

# Freedom of Expression

Judicial Ethics and the Rule of Law: ECtHR Case Law  
and Contemporary European Challenges

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# Introduction



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# Expressions of Judges on current or (potential) future cases

- Most limited area for judges' freedom of expression
- Arguably the 1st case: E. v Switzerland (App No. 10279/83) concerning judge's advocacy for amnesty deemed inadmissible due to potential future involvement
- Principles:
  - Judges must exercise discretion in ongoing proceedings (Olujić v. Croatia, 2009)
  - Judges must resist provocation (Buscemi v. Italy, 1999)
  - Mere prospect of future involvement insufficient for interference (Danilet GC, para. 188)



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# Personal convictions of judges

Majority of early cases involved private capacity expressions. Examples: Political pamphlets (*E. v. Switzerland*, 1983); Religious convictions (*Pitkevich v. Russia*, 2001); Academic speech (*Wille v. Liechtenstein*, 1999); Media consumption (*Albayrak v. Turkey*, 2008)

Key principles: Judicial impartiality and authority of judiciary are paramount and as long as judges' freedom of expression does not jeopardize this, their freedom of speech enjoys strong protection. However, it is still more limited than general public's as judges also must choose words carefully and with reserve



# Expressions of judges in positions defending the rule of law

- Turning point: Baka vs Hungary (20261/12)
  - First case where opinion doesn't need to originate from personal convictions
  - Expanded docket of cases
- Key principles:
  - Judges have not only a right, but also a duty to criticize to protect rule of law (Baka vs Hungary, 20261/12) - Applied widely, (e.g. also in Kövesi v Romania and Brisc v Romania)
  - Duty to speak out when rule of law is threatened expanded to all judges in Żurek v. Poland, 2022
- Dissenting opinions:
  - Arguments based on inadmissibility under Art. 34 and
  - Distinction between individual and judicial office rights





# Expressions of judges without positions outside of social media

- Examples:
  - Kayasu v. Turkey (2008): Disproportionate sanctions for whistleblowing
  - Kudeshkina v. Russia (2009): Excessive dismissal for corruption allegations
  - Di Giovanni v. Italy (2013): Upheld warning for unfounded accusations
  - Guz v. Poland (2020): Disproportionate sanction for criticism
  - Kozan v. Turkey (2022): Violation for sharing article in closed group
- Common principles: restraint and special duties for judges



# Danilet GC: Key Criteria

- Scope:
  - The judgement limits to cases of internet freedom of expression of judges holding no positions (debatable).
  - Accepts standard Art. 10 practice on first 3 prongs of the Art. 10 examination and consolidates case law on criteria for the necessity test (4 prong of the examination).
- Criteria for the necessity test:
  - Content & Form: High protection for public interest; judges must use circumspect tone.
  - Context & Capacity: Consider historical context and official position.
  - Consequences: Assess impact on judicial independence; distinguish between open/closed networks.
  - Sanctions: Must be proportionate; even minor sanctions can deter free expression.
  - Safeguards: Ensure protection against arbitrariness and right to independent review.





# Danilet GC: Application of Criteria

| Aspect                        | Majority view                                         | Dissenting opinion view                                                        |
|-------------------------------|-------------------------------------------------------|--------------------------------------------------------------------------------|
| <b>Content &amp; Form</b>     | Ambiguity protected; no clear incitement to violence. | Language and tone undermined judicial decorum and ambiguity to be reprimanded. |
| <b>Context &amp; Capacity</b> | Political debate; no direct link to future cases.     | Judge should avoid comments on potential judicial matters.                     |
| <b>Consequences</b>           | No evidence of harm to judiciary.                     | Risk of reputational damage; media exposure mattered.                          |
| <b>Sanction Severity</b>      | Mild but could deter free expression.                 | Sanction justified for breaching discretion.                                   |
| <b>Procedural Safeguards</b>  | Insufficient explanation for disciplinary action.     | Domestic procedures met required standards.                                    |



# Conclusion

- **Step Forward:** *Danilel* GC case marked progress, establishing **new principles for judges' social media use** amid challenges to the Court's authority.
- **Symbolic Timing:** Judgment published shortly after the **Declaration of the 27**, reaffirming the Court's role as guardian of the Convention and domestic judges.
- **Balancing Act:** Court's approach reflects its **dual commitment**—protecting Convention rights while maintaining **State cooperation** (e.g., margin of appreciation doctrine).
- **Uncertain Future:** Debate remains on whether a **more State-leaning decision** would have been prudent, but the Court's path reflects its historical balance.
- **Navigating Challenges:** The Court must continue to adapt to **today's turbulence and tomorrow's unknowns**, striving for effective rights protection.



# Google v Russia

Online Platform's rights and duties and obligations under  
Art. 10 –is ECtHR moving towards new case law or  
waiting for further developments?

# Background and Parties Involved

## The Applicants

### **Google LLC (Delaware, USA)**

*Provides YouTube video sharing platform*

### **OOO Google (Russia)**

*Provides marketing and advertising services in Russia*

### **Google International LLC (Delaware, USA)**

*Shareholder of Google LLC and sole owner of Google Russia*

### **Google Ireland Limited (Ireland)**

*Provides Gmail and other services to European users*

## Jurisdictional Context

### Key timeline

*Case facts occurred before Sept 2022*

*Russia withdrew from Council of Europe in  
with effect as of Sept 2022*

*EctHR retains jurisdiction over pre-  
withdrawal events*

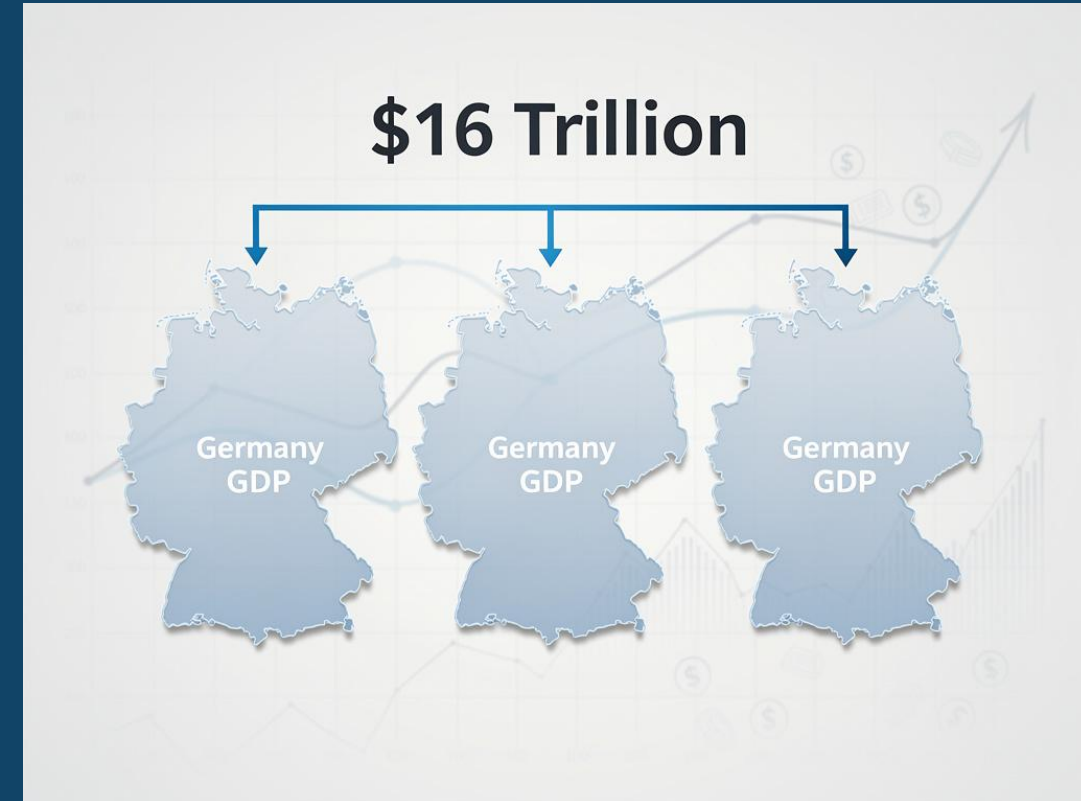
# The Facts: The Tsargrad TV Account Suspension

**Background & Suspension:** Tsargrad TV, a Russian media group owned by sanctioned oligarch Konstantin Malofeyev, was suspended by Google (YouTube/Gmail) on July 28, 2020, due to US sanctions.

**Russian Court Response:** April 20, 2021: Moscow court ordered account restoration, imposing daily fines of 100,000 rubles (€1,000), doubling weekly with no cap.

March 23, 2022: Google restored accounts without monetization.

**Escalation & Consequences** April 2022: Google Russia filed for bankruptcy due to unsustainable penalties, which by September 2022: accumulated to \$16 trillion—equivalent to roughly 3x Germany's GDP.





# Court's Reasoning: Article 10 Violation

## 1. Interference Confirmed

Massive fines pressured Google to over-censor content. Threats of further sanctions distorted its role as a free exchange platform.



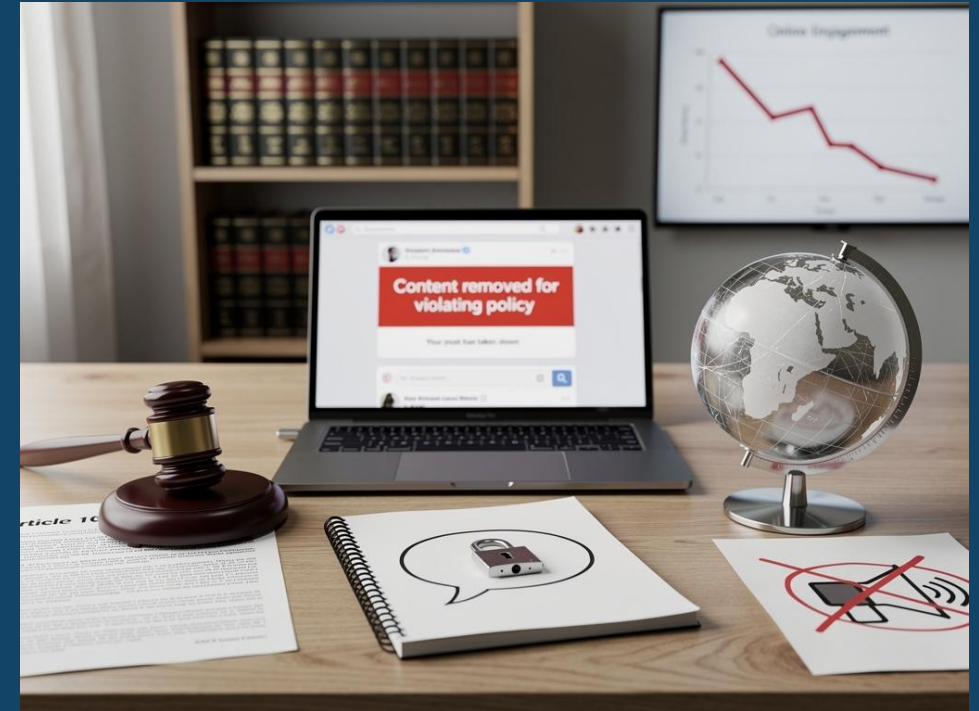
## 2. No Legitimate Justification

Targeted political speech (COVID criticism, war reporting, opposition support). Courts failed to prove harm—assumed deviation from official narratives was inherently dangerous.



## 3. Disproportionate in a Democracy

Indiscriminate restrictions on political expression, government criticism, and LGBTQ+ content. Public interest value (e.g., conflict reporting) ignored.



Thank  
you!