the cases cited therein). Whilst certainty is desirable, it may bring in its train excessive rigidity, and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague, and whose interpretation and application are questions of practice (see *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 41, ECHR 2007-IV; *Delfi AS*, cited above, § 121; *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, § 143; and *Sanchez*, cited above, § 125). The level of precision required of domestic legislation – which cannot provide for every eventuality – depends to a considerable degree on the content of the law in question, the field it is designed to cover and the number and status of those to whom it is addressed (see *NIT S.R.L.*, cited above, § 160; *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, § 144; and *Delfi AS*, cited above, § 122).

121. A margin of doubt in relation to borderline facts does not therefore by itself make a legal provision unforeseeable in its application. Nor does the mere fact that a provision is capable of more than one construction mean that it fails to meet the requirement of “foreseeability” for the purposes of the Convention. The role of adjudication vested in the courts serves precisely to dissipate such interpretational doubts as remain, taking into account the changes in everyday practice (see *Gorzelik and Others v. Poland* [GC], no. 44158/98, § 65, ECHR 2004-I; *Magyar Kétfarkú Kutya Párt*, cited above, § 97; and *Sanchez*, cited above, § 126).

122. The novel character of a legal question that has not hitherto been raised, particularly with regard to previous decisions, is not in itself incompatible with the requirements of accessibility and foreseeability of the law, provided the solution adopted is consistent with one of the possible and reasonably foreseeable interpretations (see *Sanchez*, cited above, § 127; see also, *mutatis mutandis*, *Soros v. France*, no. 50425/06, § 58, 6 October 2011; *Huhtamäki v. Finland*, no. 54468/09, § 51, 6 March 2012; and *X and Y v. France*, no. [48158/11](#), § 61, 1 September 2016).

123. The Court’s power to review compliance with domestic law is thus limited, as it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see,

among other authorities, *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, § 144; *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 110, ECHR 2015; and *NIT S.R.L.*, cited above, § 160). Unless the interpretation is arbitrary or manifestly unreasonable, the Court's role is confined to ascertaining whether the effects of that interpretation are compatible with the Convention (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 149, 20 March 2018; *NIT S.R.L.*, cited above, § 160; and *Centre for Democracy and the Rule of Law v. Ukraine*, no. 10090/16, § 108, 26 March 2020). In any event, it is not for the Court to express a view on the appropriateness of methods chosen by the legislature of a respondent State to regulate a given field. Its task is confined to determining whether the methods adopted and the effects they entail are in conformity with the Convention (see *Gorzelik and Others*, cited above, § 67; *Delfi AS*, cited above, § 127; and *Sanchez*, cited above, § 128).

124. That being said, the Court reiterates that for domestic law to meet the qualitative requirements, it must afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for the law not to indicate with sufficient clarity the scope of the power granted to the competent authorities and the manner of its exercise (see *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 115, 15 November 2018, and the cases cited therein).

125. This requirement is particularly relevant in cases involving disciplinary proceedings brought against judges, given the prominent place the judiciary occupies among State organs in a democratic society and the growing importance such societies attach to the necessity of safeguarding the independence of the justice system (see *Baka*, cited above, § 165). In this context, the legal system in place should be able to ensure the consistent, uniform application of the law to all judges in similar situations and thereby to secure compliance with the principle of legal certainty, one of the fundamental aspects of the rule of law (see, *mutatis mutandis*, *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], no. 13279/05, § 56, 20 October 2011, and *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 116, 29 November 2016). The Court will revert to this matter below (see paragraph 165 below), because the issue of safeguards against abuse that arises from the standpoint of the lawfulness of the interference overlaps with similar issues analysed from the standpoint of the “necessity in a democratic society” criterion provided for in Article 10 § 2 (see, *mutatis mutandis*, *Gaspar v. Russia*, no. 23038/15, § 41, 12 June 2018, and the cases cited therein, and *Eminağaoğlu*, cited above, § 150).

#### **(b) Application of these principles to the present case**

126. At the outset, the Court observes that the disciplinary sanction imposed on the applicant following the disciplinary investigation had a legal basis, namely Articles 99 (a) and 100 (b) of Law no. 303/2004 (see paragraphs 26 and 32 above), and that those provisions were accessible to the applicant. Furthermore, the domestic judicial authorities established, in the context of the right to freedom of expression of judges and their duty of discretion, that the disciplinary offence provided for in Article 99 (a) of Law no. 303/2004 had been committed.

127. The Court notes that, according to the applicant, the provisions of Article 99 (a) of Law no. 303/2004 did not satisfy the foreseeability requirement either in general terms or in relation

to the use of social media (see paragraph 85 above). The Government took the opposite view (see paragraphs 91-94 above).

128. The Court observes that Article 99 (a) of Law no. 303/2004 characterised disciplinary offences as “any behaviour that impair[ed] the honour, the professional integrity or the image of the justice system, displayed either in or outside the performance of professional duties”. It must therefore examine whether the type of conduct that might constitute a disciplinary offence was foreseeable.

129. The Court notes that it appears from a reading of the legal provision in question that the legislature used rather general wording to define the type of conduct that constituted a disciplinary offence. Article 99 (a) of Law no. 303/2004 thus did not expressly specify what conduct was subject to sanctions, and did indeed lend itself to several interpretations. In this connection, the Court reiterates that in the area of disciplinary rules it has previously had occasion to point out that the use of terms which, to a greater or lesser extent, are broad makes it possible to avoid excessive rigidity and to keep pace with changing circumstances (see *Oleksandr Volkov v. Ukraine*, no. 21722/11, §§ 175-78, ECHR 2013). Otherwise, the provision in question may not deal with the relevant issue comprehensively and will require constant review and updating according to the numerous new circumstances arising in practice (ibid., § 175; see also, *mutatis mutandis*, *Kudrevičius and Others*, cited above, § 109). Furthermore, with regard to the rules on the conduct of members of the judiciary, a reasonable approach should be taken in assessing statutory precision (see *Eminağaoğlu*, cited above, § 130, and *Oleksandr Volkov*, cited above, § 178).

130. The Court observes that the Constitutional Court, in a judgment delivered after the events of the present case and concerning an objection of unconstitutionality as to the lack of foreseeability of the provisions of Article 99 (a) of Law no. 303/2004, confirmed that the legislature had chosen not to list all situations that could constitute disciplinary offences, and thus to render that rule abstract in nature. It further found that it was for the domestic judicial authorities to apply the rule on a case-by-case basis and thereby to identify the specific situations that could amount to disciplinary offences (see paragraph 49 above). The Court reiterates that it is not for it to express a view on the appropriateness of methods chosen by the legislature of a respondent State to regulate a given field (see paragraph 123 above; see also *Kövesi v. Romania*, no. 3594/19, § 192, 5 May 2020). Furthermore, as previously stated, the foreseeability requirement does not preclude the law from being left in part to the interpretation of the courts (see paragraph 123 above; see also, for example, *Kudrevičius and Others*, cited above, § 110). The Court must therefore ascertain whether in the present case the text of the legal provision in question, read in the light of the accompanying interpretative case-law, satisfied the requirement of foreseeability of the law as to its effects (see *Oleksandr Volkov*, cited above, § 179; see also, to similar effect, *Sanchez*, cited above, §§ 134 and 137).

131. In this connection, it appears from the examples of previous cases adduced by the parties – some of which were decided before the applicant committed the acts in issue (see paragraphs 50-56 above) – that the domestic judicial authorities, in the course of disciplinary proceedings before them, had the opportunity to assess whether various types of conduct by judges and prosecutors were compatible with the provisions of Article 99 (a) of Law no. 303/2004. They consistently held that the right to freedom of expression of judges had to be examined in the light of their duty of discretion, and assessed whether the conduct complained of was such as to impair the image of the justice system and to undermine public confidence in the courts (see paragraphs 51 and 55 above). The case-law in question further shows that, to

determine whether a disciplinary offence had been committed, the relevant authorities analysed the content of the statements by the judge or prosecutor and the context in which they had been made, in order to ascertain whether they concerned the functioning of the justice system or were remarks of some other nature (see paragraphs 52, 53, 55 and 56 above). They also gave consideration to the tone used, indicating that “outrageous” or “crude, lewd or insulting” expressions could undermine the integrity and discreet conduct required of judges and prosecutors (see paragraphs 51 and 52 above). Lastly, the domestic judicial authorities found that social-media platforms were a “public space”, and reiterated the obligation for judges and prosecutors not to post crude, lewd or insulting comments or expressions about identified or identifiable individuals (see paragraph 52 above).

132. In the light of this domestic case-law, it is noteworthy that the domestic courts identified a number of criteria that were used consistently by the disciplinary authorities, and then by the courts themselves, to determine whether a disciplinary offence, as defined in Article 99 (a) of Law no. 303/2004, had been committed in cases where judges or prosecutors had made remarks on social media or elsewhere. In the present case, the domestic judicial authorities having jurisdiction to examine the applicant’s disciplinary sanction additionally interpreted the provision in question in a manner that was consistent with the practice of the domestic courts in similar disputes. The High Court examined the applicant’s right to freedom of expression in the light of his duty of discretion as a judge and reviewed, in the specific circumstances of the case, the content and form of his messages and the manner in which they had been disseminated to the general public. It should also be noted that the High Court specified that it was impossible to list in legislation all behaviour that could amount to a breach of the duty of discretion (see paragraph 67 of the High Court’s judgment, quoted in paragraph 33 above, and paragraph 40 above), this finding being consistent with the Constitutional Court’s decision of 21 May 2019 (see paragraph 49 above).

133. Furthermore, and regardless of the amount of domestic case-law available at the relevant time, the Court notes that the applicant had many years’ experience in the judiciary and had been involved in several other activities in connection with the performance of his judicial duties (see paragraph 14 above). He was therefore an expert in the field of law and was capable of acting with caution, taking special care to verify the interpretation given to the terms in issue in order to assess the risks his conduct might entail in the performance of his profession (see *Brisic v. Romania*, no. 26238/10, § 94, 11 December 2018, and *Panioglu*, cited above, § 106). Given the guidance that was available in the Romanian legal system (see paragraph 131 above), the Court considers that the applicant could have foreseen the potential risks and adjusted his conduct to prevent them from materialising (see *Kudrevičius and Others*, cited above, § 114, and *Tête v. France*, no. 59636/16, § 52, 26 March 2020).

134. Lastly, regarding the applicant’s argument that there was no clear distinction between the ethical standards, on the one hand, and the disciplinary rules applicable in the present case, on the other (see paragraph 85 above), the Court affirms that it is important for the national authorities to clearly define which legal provisions govern disciplinary liability for judges and prosecutors and, in doing so, to specify the scope of any acts that could constitute disciplinary offences. In line with the CCJE, whose recommendations in Opinion No. 27 (2024) to the attention of the Committee of Ministers of the Council of Europe also emphasise that 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 Court considers that ethical standards should be clearly distinguished from the rules that govern disciplinary offences. Where

those two types of norm converge with respect to extrajudicial conduct potentially compromising public confidence in the judiciary, there should be a threshold criterion to demarcate misconduct that might warrant disciplinary sanctions from other forms of misbehaviour (see paragraph 65 above).

135. In the present case, as the High Court also explained (see paragraph 32 above), such a criterion was considered by the disciplinary body in order to demarcate conduct that contravened the Code of Ethics from behaviour that constituted a disciplinary offence. That the intention of the national legislature was to distinguish between the two types of liability is also apparent from its decision to define disciplinary offences in a statute (see paragraph 43 above), whereas the procedure concerning a breach of the Code of Ethics was laid down in regulations governed by secondary legislation (see paragraph 45 above). It should further be noted that separate procedural provisions were – and continue to be – applicable depending on whether the conduct of a judge was found to be a breach of the Code of Conduct or a disciplinary offence (see paragraph 48 above). Lastly, the Court attaches weight to the High Court’s indication that, in the applicant’s case, the disciplinary authority had considered it appropriate to continue with the disciplinary-offence proceedings (see paragraph 32 *in fine* above), thereby distinguishing between the disciplinary offence provided for in Article 99 (a) of Law no. 303/2004 and the procedure for non-compliance with the Code of Ethics.

136. As to the applicant’s allegation that the scope of the duty of discretion was not clearly defined (see paragraph 85 *in fine* above), the Court considers that, with this argument, the applicant was criticising the vague nature of the limits imposed on his right to freedom of expression, given his competing duty of discretion as a judge. In the Court’s view, this issue, like the need to ascertain whether the applicant had been afforded adequate safeguards against arbitrariness in the disciplinary proceedings against him, is closely related to the question whether the interference was necessary in a democratic society in the circumstances of the present case and in the light of the legitimate aim or aims pursued (see, *mutatis mutandis*, *Kövesi*, cited above, § 194).

137. Having regard to all of the foregoing considerations, the Court finds that the provisions that served as the legal basis for the interference in issue were formulated with sufficient precision, for the purposes of Article 10 of the Convention, to enable the applicant, who was actually a judge, to regulate his conduct in the circumstances of the present case.

### 3. *Whether the interference pursued a legitimate aim*

138. The Court has on many occasions emphasised the special role in society of the judiciary which, as the guarantor of justice, a fundamental value in a State governed by the rule of law, must enjoy public confidence if judges are to be successful in carrying out their duties (see, among other authorities, *Baka*, cited above, § 164, and *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, § 283, 1 December 2020). Having regard to the importance of the principles of subsidiarity and shared responsibility now affirmed in the Preamble to the Convention, the Convention system cannot function properly without independent and impartial domestic judges (see *Grzęda v. Poland* [GC], no. 43572/18, § 324, 15 March 2022). In the context of the present case, the Court considers it important to note that the judiciary’s impartiality and independence, which are included in the guarantees of Article 6 § 1, are prerequisites to the rule of law (see, *mutatis mutandis*, *Guðmundur Andri Ástráðsson*, cited above, § 239), one of the fundamental principles of a democratic society, inherent in all the

Articles of the Convention (see, among many other authorities, *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II; *Baka*, cited above, § 117; and *Grzęda*, cited above, § 339).

139. At the same time, Article 10 § 2 of the Convention expressly provides that maintaining the authority and impartiality of the judiciary is a legitimate aim that warrants certain restrictions on the right to freedom of expression (see paragraph 79 above). On that basis, the Court has recognised that it can be expected of public officials serving in the judiciary that they should show restraint in exercising their freedom of expression in all cases where the authority and impartiality of the judiciary are likely to be called into question (see *Baka*, cited above, § 164). Moreover, a similar approach is adopted in all the relevant international material (see paragraphs 60-69 above), including the Non-Binding Guidelines on the Use of Social Media by Judges issued by the United Nations Office on Drugs and Crime (see paragraphs 15 and 16 of those Guidelines, quoted in paragraph 70 above).

140. In these circumstances, the Court points out that it is crucially important for domestic justice systems to function properly so that, in turn, the Convention system can function properly. It considers that the duty of discretion incumbent on judges – which is intended to protect public confidence in the justice system – forms part of the “duties and responsibilities” that are necessary for maintaining the authority and impartiality of the judiciary, within the meaning of Article 10 § 2 of the Convention.

141. In the light of the reasons given by the national authorities, the Court observes that the sanction imposed on the applicant for posting the two messages in issue on his Facebook page (see paragraphs 28 and 34 above) was in response to his breach of the duty of discretion inherent in the office of judge (see paragraph 67 of the High Court’s judgment, quoted in paragraph 33 above). Having regard to the importance of the proper functioning of the domestic justice system (see paragraphs 138 and 140 above), the Court considers that there can be no doubt that that disciplinary measure pursued a legitimate aim, namely that of maintaining the authority and impartiality of the judiciary, as provided for in Article 10 § 2 of the Convention.

#### 4. *Whether the interference was necessary in a democratic society*

##### (a) **General principles**

###### (i) *The right to freedom of expression in general*

142. The basic principles concerning the necessity in a democratic society of an interference with the exercise of freedom of expression are well established in the Court’s case-law. They have been summarised as follows in cases including *Handyside v. the United Kingdom* (7 December 1976, Series A no. 24), *Morice v. France* ([GC], no. 29369/10, § 124, ECHR 2015), *Delfi AS* (cited above, §§ 131-39) and *Perinçek v. Switzerland* ([GC], no. 27510/08, §§ 196 and 197, ECHR 2015 (extracts), and the cases cited therein):

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

(ii) The adjective ‘necessary’, within the meaning of Article 10 § 2, implies the existence of a ‘pressing social need’. In general, the ‘need’ for an interference with the exercise of the freedom of expression must be convincingly established. Admittedly, it is primarily for the national authorities to assess whether there is such

a need capable of justifying that interference and, to that end, they enjoy a certain margin of appreciation. However, the margin of appreciation goes hand in hand with European supervision, embracing both the law and the decisions that apply it.

(iii) In exercising its supervisory jurisdiction, the Court must examine the interference in the light of the case as a whole, including the content of the impugned statements and the context in which they were made. In particular, it must determine whether the interference in issue was ‘proportionate to the legitimate aims pursued’ and whether the reasons adduced by the national authorities to justify it were ‘relevant and sufficient’. In doing so, the Court has to satisfy itself that these authorities applied standards which were in conformity with the principles embodied in Article 10 and that, moreover, they relied on an acceptable assessment of the relevant facts ...”

(ii) *Freedom of expression on the internet and on social media*

143. With regard to the internet and social media, the Court refers to the following general principles, which were summarised in the *Sanchez* judgment (cited above, §§ 158-66).

“158. The Internet has become one of the principal means by which individuals exercise their right to freedom of expression. It provides essential tools for participation in activities and discussions concerning political issues and issues of general interest (see *Vladimir Kharitonov v. Russia*, no. 10795/14, § 33, 23 June 2020, and *Melike v. Turkey*, no. 35786/19, § 44, 15 June 2021).

159. The possibility for user-generated expressive activity on the Internet provides an unprecedented platform for the exercise of freedom of expression (see *Delfi AS*, cited above, § 110; *Times Newspapers Ltd v. the United Kingdom (nos. 1 and 2)*, nos. 3002/03 and 23676/03, § 27, ECHR 2009; and *Ahmet Yildirim v. Turkey*, no. 3111/10, § 48, ECHR 2012). Given the important role played by the Internet in enhancing the public’s access to news and in generally facilitating the dissemination of information (see *Delfi AS*, cited above, § 133), the function of bloggers and popular users of social media may be assimilated to that of a ‘public watchdog’ in so far as the protection afforded by Article 10 is concerned (see *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 168, 8 November 2016).

160. As the Court has previously observed, the Internet has fostered the ‘emergence of citizen journalism’, as political content ignored by the traditional media is often disseminated via websites to a large number of users, who are then able to view, share and comment upon the information (see *Cengiz and Others v. Turkey*, nos. 48226/10 and 14027/11, § 52, ECHR 2015 (extracts)). Generally speaking, the use of new technologies, especially in the political field, is now commonplace, whether it be the Internet or a mobile application ‘put in place by [a political party] for voters to impart their political opinions’, ‘but also to convey a political message’; in other words, a mobile application may become a tool ‘allowing [voters] to exercise their right to freedom of expression’ (see *Magyar Kétfarkú Kutya Párt*, cited above, §§ 88-89).

161. However, the benefits of this information tool, an electronic network serving billions of users worldwide (see *Editorial Board of Pravoye Delo and Shtekel v. Ukraine*, no. 33014/05, § 63, ECHR 2011 (extracts)), carry a certain number of risks: the Internet is an information and communication tool particularly distinct from the printed media, especially as regards the capacity to store and transmit information, and the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is certainly higher than that posed by the press (see *Bonnet*, cited above, § 43; *Société éditrice de Mediapart and Others v. France*, nos. 281/15 and 34445/15, § 88, 14 January 2021; *M.L. and W.W. v. Germany*, nos. 60798/10 and 65599/10, § 91, 28 June 2018; *Cicad v. Switzerland*, no. 17676/09, § 59, 7 June 2016; and *Editorial Board of Pravoye Delo and Shtekel*, cited above, § 63).

162. Defamatory and other types of clearly unlawful speech, including hate speech and speech inciting violence, can be disseminated as never before, worldwide, in a matter of seconds, and sometimes remain available online for lengthy periods (see *Savva Terentyev v. Russia*, no. 10692/09, § 79, 28 August 2018, and *Savcı Çengel v. Turkey* (dec.), no. 30697/19, § 35, 18 May 2021).”

(iii) *Freedom of expression of judges*

144. The general principles on the freedom of expression of judges were set out in the *Baka* judgment (cited above, §§ 162-67), as follows.

“162. While the Court has admitted that it is legitimate for a State to impose on civil servants, on account of their status, a duty of discretion, civil servants are individuals and, as such, qualify for the protection of Article 10 of the Convention (see *Vogt*, cited above, § 53, and *Guja*, cited above, § 70). It therefore falls to the Court, having regard to the circumstances of each case, to determine whether a fair balance has been struck between the fundamental right of the individual to freedom of expression and the legitimate interest of a democratic State in ensuring that its civil service properly furthers the purposes enumerated in Article 10 § 2. In carrying out this review, the Court will bear in mind that whenever a civil servant’s right to freedom of expression is in issue the ‘duties and responsibilities’ referred to in Article 10 § 2 assume a special significance, which justifies leaving to the national authorities a certain margin of appreciation in determining whether the impugned interference is proportionate to the above aim (see *Vogt*, cited above, § 53, and *Albayrak v. Turkey*, no. 38406/97, § 41, 31 January 2008).

163. Given the prominent place among State organs that the judiciary occupies in a democratic society, the Court reiterates that this approach also applies in the event of restrictions on the freedom of expression of a judge in connection with the performance of his or her functions, albeit the judiciary is not part of the ordinary civil service (see *Albayrak*, cited above, § 42, and *Pitkevich*, cited above).

164. The Court has recognised that it can be expected of public officials serving in the judiciary that they should show restraint in exercising their freedom of expression in all cases where the authority and impartiality of the judiciary are likely to be called in question (see *Wille*, cited above, § 64; *Kayasu*, cited above, § 92; *Kudeshkina*, cited above, § 86; and *Di Giovanni*, cited above, § 71). The dissemination of even accurate information must be carried out with moderation and propriety (see *Kudeshkina*, cited above, § 93). The Court has on many occasions emphasised the special role in society of the judiciary, which, as the guarantor of justice, a fundamental value in a law-governed State, must enjoy public confidence if it is to be successful in carrying out its duties (*ibid.*, § 86, and *Morice*, cited above, § 128). It is for this reason that judicial authorities, in so far as concerns the exercise of their adjudicatory function, are required to exercise maximum discretion with regard to the cases with which they deal in order to preserve their image as impartial judges (see *Olujić*, cited above, § 59).

165. At the same time, the Court has also stressed 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 in a position such as the applicant’s calls for close scrutiny on the part of the Court (see *Harabin* (dec.) 2004, cited above; see also *Wille*, cited above, § 64). Furthermore, questions concerning the functioning of the justice system fall within the public interest, the debate of which generally enjoys a high degree of protection under Article 10 (see *Kudeshkina*, § 86, and *Morice*, § 128, both cited above). Even if an issue under debate has political implications, this is not in itself sufficient to prevent a judge from making a statement on the matter (see *Wille*, cited above, § 67). Issues relating to the separation of powers can involve very important matters in a democratic society which the public has a legitimate interest in being informed about and which fall within the scope of political debate (see *Guja*, cited above, § 88).

166. In the context of Article 10 of the Convention, the Court must take account of the circumstances and overall background against which the statements in question were made (see, *mutatis mutandis*, *Morice*, § 162). It must look at the impugned interference in the light of the case as a whole (see *Wille*, § 63, and *Albayrak*, § 40, both cited above), attaching particular importance to the office held by the applicant, his statements and the context in which they were made.

167. Finally, the Court reiterates the ‘chilling effect’ that the fear of sanction has on the exercise of freedom of expression, in particular on other judges wishing to participate in the public debate on issues related to the administration of justice and the judiciary (see *Kudeshkina*, cited above, §§ 99-100). This effect, which works to the detriment of society as a whole, is also a factor that concerns the proportionality of the sanction or punitive measure imposed (*ibid.*, § 99).”

**(b) Specific features of the present case and approach to be adopted by the Court**

145. The Court notes at the outset that the case before it differs from certain previous cases that also involved the freedom of expression of judges or prosecutors. As the applicant pointed out in his submissions, he had had a sanction imposed on him for expressing a personal opinion on his Facebook page, which was accessible to the general public and where he had several thousand followers. Regarding his first message, posted on 9 January 2019, the applicant was also expressing a personal opinion on a matter of public interest that was not directly related to the functioning of the justice system. The present case must therefore be distinguished from others concerning judges and prosecutors who had publicly expressed their views in their capacity as presidents of courts, chief prosecutors, representatives of professional associations or members of judicial councils (see, for example, *Baka*, cited above, §§ 168 and 171; *Brisic*, cited above, §§ 104 and 105; *Kövesi*, cited above, §§ 205, 207, 209 and 210; *Eminağaoğlu*, cited above, §§ 133-51; *Miroslava Todorova v. Bulgaria*, no. 40072/13, §§ 174-78, 19 October 2021; and *Žurek*, cited above, §§ 221, 222 and 224). It must also be distinguished from cases concerning sanctions imposed on judges and prosecutors for public remarks made or positions adopted outside publicly accessible social-media fora (see, among other authorities, *Wille v. Liechtenstein* [GC], no. 28396/95, §§ 61-70, ECHR 1999-VII; *Kayasü v. Turkey*, nos. 64119/00 and 76292/01, §§ 100-07, 13 November 2008; *Kudeshkina v. Russia*, no. 29492/05, §§ 93-100, 26 February 2009; *Goryaynova v. Ukraine*, no. 41752/09, §§ 60-67, 8 October 2020; *Guz v. Poland*, no. 965/12, §§ 89-98, 15 October 2020; *Kozan v. Turkey*, no. 16695/19, §§ 59-70, 1 March 2022; *M.D. and Others v. Spain*, no. 36584/17, §§ 83-91, 28 June 2022; *Di Giovanni v. Italy*, no. 51160/06, §§ 75-86, 9 July 2013; *Panioglu*, cited above; *Simić v. Bosnia and Herzegovina* (dec.), no. 75255/10, 15 November 2016; and *Poyraz v. Turkey*, no. 15966/06, 7 December 2010).

146. The Court, which attaches importance to the stability and foreseeability of its case-law in terms of legal certainty, has consistently applied criteria enabling it to assess to what extent the judges and prosecutors in the cases cited in the preceding paragraph enjoyed the protection of Article 10 of the Convention. The specific features of the present case, however, offer the Grand Chamber an opportunity to confirm and consolidate the principles established in its case-law with regard to the freedom of expression of judges and prosecutors on the internet. At the same time, the Grand Chamber will be able to provide certain clarifications and to define a set of criteria that take into account the limits imposed on this freedom by the duty of discretion inherent in their office.

147. The criteria in question will be applicable to the various manifestations of the freedom of expression of judges and prosecutors that may be found on the internet and social media, such as Facebook posts and interactions with the posts of other social-media users, including remarks, photos, videos and even mere “likes”. They are intended to guide domestic courts in striking a balance between the competing rights and interests at stake. The Court would emphasise that this balancing exercise must involve weighing up the right to freedom of expression of judges and prosecutors, which they are guaranteed like any other individual under Article 10 § 1 of the Convention, against the duty of discretion, a social value rooted in the ethical obligation for judges and prosecutors to protect public confidence in the justice system and thus forming part of the “duties and responsibilities” referred to in Article 10 § 2 of the Convention.

148. In view of their interdependence, it is only after undertaking a global analysis of all these criteria that the proportionality of any interference with the right to freedom of expression of a judge or prosecutor on the internet or social media should be assessed.

**(c) Criteria to be applied in weighing up the competing rights and interests**

149. As a preliminary consideration, the Court would point out that there is no reason to establish a hierarchy among the various criteria set out below or to lay down any order for their examination. Certain criteria may have more or less relevance according to the particular circumstances of the case (see, *mutatis mutandis*, *Satakunnan Markkinapörssi Oy and Satamedia Oy*, cited above, § 166).

(i) *Content and form of remarks or other manifestations of freedom of expression of judges and prosecutors on social media*

150. First of all, the Court notes that remarks by judges and prosecutors on matters of public interest generally enjoy a high degree of protection under Article 10 of the Convention (see, for example, *Kudeshkina*, cited above, §§ 86-95; *Guz*, cited above, §§ 90-93; and *Kozan*, cited above, §§ 62, 63 and 65). The same is not true of statements of fact and personal opinions that do not concern such matters and that could, in addition, damage other public or private interests (see, for instance, *Poyraz*, cited above, §§ 67 and 75-77; *Simić*, cited above, §§ 35 and 36; and *Di Giovanni*, cited above, § 81).

151. Matters relating to the functioning of the justice system and judicial reforms are undeniably of public interest. They are not, however, the only issues in relation to which judges might legitimately exercise their freedom of expression under Article 10 of the Convention, since their isolation from the community in which they live is neither possible nor beneficial (see the extract from the Commentary on the Bangalore Principles relating to Principle 1.2, quoted in paragraph 69 above).

152. Where democracy or the rule of law is under serious threat, for example, judges may speak out in defence of judicial independence, the constitutional order and the restoration of democracy, both at national and international level. Such latitude includes the possibility for them – where warranted by the historical, political or legal context of a debate with serious political implications – to express specific opinions on issues about which the general public have a legitimate interest in being informed (see paragraphs 61, 64 and 68 above).

153. However, taking such positions may jeopardise their impartiality and 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. The question that should therefore always be asked is 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 (see also paragraphs 61-66 and 69 above).

154. While judges enjoy a recognised right to speak out in order to protect the very basics of the rule of law, this right goes hand in hand with the duty of discretion, which is equally necessary for maintaining the authority and impartiality of the justice system. In this connection, even appearances may be of a certain importance; in other words, “justice must not only be done, it must also be seen to be done”. What is at stake is the confidence which the courts in a democratic society must inspire in the public (see *Denisov v. Ukraine* [GC], no. [76639/11](#), § 62, 25 September 2018, and *Ramos Nunes de Carvalho e Sá v. Portugal* [GC], nos. [55391/13](#) and 2 others, § 149, 6 November 2018). The Court would again point out that it is fundamentally important for domestic justice systems to function properly – which requires protecting the independence and impartiality of the courts under Article 6 § 1 of the Convention – so that the Convention system can function properly in turn.

155. As regards the form that judges and prosecutors give to their remarks in exercising their freedom of expression on social media, there is no exemption from the obligations stemming from their duty of discretion. The instruments adopted by the Council of Europe, along with the other international material cited above, in particular the Bangalore Principles of Judicial Conduct (see paragraphs 61-65 and 69 above) and the Non-Binding Guidelines on the Use of Social Media by Judges (see paragraph 70 above), emphasise the fact that judges and prosecutors have a duty, under Article 10 § 2 of the Convention, to be circumspect and prudent in tone and language and to consider, in respect of each social-media post or other interaction with users on such platforms, what its consequences might be for judicial dignity. The same duty applies to the judges of the Court themselves, as provided in the Resolution on judicial ethics (see paragraph 66 above).

156. In the Court's view, it is essential that judges use clear language in exercising their freedom of expression. Such clarity should make it possible to preclude multiple interpretations that could undermine public confidence in the justice system.

*(ii) Context of disputed remarks and capacity in which they were made*

157. The domestic courts must examine the disputed remarks in the light of the case as a whole, giving special consideration to the context in which they were made and the position held by the judge or prosecutor who made them (see *Baka*, cited above, § 166).

158. The historical context is of particular importance in weighing up the competing rights and interests. The Court has itself attached importance to such a context in reviewing whether there existed a pressing social need for interference with the right to freedom of expression under Article 10 of the Convention (see *Perinçek*, cited above, § 242, and the cases cited therein). In its view, the passage of time is a circumstance capable of increasing the scope of freedom of expression enjoyed by participants in a debate (see, *mutatis mutandis*, *Chauvy and Others v. France*, no. 64915/01, § 69, ECHR 2004-VI; *Orban and Others v. France*, no. 20985/05, § 52, 15 January 2009; and *Dink v. Turkey*, nos. 2668/07 and 4 others, § 135, 14 September 2010).

159. The Court's case-law as it stands acknowledges that judges and prosecutors who hold certain positions in the justice system (such as president of a court, chief prosecutor, spokesperson for a court, representative of a professional association or member of a judicial council) enjoy greater protection of their freedom of expression, since their public statements are very often motivated by a desire to preserve the justice system (see paragraph 145 above). The capacity in which a judge or prosecutor has made disputed remarks in a given context may very well warrant consideration in weighing up the rights and interests at stake, justifying broader permissible limits in certain cases. That does not mean that "ordinary" judges and prosecutors, who do not hold specific positions within the justice system and are not speaking in any particular capacity, cannot publicly express their views on matters of public interest.

160. The Court would, however, emphasise the obligation of judges and prosecutors to exercise restraint in the context of pending cases. This means refraining from any comment that might reasonably be expected to influence the outcome or compromise the fairness of the proceedings (see *Wille*, cited above, § 67, and *Eminağaoğlu*, cited above, §§ 138-40; see also the Bangalore Principles, quoted in paragraph 69 above, and the extract from the Commentary on the Bangalore Principles relating to Principle 2.4).

*(iii) Consequences of the disputed remarks*

161. The Court has previously had occasion to point out the benefits of the possibility for user-generated expressive activity on the internet. This communication medium has become one of the principal means by which individuals exercise their right to freedom of expression. It provides essential tools for participation in activities and discussions concerning political issues and issues of general interest. It nevertheless carries a certain number of risks, making it particularly distinct from the printed media, especially as regards the capacity to store and transmit information (see *Sanchez*, cited above, §§ 158-61, and the cases cited therein).

162. In this context, and bearing in mind the risks inherent in any remarks made on the internet or social media by judges, prosecutors or anyone else, the domestic courts should take into account, when weighing up the competing interests, the detrimental effects, taken as a whole, that remarks by a judge or prosecutor on social media entailed or were likely to entail (see, *mutatis mutandis*, *Halet*, cited above, § 148). It is for the domestic courts to distinguish between statements by judges and prosecutors made on open social networks, accessible to an indefinite number of users, on the one hand, and those made in closed social networks, reserved for a private circle of “friends”, or closed to the general public and accessible only to legal professionals, on the other. Such a distinction may be decisive in determining whether the measures taken in response were proportionate (see, among other authorities, *Kozan*, cited above, § 66).

*(iv) Severity of the sanction*

163. Under Article 10, the Court has on many occasions emphasised that the nature and severity of the penalties imposed are factors to be taken into account when assessing whether an interference with the freedom of expression guaranteed by Article 10 was proportionate to the legitimate aim or aims pursued (see, among other authorities, regarding the freedom of expression of journalists, *Cumpănă and Mazăre v. Romania* [GC], no. [33348/96](#), § 115, ECHR 2004-XI). This principle also applies to sanctions that are or may be imposed on judges and prosecutors (compare, for example, *Di Giovanni*, cited above, § 83, regarding a sanction with a warning, and *Miroslava Todorova*, cited above, § 176, regarding a reduction in salary).

164. The chilling effect that a sanction could have, not only on the judge or prosecutor concerned but also on the profession as a whole, is another factor to be taken into account in assessing whether the interference was proportionate to the legitimate aim or aims pursued (see, for example, *mutatis mutandis*, *Eminağaoğlu*, cited above, § 124; *Žurek*, cited above, § 227; and *Kozan*, cited above, § 68). The same applies to the cumulative effect of the various sanctions imposed on an applicant (see *Lewandowska-Malec v. Poland*, no. [39660/07](#), § 70, 18 September 2012).

*(v) Whether procedural safeguards were afforded*

165. When disciplinary proceedings are brought against a judge, public confidence in the functioning of the judiciary is at stake. Any judge who faces such proceedings must be afforded effective and adequate safeguards against arbitrariness (see *Baka*, cited above, § 174). That includes the ability to have the measure which has been imposed on him or her scrutinised by an independent and impartial body competent to review all the relevant questions of fact and law, in order to determine the lawfulness of that measure and censure any abuse on the part of the authorities. Before that review body the judge concerned must have the benefit of adversarial proceedings in order to present his or her views and counter the arguments of the authorities (see *Eminağaoğlu*, cited above, § 150, and the cases cited therein, and *Kövesi*, cited above,

§ 210). It is also for the national authorities to provide relevant and sufficient reasons for their decisions in order to justify the necessity of the disciplinary proceedings and sanctions imposed, and their proportionality in relation to the legitimate aims pursued (see *Miroslava Todorova*, cited above, §§ 171, 178 and 179).

**(d) Application of these principles to the present case**

166. The Court reiterates that it is primarily for the national authorities, notably the courts, to interpret and apply domestic law in a manner that gives full effect to the Convention. Its role is ultimately to determine whether the way in which that law is applied produces consequences that are consistent with the principles of the Convention (see *Guðmundur Andri Ástráðsson*, cited above, § 250, and the cases cited therein).

167. The Court also points out that it has gradually developed in its case-law supervisory mechanisms which are intended to comply fully with the principle of subsidiarity. In this respect, its task is to verify whether the national courts applied the principles of the Convention as interpreted in the light of its case-law in a satisfactory manner, in such a way that their decisions are consistent with it (see, among other authorities, *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, ECHR 2003-VIII, for an example of such review).

168. In this connection, the Court emphasises that it has an increased expectation that the national courts will take account of its case-law in reaching their decisions where, on the questions at issue, that case-law is both substantial and stable and where it has identified a series of objective principles and criteria that can be easily applied. Thus, the Court has found a violation of the Convention in cases where it considered, with regard to one or other of the Convention's provisions, that the domestic courts had not given sufficiently detailed reasons for their decisions or assessed the case before them in the light of the principles defined in its case-law (see, among other authorities, *Makdoudi v. Belgium*, no. 12848/15, §§ 94-98, 18 February 2020, and *Lashmankin and Others v. Russia*, nos. 57818/09 and 14 others, § 454, 7 February 2017, for examples of a lack of "relevant and sufficient reasons" under Articles 8 and 11 of the Convention). Where, on the other hand, the domestic courts have carefully examined the facts, have applied the relevant human-rights standards consistently with the Convention and the Court's case-law, and have adequately weighed up the individual interests against the public interest in a case, the Court would require strong reasons to substitute its own view for that of the domestic courts (see, with regard to Article 8 of the Convention, *M.A. v. Denmark* [GC], no. 6697/18, § 149, 9 July 2021).

169. With more specific regard to Article 10 of the Convention, the Court expects the domestic courts to weigh up the rights or interests concerned in conformity with the criteria it has laid down in its case-law. It emphasises that deficiencies or shortcomings in the domestic courts' reasoning have also led it to find a violation of this provision, either because such omissions prevented it from exercising effective scrutiny as to whether the domestic authorities had correctly applied the criteria established in its case-law, or because the domestic courts had inadequately applied those standards and had thus failed to provide "relevant and sufficient" reasons for the interference in issue (see, for example, *Ergüdoğan v. Turkey*, no. 48979/10, § 33, 17 April 2018, and *Ibragim Ibragimov and Others v. Russia*, nos. 1413/08 and 28621/11, §§ 106-11, 28 August 2018). In certain contexts, where the balancing exercise has been undertaken by the national authorities in conformity with the criteria laid down in the Court's case-law, the Court would require strong reasons to substitute its own view for that of the domestic courts (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08,

§§ 106 and 107, ECHR 2012, and *MGN Limited v. the United Kingdom*, no. 39401/04, §§ 150-55, 18 January 2011).

170. Since, however, the matter at hand concerns a restriction on the freedom of expression of a judge, and given the prominent place the judiciary occupies among State organs in a democratic society and the growing importance such societies attach to the necessity of safeguarding the independence of the justice system, the Court must exercise strict scrutiny over the authorities' grounds for that restriction and its proportionality (see *Baka*, cited above, § 165). In the present case, this means leaving the national authorities a narrow margin of appreciation in assessing whether the interference complained of by the applicant under Article 10 of the Convention met a "pressing social need" and was proportionate to the legitimate aim pursued.

171. In the present case, there is no doubt that the national authorities, and in particular the High Court, endeavoured to apply the Court's case-law faithfully, in the light of certain general principles and criteria as established at the material time. The Court would point out, however, that the specific features of the present case have enabled it to consolidate and clarify the general principles identified in its case-law on the protection and limits of the freedom of expression of judges and prosecutors on social media, while refining the terms of the balancing exercise involving the competing rights and interests (see paragraphs 145-165 above). The Court's task, in keeping with the principle of subsidiarity, is thus to apply to the present case the new enumeration of review criteria that it has defined above, successively examining each criterion in the light of the specific circumstances of the case and the grounds relied on by the authorities, especially the High Court (see, for a similar approach, *Halet*, cited above, § 178).

172. Although the applicant's two messages were analysed together by the national authorities as part of the disciplinary proceedings, which resulted in a single sanction being imposed on him for the remarks made in both, the Court notes that they differ in terms of content and context (see paragraphs 17 and 19 above). It therefore considers it appropriate, in applying the criteria set out in paragraphs 145-165 above, to examine each message separately where made necessary by their specific features.

(i) *Content and form of the messages*

(α) The first message (posted by the applicant on 9 January 2019)

173. The Government submitted that the applicant's remarks had not concerned the functioning of the justice system, but rather 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 political matter that could have come before the courts (see paragraph 97 above). The applicant asserted that his message had concerned the need for a separation of powers in a democratic State, against the backdrop of a dispute between the President's Office and the Ministry of Defence over the appointment of the next Army Chief of Staff (see paragraph 87 above).

174. On the basis of the case file, the Court notes that the applicant unquestionably participated in a political controversy by posting the message of 9 January 2019 on his Facebook page (see paragraphs 23, 87 and 97 above). As the Court has pointed out above, the existence of a controversy is not in itself sufficient to prevent a judge or prosecutor from expressing a view on a matter of public interest that may arise in the context of such a situation (see paragraphs 151 and 152 above).

175. In the Court's view, the applicant's remarks, to the effect that there would be a threat to constitutional democracy in the event that public institutions were to fall under political control,

could be regarded as aiming to defend the constitutional order and the continued independence of the institutions of a democratic State. They were thus akin to value judgments, the truth of which – by their very nature – is not susceptible of proof (see *Morice*, cited above, § 126). As to the question whether those value judgments had a sufficient “factual basis”, the Court notes, like the Chamber (see paragraphs 70 and 77 of the Chamber judgment), that the disciplinary bodies did not dispute the applicant’s argument that there was a major debate taking place in civil society around the extension of the Army Chief of Staff’s term of office (see paragraphs 27-28 above). The High Court, for its part, noted that the disputed remarks could not be examined from the perspective of whether they had a factual basis, since neither it nor the disciplinary body had jurisdiction to rule on the questions of fact and law addressed in the opinions expressed publicly by the applicant. It nevertheless established that, from a disciplinary point of view, the applicant’s remarks amounted to a “personal opinion” (see paragraphs 75 and 76 of the High Court’s judgment, quoted in paragraph 38 above; see also paragraph 201 below).

176. In the reasons given by the national authorities for restricting the applicant’s freedom of expression, there is nothing to indicate how his remarks could have undermined the proper functioning of the domestic justice system or could have impaired the dignity and honour of judicial office or the public confidence that office should inspire (contrast *Simić*, cited above, §§ 35 and 36).

177. In this connection, the Court would reiterate that it expects the domestic courts to weigh up the rights or interests concerned in conformity with the criteria it has laid down and that deficiencies or shortcomings in the domestic courts’ reasoning may prevent the Court from effectively exercising its scrutiny as to whether the domestic authorities have correctly applied the standards established in its case-law (see paragraph 169 above).

178. Turning to the form of the message, the Court notes that the applicant set out a series of questions concerning an intervention by the army, which could have been interpreted in several ways (see paragraph 17 above). The High Court interpreted the message to mean that the applicant was alluding to the possibility of the army deploying on the streets as a solution for preserving constitutional democracy (see paragraph 37 above). In the Government’s view, the applicant’s message, which had been posted in the context of a political dispute, amounted to a “call to arms” to preserve democracy (see paragraph 97 above). The applicant, meanwhile, asserted that 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 (see paragraph 87 above).

179. In this connection, the Court once again points out that the use of unclear language in remarks made by a judge or prosecutor on social media may prove problematic, particularly where such statements may be understood by readers as incitement, even if implicit or indirect, to hatred or violence (see paragraph 156 above). While it would therefore have been preferable for the applicant to use clearer language, thereby precluding multiple interpretations, it must nevertheless be noted that the references to the army in his message essentially conveyed, in rhetorical form, his fears as to the risk of political influence over that institution. In the absence of other evidence supporting the premise either that the applicant in any way sought to incite his readers to take to the streets or to use violence, or that the remarks in issue actually had such an effect on his readers, those mere references to the army, however ambiguous they may appear, are not sufficient to upset the requisite balance between the degree to which the applicant, as a judge, could be involved in society and the need for him to remain – and to be seen as – independent and impartial in the discharge of his duties (see paragraph 153 above).

(β) The second message (posted by the applicant on 10 January 2019)

180. The applicant's second message comprised a hyperlink to a news website, on which a press article had been published containing an interview with the prosecutor C.S. about how the public prosecutor's office was handling criminal cases and the difficulties that prosecutors were having in dealing with the cases assigned to them. The hyperlink was accompanied by a brief comment by the applicant – "Now here's a prosecutor with some blood in his veins (*sânge în instalație*) ..." – praising the courage of the prosecutor in question in that he had dared to speak openly about the release of dangerous inmates, about initiatives of which he disapproved to amend the legislation on the organisation of the justice system, and about the "lynching" of judges and prosecutors (see paragraph 19 above).

181. In the Court's view, there is no doubt that the applicant's message – which was an endorsement of the content of the article in question and, in particular, the ideas expressed by the prosecutor C.S. as to the problems being faced by Romanian judges and prosecutors at the material time – concerned matters of public interest, namely legislative reforms of the justice system. It thus related to the functioning of the justice system, an issue which calls for a high degree of protection under Article 10 (see paragraphs 60, 64, 144 and 151 above).

182. As to the form of the message, the Court notes that the Romanian expression "*sânge în instalație*" used by the applicant in that post was the main factor behind the domestic judicial authorities' decision to impose a sanction on him (see paragraphs 27 and 36 above). Moreover, the translation of that expression is a matter of some controversy between the parties before the Grand Chamber (see paragraphs 89 and 99 above).

183. Admittedly, the national authorities are better placed than the Court to understand and assess certain phrases and statements and the intention behind them in a given case and, in particular, to judge how the general public might interpret and react to them (see, *mutatis mutandis*, *Panioglu*, cited above, § 116; see also the comments by the third-party interveners in paragraph 113 above). It cannot be ruled out that a single expression used by a judge or prosecutor may in itself justify a disciplinary sanction, where the tone or language used lacked the circumspection and caution required to avoid impairing the image of the justice system. Nevertheless, it must be noted that the domestic judicial authorities did not explain how the expression in issue had "significantly overstepped the limits of propriety inherent in the office" the applicant held (compare *Panioglu*, cited above, §§ 40 and 117) and why it was so serious as to call for disciplinary sanctions (see paragraph 134 above).

184. Such an explanation could have avoided the controversy raised before the Court as to the meaning and level of propriety of that expression. While in the Government's view it was a course, crude expression used by uneducated individuals, in the applicant's view it was not, since it had previously been used in the media by politicians and civil servants (see paragraph 89 above). In this connection, the Court refers to its statements above (see paragraphs 169 and 177 above) as to the consequences of deficiencies or shortcomings in the domestic courts' reasoning when they weigh up the rights or interests concerned in conformity with the criteria laid down in its case-law.

(ii) *Context of the applicant's remarks and the capacity in which he made them*

(α) The first message (posted by the applicant on 9 January 2019)

185. The applicant's remarks could reasonably have been understood as aiming to defend the democratic order because they drew attention to the Constitution and the need to maintain the separation of powers. They were expressed in the context of a debate on a matter of public

interest, namely the extension of the Army Chief of Staff's term of office, which had triggered an institutional dispute between the Ministry of Defence and the President's Office and had made headline news (see paragraphs 23, 87 and 97 above).

186. In this connection, the Court reiterates that, where democracy or the rule of law is under serious threat, judges are entitled to speak out on matters of public interest, putting forward views and opinions on issues about which the general public have a legitimate interest in being informed (see paragraph 152 above). Moreover, remarks made in such a context generally enjoy a high degree of protection under Article 10 of the Convention (see paragraphs 150 and 154 above).

187. At the material time the applicant, who was expressing his views as part of his human-rights awareness-raising endeavours (see paragraphs 14 and 83 above), held no high-ranking position in the justice system and was neither a spokesperson for his court nor the chair of any professional association. That circumstance did not, however, deprive him of the protection of his freedom of expression under Article 10 of the Convention – a freedom afforded to all judges and prosecutors provided that its limits are not overstepped (see paragraphs 159 and 160 above).

188. The Court further notes that the applicant's message did not concern judicial proceedings that were "ongoing" (see paragraph 97 above) at the time it was posted. The message was posted before the judicial proceedings concerning the political controversy it addressed were brought before the domestic courts (see paragraphs 18 and 88 above). The mere fact that, at the time the applicant posted his message online, a press article had mentioned the possibility of judicial proceedings, as pointed out by the Government, is not a sufficient reason to consider that the applicant acted imprudently. To find otherwise would be tantamount to presuming that there is a "risk of legal proceedings" whenever a political or other controversy attracts a certain amount of media coverage. Such a risk could disproportionately restrict the ability of judges and prosecutors to exercise their freedom of expression, within the meaning of Article 10 of the Convention (see paragraph 69 above).

(β) The second message (posted by the applicant on 10 January 2019)

189. The domestic judicial authorities confined themselves to observing that the applicant's use of the Romanian expression "*sânge în instalație*" was sufficient reason to hold him liable for a disciplinary offence (see paragraphs 36 and 181 above). They did not, however, analyse the disputed remarks in the overall context in which they had been made (see *Vajnai v. Hungary*, no. 33629/06, § 53, ECHR 2008) or examine whether the expression in question served merely stylistic purposes (see *Giül and Others v. Turkey*, no. 4870/02, § 41, 8 June 2010, and *Grebneva and Alisimchik v. Russia*, no. 8918/05, § 52, 22 November 2016, with further references).

190. Like some of the third-party interveners (see paragraphs 101-104 and 116 *in fine* above), the Court notes that the applicant's remarks clearly fell within the context of a debate on matters of public interest, concerning legislative reforms of the justice system (see, *mutatis mutandis*, *Žurek*, cited above, § 224; *Kozan*, cited above, § 64; *Miroslava Todorova*, cited above, § 175; *Kövesi*, cited above, § 207; and *Baka*, cited above, § 171). Those matters had also attracted the attention of the Venice Commission (see paragraph 62 above) and the European Commission (see paragraphs 71-72 above). The domestic judicial authorities did not take the context into account in their assessment of the applicant's second message. That message was not, therefore, given the careful consideration required by the circumstances of the case.

191. As to the capacity in which the applicant made his remarks, the Court notes that, as observed above (see paragraph 187 above), the applicant expressed a personal opinion, as part of

his human-rights awareness-raising endeavours, on issues relating to the functioning of the justice system, during a debate of public interest. He was thus entitled, generally speaking, to greater freedom of expression.

(iii) *Consequences of the applicant's remarks*

(α) The first message (posted by the applicant on 9 January 2019)

192. Admittedly, by posting the message on Facebook, where he had an open, publicly accessible page (contrast *Kozan*, cited above, § 66), the applicant accepted a certain number of risks inherent in the use of the internet, where remarks including hate speech and calls to violence can be disseminated extremely quickly and widely (see *Sanchez*, cited above, §§ 161 and 162; see also paragraph 143 above). However, as the Court has noted above, the applicant's message did not contain any call to violence or popular uprising that would have required him to act with any particular restraint or caution (contrast *Savva Terentyev v. Russia*, no. 10692/09, § 79, 28 August 2018, and *Savcı Çengel v. Turkey* (dec.), no. 30697/19, § 35, 18 May 2021). Although the applicant's message did not relate to the functioning of the justice system, his remarks – which could be regarded as aiming to defend the constitutional order – were perfectly legitimate (see paragraphs 150 and 152 above).

193. While the High Court endeavoured in its judgment to identify the detrimental effects of the applicant's Facebook post (see paragraphs 34 and 37 above), it limited its findings to the form and tone of the applicant's remarks. It did not analyse those remarks in the national context in which they had been made, nor did it provide reasons for its finding that the message had impaired the dignity of judicial office (see paragraph 75 of the High Court's judgment, quoted in paragraph 38 above, and paragraph 175 above; see also, *mutatis mutandis*, *Savva Terentyev*, cited above, § 82).

194. In any event, the Court notes that there is nothing in the case file to substantiate the claim that the applicant's message undermined judicial independence and impartiality, the right to a fair trial or public confidence in the judiciary (see paragraph 16 of the Non-Binding Guidelines on the Use of Social Media by Judges, quoted in paragraph 70 above). The mere fact that the applicant's remarks were the subject of some press articles and had allegedly “prompt[ed] readers to make a connection with other historical events” (see paragraph 37 above) is not sufficient in itself to impair the dignity of his office as judge or the impartiality and independence of the justice system.

(β) The second message (posted by the applicant on 10 January 2019)

195. The Court notes that the second message, like the first, was posted on the applicant's Facebook page – an open page to which the public had unrestricted access and which could thus be read by a large number of users (contrast *Kozan*, cited above, § 66, and, *mutatis mutandis*, *Sanchez*, cited above, §§ 161 and 162, quoted in paragraph 143 above).

196. This second message – which related to the functioning of the justice system and was therefore a matter of public interest – did not contain any defamatory or hateful remarks or calls to violence, whose dissemination or availability online could have given rise to legitimate concerns for the dignity of his office as judge (see paragraphs 180-181 above).

197. While the High Court appeared to regard the message as having impaired the dignity of the applicant's office as judge and the impartiality and independence of the justice system, on account of the use of the Romanian expression “*sânge în instalație*”, it remained vague as to its specific consequences (see paragraph 183 above). There is nothing in the case file to support the

allegation that the message in question actually undermined the impartiality and independence of the justice system or public confidence in the judiciary and reached the threshold of severity necessary to impose a disciplinary sanction (see paragraph 16 of the Non-Binding Guidelines on the Use of Social Media by Judges, quoted in paragraph 70 above).

*(iv) Severity of the sanction*

198. The Court first notes that the national authorities imposed a single sanction on the applicant – a two-month, 5% pay cut – for the remarks he had made in two messages posted on his Facebook page, without specifying the extent to which each of the two messages contributed to the disciplinary offence found and to the overall sanction imposed.

199. As stated above, the applicant’s remarks in each of his two messages concerned matters of public interest about which the general public had a legitimate interest in being informed (see paragraphs 152 and 196 above). Remarks made in such a context generally enjoy a high degree of protection under Article 10 of the Convention (see paragraph 150 above).

200. While the sanction imposed on the applicant was not the most severe (see paragraph 43 above), it was such as potentially to discourage him from making similar remarks in the future. Moreover, it was capable of having a chilling effect on the profession as a whole (see paragraph 164 above).

*(v) Compliance with procedural safeguards*

201. Lastly, the Court observes that the remarks made by the applicant in the two messages posted on his Facebook page were the subject of a single set of disciplinary proceedings. Those proceedings were initiated by the Judicial Inspection Board, which took up the case of its own motion on the same day the second message was posted. They continued before the CSM’s Disciplinary Board for Judges, which allowed the disciplinary action against the applicant and imposed a sanction on him. They then terminated with the judgment of the High Court, which dismissed the applicant’s appeal as unfounded.

202. It must be observed that the applicant had the opportunity to submit his arguments and adduce evidence both before the Judicial Inspection Board and before the CSM’s Disciplinary Board for Judges, an independent and impartial body (see *Cotora v. Romania*, no. 30745/18, §§ 36-39, 17 January 2023; compare *Catană v. the Republic of Moldova*, no. 43237/13, §§ 75-85, 21 February 2023). The domestic system also afforded the applicant the ability to have the measure in question scrutinised by another independent and impartial body, namely the High Court, which was competent both to determine whether the measure imposed on him by the CSM’s Disciplinary Board was lawful and well-founded, and to set it aside if appropriate (see paragraphs 21-23 and 30 above; compare *Eminağaoğlu*, cited above, § 150, and *Kövesi*, cited above, §§ 157 and 158).

203. The fact remains in the present case that, although they had the opportunity to do so, neither the CSM’s Disciplinary Board nor the High Court examined whether the value judgments made by the applicant in his first message had a sufficient “factual basis” (see paragraph 175 above and paragraph 75 of the High Court’s judgment, quoted in paragraph 38 above; contrast *Cotora*, cited above, §§ 37, 44, 54 and 56).

204. Moreover, the domestic judicial authorities were silent as to how, specifically, the Romanian expression “*sânge în instalație*” used in the second message had, in their view, “significantly overstepped the limits of propriety inherent in the office” the applicant held (see paragraph 183 above). They also failed to examine the context in which the applicant had made

those remarks (see paragraph 185 above), confining themselves to observing that the mere use of the disputed expression by the applicant was sufficient to justify a disciplinary sanction. In view of these findings, the Court has doubts as to the quality and the scope of the judicial review conducted in the present case, neither of which appear to have been adequate (contrast *Cotora*, cited above, §§ 47-56).

*(vi) Conclusion*

205. In view of the foregoing, the Court considers that the applicant's remarks in the two messages posted on his Facebook page were not such as to upset the requisite reasonable balance between, on the one hand, the degree to which the applicant, as a judge, could be involved in society in order to defend the constitutional order and State institutions and, on the other, the need for him to be and to be seen as independent and impartial in the discharge of his duties. Whether in the first message, which aimed to defend the constitutional order and preserve the independence of State institutions, or in the second, which related to the functioning of the domestic justice system, his remarks concerned matters of public interest about which the general public had a legitimate interest in being informed. In the reasons given by the national authorities for restricting the applicant's freedom of expression, there is nothing to indicate convincingly how his remarks had allegedly disrupted the proper functioning of the domestic justice system and impaired the dignity and honour of judicial office or the public confidence that office should inspire.

206. After weighing up the various interests at stake and taking account of the content and form of each of the applicant's two messages, the context in which they were posted, their consequences, the capacity in which the applicant posted them, the nature and severity of the sanction imposed on him and its chilling effect on the profession as a whole, and the safeguards against arbitrariness he was afforded, the Court considers that the interference in issue was not based on "relevant and sufficient" reasons and consequently did not meet a "pressing social need".

207. There has accordingly been a violation of Article 10 of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

208. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

209. The applicant, who did not seek any award in respect of pecuniary or non-pecuniary damage suffered, claimed 5,232 euros (EUR) for the costs and expenses incurred in the proceedings before the Chamber, and a further EUR 4,473.44 for those incurred before the Grand Chamber. Submitting documents in support of his claims, he indicated that the costs before the Grand Chamber corresponded to his lawyers' fees, specifically those of Ms M.-C. Ghirca-Bogdan for her drafting of the submissions to the Grand Chamber (EUR 1,650), her oral pleadings (EUR 500) and her transport costs (EUR 911.72), and those of Ms. N.-T. Popescu for her oral pleadings (EUR 500) and her transport costs (EUR 911.72). He further requested that the sums awarded by the Court be paid directly into his lawyers' bank accounts, in accordance with their respective written agreements.

210. The Government left the applicant's claim under this head to the Court's discretion.

211. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In accordance with Rule 60 §§ 2 and 3 of the Rules of Court, itemised particulars of all claims must be submitted, failing which the Court may reject the claim in whole or in part (see *Yüksel Yalçinkaya v. Türkiye* [GC], no. 15669/20, § 429, 26 September 2023, and *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 189, 17 May 2016). A representative's fees are actually incurred if the applicant has paid them or is liable to pay them pursuant to a legal or contractual obligation (see *Merabishvili v. Georgia* [GC], no. 72508/13, § 371, 28 November 2017, and the cases cited therein). As for the number of representatives necessitated by the case, and the rates charged, those are matters taken into consideration by the Court as relevant within the framework of its assessment as to whether the costs and expenses have been reasonably incurred (see, for instance, *Yüksel Yalçinkaya*, cited above, § 429, and *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 55, ECHR 2000-XI).

212. In the present case, the Court considers that, in view of the legal services agreements submitted, the applicant is under a legal obligation to pay the fees charged by his lawyers (see, among many examples, *Yüksel Yalçinkaya*, cited above, § 430; *Toptaniş v. Turkey*, no. 61170/09, §§ 60-62, 30 August 2016; and *Bilgen v. Turkey*, no. 1571/07, §§ 104-06, 9 March 2021, for a similar finding). The Court further considers that the amount claimed is not excessive, having regard to the legal work that was required at the level of the Chamber and then of the Grand Chamber. Regard being had to the documents in its possession and its case-law, the Court considers it reasonable to award the applicant the amount claimed in full in respect of costs and expenses, namely EUR 9,705.44. The respective shares of this amount due to Ms M.-C. Ghirca-Bogdan (EUR 3,061.72) and to Ms N.-T. Popescu (EUR 6,643.72) are to be paid directly into their bank accounts.

## FOR THESE REASONS, THE COURT

1. *Holds*, by ten votes to seven, that there has been a violation of Article 10 of the Convention;
2. *Holds*, by ten votes to seven,
  - (a) that the respondent State is to pay the applicant (into his representatives' bank accounts), within three months, EUR 9,705.44 (nine thousand seven hundred and five euros and forty-four cents), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
  - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg on 15 December 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos Arnfinn Bårdsen  
Deputy Registrar President

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

- (a) Concurring opinion of Judge Krenc;
- (b) Joint concurring opinion of judges Gnatovskyy and Rădulețu;
- (c) Joint dissenting opinion of judges Ktistakis, Šimáčková, Elósegui, Felici, Derenčinović, Arnardóttir and Ní Raifeartaigh.

## CONCURRING OPINION OF JUDGE KRENC

*(Translation)*

1. I agreed with the majority that there had been a violation of Article 10 of the Convention in the present case. My reasoning, however, is significantly different from that set out in the judgment, and I will endeavour to explain my approach separately.

2. My position in the present case is in fact based on the distinction I believe should be made between the applicant's statements, on the one hand, and the disciplinary sanction imposed on him, on the other.

### I. THE STATEMENTS

3. My own view, to make it plain at the outset, is that the national authorities were allowed to find that the applicant had overstepped the limits of the freedom of expression afforded to judges.

4. I attach great importance to the duty of discretion of judges. The justification for this duty lies in the necessary trust that the justice system must inspire in the general public. It seeks to maintain the legitimacy of the act of adjudication while eschewing any stances that could call into question the judge's independence and impartiality and subsequently undermine the institution he or she serves.

Judges are not influencers. They must refrain from stepping into the ring and engaging in partisan disputes. They should keep their distance, for two reasons that I believe are essential to emphasise.

First, judges cannot prejudge matters that they may be called upon to decide.

Second, more generally, judges can never lose sight of the fact that, in expressing their views, they implicate the justice system as a whole. As the Court stated in *Morice v. France* ([GC], no. 29369/10, § 168, ECHR 2015), "the speech of judges ... is received as the expression of an objective assessment which commits not only the person expressing himself, but also, through him, the entire justice system".

5. It is nowadays accepted that a judge may, or even must (see *Žurek v. Poland*, no. 39650/18, § 222, 16 June 2022), speak out when the independent functioning of the justice system and the rule of law are under serious threat (see *Baka v. Hungary* [GC], no. 20261/12, §§ 158-76, 23 June 2016). Where the Convention's foundational values are at risk, it is

legitimate for judges to voice their concerns, while maintaining the restraint that befits their office.

Outside that specific situation, discretion is the norm, and judges must exercise particular caution when using social media (see, to this effect, the Resolution on judicial ethics adopted by our Court, quoted in paragraph 66 of the judgment). Evidently, there is no question of prohibiting judges from expressing themselves on social media. But they should not overlook the dangers of controversy and polarisation that tend to characterise some such fora.

When judges do decide to speak out online, they must constantly be driven by the concern to preserve the authority and legitimacy of the institution they have chosen to serve. That implies restraint in both form and content. Judges must not use their position to impose their opinions outside their role of adjudication, and it is important for them to steer clear of public controversies. As custodians of the rule of law, judges are not political representatives and are themselves bound by the separation of powers. They must stay on the sidelines, keeping the distance needed to decide disputes and play their role as social peacemakers. For this reason, it is imperative that they remain above the fray and above passions.

6. In the light of the foregoing – and in view of the margin of appreciation they must be afforded –, I consider that the national authorities were allowed to find in the present case that the limits of freedom of expression had been overstepped by the applicant on account of the content of the two Facebook posts in issue. I note that those two messages were posted one day apart (on 9 and 10 January 2019). The national authorities did not baselessly conclude that the applicant had breached his duty of discretion given the content – which was certainly not without ambiguity – of the first message and the language used in the second message in support of the prosecutor C.S.

On this point, I am regrettably unable to join the majority, especially since the domestic authorities provided detailed reasoning for their finding that the applicant had overstepped the limits inherent in his office.

## II. THE SANCTION

7. While the national authorities were allowed to find that the applicant had breached his duty of discretion, I nevertheless consider that his statements did not justify the disciplinary sanction that was imposed on him. It is precisely on account of the sanction that I consider Article 10 of the Convention to have been violated in the present case.

8. Any sanction – whether disciplinary or disguised – against a judge for his or her statements requires the Court’s closest scrutiny, given the importance of the independence of the justice system in a democratic society (see *Baka*, cited above, § 165, and *Grzęda v. Poland* [GC], no. [43572/18](#), § 302, 15 March 2022).

Thus, while the applicant’s statements could be regarded as failing to adhere to the duty of discretion expected of a judge, they were not, in my view, so serious as to warrant the disciplinary sanction imposed.

9. The present judgment does not dwell on the sanction. Yet it is what constitutes the interference under Article 10 § 2 of the Convention and raises a crucial question, in terms of both principle and substance.

In Opinion No. 27, the Consultative Council of European Judges (CCJE) “stresses the importance of a threshold criterion to demarcate misconduct that potentially justifies the imposition of disciplinary sanctions from other forms of misbehaviour” (see paragraph 29 of the

Opinion, quoted in paragraph 65 of the judgment). The CCJE goes on to state (see paragraph 30 of the Opinion, quoted in paragraph 65 of the judgment):

“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.”

There is indeed a difference, in both principle and extent, between the breach of a professional rule of conduct or ethical standard, on the one hand, and the imposition of a disciplinary sanction, on the other.

10. Punishing a judge is not a mundane affair. Reaching directly into his or her back pocket is even less so, and it would be fundamentally wrong to downplay the consequences of such a financial sanction, which indisputably has a chilling effect not only on the judge in question but also, and above all, on other judges.

Finding that a two-month, 5% pay cut is a marginal and ultimately insignificant sanction amounts to ignoring the intrinsic danger of such a sanction for a judge and for the profession as a whole. Sanctions of this kind can indeed discourage judges from expressing their views on issues that directly affect the justice system.

11. My intention obviously is not to say that judges cannot have disciplinary sanctions imposed on them. Rather, I wish to emphasise that a “threshold” is needed for this purpose, and that I find it hard to accept that the requisite threshold was reached in the present case such as to justify a pay cut.

12. Moreover, the inappropriateness of a pay cut as a disciplinary sanction has been highlighted. Here I refer again to Opinion No. 27 of the CCJE which clearly “advocates against reduction of salary as a disciplinary sanction because judges must be remunerated equally for like work” (see paragraph 40 of the Opinion, quoted in paragraph 65 of the judgment). This particularly authoritative and recent (6 December 2024) Opinion should have been given greater consideration by the Court.

I wonder quite frankly whether such pay cuts make sense.

### **III. MY GUIDING PRINCIPLE: SAFEGUARDING OF JUDICIAL INDEPENDENCE**

13. In other words, my position in the present case rests wholly on the need to safeguard judicial independence, the cornerstone of the rule of law.

The need to preserve this independence and, consequently, people’s trust in the justice system thus leads me to consider that the national authorities were allowed to find that the applicant, through his Facebook posts, had overstepped the limits of his freedom of expression.

These same considerations have also, however, prompted me to conclude that the pay cut imposed on the applicant was an excessive measure in the light of this independence.

### **IV. A MISSED OPPORTUNITY**

14. In this regard, the present judgment worries me when it sets out the procedural safeguards that must be afforded to judges facing disciplinary proceedings. It defines those safeguards far too timidly in my view in paragraph 165, focussing solely on judicial review of the decision taken by the disciplinary body.

Nothing, however, can justify the fact that the disciplinary body itself may be exempted from complying with the requirements of independence and impartiality. Such a body must be – both on paper and in reality – sufficiently independent from the government of the day. This is absolutely crucial when judges and prosecutors are being targeted. It prevents excessive or arbitrary sanctions that aim to silence judges or to remove them purely and simply from the judiciary.

15. Admittedly, the Court’s case-law on Article 6 enshrining the right to a fair hearing has been settled since the judgment in *Le Compte, Van Leuven and De Meyere v. Belgium* (23 June 1981, Series A no. 43), with the Court consistently holding that even where a disciplinary body determining disputes over “civil rights and obligations” does not comply with Article 6 § 1 of the Convention in some respect, no violation of that provision can be found if the sanction imposed by that body is subject to subsequent control by a judicial body that has “full jurisdiction” and provides the guarantees of Article 6 § 1 (*ibid.*, § 51, and *Albert and Le Compte v. Belgium*, 10 February 1983, § 29, Series A no. 58; see, more recently, *Eminağaoğlu v. Turkey*, no. 76521/12, § 103, 9 March 2021).

In my view, however, the possibility of a subsequent review is not sufficient to ensure practical and effective protection of the independence of the judge concerned. Where sanctions imposed on judges (including pay cuts, transfers, suspensions and removals from office) are in issue, the disciplinary body must from the outset afford a number of minimum safeguards, first among which are independence and impartiality. The fact that a judicial review of the sanction can subsequently be sought by the person concerned does not detract from the importance of the safeguards that must immediately be offered by the disciplinary body imposing the sanction.

The same is true for the adversarial principle, the benefit of which cannot be limited solely to proceedings before a review body (see paragraph 165 of the judgment).

16. In this regard, I note that the standards established by the Court in the present case fall short of those set out in the CCJE’s Magna Carta of Judges, paragraph 6 of which states that “[d]isciplinary proceedings shall take place *before an independent body* with the possibility of recourse before a court” (emphasis added).

What is more, I find our Court quite reserved when looking at the case-law of the Court of Justice of the European Union (CJEU), which requires independence of the bodies conducting investigations and bringing disciplinary proceedings against judges, and of the body competent to apply sanctions, in addition to the possibility of bringing subsequent legal proceedings challenging that body’s decisions (see CJEU judgment of 18 May 2021 in *Asociația ‘Forumul Judecătorilor din România’ and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, EU:C:2021:393, paragraph 198, and CJEU judgment of 11 May 2023 in *Inspekția Judiciară*, C-817/21, EU:C:2023:391, paragraphs 48 and 49).

It is important that the two European courts be aligned on such fundamental issues for the rule of law. In the present case, Luxembourg is showing us the way forward.

17. From this perspective, the present Grand Chamber judgment is a missed opportunity. Admittedly, the independence and impartiality of the National Judicial and Legal Service Commission (*Consiliul Superior al Magistraturii* – “the CSM”) were not called into question in the present case. Nevertheless, this is a question of principle that the Grand Chamber, as the highest judicial formation, could – and should – have clarified regardless of the case before it, as part of the criteria applicable to sanctions imposed on judges for their public positions. “The Court has repeatedly stated that its judgments serve not only to decide those cases brought before it but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention,

thereby contributing to the States' observance of the engagements undertaken by them. Although the primary purpose of the Convention system is to provide individual relief, its mission is also to determine issues on public-policy grounds in the common interest, thereby raising the general standards of protection of human rights and extending human rights jurisprudence throughout the community of Convention States ..." (see *Paposhvili v. Belgium* [GC], no. [41738/10](#), § 130, 13 December 2016).

The principles laid down in the present judgment risk proving too theoretical in the absence of adequate procedural safeguards to ensure their application.

Can it be seriously accepted, in the name of the Convention, that disciplinary sanctions may be imposed on judges by a body that is either insufficiently independent or biased? I cannot personally accept this, and I deeply regret that the Court has remained so quiet on this essential point.

## JOINT CONCURRING OPINION OF JUDGES GNATOVSKYY AND RĂDULEȚU

1. We fully subscribe to the criteria developed by the Grand Chamber for assessing interferences with judges' freedom of expression under Article 10 of the Convention and agree with the application of those criteria to the present case, which correctly led the Court to find a violation. The purpose of this concurring opinion is to offer several additional considerations that reinforce our conclusion.

### **A. A clear set of criteria for balancing competing rights and interests**

2. The principal significance of the present case lies in the criteria established by the Grand Chamber for assessing interferences with judges' freedom of expression under Article 10 of the Convention, particularly when they are not high-ranking members of the judiciary and choose to express their views on matters of public interest (see paragraphs 149-165 of the judgment). This development addresses a gap in the Court's case-law identified in Judge Rădulețu's concurring opinion appended to the Chamber judgment. The criteria are flexible and adaptable to different national contexts (see paragraph 149), while also providing judges with foreseeable rules regarding the limits of their duty of discretion.

3. Although all the criteria set out in the present judgment are relevant for assessing cases where judges exercise their freedom of expression, we would emphasise the importance of procedural safeguards in disciplinary proceedings against judges (see paragraph 165). On the one hand, any measures imposed must be reviewed by an independent and impartial body with full competence over all relevant aspects of fact and law. On the other hand, national authorities must provide relevant and sufficient reasons for their disciplinary measures. Only under these conditions can the Court effectively scrutinise the compatibility of such measures with the requirements of Article 10 of the Convention.

4. Particular attention should be paid to the language judges use when participating in public debates (see paragraphs 155-156). This criterion is twofold: first, the language should be clear to avoid ambiguity or misinterpretation; second, judges should be circumspect and prudent in tone and reasoning, given the implications for judicial dignity. From this perspective, it is primarily the responsibility of national courts to assess the language used and to provide adequate

reasoning for any decision taken in this regard. Only then can the Court properly evaluate disciplinary measures imposed for inappropriate speech, as noted above.

## **B. The spectrum of judicial expression**

5. The proper scope of a judge's freedom of expression is best understood as a spectrum. At one end lies strictly prohibited expression. This includes commentary on the substance of pending cases or any manifestation of bias, political partisanship or behaviour that would undermine the high moral character and impartiality required of the judiciary. At the other end lies the principle, established in *Baka v. Hungary* ([GC], no. [20261/12](#), § 168, 23 June 2016), that judges, particularly those with senior administrative functions, may have not only a right, but also a duty, to speak out on matters concerning the proper functioning and independence of the judiciary.

6. Between these two poles lies a vast middle ground for expression on matters of public concern. In our view, within this space, if a judge chooses to exercise his or her freedom of expression, that freedom is not significantly narrower than for other citizens. Consequently, national authorities assessing a judge's public statements should exercise extreme caution. In the absence of clear and concrete evidence that a judge's statements have tangibly damaged the authority and impartiality of the judiciary, the authorities should refrain from interfering with that judge's rights under Article 10. A theoretical or abstract risk is not a sufficient basis for a sanction.

## **C. The modern role of social media: risks versus benefits**

7. The Grand Chamber's judgment rightly highlights the significant risks judges run when expressing themselves on social media (see, in particular, the reference to *Sanchez v. France* [GC], no. 45581/15, § 161, 15 May 2023, cited in paragraph 161 of the judgment; see also paragraphs 161-162 and 192 of the judgment). While we acknowledge these risks, we believe it is essential to also recognise the profound benefits of such an online presence, particularly in the context of "new" or "maturing" democracies. In societies where social networks are the primary forum for public debate and, often, for populist attacks on institutions, the judiciary cannot afford to be an invisible or silent participant. An active and appropriate judicial presence on such platforms serves vital functions. Firstly, it demystifies the institution, allowing judges to provide public legal education and explain the rule of law in accessible terms. Secondly, it humanises the judiciary, reinforcing public trust by showing judges not as a remote, isolated caste, but as fully fledged, engaged members of the society they serve. Thirdly, it allows the judiciary to counter misinformation by being an authoritative source, which is critical for maintaining their legitimacy. This is especially true in nations where public trust in institutions is still solidifying. Fourthly, it enables not only senior members of the judiciary but also every judge to contribute to public debate, within the parameters set out in the present judgment.

## **D. Beyond "speaking only through judgments"**

8. Finally, the traditional notion that "judges should speak only through their judgments" appears to us to have lost its universal relevance in the 21st century. While that maxim may still hold as a dignified ideal in some judicial cultures, it is an insufficient guide in a world where public opinion is overwhelmingly formed in the digital public square. In this new reality, a

judge's direct and thoughtful participation in public debate can be a profound asset to the rule of law.

9. In the applicant's specific case, as a public figure whose activities and expertise centred on the functioning of democracy and protecting the rule of law, his various public remarks were a coherent and understandable part of his role. While this is certainly not a path all judges must or should take, to categorically punish such engagement would be detrimental. It would risk creating a chilling effect, discouraging all judges from participating in the broader civic life of their nation. This would isolate the judiciary at the very moment they most need to be understood by the public they serve.

## JOINT DISSENTING OPINION OF JUDGES KTISTAKIS, ŠIMÁČKOVÁ, ELÓSEGUI, FELICI, DERENČINOVIĆ, ARNARDÓTTIR AND NÍ RAIFEARTAIGH

1. We respectfully disagree with the majority's conclusion that there has been a violation of Article 10 of the Convention in the present case. In our view, the interference with the applicant's freedom of expression was based on relevant and sufficient reasons and was proportionate to the legitimate aims pursued, namely maintaining the authority and impartiality of the judiciary.

2. We fully support the Court's identification of guiding criteria to assist domestic courts in evaluating the necessity and proportionality of measures taken in response to remarks by judges on social media (see paragraphs 149-165 of the judgment). The growing use of such platforms by public figures, including members of the judiciary, will inevitably generate new cases at the national level and thus calls for principled guidance. The five criteria elaborated by the Grand Chamber – derived from the Court's case-law and from the broader European and international framework – deserve our full endorsement.

3. However, when applying those criteria to the present case, we reach conclusions different from those of the majority. Our disagreement lies precisely here. The applicant sought to argue that his public profile and professional experience entitled him to a broader freedom of expression. He referred to his status as an educator, a former member of the National Judicial and Legal Service Commission (*Consiliul Superior al Magistraturii* – “the CSM”), the author of legal publications and a participant in debates on judicial independence. He also emphasised that his Facebook page had tens of thousands of followers (see paragraphs 23 and 83). While such a background may enhance public interest in his opinions, it does not alter the scope of his judicial obligations. Judges and prosecutors may enjoy a wider freedom of expression only when they speak in their official capacity on matters directly concerning the functioning of the justice system. That was not the case here. The applicant spoke as a private individual and thus remained fully bound by the duty of discretion inherent in his judicial office. More specifically, concerning the application of the five criteria in the particular circumstances of the present case, we would note the following.

### (a) Content and form of the applicant's remarks

4. The applicant's first Facebook post (of 9 January 2019), though presented as part of a political debate, was framed by a series of rhetorical questions open to more than one interpretation. The domestic courts reasonably understood those remarks as implying, however

hypothetically, that the army might intervene in political life to safeguard democracy. For a sitting judge, such language – capable of being construed as an appeal to force – was incompatible with the restraint expected of holders of judicial office. Judges, while free to contribute to discussions on matters of public concern, must do so in a manner that preserves both the dignity of their position and public confidence in their impartiality. The ambiguity of the applicant’s message, addressed to a readership of some 50,000 followers (see paragraph 16), risked undermining both.

5. We also disagree with the majority’s assessment of the applicant’s second post (of 10 January 2019). The expression he used to praise a prosecutor – a colloquial idiom deemed improper by the domestic courts – fell short of the standard of sobriety required of a judge speaking in public. Domestic authorities are best placed to assess the nuances of linguistic decorum within their own culture and language. Their finding that the expression overstepped the limits of propriety expected of judicial officers falls well within their margin of appreciation.

**(b) Context of the remarks and the capacity in which the applicant made them**

6. It is necessary to distinguish between the two posts. In the first, of 9 January 2019, the applicant intervened in an ongoing institutional dispute between the Ministry of Defence and the President’s Office concerning the appointment of the Army Chief of Staff. The purpose of the judicial duty of discretion is precisely to prevent the justice system from being drawn into politically contentious debates, particularly on matters that may later come before the courts. This was such a situation: an institutional disagreement between the President and the government over the extension of the Army Chief of Staff’s term of office. Unsurprisingly, and contrary to what the applicant judge submitted, the issue was ultimately resolved peacefully by the domestic courts (see paragraph 18). By publicly engaging in this controversy within the executive branch of government, the applicant risked weakening the perception of judicial neutrality. His reference to the army as a solution to preserve constitutional democracy and his citation of Article 118 § 1 of the Romanian Constitution bore no direct connection to the matter at stake and could reasonably be interpreted as alluding to the use of force. The domestic courts were therefore entitled to regard this as an imprudent and ambiguous formulation, which was inconsistent with the dignity of judicial office.

7. The second post, of 10 January 2019, contained an expression of praise for a prosecutor which the domestic authorities found to be inappropriate and improper. We discern no basis on which to call into question that assessment. While we accept that the applicant’s statements formed part of a debate on matters of public interest, notably those relating to legislative reforms within the justice system (see paragraphs 61, 64 and 71), that fact cannot be regarded as exempting him from the duty of discretion inherent in judicial office. Moreover, the ambiguous language employed, which the domestic courts qualified as inappropriate and improper, failed to meet the standards of clarity and restraint expected of a member of the judiciary. Judicial integrity, as an indispensable element of public confidence in the administration of justice, presupposes the careful and measured use of language, making the reasoning of judicial decisions accessible to the ordinary reader and enabling the judiciary to command the respect it must inspire in a democratic society.

**(c) Consequences of the remarks**

8. The domestic courts found that the first post had been widely disseminated, had been picked up by the media and had contributed to diminishing public confidence in the judiciary.

Those factual findings, based on concrete evidence, warrant deference from this Court. The State authorities were entitled to consider that the applicant's conduct risked undermining the authority of the justice system.

9. The expression used in the second post, which was publicly accessible through the applicant's open Facebook page, risked trivialising the image of the judiciary and eroding public confidence in its decorum. The domestic courts were reasonably able to conclude that such language, when employed by a judge who had tens of thousands of followers on his Facebook page, had had adverse consequences for the reputation and legitimacy of the justice system.

**(d) Severity of the sanction**

10. The sanction imposed – a two-month, 5% pay cut – was among the lightest disciplinary measures available (see paragraphs 43 and 88). It did not call into question the applicant's overall competence or professionalism, but concerned solely his failure to observe the duty of discretion when posting the disputed messages. We find the reasoning of the High Court sufficiently persuasive on this point.

**(e) Procedural safeguards**

11. Lastly, as regards respect for procedural safeguards, the applicant benefited from adequate guarantees. As recently confirmed in *Cotora v. Romania* (no. [30745/18](#), 17 January 2023), the disciplinary procedure before the CSM's Disciplinary Board for Judges, as well as the subsequent review by the High Court, satisfy the requirements of Article 6 of the Convention. The present proceedings followed the same procedural framework described in that case and afforded equivalent safeguards. The applicant's arguments were duly examined in light of this Court's case-law. We find no indication of arbitrariness or unfairness in the domestic proceedings.

In addition, we are not convinced by the majority's argument that the domestic courts failed to examine whether the value judgments expressed by the applicant in his first message had a "factual basis" (see paragraph 203). Unlike cases concerning defamation, the applicant's expression consisted in social commentary relating to a major debate taking place in civil society. In this context, we see no reason to question the approach taken by the High Court, which drew no negative inference from the fact that the applicant could not prove the basis for his remarks and instead emphasised that he had questioned the credibility of State institutions and had alluded to the inappropriate solution of the army deploying on the streets (see paragraphs 37 and 38).

12. Taking all five criteria together, we find no reason to contest the domestic courts' finding that the applicant's two public interventions clearly transgressed the limits of discretion that members of the judiciary must respect when engaging in public debate on matters of political or institutional sensitivity. The domestic authorities, in our view, remained fully within their margin of appreciation and succeeded in striking a fair balance between the applicant's freedom of expression and the fundamental need to safeguard the authority and impartiality of the judiciary. It is, moreover, a constant line of our case-law that national authorities are best placed to evaluate the meaning, tone and societal impact of statements made within their linguistic, cultural and political context. In the absence of any indication of arbitrariness or bad faith, it is not for an international court to second-guess that assessment – particularly where the judges concerned do not speak the language in which the remarks were made and are therefore unable to appreciate their nuances, connotations or resonance within the domestic public sphere. Judicial

self-restraint is not a weakness in such circumstances; it is a manifestation both of respect for the principle of subsidiarity and of the limits of our institutional competence.

13. Judges are bound by their obligation to use moderation and prudence when participating in public debates. This obligation extends equally to the members of this Court (see paragraph 66). The well-established compensation for this restraint is provided by the enhanced legal protection of their judicial function under the Convention. We are concerned that in vindicating individual judges who act as ordinary influencers, instead of supporting their role as messengers of prudence and moderation in an increasingly polarised world, the present judgment may be understood as reversing the important principle of judges' duty of discretion and suggesting that, from now on, any great care shown by judges in the use of social media will be the exception rather than the rule.