

**Romania, Decision nr. 10P/13.09.2023 of the Section for prosecutors in disciplinary matters in Case file nr. 6/P/2022, definitive by Court Decision nr. 74/ 18.03.2024 of ICCJ (Romanian High Court of Cassation and Justice) in case file nr. 2817/1/2023**

Member State

 Romania

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Topic

impartiality, freedom of expression

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Sector

Judicial Self-Government (Judicial Council, Court Presidents; Disciplinary proceedings; Judicial Ethics.

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Deciding Court Original Language

Inalta Curte de Casatie si Justitie – Romania

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Deciding Court English translation

Romanian High Court of Casation and Justice

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Registration N

2817/1/2023

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Date Decision

18.03.2024

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ECLI (if available)

N/A

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National Follow Up Of (when relevant)

NOT RELEVANT

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EU legal sources and CJEU jurisprudence

The Treaty on the Functioning of the European Union

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## ECtHR Jurisprudence

### The European Convention of Human Rights

Case Eminagaoglu vs. Turkey, ECHR, Application no. 76521/12, Final decision of 05/07/2021.

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#### Subject Matter

Deputy chief prosecutor accused of giving public statement and affecting public trust in rule-of-law and justice undergoes disciplinary investigation but the Court considered that the constitutive elements regarding the disciplinary sanction were not met in this case.

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#### Legal issue(s)

The main legal issue in this case is whether public, critical statements about the profession of prosecutor may affect judicial ethics and may lead to disciplinary proceedings. Also, does a prosecutor have a role in maintaining public trust in justice and the rule of law.

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#### Request for expedited/PPU procedures

NO

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#### Interim Relief

NO

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#### National Law Sources

Law no. 303/2004 regarding the status of judges and prosecutors, republished  
Romanian Constitution

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#### Facts of the case

As a first deputy prosecutor within a Military Prosecutor's Office and co-president of Association I..., X gave an interview of approximately one hour on 20.07.2022, in which he expressed his opinion on the manner of conducting the election of future members of the Superior Council of the Magistracy, as well as on appeals made by other magistrates regarding the election procedure in the second round. The interview was picked up by several media sources. On 27.07.2022, a complaint was registered against X, in the sense that he would have harmed the prestige of justice and would have affected the trust of public opinion in justice. By the Resolution of 19.10.2022, the disciplinary investigation of X was ordered, but the Section for prosecutors in disciplinary matters held that the reported disciplinary offense was not confirmed and decided to reject the action filed by the Disciplinary Inspection against prosecutor X, a solution also confirmed by the High Court of Cassation and Justice.

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#### Reasoning (role of the Charter or other EU, ECHR related legal basis)

Through the action, the Judicial Inspection requested that X be sanctioned for the disciplinary offense regulated by Art. 99 letter a) of Law no. 303/2004 regarding the status of judges and prosecutors, republished, because it would have affected the prestige of the prosecutor profession

and public's trust in justice, through the public interview broadcasted on 20.07.2022.

It was considered that, through the critical statements made during the interview, X would have discredited the activity of the entire judicial system in Romania.

During the interview, X criticized the manner in which the elections for the members of the Superior Council of Magistracy were conducted, stating, among other things, that he was ashamed of the way these elections were conducted and that he apologized to the citizens of Romania. In his defense, X invoked the absolute nullity of the resolution to exercise disciplinary action as a result of the failure to comply with the summons procedure within the disciplinary investigation, an exception that was rejected at the hearing on 03.05.2023. X also filed a request for a preliminary ruling, pursuant to Article 267 TFEU, a request that was rejected for failure to meet the formulation requirements, at the hearing on 22.06.2023.

In the final pleading, X requested the dismissal of the disciplinary action as unfounded. The section for prosecutors in disciplinary matters retained, as a legal argument, the relevance of the provisions of Article 99 letter a of Law no. 303/2004 on the status of judges and prosecutors, which regulates as a disciplinary offense "manifestations that affect the honor or professional probity or the prestige of justice, committed in the exercise or outside the exercise of official duties", as well as the provisions of Article 30 paragraph 1 of the Constitution of Romania, which protects freedom of expression, being regulated as inviolable. The section created a broad definition of the notions of "professional honor", "professional probity", "dignity of office" and "prestige of justice", in relation to the behavior of the magistrate and the possibility that it affects the credibility of justice among public opinion.

The Section also considered the obligation of reserve that magistrates have with regard to freedom of expression is regarded as a particularization of freedom of expression. The court analyzed this obligation of reserve in the light of the Declaration on Judicial Ethics from London in 2010, which states that the obligation of reserve cannot lead to inactivity on the part of the magistrate. The Section found that no conclusive evidence was submitted showing that the opinion of prosecutor X would have led to the creation of a negative image of justice, only press articles being submitted.

The section considered that the activity of a magistrate, especially one who holds a managerial position, must be assessed in light of the principles set out in the ECHR case law on the freedom of expression of a magistrate. The case of *Eminagaoglu v. Turkey* was considered, in which the ECHR analyses the possible violation of Article 10 of the ECHR on freedom of expression. In essence, the ECHR states that a magistrate is a guarantor of individual freedoms and the rule of law who must contribute to the proper functioning of the justice system and to the growth of public confidence in this system.

In relation to the factual situation, the Section considered that Prosecutor X, through the interview granted, was involved in debates of general interest regarding the functioning of the justice system, this type of debate being the one protected by the ECHR, which considers them as a professional obligation for magistrates in defending the rule of law. This, all the more so since he also held a leadership position in a professional association. In conclusion, the Section considered that the constitutive elements regarding the disciplinary sanction of Prosecutor X were not met. The same considerations were also taken into account by the High Court of Cassation and Justice, which maintained the solution ordered by the Section for prosecutors in disciplinary matters.

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[Relation of the case to the EU Charter](#)

NOT RELEVANT

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[Relation between the EU Charter and ECHR](#)

NOT RELEVANT

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Use of Judicial Interaction technique(s)

N/A

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Horizontal Judicial Interaction patterns (Internal – with other national courts, and external – with foreign courts)

NO

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Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

NO

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Strategic use of judicial interaction technique (purpose aimed by the national court)

The court used judicial interaction techniques, namely quoted ECHR in order to solve a seemingly conflict of norms - the ones regulating the freedom of speech and the ones protecting the profession of prosecutor.

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Impact on Legislation / Policy

NO

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Notes on the national implementation of the preliminary ruling by the referring court

NOT RELEVANT

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Did the national court quote case law of the CJEU/ECtHR (in particular cases not already referred to by the CJEU in its decision) or the Explanations?

The National Court quoted both the case of ECtHR and the explanation.

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Did the national court quote soft law instruments, such as GRECO Reports, Venice Commission, CEPEJ Reports, or CCEJ Reports?

NO

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Did the national court take into account national case law on fundamental rights?

The decision of the Section for prosecutors in disciplinary matters in Case file nr. 6/P/2022, was contested at the higher court and remained definitive by Court Decision nr. 74/ 18.03.2024 of ICCJ (Romanian Court of Casation and Justice) in case file nr. 2817/1/2023. The superior court based its decision on the same legal considerations as the Section for prosecutors in disciplinary matters.

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If the court that issued the preliminary reference is not a last instance court, and the “follow up” was appealed before a higher court, include the information

NO

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Was there a consensus among national courts on how to implement the CJEU's preliminary ruling;

and were there divergences between the judiciary and other state powers regarding the implementation of the preliminary ruling?

NO

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Impact on national case law from the same Member State or other Member States

NOT RELEVANT

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Connected national caselaw / templates

NOT RELEVANT

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(Link to) full text

N/A

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Author

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History of the case: (please note the chronological order of the summarised/referred national judgments.)

1. Superior Council of Magistrates, Section for prosecutors in disciplinary matters, Decision no. 10P of 13.09.2023

2. Romanian Court of Casation and Justice, decision no. 74 of 18.03.2024.

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