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Freedom of Expression of Judges on Social Media: A Case Note on the Order Ds-ss 1/2021 of the Disciplinary Court of the Judicial Council of the Republic of Slovenia

Abstract

A local court judge labelled the Slovenian Prime Minister a "great dictator" on her closed Facebook profile. One of her virtual friends captured a print-screen, propelling the posts into a national scandal. The Disciplinary Court acquitted the judge. The Ethical commission did not pass judgment on her, issuing only non-binding guidelines for public expression of judges on social networks. Nevertheless, the judge suffered significant sanctions. The President of the local court removed her from the leadership position, and she received serious threats and insults by private actors. The case note discusses the broader questions emerging from the case. In relation to which topics can judges express opinions of political nature? Can they expect privacy when they engage in closed social media communication? Which standards should the national authorities employ in assessing these issues? How judges perceive different sanctions and what measures can mitigate the chilling effect such sanctions can create? By analysing both formal and informal responses to the controversial Facebook posts and drawing upon the personal recollections of the affected judge, this case note aims to provide more clarity on the issues relevant way beyond Slovenia.

Key words

freedom of expression of judges, social media, privacy, chilling effect, political expression.

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1. Introduction

Opinions of proverbially reserved Slovenian judges have reverberated through the headlines surprisingly often in the last few years. The case of a local court judge who labelled the Prime Minister a "great dictator" holds a distinctive place.[1] The reason is counter-intuitively not the crude language employed by the judge, or the extensive media coverage it garnered, but the richness and complexity of legal questions the case illuminates. Some were addressed in the subsequent disciplinary procedure, whereas many others remain poorly examined. The case does more than merely reflect upon the Slovenian judiciary, especially regarding the self-perception of its role in the democratic society and its proneness to apply the European standards. It also contributes valuable insights for the underdeveloped case law of the European Court of Human Rights (the ECtHR), the Court of Justice of the EU (the CJEU) and national courts in an area of an increased interest: freedom of expression of judges on social media.

The analysis of the decision of the Disciplinary court of the Judicial Council[2] is only one of the parts of this case note. The inquiry is broader and covers other formal and informal responses from the judicial leadership and other relevant actors. After providing the factual circumstances of the case, the case note analyses the four most relevant issues: the reasonable expectations of privacy on social media, the correct characterisation of the type of "political" speech of judges, the required standards of review by national authorities, and a comparison between different measures taken against judges from the perspective of the chilling effect they entail. The analysis seeks to determine to what extent the Slovenian authorities complied with the European standards and what insights the case brings for the developing European standards of freedom of expression of judges. The case note concludes by underlining the importance of solidarity and mutual support among judges.

2. Facts of the case and the outcome of formal proceedings

The origins of the case date back to November 2020, when the second wave of COVID-19 pandemic struck Slovenia. The government took laconic measures to contain the spread of the coronavirus. Universities and schools were closed, public transport was limited, a curfew prevented people from leaving their homes from 9 p.m. to 6 a.m. Residents were also

[1] Disciplinary Court of the Judicial Council of the Republic of Slovenia, Order Ds-ss 1/2021, 13 April 2021. Available at: www.sodni-svet.si/doc/Disc.%20sklep_Ds-ss1.2021.pdf (accessed 9 June 2023). For a shorter analysis of this case, see: Fajdiga, 2022a. For the purposes of this case note, the short analysis was extended, deepened and further elaborated. I have also had the opportunity to present this case in a number of national and cross-border workshops, organised under the TRIIAL project.

[2] Disciplinary court, Order Ds-ss 1/2021, 13 April 2021.

not allowed to cross the borders of their municipalities without a valid reason.

Against this backdrop, a local court judge published two posts on her private Facebook profile. She set her Facebook privacy settings in such way that only about 50 to 60 virtual friends could view her posts, but further sharing was disabled. In her initial post, she referred to the "closure" of borders between municipalities. She wrote that

> "this was an order of Janez Janša [the than Slovene prime minister], who, at the government meeting, ordered police to go to the roads and municipality borders to collect fines"

and that

> "it is not about your safety and health, but it is about filling the empty state budget bag".

She added:

> "I hope that the era of Janšism will soon be a bitter memory."

In the second post, written as a comment under a post of a visible opponent of COVID-related measures, she opined:

> "I prefer this kind of rhetoric to Beović, Krek, Bregant, Kacin, and the great dictator Janša […] Virus gave a fillip to frustrated specimen with criminal past and a will to oppress everything on their way. And of course, a great need for revenge."

As previously noted, the judge shared these comments privately only with her small Facebook community. One of her virtual "friends" captured a screenshot of the posts, forwarding them to Mr Gorenak, a prominent member of Mr Janša's political party. Upon making them public, a torrent of media attention followed, escalating the situation into a nationwide scandal. The President of the Supreme Court publicly stated that

> "if these are indeed the statements of a judge, they are utterly inappropriate and indecent for a judge".[3]

The President of the local court, where the judge in question worked, initiated the procedure before the Commission for Ethics and Integrity of the Judicial Council of Slovenia (the Ethical commission). A few days after, the Judicial Council heard a complaint from Mr Gorenak. The Council declined to provide any views on the concrete case. Nevertheless, it held that

> "the users cannot reasonably expect full privacy on social media, which is why judges have to show restraint and dignity while using social networks."

In the explanation of his vote, the President of the Judicial Council argued that in cases that could entail a serious disciplinary offence, the bodies competent to file a formal proposal for the initiation of the disciplinary procedure should not turn to the Ethical commission, since the procedure before the Ethical commission is not a "backup disciplinary procedure". According to the President, in such cases, disciplinary procedures should be initiated to ensure credibility of the judiciary and adequate procedural guarantees for

[3] Demokracija, 2020.

the accused judges.[4] In the days that followed, the Minister of Justice sent a letter to the President of the Supreme Court, the President of Higher Court of Ljubljana and the President of the local court of Ljubljana. In this letter, the Minister of justice first recognised the authority of all three presidents and herself to file a formal proposal for the initiation of disciplinary proceedings.[5] She then hinted that it would be appropriate to open disciplinary action against the aforementioned judge, contending that such matters should be dealt with within the judiciary. By implication, she suggested that one of the presidents of the courts should file the formal proposal for disciplinary procedure. Her letter, perhaps inspired by the opinion of the president of the Judicial Council, seems to have borne fruit: the President of the local court filed the proposal for the initiation of the disciplinary procedure. Moreover, she changed the annual work schedule depriving the judge of the position of the head of the division for commonhold. The procedure before the Ethical commission ended in an uncommon way.[6] The Ethical commission did not find a violation of judicial ethics. Instead, it issued Guidelines for public expression of judges on social networks.[7] This document, while explicitly referencing the ongoing case, opted to detach from the concrete case offering five general guidelines for the use of social media by judges. Before the Disciplinary court, the judge was acquitted. The Court deemed her expressions intended to remain private, and it judged the political expression at hand to be justified under the circumstances of the case.

3. Analysis of the formal proceedings and informal sanctions: Compliance with European standards and the European added value of the case

3.1. A reasonable expectation of privacy?

One can only agree with the primary argument put forth by the Disciplinary court. The fact that the judge never intended her online speech to be public, coupled with her precautionary measures to prevent any further dissemination of her posts, is indeed a highly compelling argument,

[4] Judicial Council of the Republic of Slovenia, *Record of the 54th session of 10 December 2020*, pp. 7–8. Available at: http://www.sodni-svet.si/doc/Zapisnik_54_seja_2020.pdf (accessed 9 June 2023).

[5] According to Article 45 (2) of the Judicial Council Act, Official Gazette of the Republic of Slovenia, no. 23/17 and 178/21 (the JCA), the proposal can be filed by the Judicial Council, the President of the court where the judge works, the President of a hierarchically higher court or by the Minister of Justice.

[6] Generally, the Ethical commission either finds or does not find a violation of the Code of Judicial Ethics. It also has the competence to issue guidelines and recommendations (Article 49 of the JCA).

[7] Ethical commission, *Guidelines for Public Expression of Judges on Social Networks*, 2 March 2021. Available at: www.sodni-svet.si/doc/kei/Smernice_javno_izrazanje_sodnikov_34_seja_KEI.pdf (accessed 9 June 2023).

which could itself lead the court to find that no disciplinary liability arises. Were it not for the Facebook "friend" who abused her trust, and the right-wing politician who subsequently made her post public, the upheaval would never have happened.

However, such holding should not be misconstrued as endorsing unrestricted freedom for judges to voice their opinions within closed social media groups. To avoid such interpretation, the court added an important caveat, akin to the one articulated by the Judicial Council. It acknowledged that any activity on social media can become public and that individuals cannot expect privacy on social media platforms unless they are communicating with only a few trusted persons.[8] This is perhaps the most fascinating aspect of the case, since it underscores the blurring boundaries between public and private communication in the realm of social media. The court seems to have struck a proper balance between the freedom of expression and privacy of the judge on the one hand and the legitimate aim of ensuring public trust in the judiciary on the other,[9] at least in the circumstances of the present case. Imposing a disciplinary sanction, except perhaps a reprimand (the most lenient sanction), would tilt the balancing scales in the wrong direction and create an extensive chilling effect on freedom of expression of judges. It is noteworthy that the Disciplinary court had to adjudicate a situation hitherto unencountered in European courts to the best of my knowledge.[10] It found a balanced solution that could inspire national and European adjudication in the future.

3.2. "Political" speech of judges

Let us now turn to the second argument that led the Disciplinary court to acquit the judge. According to Article 133 of the Constitution, judicial function is incompatible with functions in the bodies of political parties. *A contrario*, judges are permitted to be members of political parties provided they refrain from assuming any functions within bodies of political parties. They can also stand for election to the highest political positions and hold the highest political offices. However, during the time of holding such political function, their judicial mandate is suspended.[11] The court relied on these provisions to come to the following conclusion: if holding such offices and membership of a political party is not proscribed, political expression of a judge in the context of a heated debate on the measures for fighting the pandemic should also not be prohibited.[12]

8 Disciplinary court, Order Ds-ss 1/2021, 13 April 2021, para. 16.

9 Under Article 10 of the Convention, freedom of expression can be limited to maintain the authority and impartiality of the judiciary. The ECtHR case law shows that authority should be understood as public trust in the judiciary (ECtHR, *Morice v. France* [GC], Application no. 29369/10, para. 129).

10 For the approach adopted by United States courts in determining whether a person has a reasonable expectation of privacy in private social media communication, see: Mund, 2017.

11 Article 40 of the JSA.

12 Disciplinary court, Order Ds-ss 1/2021, 13 April 2021, paras. 15 and 43.

This is a controversial holding. It has far-reaching consequences, because it seems to justify various kinds of political activities of judges. The root of this oversimplified and premature conclusion is arguably that the court failed to distinguish between purely political expression and expression about issues relating to the justice system that can have political implications. The Disciplinary court seems to accord both types of expression the same degree of protection.[13]

So far, the ECtHR has had some opportunity to clarify this distinction. In *Wille v Liechtenstein*, the ECtHR ruled that the fact alone that the statement had had political implications could not *per se* prevent the judge from making such statement.[14] This was reiterated in later judgments.[15] Consequently, judges are afforded a certain latitude to engage in political debates, but it does not mean that judges may freely express opinions of political nature. A closer reading of the ECtHR case law seems to suggest that public expression of judges enjoys high protection when judges discuss judicial reforms or when they discuss the issues related to (the functioning of) the judiciary.[16] The reason behind this stance likely resides in the notion that judges, in such instances, are a particularly valuable source of information for the society as they possess a unique understanding of the legal system and have first-hand experience within the judiciary. Consequently, they are permitted to express their opinion, when the issue falls within this category, where they can provide unique insights, even if such expression has political implications.[17]

In *Eminağaoğlu* v *Turkey*, the president of one of the Turkish judicial associations expressed opinions of allegedly political nature. As a result, he was punished with a disciplinary transferal.[18] In this case,

[13] *Ibid.*, para. 15, where the court held that "political expression and public interest expression of judges merits special protection under Article 10."

[14] ECtHR, *Wille v. Liechtenstein* [GC], Application no. 28396/95, 28 October 1999, para. 67.

[15] ECtHR, *Baka v. Hungary* [GC], Application no. 20261/12, 23 June 2016, para. 167; ECtHR, *Kövesi v. Romania,* Application no. 3594/19, 5 August 2020, para. 201; ECtHR, *Eminağaoğlu v. Turkey*, Application no. 76521/12, 9 March 2021, paras. 123 and 134; ECtHR, *Kudeshkina v. Russia*, Application no. 29492/05, 26 February 2009, para. 95; ECtHR, *Żurek v. Poland*, Application no. 39650/18, 16 June 2022, para. 219; ECtHR, *Miroslava Todorova v. Bulgaria*, Application no. 40072/13, 19 October 2021, para. 172.

[16] ECtHR, *Baka v. Hungary* [GC], Application no. 20261/12, 23 June 2016, para. 171; ECtHR, *Kövesi v. Romania,* Application no. 3594/19, 5 August 2020, para. 207; ECtHR, *Żurek v. Poland*, Application no. 39650/18, 16 June 2022, para. 224.

[17] Of course, the manner in which the opinion is expressed and the medium are both of relevance. See, e.g., ECtHR, *Baka v. Hungary* [GC], Application no. 20261/12, 23 June 2016, para. 164; ECtHR, *Kövesi v. Romania*, Application no. 3594/19, 5 August 2020, para. 201; ECtHR, *Kudeshkina v. Russia*, Application no. 29492/05, 26 February 2009, para. 93; ECtHR, *Di Giovanni v. Italy*, Application no. 51160/06, 9 July 2013, para. 80.

[18] After three years, the transferal was annuled and a reprimand was imposed instead

ECtHR neatly differentiated statements concerning the justice system from other statements "not directly relevant to questions concerning the justice system."[19] The case thus offers valuable guidance for determining which opinions fall within the more and which into the less protected category. The ECtHR seems to have understood the expression concerning justice system in a broad sense, encompassing for example the judge's criticism of politicians' statements on judicial decisions or the judiciary in general, and opinions concerning the constitutional reform.[20] As to the statements falling into the less protected category, the ECtHR referred to the judge's criticism of the attitude of the President of Turkey towards international institutions and his position on the wearing of the Islamic headscarf by the wife of the President of Turkey.[21] It ruled that

> "although [judges'] participation in public debate on major societal issues cannot be ruled out, members of the judiciary should at least refrain from making political statements of such nature as to compromise their independence and undermine their image of impartiality."

The ECtHR then found significant, that none of the political statements contained "gratuitous attacks on politicians or other judicial officers."[22] In the end, the main reasons for finding a violation of Article 10 were that the national authorities had failed to distinguish between those two categories and did not provide sufficient procedural guarantees to the applicant, especially given his prominent position of the head of judicial association. The ECtHR acknowledged that the Government rightly pointed to judicial discretion and restraint in relation to statements that fell into the category, which merits less protection.[23] It thus seems as though the ECtHR hinted that the applicant's disciplinary sanction would be upheld in Strasbourg, if the Turkish authorities imposed a milder penalty, such as a reprimand, and if they limited their response only to the political statements unrelated to the justice system.

Applying the findings from the *Eminağaoğlu* ruling to the current case, it is highly likely that the Facebook posts in question would fall within the category that receives less protection. The opinion expressed therein had a very tenuous connection with the (functioning of the) justice system. It was partly related to the defence of the rule of law,[24] since the Government indeed used the pandemic to justify its policies that sometimes had

(ECtHR, *Eminağaoğlu v. Turkey*, Application no. 76521/12, 9 March 2021, paras. 19–24).

19 *Ibid.*, paras. 147 and 148.

20 *Ibid.*, para. 147.

21 *Ibid.*, para. 145.

22 *Ibid.*, para. 148.

23 *Ibid.*, para. 151–152.

24 In the opinion of the Venice commission (2015, p. 20), "[a] democratic crisis or a breakdown of constitutional order are naturally to be considered as important elements of the concrete context of a case, essential in determining the scope of judges' fundamental freedoms."

nothing to do with the virus.[25] When the rule of law is under threat, the ECtHR has indeed called the judges to speak out, but it seems to have limited their voice to "matters concerning the functioning of the justice system".[26] Moreover, the sharp tone and the offensive expressions combined with direct reference to politicians and members of the governmental COVID-19 expert group, argue in favour of a lower protection. Nevertheless, in my opinion, a disciplinary sanction, except perhaps a reprimand, would be unwarranted, since the statements were written in the closed Facebook group and the judge never intended them to become public.

3.3. Review by the national authorities as a central element before the ECtHR

As demonstrated by the *Eminağaoğlu* case, the ECtHR pays special attention to the standards and procedural safeguards before the national authorities. In this respect, the decision of the President of the local court to remove the judge from her leadership position by changing the annual work schedule pursuant to Article 71 of the Courts Act[27] is deeply disturbing. It was clearly a consequence of freedom of expression of the judge or perhaps even worse, the pressure from the Minister of Justice in relation to the judges' Facebook posts. The President had already published the annual work schedule, but subsequently, following the Minister of Justice's letter, which insinuated the need to initiate a disciplinary procedure, the President decided to amend it to deprive the judge of her leadership position. The decision was rendered without the benefit of formal procedure, in which the judge's arguments could have been heard. The judge was stripped of her leadership position solely on the basis of a discretionary decision of the President of the Court.

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[25] Bardutzky, Bugarič and Zagorc, 2021.

[26] ECtHR, *Żurek v. Poland*, Application no. 39650/18, 16 June 2022, para. 222.

[27] Courts Act, Official Gazette of the RS, Nos. 19/94 to 18/23 (the CA). According to the said provision, the President of the Court has the power to assign judges to different divisions of the court. The provision is controversial, since it enables the court presidents to involuntary transfer judges to other courts merely by changing the annual work schedule. In March 2021, the Judicial Council triggered the constitutional review of Article 71 of the CA before the Constitutional Court after a judge who was transferred to a different court under this provision, requested the Judicial Council to safeguard her individual independence. The Judicial Council questions the compliance of the CA with Article 125 of the Constitution (judicial independence). See: Judicial Council of the Republic of Slovenia, *Record of the 56th session of 21 January 2021*, p. 10, <www.sodni-svet.si/doc/Zapisnik_56_seja_2021.pdf> (accessed 9 June 2023); Judicial Council of the Republic of Slovenia, *Request for the Review of Constitutionality, 29 March 2021*, <http://www.sodni-svet.si/doc/Zahteva%20za%20oceno%20ustavnosti%2071.%20%C4%8Dlena%20ZS.pdf> (accessed 9 June 2023); Judicial Council of the Republic of Slovenia, *Record of the 59th session of 4 March 2021*, p. 6, <www.sodni-svet.si/doc/Zapisnik_54_seja_2020.pdf> (accessed 9 June 2023).

Unfortunately, it seems that the Slovenian authorities have not taken the lesson from the *Cimperšek v Slovenia*, where the ECtHR found a violation of Article 10 precisely because the Ministry of Justice and the Slovenian courts had failed to conduct a proper review of the alleged breach of freedom of expression.[28] However, Slovenia would likely not face a condemnation in potential proceedings before the ECtHR. The reason is the failure of the judge to exhaust domestic remedies. The judge could have invoked Article 157 (2) of the Constitution, which affords judicial protection in the so-called quasi-administrative dispute. These are reserved for cases, such as the one at hand, in which constitutional rights are at stake and the legislation ensures no judicial remedy. Had the judge pursued this avenue, a national court could have heard her arguments and safeguarded her fundamental right. This of course does not diminish the inadequacy of the action taken by the President of the local court. A more human rights-centred approach should guide future cases.

3.4. Comparing the different sources of the chilling effect

After the end of all formal proceedings, the judge at hand described how she personally experienced her saga.[29] She provided a valuable account of the impact of different formal and informal measures taken against her. This first-hand account offers invaluable insight for both European and national courts. The ECtHR currently struggles to grasp properly the concept of the chilling effect. Simultaneously, it imposes on the national courts a requirement to take into account the chilling effect when they are reviewing national measures interfering with freedom of expression.[30]

The chilling effect may be defined as a state of fear induced by sanctions and other adverse consequences, which discourages people from exercising their rights or fulfilling their professional obligations. The ECtHR has found the chilling effect to arise from different sources: mere existence of the legislation,[31] which is not applied in

[28] ECtHR, *Cimperšek v. Slovenia*, Application no. 58512/16, 30 June 2020, paras. 66–69. A similar reproach could be raised in relation to the case of judge Radonjić (Vice President of the Supreme court of the Republic of Slovenia, SuZ 53/2020, 11 August 2020; Supreme court of Republic of Slovenia, judgment U 3/2021-33, 7 June 2021). Lack of adequate consideration for freedom of expression of the judge is particularly obvious in the decision of the vice-president of the Supreme Court. For the analysis of this case, see Fajdiga, 2022b.

[29] Klakočar-Zupančič, 2021; Klakočar-Zupančič and Petrovčič, 2021; Kariž and Klakočar-Zupančič, 2021; Grizila and Klakočar-Zupančič, 2021.

[30] Fajdiga and Zagorc, 2023, p. 268, refer to ECtHR, *Miroslava Todorova v. Bulgaria*, Application no. 40072/13, 19 October 2021, para. 177.

[31] In the present case, the judge at hand argued that the new Guidelines for public expression of judges on social networks, adopted by the Ethical commission, were so vague that they in fact sent the following message to judges: "It is better not to use social media, since a judge would surely make a mistake that can be characterised as an ethical if not

the applicant's case, a personalised threat, a sanction ranging from the one with no direct bearing on the position of the person to the harshest penalties.[32] Generally, the ECtHR takes the chilling effect into account as one of the factors in the proportionality stage of the review. However, the Court seems to employ an approach based on intuition rather than on empirical evidence[33] to determine the strength and the personal scope of the chilling effect.[34] In some cases, the ECtHR seems to rule that the chilling effect was strong, since it uses firm language,[35] whereas in other cases a milder wording is used suggesting a weaker chilling effect.[36] Furthermore, the personal scope[37] of the chilling effect is sometimes broader than in other very similar cases.[38] The judge's personal account of the impact of different measures can thus provide new insights that help us understand better the chilling effect.

The first interesting conclusion after reading her recollection of the events is that the chilling effect for her did not stem primarily from formal procedures but rather from the conduct of the judicial leadership. The President of the Supreme Court and the President of the Judicial Council replied to Mr Gorenak immediately, but failed to reply to her emails. The Judicial Council generally anonymises the names of judges in its public records. This time, it decided to include the full name of the judge. Before issuing its opinion, it requested her explanation, but then completely disregarded her arguments by stating that one cannot expect privacy on social media. The President of the Judicial Council added his "separate opinion", wherein he argued that in such cases, the competent authorities should have initiated a disciplinary procedure and not a procedure before the Ethical commission. She was not troubled that much by the fact that the disciplinary procedure was initiated. What struck her the most was that she lost the leadership position and that the President of the local court broke off all communication with her. The cumulative effect of these actions taken by the judicial leadership, led her to perceive their behaviour as intimidating, which had a negative effect on her health.[39]

It is interesting to note how much the support of some judicial colleagues meant to her. In particular, she pointed out to one colleague, who expressed her support publicly. Why others did not decide to raise their voices in her support? She was clear: "Because they are afraid. Afraid of proceedings before the Ethical commission, before the Disciplinary court, afraid of sanctions."[40] The judge's account serves as a warning to both the judiciary as a whole and judges as individuals that when a judge becomes a target of sanctions and other

a disciplinary violation." (Kariž, Klakočar-Zupančič, 2021).

32 Fajdiga and Zagorc, 2023, pp. 261–265.

33 As does the US Supreme court. See *ibid*.

34 As does the US Supreme court. See *ibid*.

35 *Ibid.*

36 *Ibid.*

37 The victims of the chilling effect are not only those against whom the measure is taken, but also other persons in a similar position.

38 Fajdiga and Zagorc, 2023, pp. 265–266.

39 Klakočar-Zupančič, 2021.

40 Kariž and Klakočar-Zupančič, 2021.

negative measures, their reaction is extremely important as it can either mitigate or exacerbate the chilling effect. Judicial associations play a pivotal role in such cases.

She also mentioned that she and her children had been targets of serious threats and insults by private individuals.[41] This is a particularly challenging source of chilling effect. On the one hand, it can be stronger and more often than other measures.[42] On the other hand, it generally evades the radar of the courts.[43] The ECtHR has not yet properly addressed such measures in cases involving judges. Nevertheless, in a case concerning a journalist, the ECtHR has imposed a positive obligation on the state to respond to such private actions and safeguard the journalist at hand.[44] Such approach could be extended to judges in the future.

4. Conclusion

The case analysed in this case note offers much more than a formal decision, rich in interesting legal issues. Its wealth also derives from the personal perspective the affected judge provided after the end of formal procedures. This enabled a holistic analysis and provided insights, relevant way beyond the concrete case. The case is a reminder to all judges, especially those in the leadership positions that, when a judge becomes a target of measures or is otherwise exposed, their response is crucial. Reliance on the support of individual judges is not enough. The frequency of discreditation of judges by the (social) media calls for systemic solutions. Otherwise, the chilling effect could paralyse the guardians of the rule of law and put fundamental rights of all of us in jeopardy.

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41 Klakočar-Zupančič, 2021, p. 11; Kariž and Klakočar-Zupančič, 2021.

42 Wyatt *et al.*, 1996; Hyde and Ruth, 2002. A recent survey of the European Network of Councils for the Judiciary (the ENCJ) shows that the (social) media is the most common source of inappropriate pressure on judges (ENJC, 2022, pp. 3, 28, 29, 70 and 71).

43 Wu, 2018; Youn, 2013, p. 1471.

44 ECtHR, *Khadija Ismayilova v. Azerbaijan*, Application nos. 65286/13 and 57270/14, 10 January 2019, paras. 159 and 160.

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