European Court of Human Rights: Grand Chamber consolidates principles on freedom of expression of judges on internet and social media

IRIS 2026-2:1/8

Tarlach McGonagle
Institute for Information Law (IViR), University of Amsterdam

In its Grand Chamber judgment, *Danileţ v. Romania*, delivered on 15 December 2025, the European Court of Human Rights took the 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". It also took the opportunity 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".

The factual background to the case concerned two posts by the applicant, a judge at Cluj County Court, on his Facebook page in January 2019. The applicant was a well-known figure, nationally, due to his previous judicial, political, advisory and civil society positions and his general engagement as a (legal) commentator in public debate. He had around 50 000 followers on Facebook at the relevant time and the posts generated media attention and a large number of comments.

In the first post, the applicant expressed his personal views on an institutional dispute between two public authorities (the Ministry of Defence and the President's Office) over a political matter that could have come before the courts at a later stage. He used ambiguous language, which the Romanian High Court interpreted as an allusion to the possibility of the army being deployed on the streets (against the will of the people) in order to preserve constitutional democracy. The applicant asserted that he only intended to ask readers to imagine such a scenario.

The second post included a hyperlink to a press article on a news website, which contained 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 post also included a comment by the applicant, praising the prosecutor for having had the courage to speak out on those matters. The comment was couched in very controversial language.

The applicant was subjected to disciplinary proceedings on account of the two posts: the Judicial Inspection Board initiated the case of its own motion and the

© European Audiovisual Observatory (Council of Europe) 2026

proceedings were subsequently taken up by the Legal Service Commission's Disciplinary Board for Judges. The Disciplinary Board found that the applicant had undermined "the dignity of his office" and impaired "the impartiality and image of the justice system". Even though he had expressed his views in an individual capacity, this "did not discharge him from disciplinary liability, given his duty of discretion as a judge". The applicant unsuccessfully appealed this finding, which included a financial sanction, to the High Court.

In its consideration of the case, the Grand Chamber of the European Court of Human Rights was very clear that the facts of the case provided it with a suitable opportunity to (re-)examine its existing case law and principles concerning the scope and limits of judges' and prosecutors' right to freedom of expression online. It framed the case accordingly.

It began by succinctly summarising its general principles on "the right to freedom of expression in general", "freedom of expression on the internet and social media", and "freedom of expression of judges". Against the backdrop of these three sets of principles, it identified key distinctive features of the present case that merited closer attention, including the fact that the first message concerned a personal opinion on a matter of public interest that was not directly related to the functioning of the justice system, and that the sanction did not arise from "public remarks made or positions adopted outside publicly accessible social-media fora".

Building on the three sets of principles, the Grand Chamber developed a number of criteria to be applied in respect of "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'". The aim of the criteria – among which there is no hierarchy or fixed order in which they should be applied – is to provide guidance to national courts when weighing up the competing rights and interests involved. The criteria are:

i. Content and form of remarks or other manifestations of freedom of expression of judges and prosecutors on social media;

ii. Context of disputed remarks and capacity in which they were made;

iii. Consequences of the disputed remarks;

iv. Severity of the sanction;

v. Whether procedural safeguards were afforded.

The Court then proceeded to apply these newly formulated criteria to each of the two messages separately. In respect of the first message, it underlined the

© European Audiovisual Observatory (Council of Europe) 2026

importance for judges or prosecutors to avoid using unclear language on social media, as such lack of clarity may prove problematic when multiple interpretations are possible, especially if those possible interpretations include (even implicitly or indirectly) incitement to hatred or violence. The Court found that, notwithstanding the rhetorical form used, there was no evidence to support the assertion that the applicant had sought to incite violence. The Court saw the remarks as a value judgment concerning a threat to constitutional democracy if public institutions were to fall under political control.

As for the second message, which addressed legislative reforms of the justice system, the Court took issue with the national judicial authorities' lack of explanation as to how the very controversial phrase used by the applicant "significantly overstepped the limits of propriety inherent in the office" and thus merited disciplinary sanctions.

The Court considered 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". The Court considered both messages to be contributions to debates on matters of public interest. It found that there was nothing in the reasons given by the national authorities for restricting the applicant's freedom of expression "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". In the absence of "relevant and sufficient" reasons, the interference did not meet a "pressing social need", which led the Court to find a violation of Article 10.

It should be noted that this was a majority decision by ten judges; seven judges penned a joint dissenting opinion in which they explained why, in their view, the applicant's freedom of expression had not been violated. The dissenting judges nevertheless explicitly endorsed the criteria developed by the Court for assessing the freedom of expression of judges and prosecutors on the internet and social media. Their dissent concerned how the criteria had been applied to the facts of the present case.

Danileţ v. Romania (GC), no. 16915/21, 15 December 2025 ECLI:CE:ECHR:2025:1215JUD001691521

https://hudoc.echr.coe.int/eng?i=001-231394

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026