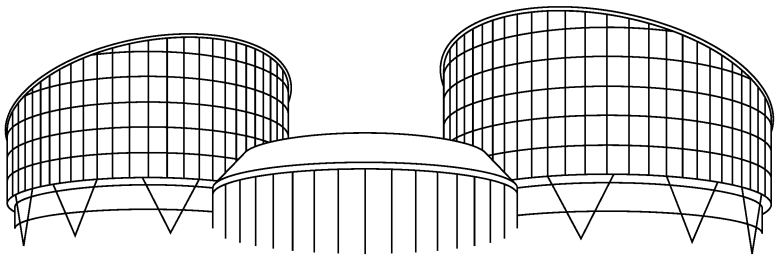

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Case of Danileţ v. Romania

(Application no. 16915/21)

Judgment

Strasbourg, 15 December 2025

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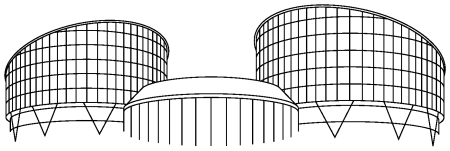

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF DANILEŢ v. ROMANIA

(Application no. 16915/21)

JUDGMENT

Art 10 • Freedom of expression • Disciplinary sanction imposed on judge by National Judicial and Legal Service Commission for posting two messages on his Facebook page • Sufficiently precise legal basis • Consolidation by Grand Chamber of case-law principles with regard to freedom of expression of judges and prosecutors on internet and social media, with certain clarifications and definition of set of criteria that take into account limits imposed on such freedom by duty of discretion inherent in their office • Application to present case of new enumeration of review criteria: weighing up of various interests at stake and taking account of content and form of each of applicant's two messages, context in which they were posted, their consequences, capacity in which applicant posted them, nature and severity of sanction imposed on him and chilling effect on profession as a whole, and procedural safeguards afforded to him • Remarks made by applicant on matters of public interest, whether or not directly related to functioning of justice system • Remarks not such as to upset requisite reasonable balance between, on the one hand, degree to which applicant, as judge, could be involved in society to defend constitutional order and State institutions and, on the other, need for him to be and be seen as independent and impartial in

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his duties • Reasons neither relevant nor sufficient • Interference not meeting "pressing social need"

Prepared by the Registry. Does not bind the Court.

STRASBOURG

15 December 2025

This judgment is final but it may be subject to editorial revision.

Table of Contents

In the case of Danileţ v. Romania,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Arnfinn Bårdsen, *President*
Lado Chanturia,
Ioannis Ktistakis,
Kateřina Šimáčková,
María Elósegui,
Gilberto Felici,
Saadet Yüksel,
Lorraine Schembri Orland,
Andreas Zünd,
Frédéric Krenc,
Davor Derenčinović,
Mykola Gnatovskyy,
Oddný Mjöll Arnardóttir,
Sebastian Răduleţu,
Gediminas Sagatys,
Stéphane Pisani,
Úna Ní Raifeartaigh, *judges*,

and Abel Campos, *Deputy Registrar*,

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

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

PROCEDURE

1. The case originated in an application (no. 16915/21) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Vasilică-Cristi Danileţ ("the applicant"), on 18 March 2021.

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

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

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

5. On 20 February 2024 a Chamber of the Fourth Section composed of Gabriele Kucsko-Stadlmayer, President, Tim Eicke, Faris Vehabović,

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

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

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

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

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

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

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

There appeared before the Court:

(a) *for the Government*

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

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

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

INTRODUCTION

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

THE FACTS

THE CIRCUMSTANCES OF THE CASE

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

14. The applicant joined the judiciary in 1998. At the relevant time, namely in January 2019, he was a judge at Cluj County Court. He was known for his active participation in debates on democracy, the rule of law and the justice system. He enjoyed significant nationwide renown, as a former member of the National Judicial and Legal Service Commission (*Consiliul Superior al Magistraturii* – "the CSM"), a former vice-president of a court, a former adviser to the Minister of Justice, a legal educator, a founding member of two non-governmental organisations (NGOs) working in the field of democracy and justice and the author of several articles on legal matters, and as a result of expressing his views on social media.

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

A. The applicant's posts

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

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

> "You might have noticed the string of efforts to attack, disrupt and discredit institutions such as the Directorate General of Information and Internal Protection, the Romanian Intelligence Service, the police, the National Anti-Corruption Directorate,

> the gendarmerie, the High Court of Cassation and Justice's public prosecutor's office, the High Court of Cassation and Justice and the army. [The attacks in question] didn't just happen randomly after 'the abuses committed by the powers that be'. Do people realise what it would mean to weaken [these] institutions or, worse, to bring services, the police, the courts and the army under political control? And speaking of the army, have you ever given much thought to Article 118 § 1 of the Constitution, which provides that 'the army shall solely serve the will of the people in order to preserve ... constitutional democracy'? What would happen if one day the army could be seen out on the streets defending... democracy, because support appears to be waning these days? Would you be surprised to know that this solution would be ... constitutional?! I think we can't see the wood for the trees ..."

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

19. The second message, which was posted on 10 January 2019, included a hyperlink to a press article headed "A prosecutor sounds the alarm. Living in Romania today represents a huge risk. The red line has been crossed when it comes to the justice system", which had been published on a national news website. The article in question consisted in an interview with C.S., a prosecutor. In it, C.S. expressed his view on how the public prosecutor's office was handling criminal cases and on prosecutors' difficulties in dealing with the cases assigned to them. The hyperlink was accompanied by the following comment by the applicant about the article (translation by the Registry):

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

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

1. Proceedings before the Judicial Inspection Board

20. On 10 January 2019 – that is, the same day the second message was posted – the Judicial Inspection Board, referring to Article 99 (a) of Law no. 303/2004 on the rules governing judges and public prosecutors (see paragraph 43 below), took up the case, of its own motion, with a view to disciplinary proceedings against the applicant for impairing the honour and image of the justice system. Seven days later it opened an investigation into the matter. The judicial inspectors analysed the content of the two messages.

With regard to the first message, which had been quoted and discussed by 11 different media outlets, the inspectors considered that it contained a suggestion by the applicant that an intervention by the army to defend democracy would be constitutionally acceptable. As to the second message, in which the applicant had shared a link to a press article, the inspectors noted that he had added comments of his own, in which he had encouraged judges and prosecutors to express their views publicly on issues relating to the functioning of the justice system; criticising reforms, "lynchings" of judges and prosecutors and the adverse effects of compensatory remedies; and endorsing the subject matter of the article in question. The inspectors concluded that there were indications that the applicant had failed to comply with his duty of discretion and that this had been capable of tarnishing the image of the justice system.

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

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

23. The judicial inspectors also interviewed the applicant. He told them that his remarks had been made in the context of a public debate on the extension of the Army Chief of Staff's term of office by a presidential decree of 28 December 2018 – a situation that had triggered an institutional dispute between the Ministry of Defence and the President's Office. He reiterated that he had been expressing himself as an ordinary citizen and not as a judge, adding that the confirmation of the Army Chief of Staff's appointment was a highly important matter for Romanian society because such an appointment on the basis of political criteria could, in his opinion, have ramifications for citizens' lives. He specified that his message had been neither a warning nor a call to disobey the law. He stated that he regularly expressed his views in the media, and had done so by appearing on television since 2003 and by posting daily messages on his Facebook page – where he had some 50,000 followers – since 2011. Regarding the support he had expressed for the prosecutor C.S., the applicant asserted that he championed judicial independence and that he backed all initiatives to that end.

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

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

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

26. In a decision of 7 May 2019 the Disciplinary Board, made up exclusively of judges, approved the disciplinary action by a majority. It found that the applicant had committed the disciplinary offence provided for in Article 99 (a) of Law no. 303/2004 and, in accordance with Article 100 (b) of that same law (see paragraph 43 below), ordered his pay to be cut by 5% for two months – a sanction intended to deter him from adopting similar behaviour in the future.

27. Noting that several media outlets had published the applicant's messages, the Disciplinary Board pointed out that judges had a duty not to impair the dignity of their office or the impartiality and independence of the justice system, and a duty of discretion, both of which the applicant had breached. The members of the Disciplinary Board considered that the applicant, in his first message, had been insinuating that public institutions were controlled by politicians and had been proposing as a potential solution that the army intervene to preserve democracy. As to the second message, they noted that he had used the expression "*sânge în instalaţie*" (see paragraph 19 below), a form of words which, they found, had overstepped the limits of propriety and had been unworthy of a judge.

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

29. Three of the nine members of the Disciplinary Board issued a dissenting opinion. They explained that in his first message the applicant had expressed a personal opinion on a topical issue at the relevant time, namely the extension of the Army Chief of Staff's term of office, the suspension of which had initially been granted by the Court of Appeal but later overturned by the High Court (see paragraph 18 above). The dissenting judges considered that forbidding judges and prosecutors outright from making any critical comments on matters of public interest amounted to an excessive restriction of their freedom of expression. In their view, the media's different interpretations of the applicant's messages could not be attributed to him, and the mere fact that he had expressed a personal opinion on a matter of public interest, without referring to the court in which he held office or to other judges or prosecutors, was not sufficient to find that he had breached his duty of discretion.

3. Appeal against the disciplinary sanction to the High Court

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

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

32. Examining the lawfulness of the impugned decision, the High Court noted, after quoting Article 99 (a) of Law no. 303/2004 (see paragraph 43 below), that the disciplinary body had observed that the duty of discretion by which judges and prosecutors were bound under Article 90 § 1 of Law no. 303/2004 (see paragraph 43 below) was reproduced in Article 17 of the Code of Ethics for Judges and Prosecutors (see paragraph 45 below). Where a judge's conduct was found to be incompatible with that Code of Ethics, it

was reviewed under the procedure laid down in Articles 64 and 65 of the Regulations on the Organisation and Operations of the CSM (see paragraph 48 below). Such a review could only take place if the constituent elements of a disciplinary offence had not been made out. As regards the bearing of the above-mentioned provisions on the present case, the High Court found:

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

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

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

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

"68. It should nevertheless be stated that the disciplinary body rightly found that the limits imposed on the right to freedom of expression were necessary to ensure a fair balance between the exercise of freedom of expression and, in the case of judges and prosecutors, the need to protect the authority of the judiciary. Judges and prosecutors thus have an obligation to exercise caution and impartiality in expressing their opinions, respecting the right of citizens to an independent, politically neutral, impartial and upright justice system.

69. According to the terms of the impugned decision, which need not be reproduced in the present judgment, the defendant enjoys a right to freedom of expression that is nevertheless limited by the duty of discretion inherent in the office of judge or prosecutor, which is intended to ensure a fair balance, in line with the branches of State, between the exercise of that fundamental personal right and the prevailing legitimate public interest associated with the justice system, seen as a public service."

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

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

"73. As regards the judge's comment on an article published on the website ziare.com, the disciplinary body rightly considered that the form of words he used – 'Now here's a prosecutor with some blood in his veins (*sânge în instalație*)' – significantly overstepped the limits of propriety inherent in the office he held, such office requiring restraint and moderation in order to avoid impairing the image of the justice system. In such circumstances, the applicant's claims that the reasoning in the impugned decision makes no reference to the posted remarks cannot be accepted. With regard to the grounds of appeal, it should be noted that the applicant justified his conduct by his capacity as a citizen playing an active role in promoting the proper functioning of the justice system and the rule of law, but that he did not make any specific criticism of the factors [which had been] taken into account by the disciplinary body concerning the form of words used and the requirements applicable to the conduct of judges and prosecutors in that regard. For these reasons, the argument that no sanction was imposed on the author of the article, which is not the subject of the present dispute, cannot be allowed."

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

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

..."

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

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

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

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

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

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

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

...

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

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

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

> "88. The fact that the disciplinary body did not apply the least severe disciplinary sanction – a warning –, but rather the second lightest sanction provided for in Article 100 of Law no. 303/2004, is justified by the following arguments, which were rightly relied on in the impugned decision: (i) the acts committed had the direct and immediate consequences of impairing the image and reputation of the justice system, one of the fundamental pillars of a State governed by the rule of law; (ii) the judge's behaviour could have cast doubt among public opinion as to whether he complied with the obligations inherent in his office; (iii) the form of words used overstepped the limits of the propriety and integrity required of judges; (iv) the judge, through his inappropriate conduct, impaired the image and reputation of the justice system – in terms both of authority and of appearance of impartiality – and thus deviated from what is expected of a 'diligent judge', who acts in the public interest when administering justice and defending the general interests of society and who behaves in line with the specific requirements of his or her professional duties and ethical standards.
>
> 89. Without denying the applicant's extensive professional experience, it should be noted that the criticisms made in the appeal submissions are incapable of invalidating any of the arguments taken into account in imposing the disciplinary sanction in the individual case. Given that the judge's inappropriate behaviour was perceived and disseminated in a negative light in the public sphere, as is clear from the facts referred to in point II.A of the present judgment, and given that the judge concerned plays a role in shaping public opinion, since his posts are among the most read of any judge in south-eastern Europe, there is no justification for imposing only the least severe disciplinary sanction on him on account of the damage caused to the justice system by the acts described.
>
> 90. At the same time, it should be noted that in quantitative terms the sanction ordered was close to the minimum provided for in Article 100 (b) of Law no. 303/2004, since only a 5% reduction was imposed, versus a maximum reduction of 25%, for a period of only two months, as opposed to a maximum duration of one year. The fact that the sanction was thus adapted to the individual case shows that, in the light of the circumstances, the aim of the disciplinary proceedings was considered to have been

satisfied by imposing the second lightest sanction, but reducing it to the minimum amount provided for by law."

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. DOMESTIC LAW AND PRACTICE

A. The Constitution

42. The relevant provisions of the Romanian Constitution read:

Article 30
Freedom of expression

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

...

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

Article 31
Right to information

"(1) There shall be no restrictions on individuals' right to access information of public interest. ..."

Article 118
Armed forces

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

B. Law no. 303/2004 on the rules governing judges and public prosecutors

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

Article 10

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

Article 44

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

Article 90

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

Article 99

"Disciplinary offences shall comprise:

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

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

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

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

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

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

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

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

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

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

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

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

(m) any unjustified failure to comply with administrative provisions or decisions of an administrative nature taken in accordance with the law by the head of the court or

the public prosecutor's office, or with other administrative obligations provided for by statutes or regulations;

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

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

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

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

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

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

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

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

Article 100

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

(a) a warning;

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

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

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

(e) a demotion;

(f) indefinite removal from office;

..."

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

Article 271

"Disciplinary offences shall comprise:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Code of Ethics for Judges and Prosecutors

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

Article 9

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

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

Article 17

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

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

46. The Judicial Inspection Board is an organisation within the CSM. It is headed by a Chief Inspector, who is appointed from among judges and whose responsibilities include informing the CSM of any alleged disciplinary offences by judges or prosecutors in the performance of their duties. The Chief Inspector is assisted by a Deputy Inspector (prosecutor); both are appointed for a three-year term, renewable once only. The Judicial Inspection Board is made up of judicial inspectors who are appointed, by the Chief Inspector following a competition, for a three-year term, renewable once only. Judicial Inspection Board members are placed on leave *ex officio* from their ordinary judicial duties in the national courts. Under Articles 44 to 47 of Law no. 317/2004 on the CSM, in force at the relevant time, the Judicial Inspection Board could take up a case with a view to proceedings into alleged disciplinary offences by judges or prosecutors, either of its own motion or upon application by any person concerned. The Judicial Inspection Board would then conduct a disciplinary investigation into the allegations, following which it could either order the case to be discontinued or initiate disciplinary proceedings by referring the matter to one of the CSM's disciplinary boards (namely the Disciplinary Board for Judges or the Disciplinary Board for Prosecutors). Law no. 317/2004 was repealed on 15 December 2022.

Articles 44 to 48 of Law no. 305/2022, which is currently in force, contain similar provisions to those described above.

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

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

E. Case-law of the Constitutional Court

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

F. Other domestic case-law

1. Disciplinary proceedings against judges or prosecutors

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

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

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

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

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

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

56. In addition, with regard to a Facebook post on 7 October 2018 by a judge criticising "the country's homosexual orientation", the Judicial

Inspection Board noted that the message, which had been written in the context of a referendum on same-sex marriage, in fact expressed the disappointment of the judge in question that the ban on such marriage had been rejected. In its view, that situation was within the acceptable limits of freedom of expression (decision no. 7848 of 28 November 2018).

2. Other disciplinary proceedings against the applicant

57. Prior to the present case, the CSM found that the applicant had breached his duty of discretion by posting remarks via his Facebook account, in July and August 2018, in response to an interview with the Minister of Justice concerning the appointment of the chief prosecutor of the National Anti-Corruption Directorate and a potential amendment to criminal-law provisions. The CSM considered that the applicant had reacted scathingly to a representative of the Ministry of Justice, had used sarcastic language and had expressed his own point of view on the legal issue raised by the Minister of Justice, thereby impairing judicial impartiality. The disciplinary body found that the applicant had thus breached ethical standards (Article 9 § 2 of the Code of Ethics for Judges and Prosecutors). It subsequently notified the Human Resources Department and the Judicial Inspection Board of that finding (CSM decision no. 583 of 16 April 2019, upheld in High Court judgment no. 5057 of 2 November 2023, delivered in case no. 6781/2/2019).

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

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

II. INTERNATIONAL MATERIAL

A. Council of Europe

1. Committee of Ministers of the Council of Europe

60. The Appendix to Recommendation CM/Rec(2010)12 of the Committee of Ministers to member States on judges: independence, efficiency and responsibilities, adopted on 17 November 2010 at the 1098th meeting of the Ministers' Deputies, reads, in so far as relevant:

> "19. Judicial proceedings and matters concerning the administration of justice are of public interest. The right to information about judicial matters should, however, be exercised having regard to the limits imposed by judicial independence. The establishment of courts' spokespersons or press and communication services under the responsibility of the courts or under councils for the judiciary or other independent authorities is encouraged. Judges should exercise restraint in their relations with the media.
>
> ...
>
> 21. Judges may engage in activities outside their official functions. To avoid actual or perceived conflicts of interest, their participation should be restricted to activities compatible with their impartiality and independence."

2. European Commission for Democracy through Law (Venice Commission)

61. The Report on the freedom of expression of judges, adopted by the Venice Commission at its 103rd Plenary Session held in Venice on 19 and 20 June 2015 (CDL-AD(2015)018), reads, in so far as relevant:

> "80. European legislative and constitutional provisions and relevant case-law show that the guarantees of the freedom of expression extend also to civil servants, including judges. But, the specificity of the duties and responsibilities which are incumbent to judges and the need to ensure impartiality and independence of the judiciary are considered as legitimate aims in order to impose specific restrictions on the freedom of expression, association and assembly of judges including their political activities.
>
> 81. However the ECtHR [European Court of Human Rights] has considered that, having regard in particular to the growing importance attached to the separation of powers and the importance of safeguarding the independence of the judiciary, any interference with the freedom of expression of a judge calls for close scrutiny. ...
>
> 84. In the context of a political debate in which a judge participates, the domestic political background of this debate is also an important factor to be taken into consideration when assessing the permissible scope of the freedom of judges. For instance, the historical, political and legal context of the debate, whether or not the discussion includes a matter of public interest or whether the impugned statement is made in the context of an electoral campaign are of particular importance. A democratic crisis or a breakdown of constitutional order are naturally to be considered as important elements of the concrete context of a case, essential in determining the scope of judges' fundamental freedoms."

62. The successive amendments to Romania's legislation on justice have attracted the attention of both the Venice Commission (see Opinion No. 924/2018 on draft amendments to Law No. 303/2004 on the statute of [rules governing] judges and [public] prosecutors, Law No. 304/2004 on judicial organisation and Law No. 317/2004 on the Superior Council for Magistracy [National Judicial and Legal Service Commission], adopted by the Venice Commission at its 116th Plenary Session, Venice, 19-20 October 2018, and Opinion No. 950/2019 on Emergency Ordinances GEO No. 7 and GEO No. 12 amending the Laws of Justice, adopted by the Venice Commission at its 119th Plenary Session, Venice, 21-22 June 2019) and the Group of States against Corruption (Interim Compliance Report, Corruption prevention in respect of members of parliament, judges and prosecutors, adopted by GRECO at its 83rd Plenary Meeting, Strasbourg, 17-21 June 2019).

3. Consultative Council of European Judges (CCJE)

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

> "b. Impartiality and extra-judicial conduct of judges
>
> 27. Judges should not be isolated from the society in which they live, since the judicial system can only function properly if judges are in touch with reality. Moreover, as citizens, judges enjoy the fundamental rights and freedoms protected, in particular, by the European Convention on Human Rights (freedom of opinion, religious freedom, etc). They should therefore remain generally free to engage in the extra-professional activities of their choice.
>
> 28. However, such activities may jeopardise their impartiality or sometimes even their independence. A reasonable balance therefore needs to be struck between the degree to which judges may be involved in society and the need for them to be and to be seen as independent and impartial in the discharge of their duties. In the last analysis, the question must always be asked whether, in the particular social context and in the eyes of a reasonable, informed observer, the judge has engaged in an activity which could objectively compromise his or her independence or impartiality."

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

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

69. Subject to some exceptions, private communication should not be subject to restrictions on freedom of expression. Private communication is understood as taking place bilaterally or in a closed group to which access has to be permitted by the judge, including person-to-person messaging services or closed social platform groups.

...

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

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

The Opinion also includes the following recommendations:

"Recommendations

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

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

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

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

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

6. Judges should be aware of the benefits as well as the risks of media communication. For that purpose, the judiciary should provide training for judges that educates them on the use of media, which can be utilised as an excellent tool for public

outreach. At the same time, awareness should be raised that when posting on social media, anything they publish becomes permanent, even after they delete it, and may be freely interpreted or even taken out of context. Pseudonyms do not cover unethical online behaviour. Judges should refrain from posting anything that might compromise public trust in their impartiality or conflict with the dignity of their office or the judiciary.

..."

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

V. Grounds for disciplinary liability

"...

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

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

...

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

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

...

VII. Disciplinary sanctions against judges

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

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

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

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

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

4. European Court of Human Rights

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

Expression and contacts

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

B. United Nations

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

Freedom of expression and association

"8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always

conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary."

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

Freedom of expression

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

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

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

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

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

...

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

...

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

...

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

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

...

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

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

...

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

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

...

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

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

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

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

6. Judges should be aware of, and take into consideration, practical aspects of online forms of expression and association. These aspects include a potentially greater reach in terms of publicity or amplification to larger networks, and greater permanence of statements, as well as the potentially significant implications of relatively small and casual actions (such as 'liking') or otherwise relaying information presented by others.

...

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

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

...

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

...

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

Content and behaviour on social media

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

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

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

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

...

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

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

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

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

...

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

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

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

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

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

C. European Union

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

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

In the reporting period, judicial institutions reported an overall reduction in the activity of the Judicial Inspection [Board], namely fewer ex-officio disciplinary proceedings raising concerns about objectivity. However, there remain cases where

> disciplinary investigations and heavy sanctions on [judges and prosecutors] critical of the efficiency and independence of the judiciary have raised concerns. The delays from the part of the Judicial Inspection [Board] in examining complaints are also seen as a way to maintain pressure on the judge or prosecutor as long as the investigation is ongoing."

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

> "In 2021 and 2022 the number of disciplinary actions registered by the [CSM] has remained broadly stable. However, there remain cases where disciplinary investigations and resulting sanctions imposed on [judges and prosecutors] appear to have been linked to the voicing of critical opinions on rule of law issues. Such investigations have been opened by the Judicial Inspection [Board] either ex officio or at the request of the [CSM]. The CJEU [Court of Justice of the European Union] has made clear that judicial independence could be undermined if the disciplinary regime is diverted from its legitimate purposes and used to exert political control over judicial decisions or pressure on judges. In addition to the cases mentioned in the Rule of Law report 2022, other disciplinary investigations against judges were perceived as a form of pressure and retaliation for sentences given, notably in high-level corruption-related cases.
>
> Although public information regarding disciplinary cases at the Judicial Inspection [Board] was lacking for the past three years, predictability and transparency has [*sic*] been increased through the decision of the [CSM] to publish, in anonymised format, disciplinary decisions that have become final and breaches of the code of ethics on a portal accessible to [judges and prosecutors] only.
>
> This 2018 [CMV] recommendation [for the CSM 'to appoint immediately an interim team for the management of the Judicial Inspection [Board] and within three months to appoint through a competition a new management team in the Inspection [Board]'] has become obsolete. The new leadership of the Judicial Inspection [Board] has now the opportunity to ensure disciplinary investigations are no longer used as an instrument to exert pressure on the activity of judges and prosecutors, in line with the case-law of the CJEU. The Commission will continue to look at the operation in practice in the framework of the Rule of Law Reports."

D. Inter-American Court of Human Rights

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

prepared by the Secretariat of the Inter-American Court of Human Rights summarised the case as follows (original English):

"...

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

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

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

Accordingly, the [Inter-American] Court established that restrictions that ordinarily limit the right of judges to participate in partisan political activities do not apply to situations of serious democratic crisis, such as that in the instant case. It would be contrary to the independence inherent in State powers to deny judges the right to speak up against a coup. Moreover, the mere fact that disciplinary proceedings had been initiated against the judges for their actions against the *coup* could have a chilling effect and thus constitute an undue restriction of their rights.

Therefore, [the Inter-American Court considered that] the disciplinary proceedings against Mr. López Lone and Mr. Chévez de la Rocha constituted a violation of their freedom of expression, right of assembly and political rights, while the proceedings against Ms. Flores Lanza and Mr. Barrios Maldonado constituted a violation of their freedom of expression and political rights. The [Inter-American] Court also concluded that, due to their removal from the judiciary, Mr. López Lone, Mr. Chévez de la Rocha and Ms. Flores Lanza were no longer able to participate in the AJD [Association of

Judges for Democracy], and thus their dismissal also constituted an undue restriction on their freedom of association. ...”

III. COMPARATIVE-LAW MATERIAL

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

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

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

THE LAW

I. SCOPE OF THE CASE BEFORE THE GRAND CHAMBER

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

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

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

79. The applicant argued that the disciplinary sanction imposed by the CSM's Disciplinary Board for Judges on 7 May 2019 and upheld by the High Court on 18 May 2020 amounted to a disproportionate interference with his right to freedom of expression, as provided for in Article 10 of the Convention, which reads:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Chamber judgment

80. In a judgment of 20 February 2024 the Chamber held, by a majority (see paragraph 5 above), that there had been a violation of Article 10 of the Convention. It acknowledged that judges and prosecutors had a duty of discretion and that the applicant had made the remarks in issue on his Facebook page, which was open and accessible to the general public. It nevertheless found that the domestic judicial authorities had neither weighed up the various interests at stake in accordance with the criteria laid down in the Court's case-law, nor duly analysed whether the interference had been

necessary. They had merely assessed the manner in which the applicant had expressed himself, without examining the expressions he had used in the context of a debate on a matter of public interest.

81. Regarding the applicant's first message, the Chamber examined his remarks in context and found that they amounted to value judgments on a matter of public interest, relating to the separation of powers and the need to preserve the independence of the institutions of a democratic State. As to the second message in issue, the Chamber considered that the applicant's remarks fell within the context of a debate on a matter of public interest, since they concerned legislative reforms relating to the justice system. Any interference with the freedom to impart or receive information therefore ought to have been subjected to strict scrutiny, given the narrow margin of appreciation afforded to the authorities of the respondent State. The Chamber further observed that, by using the expression "a prosecutor with some blood in his veins", the applicant had been praising the courage displayed by a prosecutor who had expressed public criticism on matters of public interest relating to the justice system, and that his comments had not been intended to be disparaging.

82. As to the sanction, the Chamber noted that it was not the least severe and that sufficient reasons had not been given to establish that the dignity and honour of judicial office had been impaired. It further observed that the sanction had had a chilling effect in that it must have discouraged not only the applicant himself but also other judges from taking part in future public debates on matters concerning the separation of powers or legislative reforms involving the courts and, more generally, on matters pertaining to the independence of the justice system. Judge Răduleţu expressed a concurring opinion and Judges Kucsko-Stadlmayer, Eicke and Bormann expressed a joint dissenting opinion.

B. The parties' submissions

1. The applicant

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

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

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

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

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

particularly regarding the principle of the separation of powers in a democratic State. His intention had been to ask readers to imagine the army one day deploying on the streets against the will of the people under the pretext of preserving democracy.

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

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

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

2. The Government

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

92. In their view, the legal basis for the disciplinary sanction imposed on the applicant was accessible and foreseeable. In that connection, they referred to the judgment in *Eminağaoğlu v. Turkey* (no. 76521/12, § 130, 9 March 2021), arguing that it concerned a similar situation governed by comparable statutory provisions and that the Court had proceeded on the assumption that

the interference in issue was prescribed by law. The Government submitted that Article 99 (a) of Law no. 303/2004 concerned compliance with the duty of discretion and that relevant case-law to that effect had been accessible to the applicant on the respective websites of the High Court, the CSM and the Judicial Inspection Board, as well as on the Romanian courts' online case-law portal. They also referred to the Constitutional Court's judgment of 21 May 2019 (see paragraph 49 above) and to examples of domestic judicial rulings they considered most relevant to the present case (see paragraphs 50-53 above).

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

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

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

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

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

views on such matters. The Government further stated that the message in issue made reference to political control over the army, emphasising that it had the potential to be read by the applicant's 50,000 Facebook followers and had been quoted and discussed by much of the media.

98. According to the Government, the message in question amounted to a symbolic call to arms to preserve democracy. They further alleged that the applicant had expressed his views on an issue that was already a topic of public debate concerning a legal challenge to a presidential decree, meaning that the matter was pending or could have come before the courts. In the Government's view, his actions therefore contravened both Principles 2.4 and 4.6 of the Bangalore Principles (see paragraph 69 above) and paragraph 15 of Opinion No. 25 (2022) of the CCJE (see paragraph 64 above). In addition, the applicant had made provocative remarks and, in any event, the manner in which he had expressed himself and the consequences of his message had overstepped the limits of his freedom of expression. According to the Government, the applicant should have exercised caution and foreseen the consequences of his message, particularly given his status as an "influencer" with a large number of Facebook followers.

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

100. As to the proportionality of the interference, the Government argued that the applicant had received the second lightest sanction, and that it had not had a chilling effect on other judges and prosecutors wishing to express their views within the limits permitted by their freedom of expression and by their responsibilities. In that connection, they referred to four subsequent judicial rulings in which no sanction had been imposed on the judges or prosecutors under examination, respectively, for issuing a study on the justice system, for publishing an article on a "siege on the justice system", for signing a letter protesting against the amendment of the legislation on justice or for

making public remarks on matters relating to the justice system. In the Government's view, the disciplinary sanction imposed in the present case had been supported by extensive reasoning and had been set after weighing up the interests at stake. According to the Government, there had therefore been no violation of Article 10 of the Convention.

3. Third-party submissions

(a) Romanian Judges' Forum

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

102. It explained that Romania had adopted a very restrictive approach to judges' freedom of expression, especially in relation to political activities. The domestic law which imposed those restrictions was not sufficiently foreseeable, because it left too much scope for interpretation and made it possible to characterise any conduct by a judge as unlawful. According to the Romanian Judges' Forum, there was no clear definition available to guide judges and prosecutors with regard to the terms "honour", "integrity" and "image of the justice system" or any settled case-law or established practice by the Judicial Inspection Board to help them assess whether they were liable to receive a disciplinary sanction under Article 99 (a) of Law no. 303/2004. As a result, many investigations had been carried out since 2018 against judges and prosecutors, some of whom held senior positions.

103. The third-party intervener submitted that on 23 December 2021 some 500 Romanian judges and prosecutors had signed an open letter addressed to the CSM and to the Minister of Justice asking for the above-mentioned provision to be repealed, because it did not make it possible to identify the type of behaviour that would impair honour and professional integrity. The statutory provision in question had been subsequently repealed (see paragraph 44 above). The European Commission, in its report to the European Parliament and the Council of 8 June 2021, had also noted concerns as to cases where disciplinary investigations had been brought against, and heavy sanctions imposed on, judges and prosecutors who had been critical of the efficiency and independence of the judiciary (see paragraph 71 above). In addition, referring to the judgment of the Court of Justice of the European Union (CJEU) of 11 May 2023 in *Inspecţia judiciară* (C-817/21, EU:C:2023:391) and to the report of the European Commission to the European Parliament and the Council of 22 November 2022 (see paragraph 72 above), the third-party intervener indicated that certain disciplinary proceedings brought against judges and prosecutors by the

Judicial Inspection Board, often of its own motion, had been regarded as a form of pressure on, or even political control over, judicial activity.

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

(b) Media Defence

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

106. The third-party intervener pointed out that any limitations on judges' freedom of expression should have a clear, precise and reasonably foreseeable legal basis. In particular, the legal framework should indicate the scope of the discretion conferred on the relevant State authorities and the manner of its exercise, having regard to the legitimate aim sought to be achieved, to allow judges to regulate their behaviour accordingly.

107. While noting the differences between the present case and the cases of *Baka v. Hungary* ([GC], no. 20261/12, 23 June 2016) and *Żurek v. Poland* (no. 39650/18, 16 June 2022), the third-party intervener submitted that, even where judges did not occupy high-level positions in the judiciary, the State authorities should be afforded only a narrow margin of appreciation concerning restrictions to their right to freedom of expression on matters of public interest, such as those relating to the rule of law and democracy. The

third-party intervener further referred to the report of the Special Rapporteur on the independence of judges and lawyers to the Human Rights Council (see paragraph 68 above) and to relevant Council of Europe documents (see paragraphs 60-65 above). The mere fact that certain matters might have political implications should not prevent judges from exercising their right to freedom of expression.

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

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

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

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

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

of the justice system. That would justify limiting the freedom of speech of judges and prosecutors in the political sphere.

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

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

(d) CEU Democracy Institute, Rule of Law Clinic

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

115. In addition, the third-party intervener referred to the rules applicable to French judges and prosecutors, the basic principles of which had recently been summarised by the French National Legal Service Commission (*Conseil supérieur de la magistrature*) in an opinion of 13 December 2023 for the French Minister of Justice. According to that opinion, the duties of judges and prosecutors were subject to a strict interpretation when such professionals expressed their views on their own or their peers' judicial activities in the performance of their duties, but greater freedom was afforded to them outside that context – provided that they complied with their duty of discretion. In that connection, judges and prosecutors remained bound by their ethical obligations when exercising the rights afforded to all citizens, especially

when using social media and reporting on their profession, a situation which required them to be especially vigilant and not to be crude, virulent or careless. In the French system, the duty of discretion did not preclude individual or collective public statements. Furthermore, the duty of judges to speak out in defence of the rule of law and judicial independence when those values were under threat was a principle that had been recognised by several Presidents of the Court and by the President of the CJEU.

116. The third-party intervener also referred to EU law and, in particular, to the Code of Conduct for Members and former Members of the Court of Justice of the European Union (C2021/397/01), which provided that judges were required to perform their duties with complete independence, integrity, dignity and impartiality and with loyalty and discretion, and to act in a manner which did not adversely affect the public perception of their impartiality. Outside their institution, judges were required to refrain from making any statements which might harm their reputation and to act and express themselves with the restraint that their office entailed. With regard to the CJEU's case-law, the third-party intervener referred to the *Connolly* judgment (CJEC, 6 March 2001, C-274/99 P, EU:C:2001:127), and stated that it had recently been cited in the *Real Madrid* case (CJEU, 4 October 2024, C-633/22, *Real Madrid Club de Fútbol*, EU:C:2024:843, paragraphs 45-53). In its view, that case confirmed that, under both EU law and Convention law, legal and disciplinary action against judges and prosecutors on account of public remarks on matters of public interest outside the professional sphere was only ever rarely justified, especially where those judges or prosecutors were speaking out in defence of the rule of law in the context of a democratic crisis. In addition, legal writers had emphasised the importance that the CJEU attached to using a contextual approach in cases concerning breaches of the rule of law. The CJEU had dealt with several cases concerning judicial independence in Romania, in which it had notably examined measures that raised the question whether certain practices were compatible with the principles of the rule of law and the primacy of EU law. Lastly, several legal articles published by Romanian scholars between 2022 and 2024 reported the pressure and abuses of power to which Romanian judges and prosecutors had been subjected from 2017 onwards. Moreover, that situation had been confirmed by the United States Department of State in a 2023 Country Report on Human Rights Practices in Romania.

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 *Brisc 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 Yıldırım 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; *Brisc*, 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 *Żurek*, 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; *Kayasu 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; *Żurek*, 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, *Ergündoğan 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 instalaţie*) ..." – 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 instalaţie*" 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 instalaţie*" 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 *Gül 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*, *Żurek*, 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 instalaţie*", 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 instalaţie*" 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 Yalçınkaya 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 Yalçınkaya*, 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 Yalçınkaya*, cited above, § 430; *Toptanış 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 Răduleţu;
(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 *Żurek 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 *Asociaţia '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 *Inspecţia 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 RĂDULEŢU

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 Răduleţu'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.