



Violation of judge's right to freedom of expression on account of sanction for Facebook posts of public interest

In today's **Grand Chamber** judgment¹ in the case of **Danileț v. Romania** (application no. 16915/21) the European Court of Human Rights held, by 10 votes to 7, that there had been:

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

The case concerned the freedom of expression of a judge, who had had a sanction imposed on him by the National Judicial and Legal Service Commission (*Consiliul Superior al Magistraturii* – CSM) for posting two messages on his publicly accessible Facebook page.

The Court reiterated that, where democracy or the rule of law was under serious threat, judges were entitled to speak out on matters of public interest. Remarks made in such a context generally enjoyed a high degree of protection.

It then considered that the applicant's posts had not upset the 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. The first message had aimed to defend the constitutional order and preserve the independence of State institutions. The second had related to the functioning of the domestic justice system. They had thus both concerned matters of public interest about which the general public had had a legitimate interest in being informed. In the reasons given by the national authorities, there was 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 such office should inspire.

Examining the posts in the light of the criteria it had established with regard to the freedom of expression of judges and prosecutors on the internet, the Court found that the interference with the applicant's freedom of expression had not been based on relevant and sufficient reasons and had not met a pressing social need.

The public delivery of the judgment and a video explainer can be viewed on the Court's [YouTube](#) channel.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

Principal facts

The applicant, Vasiliță-Cristi Danileț, is a Romanian national who was born in 1975.

At the time of the events Mr Danileț 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, and enjoyed a certain amount of recognition at national level.

In January 2019 he 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 many comments.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

The first message² was posted on 9 January 2019, 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 second message was posted on 10 January 2019. It comprised a hyperlink to an article in the press containing an interview with a prosecutor 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, in which he stated, "Now here's a prosecutor with some blood in his veins (*sânge în instalație*)".

In May 2019 the National Judicial and Legal Service Commission (*Consiliul Superior al Magistraturii* – CSM) imposed a disciplinary sanction on Mr Danileț, consisting in a two-month, 5% pay cut.

Basing its decision on Article 99 (a) of Law no. 303/2004 on the rules governing judges and public prosecutors, the CSM found that Mr Danileț, in his first message, had impaired the honour and image of the justice system and had failed to comply with his duty of discretion. It also considered that the form of words used by Mr Danileț in his comment on the second message had overstepped the limits of propriety and been unworthy of a judge.

The High Court upheld the decision in May 2020.

Mr Danileț, who is currently retired, indicated that he remained active in the field of human-rights awareness-raising.

Complaints

Relying on Article 10 of the European Convention on Human Rights, Mr Danileț complained of an interference with his freedom of expression.

Procedure

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

In its [judgment](#) of 20 February 2024 the Court (Chamber) held, by a majority, that there had been a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

On 24 June 2024 the case was referred to the Grand Chamber at the Romanian Government's request.

Several organisations were granted leave to intervene in the written proceedings as third parties.

A hearing was held on 18 December 2024.

Composition of the Court

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Arntfinn **Bårdsen** (Norway), *President*,
 Lado **Chanturia** (Georgia),
 Ioannis **Ktistakis** (Greece),
 Kateřina **Šimáčková** (the Czech Republic),
 María **Elósegui** (Spain),
 Gilberto **Felici** (San Marino),
 Saadet **Yüksel** (Türkiye),
 Lorraine **Schembri Orland** (Malta),
 Andreas **Zünd** (Switzerland),
 Frédéric **Krenc** (Belgium),

2. The full message can be found in paragraph 17 of the judgment.

Davor **Derenčinović** (Croatia),
Mykola **Gnatovskyy** (Ukraine),
Oddný Mjöll **Arnardóttir** (Iceland),
Sebastian **Rădulețu** (Romania),
Gediminas **Sagatys** (Lithuania),
Stéphane **Pisani** (Luxembourg),
Úna **Ní Raifeartaigh** (Ireland),

and also Abel **Campos**, *Deputy Registrar*.

Decision of the Court

The Court began by noting that the applicant's disciplinary sanction had constituted an interference with his right to freedom of expression. That interference had been prescribed by Articles 99 (a) and 100 (b) of Law no. 303/2004, whose provisions had been accessible and formulated with sufficient precision to enable the applicant, who had actually been a judge, to regulate his conduct accordingly. Furthermore, the interference had pursued a legitimate aim, namely maintaining the authority and impartiality of the judiciary.

A balancing exercise had to be performed, weighing up the right to freedom of expression of judges and prosecutors, which they were guaranteed like any other individual under Article 10 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.

Examining the applicant's posts in the light of the criteria it had established, the Court noted that the applicant had unquestionably participated in a political controversy in his first message. The existence of a controversy was not, however, in itself sufficient to prevent a judge or prosecutor from expressing a view on a matter of public interest.

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.

Moreover, in the reasons given by the national authorities, there was nothing to indicate how the applicant's remarks could have undermined the proper functioning of the domestic justice system, nor how they could have impaired the dignity and honour of judicial office or the public confidence that such office should inspire.

As to the second message, there was no doubt that it had concerned matters of public interest, namely legislative reforms of the justice system. It had thus related to the functioning of the justice system, an issue which called for a high degree of protection under Article 10.

Regarding the form of the second message, the Romanian expression "*sânge în instalație*" had been the main factor behind the domestic judicial authorities' decision to impose a sanction on the applicant. They had not, however, explained how that expression had "significantly overstepped the limits of propriety inherent in the office" held by the applicant and why it had been so serious as to call for disciplinary sanctions.

The use of unclear language in remarks made by a judge or prosecutor on social media could prove problematic. It would therefore have been preferable for the applicant to use clearer language, thereby precluding multiple interpretations. It nevertheless had to be noted that the references to the army in his first message had 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 that the applicant had in any way sought to incite his readers to take to the streets or to use violence, those mere references to the army, however ambiguous they might appear, were 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 be and to be seen as independent and impartial in the discharge of his duties.

Furthermore, the applicant's remarks could reasonably have been understood as aiming to defend the democratic order because they had drawn attention to the Constitution and the need to maintain the separation of powers. They had been 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.

In this regard, the Court reiterated that, where democracy or the rule of law was under serious threat, judges were entitled to speak out on matters of public interest, putting forward views and opinions on issues about which the general public had a legitimate interest in being informed. Moreover, remarks made in such a context generally enjoyed a high degree of protection under Article 10 of the Convention.

At the time of the events the applicant had 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 had not, however, deprived him either of the ability to express his views as part of his human-rights awareness-raising endeavours, or 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 were not overstepped.

The applicant's first message had not concerned judicial proceedings that were "ongoing" at the time it had been posted.

In addition, the applicant's remarks in his second message had clearly fallen within the context of a debate on matters of public interest, concerning legislative reforms of the justice system. Those matters had also attracted the attention of the Venice Commission and the European Commission. The domestic judicial authorities had not taken that context into account in their assessment of the applicant's second message. The message had not, therefore, been given the careful consideration required by the circumstances of the case.

As to the capacity in which the applicant had made his remarks, he had 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 had thus been entitled, generally speaking, to greater freedom of expression.

As regards the fact that the two messages had been posted on the applicant's Facebook page, which had had no access restrictions and could thus be read by a large number of users, the applicant had admittedly accepted a certain number of risks inherent in the use of the internet, where remarks could be disseminated extremely quickly and widely. However, the first message had not contained any call to violence or popular uprising that would have required him to act with any particular restraint or caution. His remarks, aiming to defend the constitutional order, had been legitimate. As to the second message, it had not contained 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. There was nothing in the case file to support the allegation that the message in question had actually undermined the impartiality and independence of the justice system or public confidence in the judiciary and had reached the threshold of severity necessary to impose a disciplinary sanction.

Regarding the severity of the sanction imposed on the applicant, although it had not been the harshest option available, it had been such as potentially to discourage him from making similar remarks in the future. Moreover, it had been capable of having a chilling effect on the profession as a whole.

With regard to compliance with procedural safeguards, the Court observed that, although they had had the opportunity to do so, neither the CSM's Disciplinary Board nor the High Court had examined whether the value judgments made by the applicant in his first message had had a sufficient "factual basis". They had also been silent as to how, specifically, the Romanian expression "*sânge în instalație*" used in the second message had, in their view, "significantly overstepped the limits of propriety inherent in the office" held by the applicant. They had also failed to examine the context in which the applicant had made those remarks. As a result, the Court had doubts as to the quality and the scope of the judicial review conducted, neither of which appeared to have been adequate.

In conclusion, the Court considered that the applicant's remarks in the two messages had not been such as to upset the 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.

The first message had aimed to defend the constitutional order and preserve the independence of State institutions. The second had related to the functioning of the domestic justice system. They had thus both concerned matters of public interest about which the general public had had a legitimate interest in being informed.

Moreover, in the reasons given by the national authorities, there was 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 such office should inspire.

After weighing up the various interests at stake and taking account of the content and form of each of the two messages, the context in which they had been posted, their consequences, the capacity in which the applicant had 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 had been afforded, the Court found that the interference with the applicant's freedom of expression had not been based on "relevant and sufficient" reasons and had not met a "pressing social need".

There had accordingly been a violation of Article 10 of the Convention.

[Just satisfaction \(Article 41\)](#)

The Court held, by ten votes to seven, that Romania was to pay the applicant 9,705.44 euros in respect of costs and expenses.

Separate opinions

The following separate opinions are annexed to the judgment:

- (a) concurring opinion of Judge Krenč;
- (b) joint concurring opinion of Judges Gnatovskyy and Rădulețu;
- (c) joint dissenting opinion of Judges Ktistakis, Šimáčková, Elósegui, Felici, Derenčinović, Arnardóttir and Ní Raifeartaigh.

The judgment is available in English and French.

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