



## No violation for penalising judge for severe press criticism of highest judge in the land

In today's Chamber judgment<sup>1</sup> in the case of **Panioglu v. Romania** (application no. 33794/14) the European Court of Human Rights held, unanimously, that there had been:

**no violation of Article 10 (freedom of expression)** of the European Convention on Human Rights.

The case concerned professional penalties suffered by a judge, in particular concerning promotion, for an article she had written in the press. The article had severely criticised the President of the Court of Cassation's activities as a prosecutor under the repressive communist regime.

The Court found in particular that the domestic authorities had correctly balanced the rights of the applicant to free speech with the rights of the judge and the protection of the judiciary. It found that the penalties imposed had not been overly harsh given the circumstances.

### Principal facts

The applicant, Daniela Panioglu, is a Romanian national who was born in 1968 and lives in Bucharest. She is a judge of the Bucharest Court of Appeal.

In 2012 the applicant wrote an article about the President of the Court of Cassation entitled "Nothing about how a Comrade Prosecutor has become president of all the judges". In it she described from her perspective some facts of life under the communist regime, linking her description to the President of the Court, who under communism had been a prosecutor. She asked how the "Comrade Prosecutor" had acted in "root[ing] out the enemies of the socialist order ... [and] 'hunt[ing] down' women who had had abortions". She spoke of the "dungeons" and "poverty" under the regime and the prosecutors "somewhere above in an untouchable shining world ... All these comrades, usurpers of Christ and His Law, sternly guard[ing] the communist prison". She spoke about living in grinding poverty while "the Comrade Prosecutor ha[d] also floated above". Many other expressions in the text were cited as controversial or insulting in the subsequent domestic decisions.

The article was published in both a national newspaper and on a website with the applicant's name and professional title in the byline.

On 8 March 2012 the Judicial Investigation Unit ("the IJ") of the Superior Council of the Judiciary (*Consiliul Superior al Magistraturii* – "the CSM") opened an investigation into the article. The IJ produced a report for the disciplinary body for judges, stating that the applicant had drawn a parallel between communist oppression and the rise of the President, despite the fact she had been appointed lawfully and had not had dealings with the intelligence services under the communist regime. The applicant had suggested that the judge had worked unlawfully and suggested questionable moral behaviour, calling into question the honour and professional integrity of the President and damaging her professional reputation. It noted that there was an obligation on judges

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

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

to preserve the dignity of their office, implying moderation when expressing opinions. The IJ stated that there had been a possible disciplinary offence in the applicant's actions.

As a result, another investigation was ordered. The question of whether the applicant had breached the Code of Conduct for Judges was passed onto the judges' section of the CSM. The section held that her article had not amounted to a disciplinary offence because of the literary-style presentation of well-known aspects of the communist era, the lack of foul language, and the references to the President before she had attained that position. However, she had breached the Code of Conduct for Judges by associating the President's rise and activities as a prosecutor with guilt, with oppression of the poor and women, with maintaining the metaphorical communist dungeon. For them, she had overstepped her duty of discretion and damaged the reputation of the President. A decision of 16 October 2012 by the section confirmed that opinion.

The applicant challenged that decision before the plenary of the CSM, arguing that, among other things, she had been referring to the post of president rather than the president herself, and that the piece had been literary opinion rather than a statement of fact. That challenge was dismissed, with the plenary holding that the article had directly affected the reputation of the President.

The applicant challenged that decision before the Court of Cassation. That appeal was dismissed on 1 November 2013 in a final judgment, holding furthermore that the diversion from disciplinary proceedings to code-of-conduct proceedings had been justified.

The applicant sought to have the above decisions and other information related to an alleged breach of the Code of Conduct removed from her professional file in 2015. She argued, in part, that the decision and the Code itself were unconstitutional. The CSM dismissed that application.

The applicant brought administrative proceedings in respect of the above decision against the CSM, which were rejected on 4 October 2016. The constitutionality question was referred to the Constitutional Court, which has yet to rule.

A report was produced in 2017 regarding the professional integrity of candidates for promotion to the Court of Cassation. Concerning the applicant, the report noted the breach of the Code, among other concerns around the applicant's integrity. It concluded that she did not meet the requirements.

However, in 2019 the CSM asserted that the applicant had met the criteria for the promotion competition, but that she had not sat the exams (the applicant stated that she had withdrawn to avoid public humiliation, as she could not have succeeded owing to her professional file at that time). It noted that her two most recent professional appraisals had not been finalised (the three most recent were taken into account for promotion). Later the Bucharest Court of Appeal stated that she would not be eligible to apply for promotion before 2021 owing to a 2012 conduct penalty.

On 17 April 2019 the Court of Cassation found the relevant provisions of the Code of Conduct for Judges unlawful and struck them down.

## Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicant complained that preventing her from gaining promotion because of an opinion expressed on a colleague had violated her right to freedom of expression.

The application was lodged with the European Court of Human Rights on 28 April 2014.

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

Yonko **Grozev** (Bulgaria), *President*,  
Tim **Eicke** (the United Kingdom),  
Faris **Vehabović** (Bosnia and Herzegovina),  
Iulia Antoanella **Motoc** (Romania),  
Armen **Harutyunyan** (Armenia),  
Pere **Pastor Vilanova** (Andorra),  
Jolien **Schukking** (the Netherlands),

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

## Decision of the Court

### Article 10

The Government argued, initially, that the applicant had not suffered any “significant disadvantage” as she had not been prevented from sitting the exams, and so the application was inadmissible.

The Court reiterated the importance of freedom of expression for a functioning democracy, meaning that it had to carefully examine that question in the current application. The Court judged that the applicant had suffered a significant disadvantage in that she had been penalised for participating in a debate around the judiciary and the penalties remained on her permanent record. The application was admissible.

The Government argued that the interference with the applicant’s rights had been provided for by law and had been clear and foreseeable. The Court agreed, stating that the applicant should have known that a penalty would have been possible, given that the relevant provisions of the Code of Conduct had been quite clear, particularly given that they had applied to a narrow group – judges.

The Court noted that the aim of the applicant’s article had been to raise questions about the appropriateness of someone who had acted as a prosecutor in the communist regime being tasked with leading and reforming the judicial system. The applicant had also focused on the President’s professional life. The Court stated that officers of the court in their roles could be subjected to more criticism than an ordinary citizen. However, it reiterated that officers of the court were expected to show maximum discretion so as to maintain public confidence in the judiciary.

In the light of this, the Court did not call into question the national authorities’ assessment that the article had been detrimental to the reputation of the justice system and had damaged the judiciary, and had been presented without evidence. The Court was satisfied that the national authorities had balanced the competing rights of the applicant and the President.

Concerning the penalty applied, the Court noted the reasons given by the applicant for her withdrawal from the competition, but was not willing to speculate on what the outcome would have been had she remained. Overall, the penalty had not been excessive. There had been no violation of the applicant’s rights.

*The judgment is available only in English.*

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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.