**Hypothetical case no 2 – Political neutrality, freedom of association and the right to reply to media**

Solangia is a country from Central and Eastern Europe and EU Member state since 2004. It suffers from high level of polarisation. It is one of the countries with the poorest public confidence in courts according to the EU Justice Scoreboard. Recently, a scandal has shaken the judiciary and further deteriorated its public image. A president of a local court in a small town, previously a member of a political party and member of the town council, was found to have violated the rules governing the allocation of cases to the benefit of a visible member of the political party facing corruption charges. Under the Courts Act, the court presidents have the competence to issue working schedules for each court. In this case, the president abused that authority and changed the working schedule of the court to make sure that he will be allocated to the politician’s case. At the first hearing of the politician’s case, widely covered by the media, the defence counsel, informed about the abusive action of the court president, required his recusal. After the hearing, she revealed the abuse of the court president to the media and argued: “Given his previous political activities, it is clear we are facing a politician wearing a judicial robe”. The affair generated high level of publicity and provoked public outrage.

In response to the affair, the ruling party decided to introduce an amendment of the Courts Act that would require all judges and public prosecutors to declare their current and previous membership in “political parties and associations whose organisation and ends entail for their members particularly strong bonds of hierarchy and solidarity” as well as their positions held in these organisations and the duration of their membership. The amendment required that such information is reported concerning any membership from 5 years before the person concerned became a judge. The information would be publicly available on the official websites of the judiciary and the state prosecution services. The aim of the legislation is to provide transparency, ensure impartiality and political neutrality of the judiciary, build public trust, and prevent similar scandals in the future. The amendment made the failure to comply with the obligation of reporting a minor disciplinary offence. The amendment was adopted with a high level of support in the national parliament, despite warnings from the representatives of the judiciary: the Supreme Court, the Prosecutor General, the Solangia Judicial Association, and the Solangia Council for the Judiciary.

After the expiry of the dealine for reporting, government friendly media released a story about judge Silvia M., the president of the Solangia Judicial Association, criticising her for her failure to report her membership according to the amendment of the Courts Act. The media revealed that Silvia M. was a member of a youth wing of a political party during the period of transition from a former autocratic regime to democracy. They claimed that her intentional disregard of the binding law of Solangia shows that she is willing to ignore the applicable law and bind and twist the legal rules in favour of her personal and political views. The media required the competent authorities to initiate disciplinary proceedings. However, there was no reply from the Supreme Court or other official channels for communication with the public. The story triggered intensive discussions on social media. Silvia M. started receiving hate mail, she was labelled a “lawless judge” and “Mrs. above the law”.

After a few painful days for Silvia, she decided to break her silence and responded in the media. She gave an interview for a renewed newspaper, in which she claimed that the media have presented the situation in a wholly unfair way. She recalled that, when the amendment was presented to the public, the Solangia Judicial Association had warned the government that the amendment would be contrary to EU law, since the CJEU, in case C-204/21, *Commission v Poland*, recently declared similar Polish legislation to be incompatible with EU law. She argued that their warnings were completely ignored or were dismissed with the argument that judges only want to avoid greater transparency. The prime minister even publicly stated, quoting the US Supreme Court Justice Louis Brandeis that “Sunlight is said to be the best of disinfectant”. Silvia added that in the event of conflict between EU law and national law, EU law prevails. She argued she also had a moral duty to disregard national law, which is in flagrant breach of EU law. She said that if she complied with the national law, she would have appeared unconvincing to her colleagues and to the part of the public opinion that opposed the reform. She could not at the same time oppose the reform and comply with it without compromising her reputation and acting contrary to the purpose of the association she presided.

Questions:

1. In your country, do judges have to reveal their previous membership in political parties and/or associations? What is your opinion on such legislation?
2. Is the EU Charter of Fundamental Rights applicable to the case at hand? Why/why not? When answering this question, please bear in mind Recital no. 20 and Article 2 (2) (a) of the GDPR.
3. Do you agree with Silvia that the amendment is contrary to EU law? Why/why not? What are the differences between C-204/21, *Commission v Poland* and the case at hand? How important are these differences in your opinion and why?
4. Does the duty of discretion and restraint allow Silvia to reply to the media? In other words, was Silvia’s reply in line with the standards of freedom of expression of judges developed by the ECtHR? Does the fact that Silvia is the president of the judicial association impact your assessment and why / why not?
5. Imagine Solangia prohibits judges from being members of “political parties and associations whose organisation and ends entail for their members particularly strong bonds of hierarchy and solidarity”. Would this be contrary to the right to freedom of association, guaranteed by Article 11 of the Convention? Why /why not?