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

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ECHR 231 (2023)
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# Disproportionate interference with the freedom of expression of a judge penalised for disclosing prematurely the reasons for her dissenting opinion

In today's **Chamber** judgment[1] in the case of Manole v. the Republic of Moldova (application no. 26360/19) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned the applicant's dismissal from her duties as judge for having informed the press of the reasons for her dissenting opinion – the existence of which was already known – prior to publication of the full text of the decision rendered by the Court of Appeal in a case that she had heard.

The Court specified that judges' duty of discretion required them not to disclose the reasons for a decision before those reasons were available to the public. However, it reiterated that the procedural safeguards and the nature and severity of the penalty imposed were further criteria to be examined when assessing the proportionality of an interference with the exercise of freedom of expression as guaranteed by Article 10 of the Convention.

With regard to the procedural safeguards, the Court expressed reservations concerning the choice left to the National Judicial and Legal Service Commission (CSM) as to the type of administrative procedure to use in the applicant's case. It also noted that the Supreme Court had not addressed the applicant's ground of appeal concerning failure to comply with the provisions of Law no. 947/1996 on the CSM. That legislation referred, in the context of possible administrative sanctions for a breach of the prohibition on disclosing information, to the disciplinary procedure which incorporated procedural safeguards.

As to the sanction imposed, the Court observed that the applicant's dismissal had been the only sanction that could be applied at the material time. It was a very heavy penalty which had put a permanent end to her career after 18 years of successful service. The Court also noted that at the time the Supreme Court examined the applicant's appeal, Law no. 544/1995 (on the status of judges), on the basis of which the sanction had been imposed on the applicant, had recently been amended so that breaches of the prohibition on the disclosure of information by judges were no longer even punishable on that legal basis. At the same time, Law no. 178/2014 (on judges' disciplinary liability), which the applicant considered should apply in her case, provided for a range of sanctions for infringements of that prohibition. In the Court's view, it was clear from those legislative changes that the legislature had even then considered that breaches of the prohibition on the disclosure of information by judges were to be examined in the light of the full range of sanctions available in the sphere of judges' disciplinary liability. Consequently, it considered that the domestic authorities could not be said to have applied the relevant standards derived from the Court's case-law concerning Article 10 of the Convention and that, in any event, the sanction imposed on the applicant did not appear necessary in a democratic society.

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.

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## Principal facts

The applicant, Domnica Manole, is a Moldovan and Romanian national who was born in 1961. At the relevant time she was a judge at the Chişinău Court of Appeal.

In June 2017 the Chişinău Court of Appeal, sitting as a panel of three judges – one of whom was the applicant – dismissed an application by the newspaper *Jurnal de Chişinău* to reset the time-limit for appeal in a defamation case involving the newspaper and the Speaker of the Moldovan Parliament. In that case, the newspaper had been ordered to broadcast a retraction on the Jurnal TV television channel which belonged to the same media trust. The applicant had appended a dissenting opinion to the judgment. The operative part of the judgment, indicating the existence of the applicant's opinion, had been read out at a public hearing and information in that respect had been published on the Ministry of Justice website, where the case was presented as "pending".

Before the full text of the Court of Appeal's decision was published, a journalist from the Jurnal TV channel contacted the applicant, who sent him a text message via mobile phone briefly explaining the reasons for her opinion. That same day Jurnal TV published an article reporting the conversation with the applicant and the reasoning of her dissenting opinion which she had shared.

A judicial inspector subsequently sent the CSM a "memorandum on information disseminated by the media" concerning the case and the applicant's disclosure of the content of her dissenting opinion. Finding that the applicant's conduct was in breach of the Law on the status of judges, the Commission asked the President of the Republic of Moldova to relieve the applicant of her duties as judge. The President of the Republic acceded to that request in July 2017. The applicant lodged an application with the Supreme Court, which dismissed it as unfounded in November 2018.

## Complaints, procedure and composition of the Court

Relying, in particular, on Article 10 (freedom of expression), the applicant submitted that her dismissal amounted to an illegitimate and disproportionate interference with her right to impart information on a matter of public interest.

The application was lodged with the European Court of Human Rights on 14 May 2019.

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

Arnfinn **Bårdsen** (Norway), *President*,
Jovan **Ilievski** (North Macedonia),
Egidijus **Kūris** (Lithuania),
Pauliine **Koskelo** (Finland),
Lorraine **Schembri Orland** (Malta),
Frédéric **Krenc** (Belgium),
Davor **Derenčinović** (Croatia),

and also Hasan **Bakırcı**, *Section Registrar.*

## Decision of the Court

### Article 10

The Court noted that, as upheld by the Supreme Court in its decision of 19 November 2018, the applicant's dismissal had been based solely on the fact that she had disclosed to the Journal TV television channel a summary of the reasons for her dissenting opinion. It held that there had been an interference with the exercise by the applicant of a right apparently protected by Article 10 of the Convention.

It was undisputed that the interference had had a legal basis (namely sections 8 and 25 of Law no. 544/1995) and had been accessible. As to its foreseeability, the applicant submitted that Law no. 178/2014 – which provided for safeguards in disciplinary matters – should have been applied to her case as to any breaches of the rules and prohibitions committed by judges.

At the material time, both Law no. 544/1995 (applied in the present case) and Law no. 178/2014 (on which the applicant relied) provided that dismissal was the only sanction applicable to judges who had breached the prohibition on disclosing information.

The Court noted that the CSM enjoyed wide discretion in choosing the administrative procedure to be used in the case of a judge suspected of infringing those provisions.

In its examination of proportionality it would have regard to the reservations it had expressed concerning the scope of the CSM's power to choose which procedure, and by implication which safeguards, to apply in imposing sanctions for a given conduct on the part of a judge. Accordingly, it was prepared to consider that the interference complained of, which was provided for by Law no. 544/1995, was prescribed by law and had pursued at least one of the aims recognised as legitimate by the Convention, namely maintaining the authority and impartiality of the judiciary.

As to whether the interference had been necessary in a democratic society, the Court observed that at the material time the applicant, by virtue of her position as a judge, was in principle bound by a duty of discretion. It also noted that the existence of her dissenting opinion had been known since the delivery at a public hearing on 8 June 2017 of the Chişinău Court of Appeal decision rejecting the application by the *Jurnal de Chişinău* to reset the time-limit for appealing in a media defamation case involving the newspaper and the Speaker of the Moldovan Parliament. It had therefore been possible, as of the date of delivery, to infer the applicant's position concerning the belated nature of the appeal in question. Nevertheless, the Court noted that the applicant had chosen to go further and to answer the journalist's specific question by briefly summarising the reasons for her dissenting opinion.

Regarding the disclosure of information the Court reiterated that, in principle, the judicial authorities were required to exercise maximum discretion with regard to the cases with which they dealt, in order to preserve their image as impartial judges. That discretion should dissuade them from making use of the press, even when provoked.

While the Court considered that the present case concerned a matter of public interest in which the interest of the media in disseminating the information diminished significantly with the passage of time, and that the applicant had limited the content of the information shared, it nevertheless considered relevant the reasons given by the Supreme Court for imposing a sanction for such conduct. In that connection, it held that judges' duty of discretion required them not to disclose the reasons for a decision before those reasons were available to the public.

However, the Court reiterated that the procedural safeguards and the nature and severity of the penalty imposed were further criteria to be examined when assessing the proportionality of an interference with the exercise of freedom of expression as guaranteed by Article 10.

With regard to the procedural safeguards the Court observed that, unlike Law no. 544/1995, which had been applied in the present case, the disciplinary procedure under Law no. 178/2014 provided for safeguards designed to keep in check the CSM's wide-ranging powers in this area. It also noted that in the present case the Supreme Court had examined the applicant's argument from the sole standpoint of the CSM's powers under Law no. 544/1995, without addressing the issue of that body's failure to comply with the procedure laid down by Law no. 947/1996, which referred to the disciplinary procedure in the event of a breach by a judge of the prohibition on disclosing information.

As to the sanction imposed, the Court observed that the applicant's dismissal had been the only sanction that could be applied at the material time. It was a very heavy penalty which had put a permanent end to her career after 18 years of successful service. Moreover, the sanction had not followed other measures previously taken in respect of the applicant. The relevant international instruments and opinions, and the law and practice of the Council of Europe member States, provided that the proportionality test must also assess the severity of the sanction chosen from a range of available sanctions in relation to the content and context of the impugned remarks. In the present case no such assessment had been carried out and the Government had not argued that any exceptional circumstances justified imposing a single sanction of such gravity.

Lastly, at the time the Supreme Court examined the applicant's appeal, Law no. 544/1995, which had provided the basis for the sanction imposed on the applicant, had recently been amended so that breaches of the prohibition on the disclosure of information by judges were no longer even punishable on that legal basis. At the same time, Law no. 178/2014 – which the applicant considered should apply in her case – provided for a range of sanctions for infringements of that prohibition. While it was not the Court's task to assess whether the Supreme Court could have drawn any inferences from the recent changes during the impugned proceedings, which concerned earlier events, it was nevertheless clear from those legislative changes that the legislature had even then considered that breaches of the prohibition on the disclosure of information by judges were to be examined in the light of the full range of sanctions available in the sphere of judges' disciplinary liability.

Consequently, the Court took the view that the domestic authorities could not be said to have applied the relevant standards derived from the Court's case-law concerning Article 10 of the Convention and that, in any event, the sanction imposed on the applicant did not appear necessary in a democratic society. **There had therefore been a violation of Article 10 of the Convention**.

## Just satisfaction (Article 41)

The Court held that the Republic of Moldova was to pay the applicant 4,500 euros (EUR) in respect of non-pecuniary damage and EUR 5,000 in respect of costs and expenses.

*The judgment is available only in French.*

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**Press contacts**
echrpress@echr.coe.int | tel.: +33 3 90 21 42 08

**We would encourage journalists to send their enquiries via email.**

**Inci Ertekin (tel.: + 33 3 90 21 55 30)**
Tracey Turner-Tretz (tel.: + 33 3 88 41 35 30)
Denis Lambert (tel.: + 33 3 90 21 41 09)
Neil Connolly (tel.: + 33 3 90 21 48 05)
Jane Swift (tel.: + 33 3 88 41 29 04)