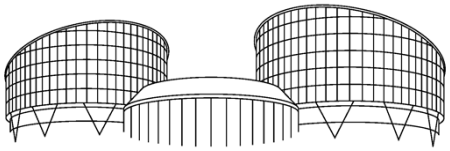

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF TOTH AND CRIȘAN v. ROMANIA

(Application no. 45430/19)

JUDGMENT

Art 8 • Positive obligations • Private life • Dismissal of defamation action brought by police officers against a private individual for a post uploaded on Facebook, along with their photograph taken on a public street while performing the duties and the name of one of them • Art 8 applicable as requisite level of seriousness attained • Domestic courts' balancing exercise between competing rights at stake in conformity with criteria laid down in Court's case-law

Prepared by the Registry. Does not bind the Court.

STRASBOURG

25 February 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Toth and Crișan v. Romania,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Lado Chanturia*, President*,
Faris Vehabović,
Tim Eicke,
Ana Maria Guerra Martins,
Anne Louise Bormann,
Sebastian Răduleţu,
András Jakab*, judges*,
and Simeon Petrovski, *Deputy Section Registrar,*

Having regard to:

the application (no. 45430/19) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by two Romanian nationals, Mr Zoltán-Ovidiu Toth and Mr Alin Crișan ("the applicants"), on 8 August 2019;

the decision to give notice to the Romanian Government ("the Government") of the complaint under Article 8 of the Convention concerning the alleged violation of the applicants' right to respect for their private life and reputation and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 4 February 2025,

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

INTRODUCTION

1. The applicants complained of a violation of their right to respect for their private life and reputation because the domestic courts had allegedly failed to strike a fair balance between the competing interests at stake following an allegedly defamatory post uploaded by a private individual on Facebook. They relied on Article 8 of the Convention.

THE FACTS

2. Mr Zoltán-Ovidiu Toth ("the first applicant") and Mr Alin Crișan ("the second applicant") were born in 1982 and 1974, respectively, and live in Oradea. They were represented before the Court by Mr C.D. Rusu, a lawyer practising in Oradea.

3. The Government were represented by their Agent, Ms O.F. Ezer, of the Ministry of Foreign Affairs.

4. The facts of the case may be summarised as follows.

5. The applicants are police officers working for the Oradea local police force (*Poliţia Locală Oradea*).

I. THE ONLINE POST CONCERNING THE APPLICANTS AND THE PROCEEDINGS AGAINST THEM

6. On 8 April 2016 the applicants fined C.T. and her mother for a minor offence in connection with the disposal of household waste and with the conduct that those two private individuals had displayed towards them. As indicated in the judgment of Oradea District Court ("the District Court") (see paragraph 15 below) C.T. had challenged the fine and the national courts had established that (i) she had deposited the household waste in an unauthorised location, but she had not insulted the applicants and (ii) the applicants had behaved inappropriately towards C.T. In reaching these conclusions, the competent courts had relied on testimonial evidence and a forensic expert report submitted by C.T., which indicated that on the date of the incident she had sustained bodily injuries which had not required a medical treatment. According to evidence in the case-file, the national courts had reduced the fine imposed on C.T.

7. On the same date (8 April 2016) C.T. used her personal Facebook account to post a text accompanied by the applicants' photograph to the public Facebook group "Oradea is us" (*Oradea suntem noi*). The post read as follows:

> "Today the local police [*poliţia comunitară*] have screwed up [*au facut-o de oaie*] once again. I went downstairs [holding my] child in [my] arms to take him to the car and after [five] minutes my mother also innocently came downstairs with the [household] waste. She was unaware that each [owner's] association has its own bins. I explained [this] to her and I told her to leave the bag [with the household waste] next to the bin where [she] was standing, intending to take it to our courtyard myself, obviously, after placing [my] child in the car. It was logical that I was not going to leave it in the middle of the road!!!!!! In the meantime, the local police showed up [and] they jumped on us as [if they were] on fire [*arşi*]. I explained to them what the problem was, but, eager [to start] a scandal, they did not [want to] understand!!!! 'Mister [*Domnule*], wait [for five] minutes while I put [my] child [in the car], then I'll come [back] to put the [household] waste where it should [go]!' NO, they wanted [me to provide them with] my [ID immediately], to drop everything and to stand to attention!! They did not even identify themselves until the moment that I said I was calling 112 [emergency services]. We were terribly scared! They verbally assaulted and pushed us. [They] did not let my mother drive away in [her] car ... it was terrifying! How [can anyone] behave like that with [two] women and a child? Do they really have so little dignity and respect towards people????!!!!!!!"

8. In the photograph, the applicants were depicted standing next to one another dressed in their police uniforms, with the first applicant holding a pen, a notebook and a mobile phone in his hand. Some cars, buildings and an unidentified person could be seen in the background.

9. C.T.'s post received ninety-two comments and was "liked" by around 160 people. According to the applicants, it was also shared seventy-three times. In their view, that meant that the post was viewed more than 100,000 times, given that each user had more than 200 "friends" and that the online group in question had more than 24,000 members.

10. Some of the people who commented on the post and engaged in the ensuing discussion about the event reported by C.T. referred to the applicants and to local police officers in general in a disrespectful manner, using expressions such as "scumbags", "impostors", "idiots", "stupid", "hillbillies", "di.ks amounting to nothing", "uneducated", "crazy" and "worthless simpletons". One of the people said that he wished that he could meet "specimens" like the applicants "to wipe the arrogance off their faces (*să le scot figurile din cap*)" and that, if the "scumbags" had been beaten up, they would have called the emergency services. One person stated that the second applicant appeared in several YouTube videos committing abuses. Three other people said that they had been fined by the applicants, that they had witnessed the second applicant acting overzealously and been given a hard time by him even though he had been off duty at the time, or that they had seen him harass a less-abled woman. One person said that she knew the applicants personally and was surprised by the information in C.T.'s post.

11. In one of her replies to the comments (see paragraphs 9-10 above), C.T. disclosed the second applicant's full name after she was asked about his identity. In another reply to a third-party comment effectively condoning the applicants' alleged reactions to C.T.'s behaviour, she denied that her intention had been to defame the applicants.

12. On 19 August 2016 and on an unspecified date, respectively, the relevant authorities discontinued the disciplinary and criminal proceedings brought either by C.T. or by her mother against the applicants in connection with the events of 8 April 2016 (see paragraphs 6-7 above), apparently for lack of sufficient evidence (see paragraph 17 below).

II. ACTION IN TORT BROUGHT BY THE APPLICANTS

A. First-instance proceedings

1. The applicants' claim

13. On 14 February 2017 the applicants brought an action in tort against C.T., claiming 50,000 Romanian lei (RON) (11,111 euros (EUR)) in respect of non-pecuniary damage and asking the court to order her to publish an apology in local newspapers and on the page of the Facebook group "Oradea is us". They complained that C.T.'s post had defamed them and had affected their reputation and image because it had spread information which distorted reality, disseminated their photograph and the second applicant's full name publicly to a wide audience without their consent and instigated and generated offensive third-party comments and threats.

14. C.T.'s allegations that they had verbally and physically assaulted her and her mother were untrue. In fact, it had been C.T. who had been aggressive towards them and it had been her mother who had insulted them and had almost injured them as she drove away in her car. Moreover, C.T. had denied

that she had been physically assaulted and had refused to lodge a complaint against the applicants when she had been questioned in that connection by other police officers who had been dispatched to the scene after C.T.'s telephone call to the emergency services (see paragraph 7 above). Furthermore, because of C.T.'s actions, the applicants' family and friends had questioned their professional conduct and behaviour towards women, and random individuals had stopped them on the street and questioned them about the alleged abuses committed by them. Their employer had also opened disciplinary proceedings against them.

2. The first-instance judgment

15. On 26 June 2017 the District Court dismissed the action in tort. It held that the applicants had standing to bring the proceedings against C.T. because she had posted their photograph and identified the second applicant by his full name. Nevertheless, it found that the conclusions of the national courts described in paragraph 6 above had a *res judicata* effect.

16. Moreover, even though the post had generated some trivial third-party comments about the applicants, it had not harmed their image. In fact, when some of the third parties had started using potentially offensive expressions, C.T. had clearly stated that she had intended only to report on the event in dispute and not to offend anyone.

B. Second-instance proceedings

1. The applicants' appeal

17. The applicants appealed against the judgment and contested the District Court's assessment of the case. They argued that their image had been harmed by the post and not by what had happened at the scene of the events of 8 April 2016. Accordingly, the findings of the courts during the proceedings brought by C.T. against the fine imposed on her had been irrelevant to the action in tort which they had brought against her. Moreover, the applicants reiterated the arguments they had raised before the District Court (see paragraphs 13-14 above) and pointed to the fact that the courts had upheld the fine imposed on C.T. (see paragraph 6 *in fine* above) and the fact that the disciplinary and criminal proceedings opened against them in respect of the alleged events reported by C.T. (see paragraph 12 above) had been closed by the relevant authorities on the grounds that the evidence against the applicants had been contradictory. They lastly argued that C.T. could have foreseen the results of her actions and that, in accordance with the case-law of the High Court of Cassation and Justice, any statement posted on Facebook could have legal consequences.

2. The second-instance judgment

18. On 12 January 2018 the Bihor County Court ("the County Court") dismissed the applicants' appeal and upheld the District Court's judgment. It held that the applicants should have been mindful of the context and place in which they were operating when they had fined C.T., and of the type of relationship that had existed between them and her at that time.

19. Also, the post had not initiated a defamatory campaign against them. It had merely reported C.T.'s perception of the event in which she had been directly involved.

C. Last-instance proceedings

1. The applicants' appeal on points of law

20. The applicants appealed on points of law against the judgment and largely reiterated the arguments raised before the County Court (see paragraph 17 above).

21. Moreover, they contended that none of the information posted on Facebook had been censored, even though C.T. could have deleted any insults or inappropriate images. She was not a journalist and neither she nor the courts could rely in her defence on the rules applicable to journalistic freedom of expression. She was a private individual and therefore was under an obligation to adjust her public speech accordingly. Her actions had exceeded the limits of her right to freedom of expression and had been a way of exercising revenge on the police.

2. The last-instance judgment

22. By a final judgment of 28 February 2019, the Oradea Court of Appeal ("the Court of Appeal") dismissed the applicants' appeal on points of law and upheld the County Court's judgment. Referring to principles deriving from the Court's case-law on freedom of expression and to the provisions of the Convention and the Civil Code concerning the right to freedom of expression and the right to respect for private life, reputation and image, the Court of Appeal held that the principles developed in the Court's case-law in respect of journalistic or political speech were also applicable to the present case.

23. It also held that the post had been a way for C.T. to publicly manifest her right to freedom of expression with the intent to bring her message to the attention of a large number of users of the Facebook group. However, her post had not exceeded the limits of the aforementioned right afforded to her. It had been prompted by, and was an expression of, her momentary dissatisfaction at the applicants' conduct while they had been exercising their professional duties and it expressed her opinion about the manner in which they had accomplished those duties. It was also supported by a sufficient factual basis.

24. C.T.'s right to use the social media network in question as a means of communication could not be contested. Similarly, she could not be held responsible for the potential consequences of the comments made by third parties following her post, because every individual was responsible only for his or her own statements – given that civil liability was personal – and the conditions for third-party liability had not been met in her case. Moreover, the information disseminated by her post had been accurate and had been reviewed with *res judicata* effect (see paragraphs 6 and 15 above).

25. The Court of Appeal held that the post did not include offensive content and that all the indecent expressions used in the comments had been posted by third parties. C.T. could not have banned third parties from writing defamatory comments on the social media website in question or deleted those comments, and the closure of the proceedings brought by her against the applicants (see paragraph 12 above) could not engage her civil liability. Furthermore, the limits of acceptable criticism were wider in the applicants' case than in cases concerning ordinary citizens because the applicants were employees of a public service and the proper functioning of the State itself was at stake. The fact that C.T. had also disseminated the applicants' photograph and the second applicant's name could not have affected them in any way, given that they were public persons and the photograph in question did not portray them in an undignified or indecent manner.

RELEVANT LEGAL FRAMEWORK

26. The relevant provisions of the Civil Code regarding liability in tort and for personal actions, read as follows:

Article 1349

"(1) Every person has a duty to respect the rules of conduct that the law or local custom imposes and not to interfere, through [his or her] actions or inaction, with the rights or legitimate interests of other people.

(2) Any person who has legal capacity and who violates this obligation shall be liable for all damage caused and must provide reparation in full.

..."

Article 1357

"(1) A person who causes damage to another by an unlawful act committed with intent shall provide reparation.

(2) A person who causes damage shall be liable for any harm caused."

THE LAW

ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

27. The applicants complained that when dismissing the proceedings they had brought against C.T. on account of her post and its content, the information disclosed and the public reaction it had generated, the domestic courts had failed to strike a fair balance between the competing interests at stake and to adequately protect their right to respect for their private life and reputation. They relied on Article 8 of the Convention, which reads as follows:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. Admissibility

1. Applicability of Article 8 of the Convention

(a) The parties' submissions

28. The Government argued that the applicants could not complain of a violation of their right to respect for their private life, since they had been acting in their professional capacity when C.T. had taken their photograph.

29. The applicants disagreed and argued that the material and information posted by C.T. without their consent to a wide audience, along with the subsequent offensive comments, had affected their reputation and public image as ordinary individuals. Their status as public servants and the fact that they had been acting in their professional capacity was irrelevant in this context.

(b) The Court's assessment

30. The Court reiterates that the notion of private life is a broad concept, not susceptible to exhaustive definition. It extends to aspects relating to personal identity, such as a person's name, photograph, or physical and moral integrity. This concept also includes the right to live privately, away from unwanted attention. The guarantee afforded by Article 8 of the Convention in this regard is primarily intended to ensure the development, without outside interference, of the personality of each individual in his or her relations with other human beings. There is thus a zone of interaction of a person with others, even in a public context, which may fall within the scope of private

life. In certain circumstances, even where a person is known to the general public, he or she may rely on a "legitimate expectation" of protection of and respect for his or her private life. Publication of a photograph may thus interfere with a person's private life even where that person is a public figure (see *Couderc and Hachette Filipacchi Associés v. France* [GC], no. 40454/07, §§ 83-85, ECHR 2015 (extracts), with further references).

31. It has been accepted by the Court that Article 8 encompasses a person's right to protection of his or her reputation as part of the right to respect for private life (see *Axel Springer AG v. Germany* [GC], no. 39954/08, § 83, 7 February 2012, and *Țiriac v. Romania*, no. 51107/16, § 60, 30 November 2021). Also, individual members of a public body who could be "easily identifiable" in view of the limited number of its members and the nature of the allegations made against them may be entitled to bring defamation proceedings in their own name (see *OOO Memo v. Russia*, no. 2840/10, § 47, 15 March 2022).

32. In order for Article 8 to come into play, however, the attack on a person's honour and reputation must attain a certain level of seriousness and must have been carried out in a manner causing prejudice to personal enjoyment of the right to respect for private life (see *Axel Springer AG*, cited above, § 83). This requirement covers social reputation in general as well as professional reputation in particular (see *Denisov v. Ukraine* [GC], no. 76639/11, § 112, 25 September 2018, and *Țiriac*, cited above, § 60).

33. The Court notes that the courts acknowledged that the provisions of domestic law and the Convention and the principles developed in the Court's case-law – including in the context of political or journalistic speech – concerning the right to respect for private life and reputation were applicable to the applicants' case and that the applicants had standing to complain of a violation of their right to respect for their private life and reputation and to bring defamation proceedings against C.T. (see paragraphs 15-16, 18-19, and 22-25 above).

34. The Court finds no reason to hold otherwise. Given the nature of the accusations brought against the applicants and the particular importance attached to the publication of a person's photograph and, in certain circumstances, of his or her name (see paragraphs 55 and 79 below) under the Court's case-law, it considers that C.T.'s acts and their consequences described in paragraph 57 below attained the requisite level of seriousness for Article 8 of the Convention to come into play. It follows that this provision applies to the present case.

2. Other grounds of inadmissibility

35. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

36. The applicants argued that the mere fact that the national authorities had put in place a legal framework capable of providing adequate protection against alleged violations of their right to respect for their private life and reputation had been insufficient to ensure compliance with the State's obligation to protect them against such violations.

37. The national courts had failed in their duty to strike a fair balance between the competing interests at stake and to adequately protect their above-mentioned rights. This was all the more so given that as public servants they were banned from entering conversations on social media platforms and countering misinformation. The only way they could remedy the damage done to them was by bringing court proceedings.

38. The information disseminated by C.T. was untruthful and had been disseminated to a very wide audience on Facebook which, according to the national courts' practice, was a public space. Even though C.T. could foresee the results of her actions, she had chosen to pursue them. Therefore, C.T. had not acted in good faith and had not simply informed the local community about an event in which she had been involved.

39. The Government's arguments described in paragraphs 45-46 below were irrelevant. Asking for the removal of the post and of the third-party comments at issue would have served no purpose given that the damage to the applicants' reputation had already been done and that they were free to choose the redress which they considered best suited to the protection of their rights. The information in question had received maximum attention immediately after it was posted and its visibility, impact and consequences had only decreased over time. Even though they had indeed not suffered any specific professional consequences, their image had been affected given the questions they had received from strangers, friends and acquaintances about their conduct and the proceedings opened by their employer (see paragraph 14 *in fine* above).

40. Lastly, the applicants argued that when examining their case the Court had to take account at the very least of its own findings in the case of *Sanchez v. France* ([GC], no. 45581/15, §§ 160-62 and 183-85, 15 May 2023), whose outcome had legitimised their decision to lodge their application with the Court.

(b) The Government

41. The Government argued that the national authorities had put in place a legal framework capable of providing adequate protection against alleged violations of the applicants' right to respect for their private life and

reputation. Moreover, the national courts had struck a fair balance between the competing interests at stake and had provided relevant and sufficient reasons for their decisions.

42. They had assessed the circumstances of the case with reference to the relevant principles and rules flowing from the Court's case-law. They had held that the post had expressed C.T.'s opinion regarding the manner in which the applicants had performed their professional duties; had contained accurate information and used inoffensive language. They had also considered that the limits of acceptable criticism were wider in the applicants' case than in cases concerning ordinary citizens because the applicants were public servants and their actions reflected on the proper functioning of the State. Furthermore, the courts had taken the view that the lawful conditions for C.T. to be held liable for the third parties' comments had not been met.

43. The reasons given by the Court in the case of *Sanchez*, cited above, were inapplicable in the present case given the completely different factual circumstances. The applicants were not politicians. Nevertheless, they had not denied in their submissions before the national courts that they were public figures and could therefore be the subject of some public debate and their work could be more exposed to criticism.

44. Even though C.T. was not a journalist, the information contained in her post had been of public interest, had concerned an event in which she had been involved and had not been disseminated with bad intentions. The applicants had not been photographed in a secretive manner or in circumstances connected to their private life and the photograph had been used within the context of a public debate. It had been posted to an online group with a limited number of members. The members of that group had clearly engaged in debate about problems faced by the local community in Oradea, given that C.T.'s post had also generated positive comments as far as the applicants' actions were concerned. In addition, C.T. had expressly stated in one of her replies to a third-party comment that she had not intended to defame anyone through her actions.

45. There was no evidence that the applicants had suffered negative consequences on account of the post. They had not been punished or dismissed and their reputation had not been tarnished. The disciplinary proceedings brought against them (see paragraph 12 above) had been discontinued by the authorities and a simple online search revealed that no news outlets with a high circulation had reported on the events connected to the present case. The applicants' allegations that they had been questioned by their friends and acquaintances about their conduct were insufficient to prove that they had suffered concrete negative consequences because of the post.

46. Lastly, the Government submitted that the applicants had not asked the courts to order the removal of C.T.'s post from Facebook along with the offensive third-party comments, even though they could have done so. It therefore appeared that the action in tort brought by them had been driven primarily by a pecuniary interest. Nevertheless, the courts' decision to refuse

to make an award of damages in their case could not in and of itself have resulted in a violation of Article 8 of the Convention.

2. The Court's assessment

(a) General principles

47. The Court reiterates that while the essential object of Article 8 is to protect the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this negative undertaking, there may be positive obligations inherent in effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. The boundary between the State's positive and negative obligations under Article 8 does not lend itself to precise definition; the applicable principles are, nonetheless, similar. In both contexts regard must be had to the fair balance that has to be struck between the relevant competing interests; and in both contexts the State enjoys a certain margin of appreciation (see *Von Hannover v. Germany (no. 2)* [GC], nos. 40660/08 and 60641/08, §§ 98-99, ECHR 2012, and *Țiriac*, cited above, § 72).

48. Article 10 of the Convention guarantees "everyone" the freedom to receive and impart information and ideas and no distinction is made according to the nature of the aim pursued or the role played by natural or legal persons in the exercise of that freedom. It applies not only to the content of information but also to the means of dissemination, since any restriction imposed on such means necessarily interferes with the right to receive and impart information. Likewise, Article 10 guarantees not only the right to impart information but also the right of the public to receive it (see *Cengiz and Others v. Turkey*, nos. 48226/10 and 14027/11, § 56, ECHR 2015 (extracts)).

49. Article 10 does not, however, guarantee a wholly unrestricted freedom of expression even in respect of coverage of matters of serious public concern (see *Monica Macovei v. Romania*, no. 53028/14, § 80, 28 July 2020). Any person who exercises freedom of expression (i) undertakes "duties and responsibilities" the scope of which depends on his or her situation and the technical means used (see *Gîrleanu v. Romania*, no. 50376/09, § 92, 26 June 2018) and (ii) must not overstep certain limits, particularly with regard to respect for the reputation and the rights of others (see *Sanchez*, cited above, § 149). The Court has therefore accepted that, in principle, any natural or legal person may be made the subject of various forms and degrees of individual or shared liability for defamatory or other types of unlawful speech in order to remedy effectively violations of personality rights (see, in the context of speech on the internet, *Delfi AS v. Estonia* [GC], no. 64569/09,

§ 110, ECHR 2015, and *Sanchez*, cited above, §§ 162-66, 183-85, 190, 192-93, 201 and 204).

50. Where the complaint raised before the Court is that rights protected under Article 8 have been breached as a consequence of the exercise by others of their right to freedom of expression, due regard should be had, when applying Article 8, to the requirements of Article 10 of the Convention (see *Țiriac*, cited above, § 73, with further references), bearing in mind that as a matter of principle the rights guaranteed by Article 8 and Article 10 deserve equal respect and the outcome of an application should not, in principle, vary according to whether it has been lodged with the Court under Article 8 or Article 10 of the Convention (see *Von Hannover*, cited above, § 106, and *Axel Springer AG*, cited above, § 87).

51. Relevant criteria for balancing the right to respect for private life against the right to freedom of expression include the contribution to a debate of public interest; the degree of notoriety of the person affected; the prior conduct of the person concerned; the circumstances in which a photograph was taken; and the content, form and consequences of the publication (see *Von Hannover*, cited above, §§ 109-13, and *Hájovský v. Slovakia*, no. 7796/16, § 30, 1 July 2021).

52. In cases such as the instant case where the information was disseminated on the internet and generated third-party comments, certain other criteria may be relevant for the outcome of the balancing exercise and may therefore need to be taken into account. They include the status of the alleged perpetrator, his or her specific liability for the third parties' comments, the steps taken by him or her in relation to those comments and the possibility of holding the authors of those comments liable instead (see *Sanchez*, cited above, §§ 179, 180, 190 and 202).

53. In this connection the Court is also mindful of the fact that 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 *Sanchez*, cited above, § 158). In the light of its accessibility and its capacity to store and communicate vast amounts of information, the internet plays an important role in enhancing the public's access to news and facilitating the dissemination of information in general (see *Times Newspapers Ltd v. the United Kingdom (nos. 1 and 2)*, nos. 3002/03 and 23676/03, § 27, ECHR 2009). User-generated expressive activity on the internet provides an unprecedented platform for the exercise of freedom of expression (see *Delfi AS*, cited above, § 110).

54. The Court finds relevant, nevertheless, that the risk of harm posed by content and communications on the internet to the exercise and enjoyment of human rights and freedoms is certainly higher than that posed by the press, since unlawful speech, including hate speech and speech inciting violence, can be disseminated as never before, worldwide, in a matter of seconds, and

sometimes remain persistently available online (see *Delfi AS*, cited above, §§ 110 and 133).

55. Moreover, although freedom of expression includes the publication of photographs, this is nonetheless an area in which the protection of the rights and reputation of others takes on particular importance, as the photographs may contain very personal or even intimate information about an individual and his or her family. In the cases in which the Court has had to balance the protection of private life against freedom of expression, it has always stressed the contribution made by photographs or articles in the press to a debate of general interest. Nevertheless, it has made a distinction between reporting facts – even controversial ones – capable of contributing to a debate in a democratic society, and reporting details of the private life of an individual who does not exercise official functions (see *Hájovský*, cited above, § 31). Where the situation does not come within the sphere of any political or public debate and published photographs and accompanying commentaries relate exclusively to details of the person's private life with the sole purpose of satisfying the curiosity of a particular readership, freedom of expression calls for a narrower interpretation (ibid.).

56. Lastly, the Court reiterates that in exercising its supervisory function, its task is not to take the place of the national courts, but rather to review, in the light of the case as a whole, whether the decisions they have taken pursuant to their power of appreciation are compatible with the provisions of the Convention relied on (see *Axel Springer AG*, cited above, § 86). Where the balancing exercise between the rights protected by Articles 8 and 10 of the Convention 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 view for that of the domestic courts (ibid., § 88, with further references).

(b) Application of those principles to the instant case

57. The Court notes that the applicants blamed C.T. for publicly disseminating their photograph and the second applicant's full name to a wide audience on Facebook without their consent, while at the same time making untruthful remarks suggesting that the applicants had verbally and physically assaulted her and her mother, thus attracting offensive third-party comments (see paragraphs 13-14 above).

58. The applicants appear to have accepted that the national authorities had put in place a legal framework capable of providing adequate protection against the alleged violation of their right to respect for their private life and reputation arising from the above-mentioned circumstances (see paragraphs 36 and 39 above). Indeed, they were able to bring an action in tort against C.T. to claim compensation.

59. The domestic courts examined the circumstances in which C.T.'s statements had been made and whether her liability was engaged.

Nevertheless, the applicants disagreed with their decision. The Court must therefore review whether the national courts struck a fair balance between the competing rights at stake in conformity with the criteria laid down in its case-law (see paragraphs 51-52 above).

(i) Contribution to a debate of general interest

60. The Court reiterates that there is little scope under Article 10 § 2 of the Convention for restrictions on political speech or on debate on matters of public interest. The margin of appreciation of States is thus reduced where a debate on a matter of public interest is concerned (see *Satakunnan Markkinapörssi Oy and Satamedia Oy v. Finland* [GC], no. 931/13, § 167, 27 June 2017).

61. The national courts found that C.T.'s post intended to bring to the attention of the Facebook group "Oradea is us" her position about a matter which ultimately raised questions about the proper functioning of the State (see paragraphs 22-25 above), namely the allegedly abusive and violent manner in which the applicants conducted themselves as local police officers while carrying out their professional obligations (see paragraph 7 above). Given that in working as law-enforcement officials the applicants constantly engaged in public activities and were bound by a duty to serve and protect, and that their profession was ultimately one which involved public trust, the public had a right to be informed about any possible abusive conduct on their part.

62. Indeed, the Court has acknowledged that the use of force by State agents, particularly where it relates to allegations of police brutality or misconduct, was inherently a matter of significant public interest (see *Dyundin v. Russia*, no. 37406/03, § 33, 14 October 2008, and *Bild GmbH & Co. KG v. Germany*, no. 9602/18, §§ 32-34, 31 October 2023).

63. C.T.'s post therefore concerned a matter of public concern, and the Court sees no reason to doubt that it was capable of contributing to a debate of general interest on the moral and professional integrity of local police officers and the proper functioning of certain public services.

(ii) Degree of notoriety of the person affected and his or her prior conduct

64. The Court reiterates that whilst a private individual unknown to the public may claim particular protection of his or her right to private life, the same is not true of political or public figures in respect of whom the limits of critical comment are wider, as they are inevitably and knowingly exposed to public scrutiny and must therefore display a greater degree of tolerance (see *Monica Macovei*, cited above, § 79).

65. It cannot be said, however, that public servants knowingly lay themselves open to close scrutiny of their every word and deed to the extent to which politicians do and should therefore be treated on an equal footing with the latter when it comes to criticism of their actions (see *Stancu*

and Others v. Romania, no. 22953/16, § 116, 18 October 2022, and *Bild GmbH & Co. KG*, cited above, § 33). Public servants must enjoy public confidence in conditions free of undue perturbation if they are to be successful in performing their tasks and it may therefore prove necessary to protect them from offensive, abusive or defamatory attacks or unfounded accusations when on duty (see *Chernysheva v. Russia* (dec.), no. 77062/01, 10 June 2004, and *Stancu and Others*, cited above, § 115). Nonetheless, public servants acting in an official capacity are subject to wider limits of acceptable criticism than ordinary citizens (see *Mamère v. France*, no. 12697/03, § 27, ECHR 2006-XIII). A certain degree of immoderation may fall within those limits (see *Chkhartishvili v. Georgia*, no. 31349/20, § 56, 11 May 2023), particularly where it involves a reaction to what is perceived as unjustified or unlawful conduct on the part of public servants (see *Savva Terentyev v. Russia*, no. 10692/09, § 75, 28 August 2018).

66. The Government have pointed out, and the applicants have not argued otherwise, that they had not denied in their submissions before the national courts that they were public persons (see paragraph 43 above). Moreover, the courts (i) held that the applicants were public persons and (ii) acknowledged that the limits of acceptable criticism were wider in their case, essentially because they were public servants (see paragraph 25 above).

67. As regards the applicants' status as public persons, the Court notes that it has found in the specific case of ordinary police officers that they could not be considered public figures in the same sense as politicians or any other persons who, through their acts or their position, have entered the public arena, as long as the officers had merely acted in their official capacity, without seeking public attention (see *Bild GmbH & Co. KG*, cited above, § 32).

68. In the applicants' case, none of the available evidence suggests that they sought to be in the public eye or to receive public attention either before or after C.T. posted her message. It is true that by virtue of their professional activity the applicants seem to have interacted with and been known by some members of the online group "Oradea is us" at the time C.T. posted her message (see paragraphs 10-11 above). However, the national courts did not give any weight to this evidence or to the applicants' prior conduct in the light of their involvement in previous public activities. The evidence and conduct in question did not therefore have any consequences for the courts' conclusion that the applicants were public persons or for the outcome of the balancing exercise conducted by them with regard to the competing rights at stake (see, *mutatis mutandis*, *Fuchsmann v. Germany*, no. 71233/13, § 49, 19 October 2017).

69. Furthermore, there is nothing in the case-file to suggest that in the applicants' case the above-mentioned public exposure and attention exceeded a level that the activity conducted by an ordinary public servant acting in his or her official capacity in general or a police officer in particular could reasonably be expected to generate (see paragraph 61 above). It cannot

therefore be said that the applicants could be considered on that basis to be public figures in the sense described in paragraph 67 above or even well-known figures in their professional field for that matter (compare *Petrie v. Italy*, no. 25322/12, § 51, 18 May 2017, and, for illustrative purposes, *Stroea v. Romania* [Committee], no. 76969/11, § 32, 22 October 2019).

70. As to the level of criticism acceptable in the applicants' case, the Court notes that they acknowledged that they were public servants (see paragraph 37 above). Even though none of the evidence suggests that they were high-ranking public servants or that they had applied for or occupied positions of particular public concern within the police force (see *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* [GC], no. 17224/11, § 98, 27 June 2017, and *Stancu and Others*, cited above, §§ 127-29), they never denied that they were acting in their official capacity at the time of the events in issue.

71. Accordingly, the Court agrees with the national courts that the applicants belonged to a group of persons who could not claim protection of their right to respect for their private life in the same way as ordinary individuals and were therefore subject to wider limits of acceptable criticism than such individuals (see *Stancu and Others*, cited above, § 129).

(iii) Circumstances in which the photograph was taken

72. The Court notes that it is undisputed by the parties that the applicants were neither asked for nor gave consent for their photograph, or names for that matter, to be disseminated on Facebook by C.T. Nor did C.T. take any steps to conceal the applicants' faces before posting their photograph.

73. It reiterates that the publication of a photograph must in general be considered to constitute a more substantial interference with the right to respect for private life than the mere communication of the person's name (see *Vučina v. Croatia* (dec.), no. 58955/13, § 46, 24 September 2019). It further observes that, whereas there is no general rule under Article 8 of the Convention requiring that police officers should generally not be recognisable in press publications, there may be circumstances in which the interest of the individual officer in the protection of his or her private life prevails. This would be the case, for example, if publication of the image of a recognisable officer, irrespective of any misconduct, is likely to lead to specific adverse consequences in his or her private or family life (see *Bild GmbH & Co. KG*, cited above, § 35).

74. The national courts found that the fact that C.T. had disseminated the photograph and the name in question could not have affected the applicants, given that they were public persons and that the photograph did not portray them in an undignified or indecent manner (see paragraph 25 above).

75. The Court observes that while it has disagreed with the national courts that the applicants could be considered public persons, it has nevertheless accepted their view that the applicants could not have the same expectation

of privacy as an ordinary individual in the specific circumstances of their case (see paragraphs 67-71 above).

76. The Court further observes that it is uncontested that the applicants' photograph was taken on a public street, while the applicants were fining C.T. which had prompted a call by C.T. to the emergency services and the dispatch of a second police unit to the scene, and had obviously attracted some public attention (see paragraphs 7-8 and 14 above). The photograph showed the applicants dressed in their police uniforms, while performing their duties as law-enforcement agents (see paragraph 8 above).

77. The national courts did not find – and in any event there is nothing in the case file to suggest otherwise – that the photograph in question or the second applicant's name had been taken covertly, using illicit means or subterfuge or taking advantage of any type of vulnerable position (contrast *Egeland and Hanseid v. Norway*, no. 34438/04, § 61, 16 April 2009). Thus, the Court agrees with the opinion of the County Court that the applicants should have been mindful of the public context underlying their interaction with C.T. (see paragraph 18 above) and considers that they could not have excluded that they could be photographed, given their status and alleged conduct (see, *mutatis mutandis*, *Vučina*, cited above, § 35) .

78. The Court also observes, as did the national courts, that the photograph was not taken in circumstances showing the applicants in an unfavourable light and that it did not present them in a manner which could have undermined their public standing from the reader's perspective or show a distorted image of them (see paragraph 25 above). Judging from the manner in which it was used, the Court considers that the photograph was taken merely to lend support to the content of C.T.'s comments discussing a matter of public concern and illustrating the veracity of some of the information contained therein (compare, *mutatis mutandis*, *Couderc and Hachette Filipacchi Associés*, cited above, § 135).

79. Thus, in so far as the manner in which the photograph was obtained does not raise any issue under Article 8, the mere communication of the second applicant's name next to the photograph, without any negative connotations associated with that name and/or the distortion of the photograph, cannot be considered a particularly substantial interference with the right to respect for private life (see, *mutatis mutandis*, *Vučina*, cited above, § 46).

80. The national courts did not expressly give any weight to the fact that C.T. had posted the applicants' photograph and the second applicant's name without concealing their faces or obtaining their consent. Even though the Court has found that such measures may be relevant when balancing competing rights at stake in cases such as the present one, these factors form only part of the overall criteria that may be taken into account for the balancing exercise in question, including the content of the coverage and its consequences for the person concerned (see *Bild GmbH & Co. KG*, cited above, § 35).

(iv) Content, form and consequences of the publication

81. As to the subject of C.T.'s post, the Court notes, as did the national courts (see paragraph 23 above), that it exclusively concerned the applicants' professional activities and conduct in a public context, without mentioning any details of their private life (see paragraph 76 *in fine* above and also, *mutatis mutandis*, *Sabou and Pircalab v. Romania*, no. 46572/99, § 39, 28 September 2004).

82. Moreover, they did not find that the post contained offensive, indecent or degrading content in relation to the applicants. Furthermore, the courts were of the view that the post expressed C.T.'s dissatisfaction at the applicants' conduct and her opinion about an event in which she had been involved. Whereas they did not attach any weight to the fact that the disciplinary and criminal proceedings opened against the applicants had been closed, they relied on the findings in the proceedings brought by C.T. to challenge the fine to establish that the information disseminated by C.T. was accurate (see paragraphs 6 and 24 above). Indeed, they found that C.T.'s comments and conduct were supported by a sufficient factual basis and that there was no indication that the dissemination of the applicants' photograph and of the second applicant's name had had any negative consequences for them.

83. While the courts agreed with the applicants' arguments to the effect that some of the third-party comments were indecent and defamatory, they found that C.T. could not be held responsible for the potential consequences of those comments because every individual was responsible only for his or her own statements and the conditions for third-party liability were not met in her case. Furthermore, C.T. could not have banned the third parties from writing such comments; nor could she have removed them (see paragraphs 15-16, 18-19 and 22-25 above).

84. Having regard to the information in the case file, the Court finds no reason to disagree with the domestic courts' assessment. It notes that C.T.'s post taken as a whole conveyed nothing more than her critical impressions of the manner in which the applicants had acted in their professional capacity. It also did not contain any personal insults or disparaging remarks or any unsubstantiated allegations, regardless of whether her comments could be viewed as constituting value judgments or statements of fact.

85. In this context, even though some of her statements alleged unlawful actions by the applicants and she could have foreseen the possibility that the public would react to them (see, *mutatis mutandis*, *Sanchez*, cited above, § 193), no evidence was adduced that C.T. did not act in good faith when posting her comments and the applicants' photograph and disseminating the second applicant's name or has sought only to gratuitously stir the public's emotions and portray the applicants in a negative light.

86. The Court finds relevant in this connection that C.T. and her mother also used both criminal and administrative remedies to bring their grievances

against the applicants to the direct attention of the relevant authorities (see paragraphs 12, 14, 17 and 24 above). Moreover, C.T. disclosed the second applicant's full name only in one of her replies to a third-party comment on the post and only after she was asked expressly about the applicants' identity. Furthermore, she appears to have sought to distance herself from the offensive third-party comments by expressly stating that she had not intended to defame anyone through her actions (see paragraphs 11 and 16 above).

87. The fact that the form and manner in which C.T.'s post was written and that some of the expressions contained therein were provocative and could attract the public's attention cannot in itself raise an issue under the Court's case-law (see, *mutatis mutandis*, *Axel Springer AG*, cited above, §§ 81 and 108). As acknowledged above (see paragraph 65 above), persons reacting to what is perceived as unjustified or unlawful conduct on the part of public servants are allowed to have recourse to a degree of exaggeration or even provocation, or in other words to make somewhat immoderate statements.

88. Turning to the question of the consequences of C.T.'s post for the applicants, the Court observes that even though, as essentially acknowledged by the national courts (see paragraph 23 above), it was disseminated on a publicly accessible online platform without any apparent restrictions, it seems to have drawn very little actual public attention or provoked much of a reaction. Indeed, while the Government have not contested as such the applicants' allegation that the post had quite likely generated more than 100,000 views (see paragraph 9 above), the Court notes that it was actually commented on and "liked" by a very low number of people overall.

89. The Court also observes in this connection that, at the time of the events under examination, C.T. was a private individual who did not possess any expertise in the digital services field (contrast *Sanchez*, cited above, § 180). Furthermore, she did not disseminate her post during an electoral campaign or in any kind of tense political or social climate and was not a journalist, a politician, a well-known blogger or a popular user of social media, let alone a public or influential figure, a fact which could have attracted further public attention to her comments and therefore enhanced the potential impact of her statements (contrast *Sanchez*, cited above, §§ 176, 180, 187 and 201). In addition, the applicants themselves acknowledged that C.T.'s post would have received maximum attention only immediately after it was uploaded and its visibility, impact and consequences could only have decreased significantly over time (see paragraph 39 above). They did not ask the national courts to order the removal of the post either while the proceedings were pending or subsequently. Given the circumstances, the Court considers that the potential of C.T.'s post to actually reach a wide segment of the public, either at the time of its publication or at a later date, was limited.

90. There can be no doubt that the expressions used by some of the third parties in their comments were insulting and defamatory. Nevertheless, the Court observes that nothing in the case-file suggests that C.T. sought to invite or endorse the use of the offending expressions by those third parties. Moreover, the applicants have not brought forth any convincing evidence that C.T. was the administrator of the Facebook group to which she had uploaded her post or that she had the power to control the content of the messages posted by the other members of the group, or that could generally contradict the national courts' findings (see paragraph 83 above) and show that C.T. had failed to comply with any duties that could reasonably have been expected of her, as a mere private individual of no notoriety or representativeness, in terms of intervening efficiently on social media platforms (compare and contrast *Sanchez*, cited above, §§ 185, 190, 199 and 201) without running the risk of self-censorship (ibid., § 184).

91. The Court further observes that the offending expressions used by the third parties were little more than "vulgar abuse" of a kind – albeit belonging to a low register of style – which is common in communication on many internet portals and that this consideration reduces the impact that can be attributed to those expressions (see *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary*, no. 22947/13, § 77, 2 February 2016). Moreover, all of the comments in question would, in the context in which they were written, most likely be understood by readers as conjecture which should not be taken seriously (see, *mutatis mutandis*, *Tamiz v. the United Kingdom* (dec.), no. 3877/14, § 81, 19 September 2017).

92. The Court is also mindful in this connection that the third-party comments, albeit made publicly, were directed at police officers who arguably must have been trained in how to handle such conduct (see *Chkhartishvili*, cited above, § 57). There is no evidence in the case file, however, that the applicants even attempted to bring to justice at least some of the authors of those comments. The Court finds relevant in this connection that the acts of which C.T. was accused by the applicants were clearly distinct from those committed by the authors of the unlawful comments and that the applicants have not pointed to any specific difficulties that they might have faced in identifying the authors of those comments (compare *Sanchez*, cited above, §§ 202-03). Thus, the attribution of liability by the courts to C.T. alone for both the post itself and the content of the third-party comments, even in the context of civil-law proceedings such as the ones envisaged in the present case, could have had a chilling effect on freedom of expression on the internet and could have been particularly detrimental for private individuals who are acting in good faith and trying to raise awareness about matters of general concern (see, *mutatis mutandis*, *Sanchez*, cited above, § 205).

93. At the same time, the Court is unable to discern any concrete negative impact of C.T.'s post on the applicants' private and professional life given that, as indicated by the applicants, both the disciplinary and criminal investigations opened in respect of them were discontinued (see paragraph 17

above). Moreover, it appears that C.T.'s post also prompted positive third-party comments about the manner in which they had performed their duties (see paragraphs 11 and 44 above).

94. Even assuming that the applicants' allegations that strangers or family and friends had questioned them about their conduct may be true and that C.T.'s post and the subsequent third-party comments might be expected to have affected them to some extent, the Court has serious doubts that those consequences were sufficiently serious to override the public's interest in receiving the information disseminated by C.T. (see, *mutatis mutandis*, *Țiriac*, cited above, § 98).

(v) Conclusion

95. In the light of the above, the Court considers that the national courts conducted the required thorough balancing exercise between the competing rights at stake in conformity with the criteria laid down in the Court's case-law. Having regard to the margin of appreciation available to the national authorities when weighing up divergent interests, the Court sees no strong reasons to substitute its view for that of the domestic courts (see paragraph 56 above). It cannot therefore be said that by dismissing the applicants' claim, the courts failed to comply with the positive obligations incumbent on the national authorities to protect the applicants' right to respect for their private life under Article 8 of the Convention. There has accordingly been no violation of that provision.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been no violation of Article 8 of the Convention.

Done in English, and notified in writing on 25 February 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Simeon Petrovski	Lado Chanturia
Deputy Registrar	President