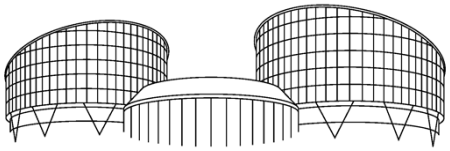

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GUZ v. POLAND

(Application no. 965/12)

JUDGMENT

Art 10 • Freedom of expression • Conviction for disciplinary offence of undermining the dignity of the office of a judge, after commenting on assessment report made by another judge in the context of a promotion procedure • Law sufficiently foreseeable for a judge, taken together with its interpretation by domestic courts • Comments not concerning the exercise of applicant's adjudicatory function and made in essentially intra-judicial context, without intent to insult • Impugned remarks having a certain factual basis and made by the applicant in the context of defending his interests in the–promotion procedure • Information regarding conviction placed on applicant's personal file for five years, with potential repercussions for future career prospects • Interference not "necessary in a democratic society

STRASBOURG

15 October 2020

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 Guz v. Poland,

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

Ksenija Turković, *President,*
Krzysztof Wojtyczek,
Linos-Alexandre Sicilianos,
Aleš Pejchal,
Armen Harutyunyan,
Pere Pastor Vilanova,
Pauliine Koskelo, *judges,*

and Renata Degener, *Deputy Section Registrar,*

Having regard to:

the application against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Remigiusz Guz ("the applicant"), on 6 December 2011;

the decision to give notice of the complaint under Article 10 to the Polish Government ("the Government") and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated in private on 22 September 2020,

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

INTRODUCTION

1. The applicant complained under Article 10 of the Convention that he had been found guilty of the disciplinary offence of undermining the dignity of the office of a judge.

THE FACTS

2. The applicant was born in 1973 and lives in Łaziska.

3. The applicant was granted leave to present his own case in the proceedings before the Court (Rule 36 § 2 *in fine* of the Rules of Court). The Government were represented by their Agent, Ms J. Chrzanowska, and subsequently by Mr J. Sobczak, of the Ministry of Foreign Affairs.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

A. The applicant's candidature for the office of Gliwice Regional Court judge

5. The applicant was appointed to the office of judge at the Wodzisław Śląski District Court on 16 December 2003.

6. At the beginning of 2009 he applied for the post of a judge at the Gliwice Regional Court. On 9 February 2009 the President of the Gliwice Regional Court instructed Judge S.F.-P. of that court to act as a judge inspector (*sędzia wizytator*) and to prepare a report on the applicant in order that his application could be presented to the general assembly of judges of the Gliwice Regional Court. The judge inspector inspected the files of some cases decided by the applicant and consulted his superiors.

7. The judge inspector submitted her assessment report on the applicant to the President of the Regional Court on 20 March 2009. She considered it necessary to include in the conclusions of her report comments that had been made by the hierarchical superiors of the applicant (the President of the Wodzisław Śląski District Court and the head of the relevant division) regarding their professional relations with the applicant, which had not always been smooth; in particular, they had stated that he had failed to comply with their instructions (*zarządzenia*). In the judge inspector's view, the reservations of the applicant's superiors had nothing to do with any personal bias, but stemmed from the applicant's failure to comply with their instructions.

8. In order to verify the superiors' comments, the judge inspector consulted the applicant's personal file held by the District Court. She found that it had been necessary to issue instructions to the applicant in writing in order to make him follow them.

9. The judge inspector's overall assessment of the applicant's work was good. However, she stated that it was premature at that stage to approve his candidature for the office of judge of the Gliwice Regional Court. The applicant needed to improve the efficiency of the proceedings that he conducted, the stability of his decisions and his productivity in order to match that of the other judges in his division.

10. On 23 March 2009 the applicant received a copy of the report. A meeting of the general assembly of the judges of the Gliwice Regional Court was scheduled for 27 March 2009.

11. On 25 March 2009 the board of the Regional Court (*kolegium*) gave a negative assessment of the applicant's candidature (five votes against, with two abstentions).

12. On 26 March 2009 the applicant submitted to the President of the Gliwice Regional Court his written comments on the assessment report. It included the following statements: "[T]he assessment of my work was undertaken only superficially, in many cases unfairly and, unfortunately, also tendentiously" ("*... Ocena mojej pracy została dokonana jedynie pobieżnie, w wielu wypadkach nierzetelnie i, niestety, również tendencyjnie"*); "[T]o allege that I was insubordinate is not serious, and the origin of these allegations is solely personal, despite what is being claimed by the inspector. Specifically, [the allegations] relate to events that occurred in 2003 and 2004, when I was assigned duties in the enforcement section,

probably without a prior decision [to that effect having been taken] by the board. The scale of negligence that I encountered there was such that it should be assessed from the angle of disciplinary or even criminal responsibility." ("*[S]tawianie mi zarzutu niesubordynacji jest niepoważne, a jego źródła, wbrew temu co twierdzi opiniująca, mają charakter wyłącznie osobisty. Konkretnie zaś datują się na rok 2003 i 2004, kiedy przydzielono mi, prawdopodobnie bez uprzedniej decyzji kolegium, obowiązki w sekcji wykonawczej. Skala zaniedbań, z jaką się tam spotkałem, kwalifikowała je do rozpoznania nie tylko pod kątem odpowiedzialności dyscyplinarnej, ale wręcz karnej*"). The applicant also commented on specific cases mentioned in the assessment report.

13. Having regard to the applicant's written comments, the board of the Regional Court met again on 27 March 2009. The members of the board took note of the applicant's comments and heard the views of the judge inspector. In the second vote, the applicant received six votes against his candidature, with one abstention.

14. On 27 March 2009 a meeting of the general assembly of the judges of the Gliwice Regional Court's jurisdiction was held. According to the Government, the chairman of the meeting read out the comments submitted by the applicant. The applicant maintained his observations regarding the assessment report. In response to a question from a judge as to what extraneous factors had influenced the assessment report, the applicant replied that he did not know exactly, but thought that those factors could have been the interpersonal relations at the Wodzisław Śląski District Court. Another judge pointed out the fact that the applicant's allegations against his fellow judges, including his superiors, had not been substantiated. In response, the applicant stated that he took full responsibility for his words. The general assembly then voted; six votes were cast for the applicant and eighty-six votes against, with nine abstentions.

15. On 8 April 2009 the judge inspector replied in writing to the applicant's comments on the assessment report. She considered his comments to be inappropriate. The applicant submitted that the judge inspector's reply had not been communicated to him and that he had learned about it only in the course of the disciplinary proceedings.

16. On 25 May 2009 the Minister of Justice positively assessed the applicant's candidature and forwarded that assessment to the National Council of the Judiciary ("the NCJ" – *Krajowa Rada Sądownictwa*).

17. On 22 June 2009 the NCJ decided not to forward the applicant's candidature for the office of regional court judge to the President of the Republic.

18. On 13 August 2009 the applicant lodged an appeal against that decision with the Supreme Court. He submitted that the NCJ had not properly assessed his candidature. In that respect he stated:

"That was so despite the fact that [the applicant] made a number of critical remarks about the assessment report prepared by the judge inspector, which served as a basis for the decisions of the board and the meeting of the general assembly [of the Regional Court]. Even though the assessment report included a lot of false data, [the report] was not verified and the NCJ, as can be seen from the [wording of the] reasoning, did not consider this issue [that is to say the lack of any verification of false data in the assessment report]."

19. On 6 November 2009 the Supreme Court dismissed the applicant's appeal.

B. Disciplinary proceedings against the applicant

20. On 11 June 2010 the disciplinary officer (*Rzecznik Dyscyplinarny*) of the Gliwice Regional Court, on an application from the President of that court, instituted disciplinary proceedings against the applicant. The applicant was charged on three counts of the disciplinary offence of undermining the dignity of the office of judge (*uchybienie godności urzędu sędziego*) under section 107(1) of the Law on the Organisation of the Common Courts (*Prawo o ustroju sądów powszechnych* – "the 2001 Law").

21. Firstly, the disciplinary officer alleged that in his written comments the applicant had implied that the judge inspector had assessed his work tendentiously. Furthermore, he implied that Judge M.O., the President of the Wodzisław Śląski District Court, and Judge K.G.-G., the head of the relevant division, had informed the judge inspector of alleged instances of the applicant failing to comply with instructions given to him. In addition, the applicant implied that Judges I.H. and E.T. had committed criminal and disciplinary offences by failing to supervise the Wodzisław Śląski District Court's enforcement section (see section 11 above).

22. Secondly, the disciplinary officer noted that during the meeting of the general assembly meeting of the judges on 27 March 2009 the applicant had maintained the allegations that he had made in his written comments and that, in addition, he had implied that judge inspector had been motivated by extraneous factors in her assessment of the applicant's work, which had undermined dignity of the office of judge.

23. Thirdly, the disciplinary officer alleged that in his appeal of 13 August 2009 against the NCJ's decision the applicant had implied that the judge inspector had used a lot of false data in her assessment report.

24. The case against the applicant was examined by the Katowice Court of Appeal, sitting as a disciplinary court (hereinafter "the Court of Appeal").

25. The applicant asserted that he had not committed a disciplinary offence. He submitted that the institution of disciplinary proceedings against him had been intended to send a signal that criticism of senior judges would not be tolerated. However, that had violated his freedom of expression. The

applicant insisted that in his professional life he had always acted honestly and that because of that he could not remain silent when the assessment of his work had been based on inaccurate data. In her report, the judge inspector had criticised the applicant for his failure to comply with superiors' instructions but had not given him the opportunity to express his position regarding the remarks made by the President of the District Court and the head of the relevant division, even though the principle of objectivity had required her to do so. The term "tendentious" used in his written comments had indicated a one-sided presentation of his alleged failings. The term "false data" used in respect of his appeal against the NCJ's decision had referred to erroneous conclusions included in the assessment report, which had not taken proper account of the number of cases assigned to the applicant.

26. On 31 March 2011 the Court of Appeal delivered its judgment. The applicant was found guilty of undermining the dignity of the office of judge on three occasions in that he had lacked objectivity and the required moderation in formulating his views.

27. The conviction concerned (1) the applicant's written comments of 26 March 2009 contesting the judge inspector's assessment report – both with regard to his work and to his cooperation with his superiors; (2) the applicant having maintained his written comments at the meeting of the general assembly of the judges of the Gliwice Regional Court of 27 March 2009 and (3) the applicant's comments on the assessment of his work made in the judge inspector's report, as submitted in his appeal to the Supreme Court against the NCJ's decision. The Court of Appeal imposed on the applicant a warning (*kara upomnienia*).

28. The Court of Appeal found that the evidence obtained in the case had confirmed the disciplinary offence of which the applicant had been found guilty. The Court of Appeal did not have the competence to determine the correctness (*merytoryczna rzetelność*) of the assessment report; accordingly, it dismissed requests lodged by the applicant for evidence to be adduced with a view to challenging the findings presented in the report. It acknowledged that the report contained certain minor inaccuracies, but stated that those did not affect the report's final conclusion as to unsatisfactory level of efficiency in the conduct of the proceedings. In that respect, the Court of Appeal examined some of the relevant case files. On the basis of the applicant's personal file and the testimony of Judge M.O. (the President of the District Court at the time in question), the Court of Appeal found that the relationship between the applicant and his superiors had not been easy. The applicant had accepted only written communications in respect of work-related matters, no matter how routine those matters had been.

29. With regard to the merits, the Court of Appeal noted, referring to the Supreme Court's judgment of 23 January 2008 (case no. SNO 89/07), that

the dignity of the office of judge manifested itself in the ability of the judge in question to remain faithful to the judicial oath, maintain an unblemished character and avoid anything that could bring disrepute to the office. In setting out limits, which if transgressed would lead to a judge being held liable, the legislature undoubtedly took account of the content of the judicial oath (stipulated in section 66 of the 2001 Law). It follows from the wording of the judicial oath that a judge was required, *inter alia*, to be guided in his actions by the principles of propriety and honesty.

30. Referring to Article 2 of the Collection of Principles of Judges' Professional Ethics, the court observed that highly inappropriate behaviour on the part of a judge towards other judges – including towards a judge inspector preparing an assessment report – could undermine the dignity of the office of a judge because professional ethics required restraint in expressing one's emotions. It was true that a judge could not be constrained in expressing his view; however, he had to express his view at an appropriate place, in a moderate manner and without excessive expressiveness so as to not expose other persons to tarnishing their esteem and dignity (see the Supreme Court's judgments of 30 August 2006, no. OSN 36/06 and 7 June 2006, no. SNO 25/06).

31. With regard to Article 10 of the Convention, the Court of Appeal noted that a judge's statement violating the reputation or dignity of other judges could be justified only if it pursued a pressing social interest. However, there had been no such interest in the case of the applicant's comments, which had been made exclusively in pursuit of his own private interests. The Court of Appeal furthermore ruled that the applicant's comments had constituted value judgments ("superficial", "unfair", "tendentious" and "using a lot of false data") that had not had a sufficient factual basis, as required by the Strasbourg Court's case-law; consequently they had infringed the personal rights of the judge inspector. It emphasised the fact that every judge – and in particular a judge who applied for appointment to a higher judicial office – should display tact, moderation and objectivity in formulating his remarks regarding the report assessing his work.

32. The Court of Appeal found that the applicant's allegation that the assessment of his work had been "tendentious" should be considered as lacking in objectivity and the required moderate tone, since the applicant's objections had concerned only the handful of cases from his docket that had been assessed by the judge inspector. Such an allegation had infringed the reputation of the judge inspector and amounted to the disciplinary offence of undermining the dignity of the judicial office. The same held true for the allegation that the negative assessment of the applicant's relationship with his superiors had been motivated by personal interests.

33. The second of the applicant's "reprehensible actions" (*naganne zachowanie*) had consisted of maintaining those allegations during the proceedings before the general assembly of judges.

34. The third reprehensible action had concerned the phrase "used a lot of false data" included in the wording of his appeal against the NCJ's decision which the Court of Appeal considered excessive and lacking a factual basis in respect of the term "a lot of false data".

35. In each of those three situations the applicant had commented on the content of the judge inspector's report in a manner unworthy of a judge, because his comments had lacked objectivity and the required moderate tone. The allegations raised by the applicant had to be considered as undermining the dignity of the office of judge, since the applicant, being a judge, was required to respect the authority of the judiciary and generally to exercise his office in a dignified manner; even so, he had failed to exercise appropriate moderation in his comments and had violated the personal rights of others. In the case of judges, the dignity of their office required a reasonable moderation and tact in their professional and non-professional relations. The Court of Appeal found that the applicant had violated the required standard of conduct.

36. The Court of Appeal issued the applicant with a warning (the most lenient penalty provided for by law), which it considered commensurate with the applicant's disciplinary offence. It had regard to the fact that the degree of harmfulness of his action was not significant. In this respect, it took into consideration the fact that the applicant's behaviour had been motivated by his ambition to become a regional court judge. On the other hand, the Court of Appeal noted that the applicant had not felt responsible for his inappropriate comments.

37. The applicant lodged an appeal. He argued, *inter alia*, that his comments on the assessment report had not amounted to a disciplinary offence because they had had a sufficient factual basis and had been motivated by the public interest.

38. On 20 July 2011 the Supreme Court, sitting as a disciplinary court (hereinafter "the Supreme Court") dismissed the applicant's appeal.

39. The Supreme Court noted that under section 61 of the 2001 Law a judge should have an unblemished character. A judge should also act in accordance with his judicial oath and avoid anything that could bring disrepute to the dignity of a judge (section 82 of the 2001 Law). The judicial oath had a substantive meaning and should be treated with all solemnity because it constituted the basis of responsibility for actions that were contrary to it.

40. The concept of "unblemished character" of a judge was not statutorily defined, but it was described in case-law and in legal writing in terms of intellectual qualities and high moral character. The Supreme Court stated that judicial office was a kind of "noble mission" that imposed

particular moral obligations on a judge, both while carrying out his office and in his private life.

41. One of the basic duties of a judge was the duty to respect the rules of decency (*dobre obyczaje*) and to uphold the authority of the judiciary, as provided for by Articles 2 and 4 of the Collection of Principles of Judges' Professional Ethics, respectively. The Supreme Court noted in this regard, referring to its previous case-law, that a judge who formulated critical remarks addressed to other judges – and in particular, judges more senior to him – should do so in a tactful, moderate and dispassionate manner (judgments of 30 August 2006, no. SNO 36/06, 7 June 2006, no. SNO 25/06, 27 June 2008, no. SNO 52/08 and 25 March 2009, no. SNO 13/09). In that respect, for the purposes of assessing the applicant's behaviour towards the judge inspector, it was not relevant whether the assessment report had been accurate or not. The relevant issue to consider was whether in commenting on the report the applicant had acted honourably and in a manner respecting the accepted rules and the rights of others. The Supreme Court established that the assessment of the applicant's behaviour in that regard had to be negative. The words used by the applicant in respect of a more senior judge – in particular the words "unfair", "tendentious", "superficial", and "false" – carried a significant pejorative connotation.

42. The Supreme Court found that the applicant had abused his right to express his opinions and had violated the standards of judicial decency and had thus undermined the administration of justice. The applicant's comments had infringed not only the reputation of the judge inspector, but had also undermined her professional standing. The comments – as formulated by the applicant and expressed in public (at the meeting of the general assembly of judges and in an appeal lodged with the Supreme Court against the NCJ's decision) – could not be left unaddressed by the judges. The Supreme Court noted that the applicant had had the right to comment on the assessment report but had been required to do so in a dispassionate manner that was free from personal comments about the judge inspector. The duty to make comments in a dispassionate manner was also one of the basic obligations of a judge who adjudicated cases, conducted proceedings and delivered judgments.

43. The Supreme Court found that the applicant's actions had been harmful to the judiciary and its image and was damaging to relations within the judiciary. The applicant had furthermore breached his judicial oath and the rules of professional ethics, and had thus committed a disciplinary offence under section 107(1) of the 2001 Law. The Supreme Court held that the imposition of a warning constituted adequate punishment in the instant case.

44. On 17 November 2011 the applicant lodged a constitutional complaint. He alleged that section 107(1) of the 2001 Law, in so far as it concerned responsibility for undermining the dignity of a judicial office,

was incompatible with Articles 2, 42 § 1, 54 § 1 (freedom of expression) and 178 § 1 of the Constitution.

45. The applicant argued that he had exercised his freedom of expression in submitting his written comments on the assessment report. His comments had exclusively related to the assessment of his work and had not infringed the rights of the judge inspector. The applicant submitted that for the Supreme Court the protection of the judiciary was more important in cases where a judge had made an erroneous assessment of a candidate for judicial office. He maintained that his comments had been in the public interest and had been motivated by the need to ensure fairness in the promotion procedures within the judiciary. The applicant also relied on the Court's case-law under Article 10 of the Convention.

46. Secondly, the applicant submitted that section 107(1) of the 2001 Law was incompatible with Article 42 § 1 of the Constitution (the principle of *nullum crimen sine lege*). He maintained that section 107(1) did not clearly define the offence of undermining the dignity of a judicial office and, in particular, that the term "dignity of a judicial office" was ambiguous and overly broad.

47. On 7 March 2013 the Constitutional Court declined to examine the constitutional complaint. With regard to the applicant's complaint under Article 42 § 1 of the Constitution, the Constitutional Court referred to the established view that that it was not possible to create a precise catalogue of disciplinary offences. The disciplinary responsibility concerned actions incompatible with the rules of professional ethics or the dignity of a profession or actions undermining the esteem in which a profession was held. The Constitutional Court dismissed the applicant's argument that criminal proceedings were comparable to disciplinary proceedings in respect of the guarantees applicable to them. It furthermore noted that disciplinary responsibility could concern actions which were not subject to criminal responsibility. With regard to the applicant's complaint under Article 54 § 1 of the Constitution, the Constitutional Court found that the applicant had not argued that section 107(1) of the 2001 Law had disproportionately restricted his freedom of expression. In addition, it noted that that complaint had concerned the actual application of the law, which was beyond the Constitutional Court's jurisdiction.

48. The applicant lodged an interlocutory appeal. On 6 May 2013 the Constitutional Court dismissed it.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW

A. The Law on the Organisation of the Common Courts

49. The Law of 27 July 2001 (as amended) on the Organisation of the Common Courts (*Ustawa prawo o ustroju sądów powszechnych*) (hereinafter "the 2001 Law") sets out comprehensively all matters related to such matters as the organisation and administration of the courts of general jurisdiction and the status of judges and their self-governing bodies.

50. Its relevant provisions provide as follows:

Section 66

"Upon appointment, a judge takes an oath before the President of the Republic of Poland, in accordance with the following formula:

'I swear, as a judge of a common court, to serve faithfully the Republic of Poland, to safeguard the law, to discharge the duties of a judge conscientiously, to administer justice impartially in accordance with the law and my conscience, to keep State and professional secrets, and to act in accordance with the principles of propriety and honesty'; the person taking this oath may finish it by saying the words: 'So help me God.'"

Section 82

"1. A judge shall act in compliance with the judicial oath.

2. A judge should, when on and off duty, guard the authority of the office of judge and avoid everything that could bring discredit to the authority of a judge or weaken confidence in his or her impartiality."

Section 107 § 1

"1. A judge shall be liable to disciplinary action for professional misconduct, including obvious and gross violations of the law and undermining the dignity of his office (disciplinary offences)."

Section 109 § 1

"1. The disciplinary penalties are:

1) a warning,

2) a reprimand,

3) dismissal from the post held,

4) a transfer to another place of service,

5) the dismissal of the judge from his office."

51. Section 91a § 3 provides that a judge passes to the next basic salary step after five years of service in any given judicial post. Under paragraph 6

of the same section, that period shall be extended by three years in the event that a judge has been subjected to disciplinary penalty in the course of that period.

52. Section 124 § 1 stipulates that a copy of a final judgment imposing a disciplinary penalty on a judge shall be added to his personal file; section 124 § 2 stipulates that it shall be removed after the lapse of five years from the date on which the judgment in question became final if, in the course of that period, the judge in question was not subject to any further disciplinary action.

B. Collection of Principles of Judges' Professional Ethics

53. The National Council of the Judiciary, in its resolution of 19 February 2003, adopted the Collection of Principles of Judges' Professional Ethics (*Zbiór zasad etyki zawodowej sędziów*). The relevant provisions of the Principles state as follows:

> "§ 2. A judge shall be guided by the principles of honesty, dignity, honour, sense of duty and respect for the rules of decency.
>
> ...
>
> § 4. A judge shall safeguard the authority of his or her office, of the court where he or she is serving, and of the administration of justice and the constitutional role of the judiciary."

II. COUNCIL OF EUROPE'S MATERIALS

54. The relevant extracts from the appendix to Recommendation CM/Rec (2010)12 of the Committee of Ministers of the Council of Europe to member States on judges: independence, efficiency and responsibilities, adopted on 17 November 2010, provide as follows:

> "Selection and career
>
> 44. Decisions concerning the selection and career of judges should be based on objective criteria pre-established by law or by the competent authorities. Such decisions should be based on merit, having regard to the qualifications, skills and capacity required to adjudicate cases by applying the law while respecting human dignity.
>
> ...
>
> Assessment
>
> 58. Where judicial authorities establish systems for the assessment of judges, such systems should be based on objective criteria. These should be published by the competent judicial authority. The procedure should enable judges to express their view on their own activities and on the assessment of these activities, as well as to challenge assessments before an independent authority or a court."

55. The relevant recommendation of Opinion no. 17 of the Consultative Council of European Judges (CCJE) on the evaluation of judges' work, the

quality of justice and respect for judicial independence, adopted on 24 October 2014, read as follows:

> "11. It is essential that there is procedural fairness in all elements of individual evaluations. In particular judges must be able to express their views on the process and the proposed conclusions of an evaluation. They must also be able to challenge assessments, particularly when it affects the judge's "civil rights" in the sense of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

56. The applicant complained that the domestic courts, in finding him guilty of the disciplinary offence of undermining the dignity of the office of judge, had infringed his right to freedom of expression, as protected by Article 10 of the Convention. That provision reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

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

B. Merits

1. The applicant's submissions

58. The applicant argued that the interference with his right to freedom of expression had not been prescribed by law, since the legal framework of the 2001 Law was lacking in precision. Sections 82 and 107 of the 2001 Law stipulated that a judge should act in accordance with the judicial oath and avoid anything that could undermine the dignity of a judge. However, the applicant argued that there was no contradiction between the protection

of dignity and the freedom to hold opinions, provided that those opinions were not offensive.

59. The applicant claimed that the interference at issue had not pursued legitimate aims – in particular the administration of justice or the protection of the reputation of judges.

60. The applicant argued that the interference in his case had not been necessary in a democratic society.

61. The applicant did not agree that his comments had been harmful to the judiciary, because he had raised them only internally. His written comments had been addressed to the President of the Gliwice Regional Court and it had been the President of that court who had actually made them public during the meeting of general assembly of judges. Furthermore, the applicant had appealed against the NCJ's decision and in that appeal had in writing questioned the findings of the assessment report. It was inexplicable to the applicant how his actions could have been damaging to relations within the judiciary. The applicant submitted that he had not written any press article or given statements to the press.

62. The applicant maintained that any irregularities during the process followed for promoting a judge should be exposed. It was in the public interest to defend the fair rules governing the promotion of judges. It was unacceptable, in his view, to dismiss a judge's candidature for higher judicial office despite the presence of false data in that judge's assessment report. In such a case, the process ought to be suspended and the reservations raised should be examined.

63. The applicant emphasised that in his remarks he had used impersonal language. He had never advanced the supposition that the judge inspector had intentionally based her report on false data. On the other hand, the judge inspector had assessed other judges and she ought to have been prepared for her work to be criticised. The judge inspector had not instituted any proceedings to protect her reputation.

64. The applicant argued that he had exercised his right to comment because the report had contained an inaccurate assessment of his work. He stressed that the term "false data" used in his appeal against the NCJ's decision had been meant to express the fact that untrue information had been found in the assessment report. He had identified those errors, referring to particular files that had been viewed during the course of the assessment, in his written comments. The domestic courts had not appreciated the importance of those errors, although they had acknowledged that the report had contained certain minor inaccuracies.

65. The applicant submitted that his actions had been motivated only by his ambition to become a judge of the regional court. His motivation had been visible during his whole service as a judge. On many occasions the applicant had taken action against misconduct in his workplace and in the judiciary, which had been acknowledged by the disciplinary court. He had

drawn the attention of the management of the district and regional courts to cases where evident abuses had emerged.

66. The applicant referred to the fact that the Minister of Justice had positively assessed his candidature and had forwarded that positive assessment to the NCJ, despite the applicant's comments on the assessment report. The minister had not found that the authority of the judiciary had been tarnished.

67. The applicant furthermore contested the proportionality of the sanction imposed. As a result of the disciplinary proceedings, the applicant's prospects of promotion had been stalled and his salary had been reduced pursuant to section 91a § 6 of the 2001 Law. In addition, the courts could refrain from imposing penalties in case of a minor disciplinary offence.

2. The Government's submissions

68. The Government submitted that the present case concerned a judge of a court of general jurisdiction. The applicant had expressed his opinions in his written comments regarding the assessment report prepared by the judge inspector on the applicant's professional activities. Those comments had been read out at the meeting of the general assembly of the judges of the Gliwice Regional Court by the chairman of the meeting. Then, the applicant had answered questions, having maintained his written submissions. Subsequently, he had expressed his opinions in his appeal of 13 August 2009 against the NCJ's decision (see paragraph 17 above). According to the domestic courts and the Government, the applicant's allegations had not had sufficient factual basis.

69. The Government submitted that the interference with the applicant's right to freedom of expression had had a legal basis in sections 82 and 107(1) of the 2001 Law, which stipulated that a judge could be held accountable for any actions undermining the dignity of his office. The interference had pursued legitimate aims – namely the protection of the dignity of the office of judge, the administration of justice, and the reputation of judges.

70. The Government argued that given the circumstances of the instant case the protection of the dignity of judges and the administration of justice had to prevail over the applicant's freedom of expression. They stressed that in the course of the domestic proceedings the applicant had not produced any credible evidence supporting his allegations. In the Government's view, the interference with the applicant's freedom of expression had been necessary because there had existed an undisputed pressing social need to protect judges' reputation and the administration of justice.

71. The Government maintained that judges had been neither deprived of the protection guaranteed under Article 10 of the Convention nor constrained in expressing their views. However, their freedom of speech

was linked with certain special obligations formulated in the 2001 Law and the Collection of Principles of Judges' Professional Ethics.

72. The Government concluded that no violation of Article 10 of the Convention had occurred in the instant case.

3. The Court's assessment

(a) Existence of an interference

73. It was common ground between the parties that the domestic courts' decisions finding the applicant guilty of a disciplinary offence had constituted an interference with the exercise of his right to freedom of expression, as guaranteed by Article 10 of the Convention. It remains to be examined whether the interference was "prescribed by law", pursued one or more of the legitimate aims referred to in paragraph 2 and was "necessary in a democratic society".

(b) "Prescribed by law"

74. In the present case the parties' opinions differed as to whether the interference at issue had been prescribed by law. The Court notes that the applicant was found guilty, under section 107(1) of the 2001 Law, of the disciplinary offence of undermining the dignity of the office of judge. The applicant maintained that the regulation of that disciplinary offence had been inadequate. The Government argued that the interference had been based on sections 82 and 107(1) of the 2001 Law.

75. The Court reiterates that the expression "prescribed by law" in the second paragraph of Article 10 not only requires that the impugned measure should have a legal basis in domestic law, but also refers to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects. However, it is primarily for the national authorities, notably the courts, to interpret and apply domestic law (see *Karácsony and Others v. Hungary* [GC], nos. 42461/13 and 44357/13, § 123, 17 May 2016; and the cases cited therein).

76. One of the requirements arising from the expression "prescribed by law" is foreseeability. Thus, a norm cannot be regarded as a "law" within the meaning of Article 10 § 2 unless it is formulated with sufficient precision to enable the citizen to regulate his conduct; he or she must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences that a given action may entail. Those consequences need not be foreseeable with absolute certainty. While certainty is desirable, it may bring in its train excessive rigidity, and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague, and whose interpretation and application are questions of practice (ibid., § 124).

77. The level of precision required of domestic legislation – which cannot provide for every eventuality – depends to a considerable degree on the content of the law in question, the field it is designed to cover and the number and status of those to whom it is addressed. The Court has found that persons carrying on a professional activity, who are used to having to proceed with a high degree of caution when pursuing their occupation, can on this account be expected to take special care in assessing the risks that such activity entails (ibid., § 125).

78. In the present case, the applicant challenged the foreseeability of section 107(1) of the 2001 Law, which provides that a judge is liable for actions undermining the dignity of a judicial office. The term employed by that provision ("undermining the dignity of a judicial office") inevitably includes an element of vagueness and is subject to interpretation by the courts. The Constitutional Court noted regarding that point that it was impossible to establish a precise catalogue of disciplinary offences (see paragraph 46 above). Furthermore, in their decisions delivered in the course of the proceedings concerning the applicant's case, the disciplinary courts referred to the case-law of the Supreme Court, which elaborated on the concept of the "dignity of a judicial office" and which had to be interpreted in combination with other rules binding on judges. Among those rules was the requirement that judges (i) possess "unblemished character" (section 61 of the 2001 Law) and (ii) act in accordance with the judicial oath and avoid anything that could bring into disrepute the dignity of a judge (section 82 of the 2001 Law). The judicial oath, in turn, required that a judge act with propriety and honesty (see paragraphs 28, 38 and 49 above). The disciplinary courts furthermore referred to the Supreme Court's case-law regarding the appropriate manner of addressing criticism to another judge (see paragraphs 29 and 40 above). They also took account of the relevant provisions of the Collection of Principles of Judges' Professional Ethics.

79. The Court considers that the applicant, being a judge, was well-versed in the law and aware of the rules aimed at upholding the integrity and dignity of a judicial office (see, *inter alia*, *Brisc v. Romania*, no. 26238/10, § 94, 11 December 2018). In its view, the relevant part of section 107(1) of the 2001 Law, together with its interpretation by the domestic courts, was sufficiently clear to enable the applicant to foresee, to a reasonable degree, the possible consequences of his conduct.

80. The Court accordingly finds that section 107(1) of the 2001 Law met the required level of precision and that, accordingly, the interference at issue was "prescribed by law", within the meaning of Article 10 § 2 of the Convention.

(c) Legitimate aim

81. The applicant alleged that the interference at issue had not pursued legitimate aims, while the Government maintained that it had furthered the

aims of protecting the dignity of the office of judge, the administration of justice and the reputation of judges.

82. The Court is satisfied that the aims cited by the Government correspond to two legitimate aims within the meaning of Article 10 § 2 of the Convention – namely "maintaining the authority and impartiality of the judiciary" and protecting "the reputation or rights of others".

(d) "Necessary in a democratic society"

(i) General principles

83. The general principles concerning the question of whether an interference with freedom of expression is "necessary in a democratic society" are well established in the Court's case-law (see, among other authorities, *Peruzzi v. Italy*, no. 39294/09, §§ 45-49, 30 June 2015; *Boykanov v. Bulgaria*, no. 18288/06, § 35, 10 November 2016; and *Miljević v. Croatia*, no. 68317/13, § 48, 25 June 2020).

(ii) General principles on freedom of expression of judges

84. The general principles concerning the freedom of expression of judges were summarised by the Court in the judgment *Baka v. Hungary* [GC] (no. 20261/12, §§ 162-167, 23 June 2016) as follows:

> "(i) While the Court has admitted that it is legitimate for a State to impose on civil servants, on account of their status, a duty of discretion, civil servants are individuals and, as such, qualify for the protection of Article 10 of the Convention ... It therefore falls to the Court, having regard to the circumstances of each case, to determine whether a fair balance has been struck between the fundamental right of the individual to freedom of expression and the legitimate interest of a democratic State in ensuring that its civil service properly furthers the purposes enumerated in Article 10 § 2. In carrying out this review, the Court will bear in mind that whenever a civil servant's right to freedom of expression is in issue the "duties and responsibilities" referred to in Article 10 § 2 assume a special significance, which justifies leaving to the national authorities a certain margin of appreciation in determining whether the impugned interference is proportionate to the above aim ...
>
> (ii) Given the prominent place among State organs that the judiciary occupies in a democratic society, the Court reiterates that this approach also applies in the event of restrictions on the freedom of expression of a judge in connection with the performance of his or her functions, albeit the judiciary is not part of the ordinary civil service ...
>
> (iii) The Court has recognised that it can be expected of public officials serving in the judiciary that they should show restraint in exercising their freedom of expression in all cases where the authority and impartiality of the judiciary are likely to be called in question ...The dissemination of even accurate information must be carried out with moderation and propriety ... The Court has on many occasions emphasised the special role in society of the judiciary, which, as the guarantor of justice, a fundamental value in a law-governed State, must enjoy public confidence if it is to be successful in carrying out its duties ... It is for this reason that judicial authorities, in so far as

concerns the exercise of their adjudicatory function, are required to exercise maximum discretion with regard to the cases with which they deal in order to preserve their image as impartial judges ...

(iv) At the same time, the Court has also stressed that having regard in particular to the growing importance attached to the separation of powers and the importance of safeguarding the independence of the judiciary, any interference with the freedom of expression of a judge in a position such as the applicant's calls for close scrutiny on the part of the Court ... Furthermore, questions concerning the functioning of the justice system fall within the public interest, the debate of which generally enjoys a high degree of protection under Article 10 ... Even if an issue under debate has political implications, this is not in itself sufficient to prevent a judge from making a statement on the matter ... Issues relating to the separation of powers can involve very important matters in a democratic society which the public has a legitimate interest in being informed about and which fall within the scope of political debate ...

(v) In the context of Article 10 of the Convention, the Court must take account of the circumstances and overall background against which the statements in question were made ... It must look at the impugned interference in the light of the case as a whole ..., attaching particular importance to the office held by the applicant, his statements and the context in which they were made.

(vi) Finally, the Court reiterates the "chilling effect" that the fear of sanction has on the exercise of freedom of expression, in particular on other judges wishing to participate in the public debate on issues related to the administration of justice and the judiciary ... This effect, which works to the detriment of society as a whole, is also a factor that concerns the proportionality of the sanction or punitive measure imposed ..."

(iii) Application of those principles in the present case

85. In respect of the present case, the Court notes that the applicant made the impugned remarks in his reply to the assessment report prepared in connection with the procedure in which he sought promotion to the post of judge at the Gliwice Regional Court. Those remarks were addressed to the President of the Gliwice Regional Court, and the applicant maintained them during a meeting of the general assembly of the judges of that court. Thus, the impugned remarks were essentially expressed within the context of internal exchanges between judges (compare and contrast *Di Giovanni v. Italy*, no. 51160/06, § 76, 9 July 2013, where a judge made declarations to the press regarding alleged irregularities in a competition for a judicial post).

86. The Court reiterates that questions concerning the functioning of the justice system, an institution that is essential for any democratic society, fall within the public interest. In this connection, regard must be had to the special role of the judiciary in society. As the guarantor of justice, a fundamental value in a State governed by the rule of law, it must enjoy public confidence if it is to be successful in carrying out its duties (see *Morice v. France* [GC], no. 29369/10, § 128, ECHR 2015, and *Baka*, cited above, § 164). The Court also takes note of the applicant's assertion that his

actions were motivated by the public interest in ensuring the fairness of the promotion procedure.

87. With regard to the nature of the impugned remarks, the Court notes as follows. In his written remarks on the report of the judge inspector, the applicant stated that the assessment of his work had been conducted "superficially, unfairly and tendentiously".

88. The Court notes that the domestic courts examined those remarks in the light of the attributes necessary to hold the office of judge. They referred, in particular, to the duty of a judge to act with propriety and to avoid anything that could bring disrepute to the dignity of a judge (see paragraphs 28 and 38 above). The courts furthermore referred to the relevant domestic case-law, indicating that criticism addressed by a judge to another judge should be made in a tactful, moderate and dispassionate manner (see paragraphs 29 and 40 above). In the light of the above-mentioned obligations, the domestic courts found that the applicant had exceeded the limits of his right to impart opinions and had not adhered to the standards of judicial propriety, and by doing so he had undermined the administration of justice (see paragraph 41 above). In addition, he had undermined the reputation of the judge inspector and her professional standing. In this regard, the Court of Appeal found that the applicant's comments had constituted excessive value judgments, since they had lacked a sufficient factual basis (see paragraph 30 above).

89. The Court has recognised that judges should show restraint in exercising their freedom of expression in all cases where the authority and impartiality of the judiciary are likely to be called into question (see, among many other cases, *Wille v. Liechtenstein* [GC], no. 28396/95, § 64, ECHR 1999-VII; *Di Giovanni*, cited above, § 71; *Baka*, cited above, § 164; and *Simić v. Bosnia and Herzegovina* (dec.), no. 75255/10, § 33, 15 November 2016;). However, in the present case the applicant's remarks did not concern the exercise of his adjudicatory function, but were related to an internal stage of the procedure for promotion in which a more senior judge assessed the applicant's work. While it may prove necessary to protect the judiciary against gravely damaging attacks that are essentially unfounded, this cannot have the effect of prohibiting other judges from expressing their views, through value judgments with a sufficient factual basis, on matters of public interest related to the functioning of the justice system, or of banning any criticism of the latter (see, *mutatis mutandis*, *Morice*, cited above, § 131). In the present case, the judge inspector prepared her assessment report while acting in an official capacity and she may, as such, be subject to criticism within the permissible limits, and not only in a theoretical and general manner.

90. In addition, the Court reiterates that a clear distinction must be made between criticism and insult. If the sole intent of any form of expression is to insult a court, or members of that court, an appropriate punishment would

not, in principle, constitute a violation of Article 10 § 2 of the Convention (see *Skałka v. Poland*, no. 43425/98, § 34, 27 May 2003). Given the circumstances of the case, the Court cannot discern in the applicant's remarks any intent to insult the judge inspector.

91. Having regard to the above and to the essentially intra-judicial context of the present case, the Court cannot agree with the domestic authorities that the applicant's first three remarks, although critical, were capable of calling into question the authority of the judiciary or of infringing the reputation of the judge inspector.

92. The Court agrees with the domestic courts that the first three impugned remarks ("unfair", "tendentious", and "superficial") were value judgments. It remains to be examined whether the "factual basis" for those value judgments was sufficient.

93. The Court notes that the Court of Appeal found that it did not have the authority to determine the correctness of the assessment report, but confirmed that the report contained certain minor inaccuracies (see paragraph 27 above). The Court furthermore notes that for the Supreme Court, the question of accuracy of the report was not a relevant consideration for the assessment of the applicant's behavior (see paragraph 40 above). From that perspective, it is difficult to see how the applicant could have demonstrated that his value judgments had a sufficient factual basis. The Court notes the applicant's argument that he had the right to comment on the report because the report, in his view, contained an inaccurate assessment of his work. He submitted, *inter alia*, that the judge inspector had criticised him for his failure to comply with his superiors' instructions, without having offered him the opportunity to respond to those allegations. Given the circumstances of the case, the Court finds that the impugned remarks, which constituted value judgments, could be regarded as having a certain factual basis and thus remained within the acceptable limits (see *Peruzzi*, cited above, § 58-59, where a lawyer's statements that a judge had taken unfair and arbitrary decisions were deemed acceptable).

94. It should also be stressed that the applicant exercised his freedom of expression with the aim of defending his interests in the context of promotion procedure by presenting submissions to competent bodies (see, *mutatis mutandis*, *Miljević*, cited above, §§ 65-66 and 74).

95. As to the sanction imposed, the Court reiterates that, in assessing the proportionality of the interference, the nature and severity of the penalties imposed are also factors to be taken into account (see, for example, *Morice*, cited above, § 175). In the present case, the applicant was found guilty of the disciplinary offence of undermining the dignity of the office of judge and the penalty of a warning, the most lenient available, was imposed on him. The information regarding his conviction in disciplinary proceedings was placed in his personal file for a period of five years.

96. The Court has emphasised on many occasions that interference with freedom of expression may have a chilling effect on the exercise of that freedom (see *Kudeshkina v. Russia*, no. 29492/05, § 99-100, 26 February 2009, and *Baka*, cited above, § 167). In the applicant's case, his disciplinary conviction may have had repercussions on his future career prospects.

97. In view of the foregoing, the Court finds that, on the one hand, the domestic courts failed to strike the right balance between the need to protect the authority of the judiciary and the protection of the reputation or rights of others, and, on the other hand, the need to protect the applicant's right to freedom of expression. It follows that the interference complained of was not "necessary in a democratic society".

98. There has accordingly been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

100. In respect of pecuniary damage, the applicant claimed 16,581.16 Polish zlotys (PLN) (equivalent to 3,883 euros (EUR) at the date on which the claims were submitted). This sum was calculated by an accountant of the Wodzisław Śląski District Court. The applicant asserted that it represented his lost earnings due to his disciplinary conviction, which had caused a three-year delay in his passing to the next salary step.

101. With regard to non-pecuniary damage, the applicant claimed PLN 50,000 (equivalent to EUR 11,710). He maintained that the disciplinary proceedings against him and the penalty imposed had infringed his good name, undermined his professional standing and stalled his prospects of promotion. It further led to the deterioration of his health.

102. The Government submitted that the claims under both heads of damage were unjustified and should be rejected. With regard to the claim for pecuniary damage, the Government argued that the sum was speculative because the calculation of the applicant's lost earnings was based on a theoretical assumption that no other obstacles to his passing to the next salary step would have arisen. Should the Court establish that there had been a violation in this case, the Government requested the Court to assess the amount of just satisfaction on the basis of the case-law in similar cases and of the national economic circumstances.

103. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 6,000 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

104. The applicant claimed PLN 3,000 (equivalent to EUR 702) for the costs of his legal representation before the domestic courts (supported invoices), and PLN 585 (equivalent to EUR 137) for the costs of his attendance at the domestic hearings, plus interest. He also claimed PLN 59.60 (equivalent to EUR 14) for postage costs incurred during the proceedings before the Court.

105. The Government argued that only costs and expenses incurred during the proceedings before the Court could be reimbursed.

106. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to allow the applicant's claim in full and awards him the sum of EUR 853 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

107. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the currency of the respondent State, at the rate applicable at the date of settlement:
      (i) EUR 6,000 (six thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 853 (eight hundred fifty-three euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 15 October 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener	Ksenija Turković
Deputy Registrar	President