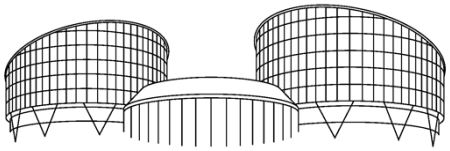

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF P. v. POLAND

(Application no. 56310/15)

JUDGMENT

Art 10 • Freedom of expression • Dismissal of a secondary school teacher for, among others, writing an Internet blog for adults featuring some sexually explicit content, considered by the authorities to be an affront to the prevailing domestic social mores • Lack of relevant and sufficient reasons • Applicant's personal blogging activity did not threaten the protection of morals of minors in a manner justifying the sanction imposed • Interference neither corresponded to a pressing social need, nor proportionate

Prepared by the Registry. Does not bind the Court.

STRASBOURG

13 February 2025

FINAL

30/06/2025

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

In the case of P. v. Poland,

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

Ivana Jelić*, President*,
Alena Poláčková,
Krzysztof Wojtyczek,
Lətif Hüseynov,
Péter Paczolay,
Gilberto Felici,
Alain Chablais*, judges*,
and Ilse Freiwirth, *Section Registrar,*

Having regard to:

the application (no. 56310/15) 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 K.P. ("the applicant"), on 5 November 2015;

the decision to give notice to the Polish Government ("the Government") of the complaints under Articles 8, 10 and 14 of the Convention concerning the applicant's dismissal on disciplinary grounds from his workplace and to declare the remainder of the application inadmissible;

the decision not to have the applicant's name disclosed;

the observations submitted by the Government and the observations in reply submitted by the applicant;

the comments submitted by the Polish Society of Anti-Discrimination Law, the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association, and Campaign Against Homophobia, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 14 January 2025,

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

INTRODUCTION

1. The case concerns the dismissal of a secondary school teacher for, among other things, writing an internet blog for adults featuring some sexually explicit content. The case mainly raises an issue under Article 10 of the Convention.

THE FACTS

2. The applicant was born in 1980 and lives in Koszalin. He was represented by Ms A. Stach, a lawyer practising in Szczecin.

3. The Government were represented by their Agent, Mr J. Sobczak, subsequently replaced by Ms A. Kozińska-Makowska, of the Ministry of Foreign Affairs.

4. The facts of the case may be summarised as follows.

I. BACKGROUND

5. The applicant is a qualified teacher of Polish and English.

6. From 1 September 2007 to 16 December 2013 the applicant worked as a teacher and a form tutor in a secondary school in Koszalin. Secondary school students in Poland are between fifteen and eighteen years old.

7. Each year from 2008 to 2012 the school principal awarded the applicant a prize for the best teacher. In 2010 and 2013 the applicant also won national competitions for the best form tutor.

8. The applicant did not receive any reprimands and no complaints were made about him.

9. The school principal stated in the disciplinary proceedings described below that since 2010 she had suspected that the applicant was homosexual. She stated that she had not taken issue with his sexual orientation and had considered him to be a very good teacher.

10. As part of his job the applicant occasionally took his students on school excursions.

11. Pursuant to the 2001 Ordinance of the Minister of Education on the organisation of tourism by schools, a school trip may only be attended by persons who have been registered, prior to the event, with the school's principal in the trip record (section 10 of the Ordinance). According to the well-established practice of the applicant's school, third parties could not be invited to attend such activities. That rule was expressly stated in the file of each school trip. It was undisputed between the parties that the applicant had known about the rule.

12. In June 2013 the applicant oversaw two school trips. During one of those trips, his same-sex partner accompanied him to a ceremony at the Presidential Palace in Warsaw. He left immediately after the ceremony and was not present throughout the rest of the trip. The applicant's partner also accompanied him on a school camping trip. The applicant explained that he had asked his partner to keep him company as he had suffered sunburn. On both occasions, the applicant introduced his partner to everyone as his cousin. The applicant's partner was not listed as a participant in any of the trip records. The applicant stressed that, during both trips, he had done his night shifts and he had diligently watched over his students.

13. From April or May 2012 until 1 July 2013 the applicant wrote approximately a hundred posts on a public blog on a website aimed at homosexual men, at times posting almost daily. In order to access the website a prospective user had to declare that they were an adult. The applicant wrote under a pseudonym. He wrote in the first person and, at times, referred to himself in the text by his real first name.

14. The content of his blog posts comprised photographs and text in the style of a diary.

15. The photographs mainly depicted men, alone or interacting with other men, dressed, half-dressed or nude, in various situations, such as holding hands, hugging while asleep, having fun on a beach or in water, doing household chores, sharing a bed, kissing in the street, mowing a lawn, urinating in a men's toilet, repairing a car, posing for a picture, holding a phallic-shaped object, removing underwear, or having sex. Other photographs depicted the applicant – either alone or hugging or kissing another man. None of the photographs, whether of the applicant or otherwise, displayed sexual organs or actual sexual intercourse.

16. The applicant's writings mainly described his daily life; his dreams and feelings of love and loneliness; and his intimate thoughts or desires in respect of his partner. Several dozen passages had clear erotic connotations or explicitly depicted, named or described erotic or sexual acts between men.

17. In several of his blog posts he expressed his frustration with his job as a junior teacher or employed swear words with respect to his superiors. He also wrote in general terms about his students.

18. The applicant's blog registered 39,000 visitors.

19. The applicant claims that he kept the blog a secret from his colleagues and students. It appears however that his blog was read and commented on by the school staff. It also appears that the students knew about his internet activity. In particular, one student left a comment, either on the blog or on the applicant's Facebook page, saying "This guy ... is my teacher of Polish".

20. During the disciplinary proceedings described below, the school principal stated that she had not received any complaints about the applicant's blog from the students or their parents. She knew that the teachers at her school had been reading the blog, but submitted that they had been appalled not by the applicant's sexual orientation, but rather by the defamatory comments about the school staff members that he had made separately on Facebook. During the same disciplinary proceedings, the applicant submitted that he had never heard any whisper about the blog from his students.

21. On 1 July 2013 the school principal, who had been informed about the applicant's blog, reprimanded him in that connection and asked him to delete it. The applicant did so on the same day.

II. DISCIPLINARY PROCEEDINGS AGAINST THE APPLICANT

22. On 4 July 2013 the school principal asked the disciplinary officer for teachers (*rzecznik dyscyplinarny*) to open disciplinary proceedings against the applicant on the grounds that he had breached his duties as prescribed in the 1982 Teacher's Charter Act (*Karta Nauczyciela*). In particular, he was reported for allowing a third party (his partner) to attend two school trips without informing the school principal or asking for her authorisation. The

applicant had thus treated both school events as private and had failed to ensure adequate care and supervision of his students. He was also reported for running an internet blog which contained text and images "full of eroticism (*erotyzm*) and profanities (*wulgaryzmy*)". No details were given about the blog's content. The principal feared that the applicant was not fit to "shape his students' moral attitudes". The principal's letter did not mention the applicant's statements regarding his students or colleagues, or his Facebook activity.

23. The disciplinary officer from the Zachodniopomorski Governor's Office brought proceedings with the Disciplinary Commission for the Teaching Profession and lodged an application to have the applicant reprimanded for introducing an unauthorised third party during two school trips and for "running a blog containing texts and images unworthy of the teaching profession".

24. According to the record of the hearing held by the Disciplinary Commission on 16 December 2013, the questioning of the school principal and the applicant focused, firstly, on the applicant's bringing a third party on the school trips, and, secondly, on the blog posts in so far as they contained "profanities" and "obscene" photographs and scenes – considered to "attest to the applicant's morality" – and in so far as they contained offensive comments about the applicant's students and colleagues. As to the comments about the colleagues, the school principal mainly referred to another activity of the applicant, namely his Facebook posts that contained negative comments about the school staff, who were depicted as slackers (*nieroby*), and clarified that profane language had not been used in those posts. Throughout the hearing, the members of the Disciplinary Commission explicitly stated that the profanities were distinct from the applicant's sexual orientation, the latter not being the subject of the disciplinary proceedings. The applicant admitted to the breach of the rules regulating school trips and to the writing of his blog. He stated that his blogging activity had been a form of therapy and a foolish mistake. He reassured the Commission that the blog had been deleted and that he was not going to make similar publications again.

25. At the above-mentioned hearing, the disciplinary officer reiterated his request that a punishment be imposed on the applicant in the form of a reprimand with a warning (see paragraph 40 below).

26. After the hearing, on 16 December 2013, the Disciplinary Commission found the applicant responsible for "a breach of the dignity of the teaching profession and of the duties set out in section 6 of the Teacher's Charter Act" (see paragraphs 39 and 40 below) in that on two school trips he had been accompanied by an unauthorised third party and that he had run a public blog with "texts and images unworthy of the teaching profession". The Commission ordered that the applicant be dismissed from his position at the

school (section 76(1)(2) of the Teacher's Charter Act – see paragraph 40 below).

27. The decision's reasoning contained, among other things, the following statements and observations. The applicant's blog contained "texts of an erotic character and obscene photos". A teacher who published profane comments on social media undermined the dignity of the profession. Teachers had to act with dignity at school and in their private environment. Teachers who in their spare time were active on the internet had to act in a dignified manner. Teachers, while enjoying freedom of expression, had to show restraint because of their mission as educators of a new generation and because of the responsibility for their expression, especially given that when publishing on the internet they did not enjoy the right to privacy. Content published on Facebook was widely accessible and aimed at an unrestricted public readership. According to the decision, "[b]y using profane terms, by breaching good mores (*dobre obyczaje*) through his expression, and by posting obscene photographs, a teacher breaches the dignity of the teaching profession". In the light of the decision's reasoning, the Commission did not make an assessment of any specific blog posts.

28. The applicant appealed against that decision, asking that the sanction imposed on him be changed as it was disproportionately severe. He argued, *inter alia*, that the Disciplinary Commission had wrongly found that he lacked morals and posed a threat to the ethical education of his students. He further stated that the Commission's decision was grounded on the information about his "disturbed sexual orientation" (his own words). He acknowledged that writing the blog was reprehensible behaviour. He explained, however, that his conduct had not been the result of "depravity" but rather his complicated and difficult personal situation and identity issues, as well as his traumatic childhood. The applicant concluded that the disproportionate severity of the punishment which had been imposed on him indicated that the Commission's decision had been based, possibly subconsciously, on homophobic prejudices and stereotypes.

29. The applicant was assigned a legal-aid lawyer to represent him in the proceedings. Before the Appellate Disciplinary Commission ("the Appellate Commission"), the applicant's lawyer argued firstly that the sanction that had been imposed on the applicant was disproportionately severe. In respect of the first ground for the applicant's punishment, the lawyer stated that the applicant had indeed breached the regulations, but he had not neglected his duties during the school trips in question. In respect of the second ground, the lawyer argued that the problem was more complex. In particular, he alleged that the reason for the disciplinary proceedings had been the discovery of the applicant's homosexual orientation, which was revealed in his blog. The disciplinary proceedings and their outcome had therefore been discriminatory. The applicant was an excellent teacher who had been teaching

his students values such as love for their country, respect for the Constitution, freedom of conscience and respect for every human being.

30. On 24 September 2014 the Appellate Commission quashed the decision of 16 December 2013 and discontinued the disciplinary proceedings against the applicant.

31. In its decision the Appellate Commission took into consideration the applicant's conduct during the proceedings, namely the fact that he had admitted all of the acts imputed to him and had expressed remorse for them, as well as the fact that he had ceased writing the blog and had deleted it on the same day on which the school principal had reprimanded him for it. The Appellate Commission also found that there had been no proof that he had in fact neglected his duties as tutor during the trips. Moreover, in the Appellate Commission's view, the applicant had written the blog for therapeutic purposes on the recommendation of his psychiatrist to note down his feelings in order to overcome his childhood psychological trauma. In the light of the decision's reasoning, the Appellate Commission did not make an assessment of any specific blog post. Lastly, the Appellate Commission attached importance to the lack of any evidence that the applicant's blog had had any negative impact on the youth at the school.

32. The disciplinary officer from the Ministry of National Education appealed, reiterating: firstly, that the applicant had not complied with regulations aimed at ensuring the safety of students on school trips; and secondly, that he had breached the dignity of his profession by writing the blog. As to the latter, the officer stressed that, contrary to what had been argued by the applicant's lawyer, the problem at hand was not the applicant's sexual preferences, but only the indecent content of his public blog. The officer also noted that the applicant's blog contained "erotic texts", "obscene photographs", "profanities", "erotic and profane descriptions of intimate situations, and "obscene photographs of the teacher with his partner". The officer also noted that the "comments full of profanities also referred to the school staff and school affairs". The officer raised the additional point that the applicant had admitted to the conduct attributed to him and, in his appeal, had merely asked for a more lenient punishment. In the officer's view, the applicant had thus not questioned the legitimacy of the punishment as such. The disciplinary officer concluded that "the applicant did not fulfil one of the statutory requirements for a teacher, namely compliance with basic moral principles". In his view, the applicant had "breached that requirement by posting on his blog entries and photographs violating good mores". In the light of those considerations, the officer argued that the sanction imposed on the applicant was appropriate.

33. On 7 May 2015 the Szczecin Court of Appeal reversed the decision of 24 September 2014 and dismissed the applicant's appeal, at the same time upholding the Disciplinary Commission's decision, including the part ordering his dismissal.

34. The Court of Appeal held that the applicant, by bringing an unauthorised person on two school trips, had neglected his duties and compromised students' safety, in breach of section 6(1) of the Teacher's Charter Act. Moreover, it considered that the fact that the applicant had been "writing a blog with the content (including the photographs) that was profane, obscene and sexual" was unworthy of the teaching profession and in breach of the obligation laid down in section 6(5) of the same Act to shape students' moral and civic attitudes. To that end, the Court of Appeal listed more than thirty dated blog entries and described them as: "obscene and pornographic photos" ("photos of men", "photos of the applicant", "sexual content"); descriptions of "the applicant's sexual life"; and "comments about the students and [the applicant's] work at the school". It singled out the following excerpts, among others: (i) those regarding the applicant's work: "I am now the school's prostitute, who can be used, as I will agree to anything anyway"; "have I mentioned that I will be used at my work? Regrettably, not sexually ... my period has started ... the period of apprenticeship"; "the first class has already got on my nerves. I will show those dicks in the English exam!", "Is there anything that makes you prouder than having your students resemble you? I am raising a whole host of future little psychopaths who are already my equals in sarcasm"; (ii) those regarding his youth: "Those were the days of rebellion. I was thrown out of school for absences and a sexual approach to education – I fucked education, or alternatively, I had everything up in my ass"; or (iii) those regarding life in general: "It's a holy day. And, in protest, I can die of humiliation. I want to be found dead, with my penis erect, with my pants lowered and stained with white sperm, among wheat coloured in blood-red gore ... 7 June – international day of sex ... remember to celebrate the holy day". The Court of Appeal noted that, as submitted by the school principal at the hearing before it, the applicant's blog contained terms such as "blow you" or "you have a big one", which the principal considered unacceptable and demeaning. The Court of Appeal did not make any reference to the applicant's Facebook activity. The Court of Appeal also noted that the applicant's colleagues and the school principal had described the photographs as being "pornographic" and "obscene", and the text as being "very immoral", "profane" and "sexual". In its reasoning, the court observed that, as the time had gone by, "the applicant [had] made more and more entries breaching the dignity of the profession, [by] describing or commenting on his sexual and professional life, [and] uploading photographs". In that context, the court observed that teachers were not only there to convey knowledge, but also to influence children's conduct or perception of the world. The Court of Appeal expressly stated that the applicant's sexual orientation was irrelevant, in the sense that it could not constitute a valid justification for the public expression of obscenities. Responding to the Appellate Commission's arguments, it also found it irrelevant that the applicant's conduct had not had any negative effect on his

students. To that end, the court attached importance to the public nature of the applicant's internet blog and the fact that in it, he had exposed his profession and discredited his colleagues, his supervisors and his students.

35. The court's reasoning does not elaborate on the statements concerning the applicant's colleagues or school administration. In this context, the court did not examine the case from the perspective of defamation.

36. Lastly, the Court of Appeal observed that the sanction imposed on the applicant was proportionate in that, taking into consideration his remorseful attitude and his very good record as a teacher, it was sufficiently harmful to the applicant, but it did not take away his career opportunities in other schools.

37. No further appeal was available under the applicable law.

38. According to statistics provided by the Government, 109 sets of disciplinary proceedings were instituted in Poland between 2013 and 2021 for "inappropriate activity of teachers on the internet" (including blogging, Facebook posts, messaging students). Ninety-six of those cases had resulted in disciplinary sanctions against the teacher concerned. It is unknown how many of those cases concerned posts with sexual content.

RELEVANT DOMESTIC LEGAL FRAMEWORK AND PRACTICE

39. The conduct of teachers in Poland is regulated by the Teacher's Charter Act of 26 January 1982 (*Karta Nauczyciela*), which, in so far as relevant, reads as follows:

> "Taking into account the important role of education and upbringing in the Republic of Poland, and wishing to express the special social importance of the teaching profession in accordance with the needs and expectations [of society] by opening the way to further legal regulation of the national education system with this Act, it is hereby established:
>
> ..."

Section 6

> "A teacher is obliged to:
>
> 1) reliably perform tasks related to the position entrusted to him and to the basic functioning of the school: teaching, education and caring, including tasks related to ensuring the safety of students during classes organised by the school;
>
> 2) support each student in his or her development;
>
> ...
>
> 4) educate and raise young people in love for the Homeland, in respect for the Constitution of the Republic of Poland, and in an atmosphere of freedom of conscience and respect for every person;

5) take care to shape moral and civic attitudes in students in accordance with the idea[s] of democracy [and of] peace and friendship between people of different nations, races and worldviews.

...”

Section 9

“1. The position of teacher may be held by a person who:

1) has a higher education with appropriate pedagogical preparation or has graduated from a teacher training institution ...;

2) adheres to basic moral principles;

...”

40. The Teacher’s Charter Act further regulates the disciplinary liability of teachers. The relevant parts read as follows:

Section 75

“1. Teachers are subject to disciplinary liability for breaches of the dignity of the teaching profession or the obligations referred to in section 6.

...

2a. ... Where there is a suspicion that a teacher has committed an act violating the rights and well-being of a child, the school principal ... shall notify the disciplinary officer no later than within 14 days from the date of receiving information about the suspicion that such an act has been committed, unless the circumstances clearly indicate that no such act has been committed.”

Section 76

“1. The disciplinary penalties for teachers are:

1) reprimand with warning;

2) dismissal from position;

3) dismissal from position with a ban on employment as a teacher for a period of 3 years from the date of punishment;

4) expulsion from the teaching profession.

...

3. Imposing the disciplinary penalty referred to in subsection 1 point 4 is tantamount to a prohibition on employing the punished person as a teacher.

...

5. A copy of the final judgment imposing a disciplinary penalty together with its justification shall be included in the teacher’s personal file.”

41. Pursuant to section 85s of the Teacher’s Charter Act, a disciplinary sanction such as dismissal from his or her position is expunged from a teacher’s records after three years and the disciplinary decision is removed from the teacher’s professional file.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION READ ALONE AND IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

42. The applicant complained, relying on Articles 8 and 14 of the Convention, that his disciplinary dismissal from his position as a teacher at a secondary school had breached his right to respect for his private and family life, as well as the prohibition of discrimination. In that connection, he explicitly argued that the sanction in question had stemmed from prejudice against his sexual orientation and his relationship with a partner of the same sex. The provisions in question read as follows:

Article 8

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

A. Article 8 of the Convention taken alone

43. The Court notes that neither party contested the applicability *ratione materiae* of Article 8 of the Convention to the facts of the case. That, however, does not release the Court from the obligation to examine *proprio motu* the question of its jurisdiction at every stage of the proceedings, even where no objection has been raised in that respect (see *Ballıktaş Bingöllü v. Turkey*, no. 76730/12, § 53, 22 June 2021).

44. The Court must assess whether the applicant's dismissal from the position of a teacher at a secondary school affected his private life, thus rendering Article 8 applicable (see, *mutatis mutandis*, *Denisov v. Ukraine* [GC], no. 76639/11, § 118, 25 September 2018).

45. The Court reiterates that the concept of "private life" is a broad term that is not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person. It can therefore embrace multiple aspects of a person's physical and social identity. Article 8 protects in addition a right

to personal development and the right to establish and develop relationships with other human beings and the outside world (see *Mile Novaković v. Croatia*, no. 73544/14, § 42, 17 December 2020, with further references therein).

46. Employment-related disputes are not *per se* excluded from the scope of "private life" within the meaning of Article 8 of the Convention (see *Fernández Martínez v. Spain* [GC], no. 56030/07, §§ 110 and 113, ECHR 2014 (extracts), with further references, and *Denisov*, cited above, § 115). There are normally two ways in which a private-life issue would arise in such a dispute: either because of the underlying reasons for the impugned measure (in that event the Court employs the reason-based approach) or – in certain cases – because of the consequences it has for private life (in that event the Court employs the consequence-based approach – see *Denisov*, cited above, § 115). Where a consequence-based approach is at stake, a certain threshold of severity must be attained, and the applicant has to present evidence substantiating the consequences of the impugned measure. The Court will only accept that Article 8 is applicable where these consequences are very serious and affect his or private life to a very significant degree (ibid., § 116, and see *Mile Novaković*, cited above, § 43). In determining the seriousness of the consequences in employment-related cases, it is appropriate to assess the subjective perceptions submitted by the applicant against the background of the objective circumstances existing in the particular case. This analysis would have to cover both the material and the non-material impact of the alleged measure (see *Denisov*, cited above, § 117). The Court notes that the applicant, in formulating his Article 8 complaint relied solely on what amounts to the reason-based approach, never raising, even in essence, any arguments pertaining to the consequence-based approach.

47. Turning to the facts of the present case, and taking the reason-based approach first, the Court observes that the direct reason for the applicant's dismissal from his post was a breach of the duties prescribed in the Teacher's Charter Act. The breach in question was twofold. Firstly, the applicant had been accompanied by an unauthorised person on two school trips. Secondly, he had been writing a blog that was viewed as obscene (see paragraphs 22-34 above). The applicant, in his complaints, focused on the fact that the person who had accompanied him on the two trips was his same-sex partner and that the blog he had written had homosexual content.

48. In so far as the applicant has argued that the situation had been underpinned by homophobic prejudice, the Court would make the following observations.

49. The applicant's dismissal from his school was not based on any official policy against homosexual people (contrast *Lustig-Prean and Beckett v. the United Kingdom*, nos. 31417/96 and 32377/96, 27 September 1999, and *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96,

ECHR 1999-VI). Moreover, it has not been argued that the Teacher's Charter Act, which does not contain any references to sexual orientation (see paragraphs 39 and 40 above), had, as its underlying legislative intent, a restriction on imparting information about same-sex relationships to students (contrast, *mutatis mutandis*, *Macatė v. Lithuania* [GC], no. 61435/19, §§ 195-200, 23 January 2023).

50. As to whether the applicant's homosexuality played a role in shaping the assessment made by the school principal and the authorities of his conduct, the Court notes that both the school principal and the authorities explicitly denied that that was the case (see paragraphs 9, 32 and 34 above, and contrast, *mutatis mutandis*, *Macatė*, cited above, §§ 189 and 194). The Court has previously found in other cases that, notwithstanding the precautions taken by the domestic authorities to justify their decision by reasons other than an applicant's sexual orientation, the inescapable conclusion was that the applicant's homosexuality had in fact been at the centre of deliberations and omnipresent at every stage of the judicial proceedings (see *E.B. v. France* [GC], no. 43546/02, § 88, 22 January 2008, and *X v. Poland*, no. 20741/10, § 79, 16 September 2021). No such inference can, however, be made in the present case, given the absence from the case material of any innuendo to that effect and the presence of explicit statements to the contrary, and given the fact that the applicant's sexual orientation had seemingly been known to the school's principal for a number of years (see paragraph 9 above), without any negative consequences for him (contrast *A.K. v. Russia*, no. 49014/16, §§ 43 and 44, 7 May 2024). If anything, it appears that the argument about the applicant's sexual orientation was presented by him as an explanation for his behaviour and, as such, was rejected by the Court of Appeal (see paragraph 34 *in fine* above).

51. In the light of these considerations, it cannot categorically be said that the real or crucial reason for the impugned measure was the applicant's homosexual orientation (see the preceding paragraph; contrast, *mutatis mutandis*, *Mile Novaković*, cited above, §§ 48 and 49, and *X v. Poland*, cited above, §§ 73-93).

52. The Court observes that the personal sphere protected by Article 8 can indeed include, irrespective of one's sexual orientation, a person's sexual life (see *Chocholáč v. Slovakia*, no. 81292/17, §§ 53-56, 7 July 2022). In the present case, however, it cannot be said that the applicant's impugned conduct related to his sexual life as such (contrast with *Chocholáč*, cited above, in which an applicant prisoner, who was unable to receive intimate visits, received a disciplinary sanction for possession of pornographic material in his cell).

53. In the light of these considerations, the Court is not satisfied that the underlying reasons for the applicant's dismissal from work were sufficiently linked to his private life (contrast *Travaš v. Croatia*, no. 75581/13, § 56,

4 October 2016) to justify the applicability of Article 8 to the facts of the present case under its reason-based approach.

54. Turning to the consequence-based approach, the Court must first reiterate the *Gillberg* exclusionary principle according to which, where the negative effects complained of are limited to the consequences of unlawful conduct which were foreseeable by the applicant, Article 8 cannot be relied upon to allege that such negative effects encroach upon private life (see *Gillberg v. Sweden* [GC], no. 41723/06, § 71, 3 April 2012, and *Denisov*, cited above, § 121). It has to be noted in this context that the applicant did not dispute that he had knowingly breached the rules relating to school trips when he had, on two occasions, been joined on such trips by his partner, who did not have the necessary authorisation (see paragraph 11 above). In these circumstances, a form of disciplinary sanction was a foreseeable consequence of the applicant's conduct in his capacity as a teacher (see *Gillberg*, cited above, § 71, and compare *Denisov*, cited above, § 121; *Gražulevičiūtė v. Lithuania*, no. 53176/17, § 102, 14 December 2021; and *Juszczyszyn v. Poland*, no. 35599/20, § 231, 6 October 2022). In so far, however, as the sanction foreseeable for the above conduct could, under the applicable law, be of a lesser degree than dismissal (reprimand was another possibility, see paragraph 40 above), and more importantly, in so far as the applicant entirely contests the existence of misconduct with regard to the second ground for his dismissal, namely, his blog activity, the case may be distinguished from *Gillberg* (compare with *Denisov*, cited above, § 121).

55. The Court will therefore continue its assessment of the applicability of Article 8, based on the assumption that the *Gillberg* exclusionary principle cannot be relied on fully in the circumstances of the present case.

56. The Court would first reiterate that it is an intrinsic feature of the consequence-based approach under Article 8 that convincing evidence showing that the threshold of severity was attained has to be submitted by the applicant. Applicants are obliged to identify and explain the concrete repercussions on their private life and the nature and extent of their suffering, and to substantiate such allegations in a proper way (see *Denisov*, cited above, § 114). The Court thus notes that the applicant was dismissed from a stable job and that the disciplinary sanction taken against him was recorded in his professional file. That said, the Court would stress that he was not suspended or barred from exercising his profession, and that the record of the disciplinary sanction was automatically expunged after three years (see paragraph 41 above). While the applicant's life was inevitably negatively affected by his losing a salary (see, *mutatis mutandis*, *Pişkin v. Turkey*, no. 33399/18, § 185, 15 December 2020; *Xhoxhaj v. Albania*, no. 15227/19, § 363, 9 February 2021; and *Ţîmpău v. Romania*, no. 70267/17, § 159, 5 December 2023), the Court reiterates that the financial element of the dispute does not make Article 8 of the Convention automatically applicable (see *Denisov*, cited above, § 122; *Camelia Bogdan v. Romania*, no. 36889/18,

§ 86, 20 October 2020; and *Miroslava Todorova v. Bulgaria*, no. 40072/13, § 137, 19 October 2021). As for the broader context of losing a job, the applicant has not submitted any evidence in support of his claim (see paragraph 64 *in fine* below), that it was impossible for him to resume exercising his profession, for instance, by securing employment at another school (see, *mutatis mutandis*, *Calmanovici v. Romania*, no. 42250/02, §§ 137-39, 1 July 2008, and contrast, *mutatis mutandis*, *Juszczyszyn*, cited above, §§ 235-36; *Pişkin*, cited above, § 186; and *Ţîmpău*, cited above, §§ 160-61). The applicant had a long record of excelling in his roles as a teacher and a form tutor (see paragraph 7 above). Moreover, it has not been argued that the grounds for his dismissal were made public or that substantial damage to his professional or social reputation were caused (compare *Denisov*, cited above, § 130, and contrast *Gražulevičiūtė*, cited above, § 109). The Court cannot therefore conclude that the impugned disciplinary sanction affected the applicant's long-term opportunities for establishing and maintaining his professional life to the extent that is deemed necessary under the consequence-based approach (see *Ballıktaş Bingöllü*, cited above, § 60; and contrast, *mutatis mutandis*, *Budimir v. Croatia*, no. 44691/14, § 47, 16 December 2021; *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, § 86, 12 January 2023).

57. Having measured the applicant's subjective perceptions against the objective background and having assessed the material and non-material impact of his dismissal on the basis of the evidence presented before the Court, it has to be concluded that the effects of the dismissal on the applicant's private life did not go beyond the "threshold of seriousness" necessary for an issue to be raised under Article 8 (see, *mutatis mutandis*, *Denisov*, cited above, § 133). Consequently, Article 8 does not apply to the facts of the present case.

58. It follows that the applicant's complaint under Article 8 is incompatible *ratione materiae* within the meaning of Article 35 § 3 (a) of the Convention and must be rejected in accordance with Article 35 § 4.

B. Article 14 of the Convention taken in conjunction with Article 8

59. In the light of the above considerations, and noting, on the one hand, that Article 14 of the Convention has no independent existence (see, among many other authorities, *Molla Sali v. Greece* [GC], no. 20452/14, § 123, 19 December 2018), and, on the other hand, that the scope of Article 14 read in conjunction with Article 8 may be more extensive than that of Article 8 taken alone (see *Beeler v. Switzerland* [GC], no. 78630/12, §§ 47-48 and 62, 20 October 2020, and *Valiullina and Others v. Latvia*, nos. 56928/19 and 2 others, §§ 136 and 145-47, 14 September 2023), the Court finds that the situation complained of fell within the ambit of Article 8, given that the applicant's blog activity was an expression of his intimate life. As such,

Article 14, taken in conjunction with Article 8, is thus applicable to the facts of the case at hand.

60. The applicant alleged that he had been discriminated against on account of his sexual orientation. In view of its analysis regarding the reason-based approach to the issue of the applicability of Article 8 of the Convention (see paragraphs 47-50 above), and the conclusion it has reached in this respect (see paragraph 51 above), the Court considers that it cannot be said that the real or crucial reason for the applicant's dismissal was his sexual orientation. Consequently, there is no basis for concluding that he has been discriminated against on that ground.

61. Accordingly, this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION READ ALONE AND IN CONJUNCTION WITH ARTICLE 14 OF THE CONVENTION

62. The applicant complained, relying on Articles 10 and 14 of the Convention, that his disciplinary dismissal had also breached his right to freedom of expression and the prohibition of discrimination. To that end, he essentially argued that the authorities had been wrong to conclude that his blog was unethical, and, again, that they had discriminated against him on the grounds of his sexual orientation.

Article 10 of the Convention reads as follows, in so far as relevant:

> "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. ...
>
> 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 ..."

Article 14 of the Convention is cited at paragraph 42 above.

A. Admissibility

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

B. Merits

1. The parties' submissions

64. The applicant argued that the disciplinary proceedings against him had been motivated by prejudice against persons of homosexual orientation. He also denied that his blog had contained pornographic content or that it had been accessed by his students. As to the severity of the sanction imposed, he argued that his dismissal from his school had prevented him, in practice, from resuming his profession as no other school establishment would want to hire him given his disciplinary record.

65. The Government argued that the interference with the applicant's right to respect for his freedom of expression pursued the legitimate aim of protecting the morals of students and that it was proportionate. In particular, teaching was a public trust profession, and a teacher should be a role model for students. The profane, obscene, erotic and pornographic content of the applicant's writings had undermined the dignity of his profession. The Government stressed that the applicant's internet blog had not in fact been anonymous because he had uploaded photos of himself. Moreover, the blog could not be classified as literary fiction because he had described real situations from his personal and professional life in, at times, defamatory terms. The Government emphasised that the authorities' reaction had not had anything to do with his sexual orientation. They also argued that by agreeing to delete the blog the applicant had condemned his own behaviour. Lastly, the Government argued that the sanction imposed on him had not been disproportionately severe, given that it reflected cumulative shortcomings such as the breach of the safety rules concerning school trips and the blog entries that were both obscene and defamatory of students and the school staff. The Government also stressed that the record of the disciplinary sanction against the applicant would be automatically expunged from his teaching file after three years. There was therefore no theoretical or practical obstacle to the applicant resuming work in his profession.

2. The third parties' submissions

66. Three non-governmental organisations: the European Region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA-Europe); Campaign Against Homophobia (CAH); and the Polish Society of Anti-Discrimination Law (PSAL), acting jointly as a third party, made the following observations, in so far as relevant.

67. Referring to, among other things, the views of the United Nations (UN) Human Rights Committee (CCPR) as adopted in the communication concerning *Fedotova v. Russian Federation* (Communication No. 1932/2010, UN Doc. CCPR/C/106/D/1932/2010, 30 November 2012, paragraph 10.7), they submitted that the right to freedom of expression of Lesbian, Gay,

Bisexual and Transgender (LGBT) persons protected the right to express themselves publicly concerning their sexual identity or gender identity and to seek understanding for it.

68. They also noted that in a joint statement by UN human rights experts, the Inter-American Commission on Human Rights, the Special Rapporteur on Human Rights Defenders in Africa of the African Commission on Human and Peoples' Rights, and the Organisation for Security and Co-Operation in Europe (OSCE) Representative on Freedom of the Media, "Free expression and association key to eliminating Homophobia and Transphobia", dated 15 May 2014, the argument that banning the dissemination of information about sexual orientation or gender identity issues was necessary to protect public morals or the well-being of vulnerable people had been categorically rejected.

69. The third parties also relied on ILGA-Europe's Rainbow Europe Index 2021, according to which Poland ranked 43rd of 49 European countries and last among the member States of the European Union (EU) in terms of legal and policy practices concerning LGBTI persons. Poland's overall score in the various categories of legal protection provided to LGBTI persons was 13%. Referring to the Memorandum on the Stigmatisation of LGBTI People in Poland, issued by the Council of Europe's Commissioner for Human Rights (CommDH(2020)27) on 3 December 2020, and to the report of the EU Fundamental Rights Agency entitled "A long way to go for LGBTI equality" published on 14 May 2020, the third parties described the prevailing social attitude towards LGBTI persons in Poland as negative.

3. The Court's assessment

(a) General principles

70. The Court refers to the recapitulation of its general principles concerning freedom of expression in *Medžlis Islamske Zajednice Brčko and Others v. Bosnia and Herzegovina* ([GC], no. 17224/11, § 75, 27 June 2017).

> "(i) Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment. Subject to paragraph 2 of Article 10, it is applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no 'democratic society'. As set forth in Article 10, this freedom is subject to exceptions, which ... must, however, be construed strictly, and the need for any restrictions must be established convincingly ...
>
> (ii) The adjective 'necessary', within the meaning of Article 10 § 2, implies the existence of a 'pressing social need'. The Contracting States have a certain margin of appreciation in assessing whether such a need exists, but it goes hand in hand with European supervision, embracing both the legislation and the decisions applying it, even those given by an independent court. The Court is therefore empowered to give

the final ruling on whether a 'restriction' is reconcilable with freedom of expression as protected by Article 10.

(iii) The Court's task, in exercising its supervisory jurisdiction, is not to take the place of the competent national authorities but rather to review under Article 10 the decisions they delivered pursuant to their power of appreciation. This does not mean that the supervision is limited to ascertaining whether the respondent State exercised its discretion reasonably, carefully and in good faith; what the Court has to do is to look at the interference complained of in the light of the case as a whole and determine whether it was 'proportionate to the legitimate aim pursued' and whether the reasons adduced by the national authorities to justify it are 'relevant and sufficient'... In doing so, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they relied on an acceptable assessment of the relevant facts ..."

(b) Application of the above principles to the present case

71. The Court notes, at the outset, that the applicant was dismissed for two reasons, namely for having been accompanied by an unauthorised third party during school trips and for running a public blog with content that was unworthy of the teaching profession (see paragraphs 24 and 34 above). Only the latter ground for his dismissal is the subject matter of his complaint under Article 10 of the Convention.

72. It is undisputed by the parties that the applicant's dismissal from his position as a teacher at a secondary school for publishing a blog constituted an interference with his right to freedom of expression.

73. The legal basis for the interference in the present case, as indicated by the authorities, was section 6 of the Teacher's Charter Act (see paragraphs 24 and 39 above). The interference was therefore in accordance with the law for the purposes of the Convention.

74. The Government and the domestic authorities relied on the protection of morals and of the rights and freedoms of others as a legitimate aim that justified the impugned interference.

75. The Court observes that the statutory obligation, prescribed by the above-mentioned section 6(5) of the Teacher's Charter Act, namely that a teacher should "take care to shape" moral attitudes in students (see paragraph 39 above), inherently presupposes a prohibition on the transmission of inappropriate material to them. Additionally, the Court notes that under section 9 of the same Act, a teacher should "adhere to basic moral principles" (ibid.). That provision may be seen as indicative of an interest in protecting morality in a more general sense that might be seen as extending into the sphere of a teacher's private life (compare, *mutatis mutandis, Chocholáč*, cited above, § 61). The authorities in the instant case did not rely on section 9 in the disciplinary proceedings against the applicant.

76. The Court would stress that, according to the authorities and the Government, the applicant's blog was an affront to the social mores prevailing in Poland because it talked in explicit terms about sexuality in and

of itself, not because the type of sexuality it described was homosexual (see paragraphs 20, 32, 34 and 65 above, and contrast, *mutatis mutandis*, *Bayev and Others v. Russia*, nos. 67667/09 and 2 others, §§ 65, 67, 69 and 74, 20 June 2017).

77. The Court reiterates that it is not possible to find in the legal and social orders of the Contracting States a uniform European conception of morals. The view taken of the requirements of morals varies from time to time and from place to place, especially in our era, characterised as it is by a far-reaching evolution of opinions on the subject (see *Pryanishnikov v. Russia*, no. 25047/05, § 53, 10 September 2019). By reason of their direct and continuous contact with the vital forces of their countries, State authorities are in principle in a better position than an international judge to give an opinion on the exact content of those requirements, as well as on the "necessity" of a "restriction" or "penalty" intended to meet those requirements (see *Müller and Others v. Switzerland*, 24 May 1988, § 35, Series A no. 133; *Kaos GL v. Turkey*, no. 4982/07, § 49, 22 November 2016; *Pryanishnikov*, cited above, § 53; and *Chocholáč*, cited above, § 70). It remains, however, incumbent on the respondent State to demonstrate the existence of the pressing social need behind an interference (see *Khoroshenko v. Russia* [GC], no. 41418/04, § 118, ECHR 2015, and *Chocholáč*, cited above, § 64).

78. In the present case, the Court does not find it necessary to take a definitive stance as to whether the disputed measure in fact pursued any of the indicated legitimate aims because it considers that, in any event, it was not necessary in a democratic society, for the reasons set out below (see, *mutatis mutandis*, *Biržietis v. Lithuania*, no. 49304/09, § 54, 14 June 2016, and *Chocholáč*, cited above, § 63).

79. As regards the necessity of the interference, the Court reiterates that the breadth of the margin of appreciation left to the national authorities varies depending on a number of factors, among which the type of speech at issue is of particular importance. Whilst there is little scope under Article 10 § 2 of the Convention for restrictions on political speech, a wider margin of appreciation is generally available to the Contracting States when regulating freedom of expression in relation to matters liable to offend intimate personal convictions within the sphere of morals or, especially, religion (see *Mouvement raëlien suisse v. Switzerland* [GC], no. 16354/06, § 61, ECHR 2012 (extracts), with further references).

80. Turning to the present case, the Court must first and foremost examine the reasoning adopted by the national authorities that conducted the disciplinary proceedings against the applicant in order to assess whether his dismissal from his post as a secondary school teacher was justified by relevant and sufficient reasons (see *Pryanishnikov*, cited above, § 56, and *Kaos GL*, cited above, § 57).

81. The Court notes that the applicant had not raised any explicit argument before the domestic authorities in terms of his right to freedom of expression and he had acknowledged that writing the blog was reprehensible behaviour. At the same time, however, the applicant argued that the authorities had wrongly perceived his blogging activity as attesting to his lack of morals and posing a threat to the ethical education of his students, and that the sanction imposed on him was disproportionate in the circumstances of the case (see paragraphs 24 and 28 above). In this context, the Court notes that the Disciplinary Commission observed that teachers, while enjoying freedom of expression, had to show restraint because of their mission as educators (see paragraph 27 above). The Court considers that despite the merely implicit and somewhat contradictory form of the applicant's arguments put forward at the hearing before the Disciplinary Commission and in his appeal, the disciplinary proceedings against him were, in part, clearly directed at activities falling within the scope of freedom of expression, and the applicant was punished for engaging in such activities (see, *mutatis mutandis*, *Müdür Duman v. Turkey*, no. 15450/03, § 30, 6 October 2015).

82. The Court also observes that the applicant's argument about the disproportionality of the sanction imposed on him is inherently linked to the broader issue of how the domestic authorities weighed the various elements of the case. Despite this context, in the proceedings conducted at three levels of jurisdiction in the applicant's case, it was only at the last level – before the Szczecin Court of Appeal – that the reasoning referred to specific examples of content from the applicant's blog, namely a number of photographs and statements (see paragraph 34 above). Apart from describing that content as "profane", "obscene" and "sexual" (see paragraph 34 above), the court did not, however, elaborate on why, in its view, those particular texts and images violated the social mores prevailing in Poland (compare, *mutatis mutandis*, *Pryanishnikov*, cited above, § 58, and *Kaos GL*, cited above, § 57). In this context, the Court would stress that the domestic proceedings regarding the applicant's blog did not focus on the comments that were considered offensive to the applicant's students and colleagues (see paragraph 35 above), or the statements that were considered profane, but rather on the blog's erotic and sexual content that was considered obscene (see paragraphs 27 and 34 above). The Court of Appeal, in particular, did not make any reference to the applicant's Facebook activity (see paragraphs 34 and 35 above). It attached importance to the public nature of the applicant's blog and found that he had exposed his profession and discredited his colleagues, his supervisors and his students (see paragraph 34 above). Conversely to the Appellate Commission (see paragraph 31 above), the Court of Appeal thus did not give any weight to considerations such as the fact that access to the blog was restricted to adult readers, that the applicant had deleted it or that it had not been demonstrated that his activity, while it had lasted, had had any negative impact on the students (see paragraph 34 *in fine* above).

83. Even if weighed against the fact that the applicant had not explicitly formulated his freedom-of-expression grievance, the Court cannot conclude that the national authorities duly examined the criteria to be taken into account before restricting the applicant's freedom of expression for the following reasons.

84. First, the Court would stress that the domestic authorities did not take into consideration the fact that the applicant had not engaged in actively transmitting allegedly immoral content to the students (contrast, *mutatis mutandis*, *X. v. the United Kingdom*, no. 8010/77, Commission decision of 1 March 1979, Decisions and Reports 16, p. 101), but in writing a blog that did not have any affiliation to the school.

85. While the applicant claimed that his blog served purely private ends, it was nevertheless hosted on a public website and read by many thousands of readers, a readership that could, and seemingly did, include some of his students and colleagues (see paragraphs 19 and 20 above). Although the blog was anonymous, it could be and indeed was traced back to the applicant (ibid.).

86. On the other hand, the Court considers that the applicant's conduct did not constitute an intrusion in the field of educational policies or parental choices on ethics or sexuality. Nothing in his actions diminished the right of parents to enlighten and advise their children, to exercise with regard to their children their natural parental functions as educators, or to guide their children on a path in line with the parents' own religious or philosophical convictions (see, *mutatis mutandis*, *Bayev and Others*, cited above, § 82). In this context, the Court notes that it has not been argued that the impugned disciplinary proceedings were triggered by the students or by parents fearing for their children's moral integrity or indeed safety (see, *mutatis mutandis*, *Klein v. Slovakia*, no. 72208/01, § 53, 31 October 2006, and contrast *Müller and Others*, cited above, § 12). As to the latter concern, there is no indication that the applicant has ever been convicted of a sexual offence, or that he has suffered from any condition owing to which the material in question could trigger violent or otherwise inappropriate behaviour (see, *mutatis mutandis*, *Chocholáč*, cited above, § 68).

87. Second, the Court notes that the domestic authorities did not take into consideration the fact that the applicant's activity was not considered illegal in the sense that no civil or criminal proceedings appear to have been instituted against him in respect of the allegedly profane or offensive language that he used. They also did not weigh up the factor that the internet platform on which he wrote abided by regulations pursuant to which the ticking by a prospective reader of a box affirming that he or she was an adult was considered sufficient for the purposes of the operation of websites with adult content. The Court also notes that similar and even more explicit – indeed pornographic – material is commonly available on the internet as well as *via* the press to the adult population in the respondent State and beyond

(see, *mutatis mutandis*, *Chocholáč*, cited above, § 68). That said, it does not appear that the applicant was ever suspected of distributing pornography to children. In such circumstances, the Court cannot subscribe to the argument that the aim of the applicant's dismissal from his post was, among other things, to protect his students from sexually explicit material (see, *mutatis mutandis*, *Pryanishnikov*, cited above, § 61).

88. Third, the Court observes that online content creators, like artists and writers, are certainly not immune from the possibility of limitations as provided for in paragraph 2 of Article 10 of the Convention. In accordance with the express terms of that paragraph, anyone who exercises his or her freedom of expression takes on "duties and responsibilities", and the scope of those duties and responsibilities will depend on his or her situation and the means used (see *Vereinigung Bildender Künstler v. Austria*, no. 68354/01, § 26, 25 January 2007; *Akdaş v. Turkey*, no. 41056/04, § 26, 16 February 2010; and *Pryanishnikov*, cited above, § 51).

89. In this context, the Court recognises that teachers exercise a profession of public trust and provide an important public service (see *Grzelak v. Poland*, no. 7710/02, § 87 *in fine*, 15 June 2010). Moreover, since teachers are figures of authority to their pupils, their special duties and responsibilities to a certain extent also apply to their activities outside school (see *Vogt v. Germany*, 26 September 1995, § 60, Series A no. 323).

90. The Court has acknowledged the need to take account of the vulnerability and impressionability of minors (see *Macatė*, cited above, § 205, and *F.O. v. Croatia*, no. 29555/13, § 58, 22 April 2021). It notes however, that the Court of Appeal, when finding that the applicant had breached his duty under section 6(5) of the Teacher's Charter Act to shape the moral and civic attitudes of his pupils (see paragraph 34 above), did not see force in the argument that the applicant had not sought to interact with his students through his blog or to intrude into their private space (see, *mutatis mutandis*, *Bayev and Others*, cited above, § 80, and contrast, *mutatis mutandis*, *Vejdeland and Others*, cited above, §§ 56 and 57). To the extent that the students who read the applicant's blog were exposed to his ideas on sexuality, the Court attaches importance to the fact that the students in question had actively sought to read a blog restricted to adult readers.

91. The Court would also stress that the applicant was employed in the context of a neutral legal relationship between an authority and an individual. Put differently, he was not employed by a religious school, and he did not teach religion or ethics. Such a status might indeed require allegiance towards a singular vision of morality or create between religious education teachers and their students a special bond of trust marked by certain specific features extending into the teachers' private conduct and lifestyle (contrast *Travaš*, cited above, §§ 97 and 98, and *Ţîmpău*, cited above, § 197). The applicant's status as a teacher must therefore be distinguished as only requiring, under section 9 of the Teacher's Charter Act, that he adhere to "basic moral

principles" (see paragraph 39 *in fine* above). It was therefore unreasonable in the present case to impose on him a heightened duty of loyalty that would bar him from expressing his sexuality in the context of a legally operating internet blog for adults (contrast *Fernández Martínez*, cited above, § 85). Moreover, the Court reiterates that the applicant's blog activity was formally condemned by the authorities under a different standard, namely, a duty to shape "moral ... attitudes" in students, within the meaning of section 6(5) of the Teacher's Charter Act (see paragraph 75 above).

92. Furthermore, while remaining mindful of its conclusion that the real reason for the applicant's dismissal was not his sexual orientation (see paragraph 51 above), the Court cannot, however, disregard the fact that his blog depicted homosexual relations and that the Council of Europe's Commissioner for Human Rights and the EU Fundamental Rights Agency reported that the prevailing social attitude towards LGBTI persons in Poland was negative (paragraph 69 above). Owing to this, the Court considers it important to refer to the observations made in its recent Grand Chamber judgment in the case of *Macatė* (cited above, §§ 210, 212-13 and 215, concerning restrictions on the distribution of a book that depicted marriage between persons of the same sex, which sought to limit children's access to information depicting same-sex relationships as essentially equivalent to different-sex relationships and labelled such information as harmful).

93. Finally, as to the severity of the disciplinary sanction imposed on the applicant, the Court duly notes that his dismissal was based on two grounds, namely his blogging activity and the fact that he had brought an unauthorised third party on the school excursions. The Court observes that while this sanction was not the most severe under the applicable law (see paragraph 40 above), it was nevertheless harsher than the one that the disciplinary officer from the Governor's Office had sought, namely a reprimand with a warning (see paragraphs 23 and 25 above). As the proceedings progressed, the sanction of dismissal was considered appropriate by the intervening disciplinary officer at the Ministry level (see paragraph 32 above). Ultimately, the Court of Appeal considered the sanction of dismissal proportionate, taking into consideration the applicant's remorseful attitude and his very good record as a teacher, and found that it did not take away his career opportunities in other schools (see paragraph 36 above). The Court notes, however, that the Court of Appeal did not give consideration to the fact that the applicant, as it would appear from the case material, did not have any previous record of disciplinary sanctions. The Court cannot therefore adhere to the domestic authorities' conclusion, and considers that the applicant's punishment was disproportionate to the legitimate aims purportedly pursued (see, *mutatis mutandis*, *Gülcü v. Turkey*, no. 17526/10, § 116, 19 January 2016).

94. Having regard to the foregoing considerations, the Court concludes that the domestic authorities did not provide "relevant and sufficient reasons"

for dismissing the applicant from his position. Even allowing for a certain margin of appreciation, it cannot be held that the applicant's personal blogging activity threatened the protection of morals of minors in a manner justifying the sanction imposed on him. Therefore, the interference with his right to freedom of expression neither corresponded to a pressing social need, nor was it proportionate to the legitimate aim purportedly pursued. It thus was not "necessary in a democratic society".

95. It follows that there has been a violation of Article 10 of the Convention.

96. Having regard to that conclusion, the Court considers that no separate issue arises under Article 14 of the Convention taken in conjunction with Article 10 (see, *mutatis mutandis*, *Association Ekin v. France*, no. 39288/98, § 65, ECHR 2001-VIII).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

97. 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

98. The applicant claimed 70,000 euros (EUR) in respect of non-pecuniary damage.

99. The Government submitted that this amount was exorbitant, unsubstantiated and unjustified.

100. In the circumstances of the present case, the Court considers that the applicant must have sustained non-pecuniary damage which the finding of a violation of the Convention in this judgment does not suffice to remedy. Ruling on an equitable basis, it awards the applicant EUR 2,600 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

101. The applicant did not make any claim for the costs and expenses incurred before the Court or in the course of the domestic disciplinary proceedings.

FOR THESE REASONS, THE COURT,

1. *Declares*, unanimously, the complaint under Article 10 of the Convention read alone and in conjunction with Article 14 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds*, by 4 votes to 3, that there has been a violation of Article 10 of the Convention;

3. *Holds*, unanimously, that no separate issue arises under Article 14 of the Convention taken in conjunction with Article 10 of the Convention;

4. *Holds*, by 4 votes to 3,
   (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, EUR 2,600 (two thousand six hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 13 February 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth	Ivana Jelić
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Wojtyczek, Poláčková and Paczolay is annexed to this judgment.

JOINT DISSENTING OPINION OF JUDGES WOJTYCZEK, PACZOLAY AND POLÁČKOVÁ

1. We respectfully disagree with the view that Article 10 has been violated in the instant case.

2. In our view, the majority's assessment of the case is based upon erroneous factual findings and a problematic analysis of how the domestic remedies operate.

The majority's reasoning emphasises, in particular, the importance of the following elements (see paragraph 90 of the judgment):

> "[The Court] notes however, that the Court of Appeal, when finding that the applicant had breached his duty under section 6(5) of the Teacher's Charter Act to shape the moral and civic attitudes of his pupils (see paragraph 34 above), did not see force in the argument that the applicant had not sought to interact with his students through his blog or to intrude into their private space (see, *mutatis mutandis*, *Bayev and Others*, cited above, § 80, and contrast, *mutatis mutandis*, *Vejdeland and Others*, cited above, §§ 56 and 57). To the extent that the students who read the applicant's blog were exposed to his ideas on sexuality, the Court attaches importance to the fact that the students in question had actively sought to read a blog restricted to adult readers."

We contest the accuracy of this analysis. It is not true that the blog was restricted to adult readers, because no effective mechanisms were put in place to prevent minors from accessing it. In fact, as established by the domestic authorities, the applicant's blog and Facebook account attracted growing interest among many minor students and became a topic of conversation among them. The minors in question were therefore induced to actively check and read a blog run by a teacher of their school. That interest further incited some students to comment on the blog on social media, creating some form of interaction between the applicant and students. The applicant set in motion a process which resulted in transmitting the content of the blog to at least some students in his school.

The majority further stressed the argument that "... it [was] not ... demonstrated that [the applicant's] activity, while it ... lasted, had ... any negative impact on the students" (see paragraph 82).

In our view, in the framework of disciplinary proceedings in an individual case, it would be simply impossible to demonstrate that any specific content had a negative impact on students. We note in this context that there is currently an increasing international trend towards effective restrictions on access by minors to obscene internet content. That such content has a negative impact on minors is a widely accepted assumption which underlies legislation imposing effective bans on their access to obscene material.

It is true that it has not been argued that the impugned disciplinary proceedings were triggered by parents fearing for their children's moral integrity (see paragraph 86), but in our view this does not mean that, had the parents known about the situation, none of them would have had such fears.

Most probably, the disciplinary proceedings started before the parents concerned became fully aware of the problem. In any event, the authorities which brought the disciplinary proceedings had clearly in mind that once the parents became aware of the situation, many of them would fear for their children's moral integrity.

We further note that the blog in question included a wide variety of material and comments, but we consider some of them to be of a very vulgar nature. The majority failed to address this aspect of the case. In our view, it is one of the most important elements justifying the sanction imposed.

3. We note the following assessment by the majority (see paragraph 81, emphasis added):

> "The Court notes that the applicant *had not raised any explicit argument before the domestic authorities in terms of his right to freedom of expression and he had acknowledged that writing the blog was reprehensible behaviour*. At the same time, however, the applicant argued that the authorities had wrongly perceived his blogging activity as attesting to his lack of morals and posing a threat to the ethical education of his students, and that the sanction imposed on him was disproportionate in the circumstances of the case (see paragraphs 24 and 28 above). In this context, the Court notes that the Disciplinary Commission observed that teachers, while enjoying freedom of expression, had to show restraint because of their mission as educators (see paragraph 27 above). The Court considers that despite the merely *implicit and somewhat contradictory form of the applicant's arguments put forward at the hearing before the Disciplinary Commission and in his appeal*, the disciplinary proceedings against him were, in part, clearly directed at activities falling within the scope of freedom of expression, and the applicant was punished for engaging in such activities (see, *mutatis mutandis*, *Müdür Duman v. Turkey*, no. 15450/03, § 30, 6 October 2015)."

We agree in general with this assessment.

We further note that the finding of a violation is based mainly upon the alleged failure by the domestic authorities to address certain issues and to consider some arguments (see paragraphs 82, 83, 84, 87, 90 and 93). We observe in this context that the disciplinary bodies and especially the Court of Appeal focused on the arguments raised by the parties. As the applicant *acknowledged that writing the blog was reprehensible behaviour*, the breach of professional ethics and the excessive nature of the speech were not disputed between the parties in the proceedings. In his submissions the applicant focussed on the severity of the sanctions. In the disciplinary proceedings it does not appear that it was necessary to address *proprio motu* all the arguments listed by the majority, as many of those issues were not disputed by the parties. The majority's approach, based upon the implicit assumption that in domestic proceedings – whatever the parties' pleadings – the appellate authorities have an obligation to examine of their own motion issues not raised by the parties, constitutes an unjustified interference with the system of domestic remedies.

4. We note that the majority refrained from taking a stance on the question whether the impugned measure pursued a legitimate aim (see paragraph 78). In our view, the disciplinary sanction did pursue a legitimate aim, namely the

protection of the rights of others; that is, the protection of minors and of the rights of parents to ensure education and teaching in conformity with their own religious and philosophical convictions. It further served to protect public order, namely the authority of schools and teachers.

In the majority's view, "the domestic authorities did not provide 'relevant and sufficient reasons' for dismissing the applicant from his position" (see paragraph 94). We respectfully disagree with this opinion. The reasons provided by the authorities were clearly relevant. In our view, they were also sufficient.

The majority, when assessing the severity of the sanction, made the following statement, with which we agree:

> "56. ... The Court cannot therefore conclude that the impugned disciplinary sanction affected the applicant's long-term opportunities for establishing and maintaining his professional life to the extent that is deemed necessary under the consequence-based approach (see *Ballıktaş Bingöllü*, cited above, § 60; and contrast, *mutatis mutandis*, *Budimir v. Croatia*, no. 44691/14, § 47, 16 December 2021; *Ovcharenko and Kolos v. Ukraine*, nos. 27276/15 and 33692/15, § 86, 12 January 2023).
>
> 57. Having measured the applicant's subjective perceptions against the objective background and having assessed the material and non-material impact of his dismissal on the basis of the evidence presented before the Court, it has to be concluded that the effects of the dismissal on the applicant's private life did not go beyond the 'threshold of seriousness' necessary for an issue to be raised under Article 8 (see, *mutatis mutandis*, *Denisov*, cited above, § 133). Consequently, Article 8 does not apply to the facts of the present case."

In our view, unlike Article 8, Article 10 of the Convention does apply to the interference complained of, but given the limited effect of the sanction on the applicant's life, the interference with his freedom of expression cannot be considered disproportionate.

5. We note the following argument by the majority (see paragraph 92):

> "Furthermore, while remaining mindful of its conclusion that the real reason for the applicant's dismissal was not his sexual orientation (see paragraph 51 above), the Court cannot, however, disregard the fact that his blog depicted homosexual relations and that the Council of Europe's Commissioner for Human Rights and the EU Fundamental Rights Agency reported that the prevailing social attitude towards LGBTI persons in Poland was negative (paragraph 69 above). Owing to this, the Court considers it important to refer to the observations made in its recent Grand Chamber judgment in the case of *Macatė* (cited above, §§ 210, 212-13 and 215, concerning restrictions on the distribution of a book that depicted marriage between persons of the same sex, which sought to limit children's access to information depicting same-sex relationships as essentially equivalent to different-sex relationships and labelled such information as harmful)."

If we understand this argument correctly, the outcome of the case could have been different had the applicant depicted heterosexual relations. We would also note that the material published by the applicant did not really seek to depict same-sex relationships as essentially equivalent to different-sex relationships.

6. In conclusion, we would like to emphasise that, according to the Preamble, as modified by Protocol No. 15:

> "... the High Contracting Parties, in accordance with the principle of subsidiarity, have the primary responsibility to secure the rights and freedoms defined in [the] Convention and the Protocols thereto, and that in doing so they enjoy a margin of appreciation, subject to the supervisory jurisdiction of the European Court of Human Rights established by [the] Convention."

The majority reassessed the case as if they were in a higher domestic court, thereby undermining the subsidiarity of the Convention system. Given the vulgar nature of some of the material published on the applicant's blog and the fact that it induced some minor students to actively seek to read it, many people and especially many parents of school-age children throughout Europe will rightly consider disturbing the finding that Article 10 has been violated in the instant case.