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CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)
CONSEIL CONSULTATIF DE JUGES EUROPÉENS (CCJE)

OPINION No. 25 (2022) / L'AVIS No. 25 (2022)

Freedom of expression of judges and the judicial duty of independence

La liberté d'expression des juges et le devoir d'indépendance des juges

Compilation of responses of the CCJE members to the questionnaire
for the preparation of the Opinion No. 25 (2022)

*Compilation des réponses des membres du CCJE au questionnaire
pour la préparation de l'Avis No. 25 (2022)*

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Albania/Albanie

A. General legal and ethical framework

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| 1. Can judges rely on a constitutional right to freedom of expression? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 1.1. Can judges rely on this right for | an opinion, statement made in the judge's capacity as such (e.g. in court) No |
| 1.2. Can judges rely on this right for | an extrajudicial statement made in a judge's private capacity <input checked="" type="checkbox"/> in private <input type="checkbox"/> in public |
| 1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | <input type="checkbox"/> yes <input checked="" type="checkbox"/> no |
| 2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?) | <input type="checkbox"/> yes; please specify: <input checked="" type="checkbox"/> no |
| 3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 3.1. If yes, please specify the nature of these restrictions | <input type="checkbox"/> constitutional provisions <input checked="" type="checkbox"/> statutory provisions <input type="checkbox"/> administrative regulations <input type="checkbox"/> code of conduct <input checked="" type="checkbox"/> code of judicial ethics <input type="checkbox"/> informal judicial standards <input type="checkbox"/> other |
| 3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |

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| 3.3. Do these restrictions impose a duty of judicial restraint? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of | <input checked="" type="checkbox"/> judicial independence and impartiality <input checked="" type="checkbox"/> the authority of the judiciary / public trust in the judiciary <input checked="" type="checkbox"/> the prestige / image of the judiciary <input checked="" type="checkbox"/> the confidentiality of the proceedings <input checked="" type="checkbox"/> the procedural rights of the parties to the proceedings <input checked="" type="checkbox"/> the confidentiality of internal judicial matters <input type="checkbox"/> other, please specify: |
| 5. Are (extra-)judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 6. Which disciplinary measures may be applied? | <input type="checkbox"/> formal advice <input checked="" type="checkbox"/> formal warning <input checked="" type="checkbox"/> reprimand <input checked="" type="checkbox"/> relocation <input checked="" type="checkbox"/> removal <input checked="" type="checkbox"/> other, please specify: <i>In virtue of article 105.1 of law no. 96/2016 “On the status of judges and prosecutors in the republic of Albania”, as amended, other disciplinary measures that may be applied are, as follows: confidential remarks; temporary reduction of salary up to 40 percent for a period not longer than one year, while in the case of resigned magistrates, a fine equal to the temporary reduction of salary; suspension from duty for a period of three months to two years, with the right to receive the minimum wage, according to the decision of the Council of Ministers</i> |

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| <p>6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure?</p> | <p><input checked="" type="checkbox"/> nature and severity of the restriction on the judicial freedom of expression, especially</p> <p><input checked="" type="checkbox"/> the specific position of the judge</p> <p><input checked="" type="checkbox"/> the content and manner of the impugned statement</p> <p><input checked="" type="checkbox"/> the context in which the statement was made</p> <p><input checked="" type="checkbox"/> the nature and severity of the disciplinary measure imposed</p> |
| <p>6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>6.4. Which state authority is responsible for issuing disciplinary sanctions?</p> | <p><input type="checkbox"/> the respective court president</p> <p><input type="checkbox"/> the highest judge(s) of the judiciary (e.g. Lord Chief Justice / Lord Chancellor)</p> <p><input checked="" type="checkbox"/> an independent judicial body</p> <p><input type="checkbox"/> an executive body (e.g. disciplinary chamber)</p> <p><input type="checkbox"/> other, please specify:</p> |
| <p>7. Do judges have access to a court to challenge the disciplinary measures?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>7.1. If not, do they have access to an appeal procedure before</p> | <p><input type="checkbox"/> an executive disciplinary chamber</p> <p><input type="checkbox"/> a judicial disciplinary chamber</p> <p><input type="checkbox"/> other or non</p> |
| <p>7.2. If not, is an Ombudsman available, who may review the process?</p> | <p><input type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>8. What may be the consequences of unethical behaviour of a judge related to restrictions on his/her freedom of expression?</p> | <p><input checked="" type="checkbox"/> initiation of disciplinary proceedings</p> <p><input type="checkbox"/> impact on promotion of a judge</p> <p><input type="checkbox"/> other, please specify:</p> |

B. Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private? When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

To the best of our knowledge, the Albanian legislation does not provide a specific interpretation of communications regarded as private. However, in virtue of article 9.k, of the Judicial Ethical Code, approved with the Decision No.171, dated 22.04.2021, of the High Judicial Council, the judge is obliged to show restraint in the use of media and social networks.

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e.g. home stories))?

In virtue of article 6.b of the Judicial Ethical Code, approved with the Decision No.171, dated 22.04.2021, of the High Judicial Council, the judge should always take care that his/her behavior, official or private, does not affect the individual or institutional independence of the judiciary or the appearance of independence in the eyes of the public.

Further to the above provision, article 7.ë of such Code, specifies that the judge has to show restraint in publicly supporting or expressing criticism of any kind and nature to other powers, except matters relating to the reform and functioning of the judiciary.

Additionally, article 7.f of the Code, provides that the judge should refrain from commenting on controversial political issues or public statements, which may give the impression that the judge is biased or influenced by a particular issue.

Also, in virtue of article 9.g of the Code, the judge should avoid displaying his/her political convictions even though he/she, like every citizen, enjoys the right to have them.

Moreover, article 9.h of the Code, specifies that the judge should restrain himself/herself and not publicly comment on his/her decisions even if they are criticized by the media or academics, or overturned by higher courts. The judge expresses his/her opinion only in the reasoning of the decision taken.

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression?

In virtue of article 101.2 of law no. 96/2016 "On the status of judges and prosecutors in the republic of Albania", as amended, when determining whether the action, omission or conduct of the magistrate is considered a disciplinary violation, the following is taken into account: a) degree of negligence; b) the frequency of the act or omission or conduct; c) experience and position of the magistrate in the system; ç) the damage, the possibility of causing the damage or the degree of consequences that have come or may come from action or inaction; and d) any situation that is beyond the control of

the magistrate and that may be related to dysfunction of the judicial or prosecutorial system.

Furthermore, in virtue of article 115.1 of law no. 96/2016 “On the status of judges and prosecutors in the republic of Albania”, as amended, in determining the significance of the disciplinary offense and the type of disciplinary action, the High Judicial Council takes into account the type and circumstances of the breach (i.e., public statement), as well as any relevant circumstances related to the breach.

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression? Is it relevant if that judge also has the statutory task of representing the judiciary in such matters?

As provided above, article 101.2.c of law no. 96/2016 “On the status of judges and prosecutors in the republic of Albania”, as amended, specifies that when determining whether the action, omission or conduct of the magistrate is considered a disciplinary violation, the experience and position of the magistrate in the system is also taken into account.

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements?

In virtue of article 102.2.dh of law no. 96/2016 “On the status of judges and prosecutors in the republic of Albania”, as amended, disciplinary violations during the exercise of magistrates’ function are, in particular, but not limited to, actions, omissions or conduct of the magistrate, related to repeated or serious violation of the rules of solemnity, rules of conduct in relations with parties, subjects involved in the process, with the chairman, other magistrates, as well as judicial administration staff.

Additionally, in virtue of article 103.dh of law no. 96/2016 “On the status of judges and prosecutors in the republic of Albania”, as amended, disciplinary offenses outside the exercise of duty are, in particular, but not limited to, actions, omissions or conduct of the magistrate related to any type of behavior that discredits the position and image of the magistrate and undermines trust of the public in the judicial or prosecutorial system, performed outside the exercise of duty.

D. Recent cases of restrictions of judges’ freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial /extrajudicial statement? If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

In relation to this question, it is worth mentioning that during the year 2021 the High Inspector of Justice investigated a judge in Albania because of the latter’s inappropriate behavior in relation to the use of social media (i.e., TikTok social networking service). Such publications prompted a public discussion regarding the neglected legal ethical duties of the aforementioned judge. Following such investigation, the High Judicial Council decided to suspend the judge from duty for a period of 6 (six) months.

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new fora for or types of judicial expressions)? Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

Overall is observed an increase in legal or ethical restrictions on judicial freedom of expression in virtue of the latest judicial reform being implemented in Albania.

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples?

There aren't any current pressing ethical issues regarding judicial statements or other types of expressions that we can mention. Most of the disciplinary proceedings have been related to the performance of judges, and their ethical behavior during the performance of their duty and outside of it.

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations?

In virtue of article 9.g, of the Judicial Ethical Code, approved with the Decision No.171, dated 22.04.2021, of the High Judicial Council, the judge should avoid displaying his political convictions even though he, like every citizen, enjoys the right to have them.

Furthermore, article 7.ë of such Code, provides the obligation of the judge to show restraint in publicly supporting or expressing criticism of any kind and nature to other powers, except matters relating to the reform and functioning of the judiciary.

While, on the other hand, article 6.c of such Code, also provides that the judge should not give financial or other contributions to political entities nor sign petitions undertaken by political entities.

18. May judges be members of a political party? Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization? Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement?

In virtue of article 6.1, of law no. 96/2016 "On the status of judges and prosecutors in the republic of Albania", as amended, the function of a magistrate in the Republic of Albania is incompatible with membership in a political party and participation in political activities organized by a political party, as well as with the performance of any political activity, regardless of whether the activity is carried out in cooperation with a political party or not, which may affect the independence of the magistrate, create any conflict of interest or, in any case, create the impression that the magistrate is impartial and uninfluenced.

Furthermore, article 10 of such law, provides that magistrates have the right to establish associations or organizations and participate in them, in order to protect their rights and interests, as well as their professional development. However, such associations or organizations of magistrates in the exercise of their activity should not conflict with the competencies of justice institutions.

Additionally, article 6.b of the Judicial Ethical Code, provides that the judge always should take care that his/her behavior, official or private, does not affect the individual or institutional independence of the judiciary or the appearance of independence in the eyes of the public and that the judge should avoid conduct that may give the impression to the public that he/she is politically engaged or involved in political activities in any way, except in matters of importance to the functioning of the courts and their independence.

On the other hand, article 7.g of such Code, specifies that the judge should be careful in the relations he/she creates due to his/her membership in the judges' associations, or in cultural, sports, religious or other fields, avoiding those relations that may compromise the respect of his/her image or of the judicial system.

A. Cadre juridique et éthique général

| | |
|--|---|
| 1. Les juges peuvent-ils se prévaloir d'un droit constitutionnel à la liberté d'expression ? | <input checked="" type="checkbox"/> oui <input type="checkbox"/> non |
| 1.1. Les juges peuvent-ils se prévaloir de ce droit pour | les avis et les déclarations qu'ils font en qualité de juge (par exemple, au tribunal) ? Non. |
| 1.2. Les juges peuvent-ils se prévaloir de ce droit pour | les déclarations qu'ils font à titre privé, en dehors du cadre judiciaire ? <input checked="" type="checkbox"/> en privé <input checked="" type="checkbox"/> en public Si le contenu n'est pas politique (dans le sens de bénéficier un ou autre parti politique) ni sur ses propres affaires. |
| 1.3. Les juges peuvent-ils se prévaloir de ce droit pour une déclaration faite en dehors du cadre judiciaire, en public, au nom de la défense des intérêts de la justice (par exemple, lorsqu'un président de tribunal critique des réformes touchant l'organisation judiciaire) ? | <input checked="" type="checkbox"/> oui <input type="checkbox"/> non |
| 2. Existe-t-il d'autres dispositions assurant une protection légale de la liberté d'expression des juges (par exemple, des règles d'immunité) ? | <input type="checkbox"/> oui ; veuillez préciser : <input checked="" type="checkbox"/> non |
| 3. Votre système juridique prévoit-il des restrictions légales ou éthiques de la liberté d'expression des juges ? | <input checked="" type="checkbox"/> oui <input type="checkbox"/> non |
| 3.1. Dans l'affirmative, veuillez préciser la nature de ces restrictions : | <input type="checkbox"/> dispositions constitutionnelles <input checked="" type="checkbox"/> dispositions légales <input type="checkbox"/> règlements administratifs <input type="checkbox"/> code de conduite <input checked="" type="checkbox"/> code de déontologie judiciaire <input type="checkbox"/> normes judiciaires informelles <input type="checkbox"/> autres |

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| <p>3.2. S'il existe un code de conduite ou de déontologie judiciaire, celui-ci a-t-il des effets juridiques (par exemple, contient-il des recommandations aux autorités disciplinaires pour leurs décisions en matière disciplinaire) ?</p> | <p><input type="checkbox"/> oui <input checked="" type="checkbox"/> non</p> |
| <p>3.3. Ces restrictions imposent-elles un devoir de réserve de la part des juges ?</p> | <p><input checked="" type="checkbox"/> oui <input type="checkbox"/> non</p> |
| <p>4. Veuillez indiquer à quelles fins la liberté d'expression des juges peut être restreinte – pour la protection de :</p> | <p><input checked="" type="checkbox"/> l'indépendance et l'impartialité de la justice</p> <p><input type="checkbox"/> l'autorité de la justice / la confiance du public dans la justice</p> <p><input type="checkbox"/> le prestige / l'image de la justice</p> <p><input checked="" type="checkbox"/> la confidentialité de la procédure</p> <p><input checked="" type="checkbox"/> les droits procéduraux des parties à la procédure</p> <p><input type="checkbox"/> la confidentialité des affaires internes de la justice</p> <p><input type="checkbox"/> autres ; veuillez préciser :</p> |
| <p>5. Les déclarations faites en justice ou dans un cadre extrajudiciaire sont-elles un motif reconnu par la loi d'exclure un juge en exercice d'une affaire ou un motif de recours devant une juridiction supérieure ?</p> | <p><input type="checkbox"/> oui <input checked="" type="checkbox"/> non</p> |
| <p>6. Quelles sont les mesures disciplinaires applicables ?</p> | <p><input type="checkbox"/> note formelle</p> <p><input type="checkbox"/> avertissement formel</p> <p><input type="checkbox"/> réprimande</p> <p><input type="checkbox"/> mutation</p> <p><input type="checkbox"/> révocation</p> <p><input checked="" type="checkbox"/> autres ; veuillez préciser : Suspension des fonctions et amende.</p> |

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| <p>6.1. L'autorité disciplinaire tient-elle compte des aspects suivants lorsqu'elle impose une mesure disciplinaire ?</p> | <p><input type="checkbox"/> nature et gravité de la restriction de la liberté d'expression des juges, en particulier</p> <p><input type="checkbox"/> position spécifique du juge</p> <p><input checked="" type="checkbox"/> contenu et modalités de la déclaration litigieuse</p> <p><input checked="" type="checkbox"/> contexte dans lequel la déclaration a été faite</p> <p><input type="checkbox"/> nature et gravité des mesures disciplinaires imposées</p> |
| <p>6.2. L'autorité disciplinaire prend-elle en considération l'effet dissuasif des sanctions disciplinaires ?</p> | <p><input type="checkbox"/> oui <input checked="" type="checkbox"/> non</p> |
| <p>6.3. L'autorité disciplinaire considère-t-elle la révocation d'un juge de son poste de juge comme un moyen de dernier recours ?</p> | <p><input checked="" type="checkbox"/> oui <input type="checkbox"/> non</p> |
| <p>6.4. Quelle est l'autorité chargée de prononcer des sanctions disciplinaires ?</p> | <p><input type="checkbox"/> le président de la juridiction concernée</p> <p><input type="checkbox"/> le(s) plus haut(s) magistrat(s) du système judiciaire (par exemple, Lord Chief Justice / Lord Chancellor)</p> <p><input checked="" type="checkbox"/> un organe judiciaire indépendant</p> <p><input type="checkbox"/> un organe de l'exécutif (par exemple, une chambre disciplinaire)</p> <p><input type="checkbox"/> autres ; veuillez préciser : Conseil Supérieur de la Justice</p> |
| <p>7. Les juges ont-ils accès à une juridiction pour contester les mesures disciplinaires ?</p> | <p><input checked="" type="checkbox"/> oui <input type="checkbox"/> non</p> |
| <p>7.1. Dans la négative, ont-ils accès à une procédure d'appel devant :</p> | <p><input type="checkbox"/> une chambre disciplinaire de l'exécutif ?</p> <p><input type="checkbox"/> une chambre disciplinaire du système judiciaire ?</p> <p><input type="checkbox"/> autres ou non</p> |
| <p>7.2. Dans la négative, existe-t-il une institution de médiation pouvant examiner l'affaire ?</p> | <p><input type="checkbox"/> oui <input type="checkbox"/> non</p> |

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| <p>8. Quelles peuvent être les conséquences du comportement d'un juge contraire à l'éthique relative aux restrictions de sa liberté d'expression ?</p> | <p><input type="checkbox"/> ouverture d'une procédure disciplinaire</p> <p><input type="checkbox"/> conséquences pour l'évolution de carrière</p> <p><input checked="" type="checkbox"/> autres ; veuillez préciser : Pas de conséquences si c'est un manquement du code déontologique. Disciplinaire pour le manquement des interdictions légales.</p> |
|--|---|

B. Restrictions à la liberté d'expression des juges

9. Les restrictions à la liberté d'expression des juges prévoient-elles des exceptions pour les déclarations (ou autres formes d'expression telles que les clips vidéo) faites en privé ? Dans quelles conditions votre système juridique considère-t-il qu'une communication relève du cadre privé, c'est-à-dire non public (par exemple, messages d'une personne à une autre personne, ou communication au sein d'un groupe fermé d'« amis » virtuels, où de nouveaux amis doivent être admis) ?

Il n'y a aucune exception à l'obligation de s'abstenir de manifester opinions et options politiques, ni à la révélation à un tiers de faits et informations des dossiers en charge. Il n'y a pas donc de différence entre un cadre public ou privé, si ce n'est qu'en tenant compte des circonstances des faits pour tempérer la sanction.

C. Aspects relatifs au contenu, aux modalités et au contexte des déclarations des juges

10. Votre système juridique fixe-t-il des limites aux sujets que les juges sont autorisés à commenter c'est-à-dire leurs propres affaires, les critiques visant leurs jugements, les affaires (internes) du système judiciaire, la politique, les questions privées (par exemple, des affaires familiales) ?

Les sujets que les juges ne sont pas autorisés à commenter sont la politique et leurs propres affaires. Pour le reste de sujets il y a une recommandation générale d'éviter les commentaires qui pourraient entraîner des doutes sur l'impartialité du tribunal.

11. L'autorité disciplinaire, lorsqu'elle évalue le caractère proportionnel d'une restriction à la liberté d'expression d'un juge, attribue-t-elle plus d'importance aux déclarations qui concernent des questions d'intérêt public ?

Il n'y a jamais eu de disciplinaire pour cette raison.

12. L'autorité disciplinaire, lorsqu'elle évalue le caractère proportionnel d'une restriction à la liberté d'expression d'un juge, attribue-t-elle plus d'importance aux déclarations d'un juge d'une juridiction supérieure, portant sur des questions qui intéressent le corps judiciaire ? Si le juge a également pour mission statutaire de représenter le corps judiciaire au sujet de ces questions, cela entre-t-il en jeu ?

Si les questions intéressent le corps judiciaire il n'y a pas de restriction.

13. Votre système juridique prévoit-il d'imposer des sanctions disciplinaires lorsqu'un juge emploie un langage choquant, dérangeant et offensant ou raciste/homophobe dans ses déclarations en tant que juge / dans un cadre extrajudiciaire ?

Pas spécifiquement, mais un langage raciste ou homophobe entraînerait des responsabilités pénales, et de surcroît un disciplinaire pour avoir commis une infraction visée dans le code pénal.

D. Cas récents de restrictions à la liberté d'expression des juges dans les États membres

14. Avez-vous connaissance d'affaires (judiciaires) récentes ayant suscité un débat public sur la question de savoir si un juge a négligé ses obligations légales ou éthiques dans ses déclarations en tant que juge / dans un cadre extrajudiciaire ? Le cas échéant, pourriez-vous décrire brièvement les faits survenus dans les affaires les plus pertinentes, en indiquant les questions juridiques ou éthiques soulevées et, le cas échéant, les décisions finales des juridictions ou des instances disciplinaires ?

Aucune.

15. Observez-vous une évolution de la situation relative à la liberté d'expression des juges (par exemple, une augmentation des déclarations sur certains sujets ou de nouveaux forums ou types d'expression des juges) ? Observez-vous une augmentation des restrictions juridiques ou éthiques de la liberté d'expression des juges ?

Non.

16. Quelles sont actuellement les questions éthiques les plus urgentes en matière de déclarations et autres formes d'expression des juges ? Pouvez-vous donner des exemples ?

La possibilité de répondre dans les médias aux attaques portées sur les juges par des groupes de pression ou lobbys.

E. Liberté de réunion / Appartenance à un parti politique

17. Les juges peuvent-ils participer à des manifestations publiques ?

Oui, si elles ne sont pas de caractère politique ou sur des matières sous l'essor de leur compétence.

18. Les juges sont-ils autorisés à adhérer à un parti politique ? Les restrictions à la liberté d'expression des juges s'appliquent-elles sans distinction selon qu'un juge fait une déclaration en tant que membre d'un parti politique, d'une organisation judiciaire ou d'une organisation non judiciaire ? Des critères différents s'appliquent-ils lorsqu'un juge exerce un mandat politique et est en congé lorsqu'il fait une déclaration litigieuse ?

Les juges ne peuvent pas adhérer des parties politiques ni exercer des mandats politiques. Il n'y a aucune restriction pour les organisations judiciaires ou autres.

Armenia/Arménie

A. Cadre juridique et éthique général

| | |
|--|---|
| 1. Les juges peuvent-ils se prévaloir d'un droit constitutionnel à la liberté d'expression ? | <input checked="" type="checkbox"/> oui <input type="checkbox"/> non |
| 1.1. Les juges peuvent-ils se prévaloir de ce droit pour | les avis et les déclarations qu'ils font en qualité de juge (par exemple, au tribunal) ? Oui |
| 1.2. Les juges peuvent-ils se prévaloir de ce droit pour | les déclarations qu'ils font à titre privé, en dehors du cadre judiciaire ? <input checked="" type="checkbox"/> en privé <input checked="" type="checkbox"/> en public |
| 1.3. Les juges peuvent-ils se prévaloir de ce droit pour une déclaration faite en dehors du cadre judiciaire, en public, au nom de la défense des intérêts de la justice (par exemple, lorsqu'un président de tribunal critique des réformes touchant l'organisation judiciaire) ? | <input checked="" type="checkbox"/> oui <input type="checkbox"/> non |
| 2. Existe-t-il d'autres dispositions assurant une protection légale de la liberté d'expression des juges (par exemple, des règles d'immunité) ? | <input checked="" type="checkbox"/> oui ; veuillez préciser : la liberté d'expression des juges est protégé par leur immunité en tant que juge, qui est garantis par la Constitution. <input type="checkbox"/> non |
| 3. Votre système juridique prévoit-il des restrictions légales ou éthiques de la liberté d'expression des juges ? | <input checked="" type="checkbox"/> oui <input type="checkbox"/> non |

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|---|---|
| <p>3.1. Dans l'affirmative, veuillez préciser la nature de ces restrictions :</p> | <p><input checked="" type="checkbox"/> dispositions constitutionnelles</p> <p><input checked="" type="checkbox"/> dispositions légales</p> <p><input type="checkbox"/> règlements administratifs</p> <p><input type="checkbox"/> code de conduite</p> <p><input checked="" type="checkbox"/> code de déontologie judiciaire</p> <p><input type="checkbox"/> normes judiciaires informelles</p> <p><input type="checkbox"/> autres</p> |
| <p>3.2. S'il existe un code de conduite ou de déontologie judiciaire, celui-ci a-t-il des effets juridiques (par exemple, contient-il des recommandations aux autorités disciplinaires pour leurs décisions en matière disciplinaire) ?</p> | <p><input type="checkbox"/> oui <input checked="" type="checkbox"/> non</p> |
| <p>3.3. Ces restrictions imposent-elles un devoir de réserve de la part des juges ?</p> | <p><input checked="" type="checkbox"/> oui <input type="checkbox"/> non</p> |
| <p>4. Veuillez indiquer à quelles fins la liberté d'expression des juges peut être restreinte – pour la protection de :</p> | <p><input checked="" type="checkbox"/> l'indépendance et l'impartialité de la justice</p> <p><input checked="" type="checkbox"/> l'autorité de la justice / la confiance du public dans la justice</p> <p><input checked="" type="checkbox"/> le prestige / l'image de la justice</p> <p><input checked="" type="checkbox"/> la confidentialité de la procédure</p> <p><input checked="" type="checkbox"/> les droits procéduraux des parties à la procédure</p> <p><input checked="" type="checkbox"/> la confidentialité des affaires internes de la justice</p> <p><input type="checkbox"/> autres ; veuillez préciser :</p> |
| <p>5. Les déclarations faites en justice ou dans un cadre extrajudiciaire sont-elles un motif reconnu par la loi d'exclure un juge en exercice d'une affaire ou un motif de recours devant une juridiction supérieure ?</p> | <p><input checked="" type="checkbox"/> oui <input type="checkbox"/> non</p> |

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| <p>6. Quelles sont les mesures disciplinaires applicables ?</p> | <p><input checked="" type="checkbox"/> note formelle</p> <p><input checked="" type="checkbox"/> avertissement formel</p> <p><input checked="" type="checkbox"/> réprimande</p> <p><input type="checkbox"/> mutation</p> <p><input type="checkbox"/> révocation</p> <p><input type="checkbox"/> autres ; veuillez préciser :</p> <p>Interdiction d'être inscrit sur la liste des candidats à la promotion pour une durée d'un an.</p> <p>Révocation des fonctions de président de la Cour ou de président de chambre de la Cour de cassation.</p> <p>Révocation seulement en cas d'une faute disciplinaire grave.</p> |
| <p>6.1. L'autorité disciplinaire tient-elle compte des aspects suivants lorsqu'elle impose une mesure disciplinaire ?</p> | <p><input checked="" type="checkbox"/> nature et gravité de la restriction de la liberté d'expression des juges, en particulier</p> <p><input checked="" type="checkbox"/> position spécifique du juge</p> <p><input checked="" type="checkbox"/> contenu et modalités de la déclaration litigieuse</p> <p><input checked="" type="checkbox"/> contexte dans lequel la déclaration a été faite</p> <p><input checked="" type="checkbox"/> nature et gravité des mesures disciplinaires imposées</p> |
| <p>6.2. L'autorité disciplinaire prend-elle en considération l'effet dissuasif des sanctions disciplinaires ?</p> | <p><input checked="" type="checkbox"/> oui <input type="checkbox"/> non</p> |
| <p>6.3. L'autorité disciplinaire considère-t-elle la révocation d'un juge de son poste de juge comme un moyen de dernier recours ?</p> | <p><input checked="" type="checkbox"/> oui <input type="checkbox"/> non</p> |
| <p>6.4. Quelle est l'autorité chargée de prononcer des sanctions disciplinaires ?</p> | <p><input type="checkbox"/> le président de la juridiction concernée</p> <p><input type="checkbox"/> le(s) plus haut(s) magistrat(s) du système judiciaire (par exemple, Lord Chief Justice / Lord Chancellor)</p> <p><input checked="" type="checkbox"/> un organe judiciaire indépendant</p> <p><input type="checkbox"/> un organe de l'exécutif (par exemple, une chambre disciplinaire)</p> <p><input type="checkbox"/> autres ; veuillez préciser :</p> |

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| 7. Les juges ont-ils accès à une juridiction pour contester les mesures disciplinaires ? | <input type="checkbox"/> oui <input checked="" type="checkbox"/> non |
| 7.1. Dans la négative, ont-ils accès à une procédure d'appel devant : | <input type="checkbox"/> une chambre disciplinaire de l'exécutif ? <input type="checkbox"/> une chambre disciplinaire du système judiciaire ? <input checked="" type="checkbox"/> autres ou non Les juges ont le droit de faire appel de la constitutionnalité de la loi appliquée dans le cadre d'une procédure disciplinaire devant la Cour constitutionnelle. |
| 7.2. Dans la négative, existe-t-il une institution de médiation pouvant examiner l'affaire ? | <input type="checkbox"/> oui <input checked="" type="checkbox"/> non |
| 8. Quelles peuvent être les conséquences du comportement d'un juge contraire à l'éthique relative aux restrictions de sa liberté d'expression ? | <input checked="" type="checkbox"/> ouverture d'une procédure disciplinaire <input type="checkbox"/> conséquences pour l'évolution de carrière <input type="checkbox"/> autres ; veuillez préciser : |

B. Restrictions à la liberté d'expression des juges

9. Les restrictions à la liberté d'expression des juges prévoient-elles des exceptions pour les déclarations (ou autres formes d'expression telles que les clips vidéo) faites en privé ? Dans quelles conditions votre système juridique considère-t-il qu'une communication relève du cadre privé, c'est-à-dire non public (par exemple, messages d'une personne à une autre personne, ou communication au sein d'un groupe fermé d'« amis » virtuels, où de nouveaux amis doivent être admis) ?

Les règles de conduite des juges stipule que le juge est tenu de faire preuve de discrétion dans l'exercice de toute activité et en toutes circonstances. C'est-à-dire que sa liberté d'expression est limitée en public aussi bien qu'en privé.

C. Aspects relatifs au contenu, aux modalités et au contexte des déclarations des juges

10. Votre système juridique fixe-t-il des limites aux sujets que les juges sont autorisés à commenter c'est-à-dire leurs propres affaires, les critiques visant leurs jugements, les affaires (internes) du système judiciaire, la politique, les questions privées (par exemple, des affaires familiales) ?

Oui, les règles de conduite précise que les juges doivent s'abstenir de donner un avis public sur une affaire en cours d'examen ou pendante devant la cour, sauf lorsque le juge agit en qualité de partie ou de représentant légal d'une partie. En plus, ils doivent s'abstenir de remettre en cause publiquement les agissements de cour et les actes judiciaires, sauf dans le cadre d'activité professionnelle prévus par la loi ou dans le cadre de la liberté scientifique (par exemple lorsqu'ils sont aussi des professeurs).

11. L'autorité disciplinaire, lorsqu'elle évalue le caractère proportionnel d'une restriction à la liberté d'expression d'un juge, attribue-t-elle plus d'importance aux déclarations qui concernent des questions d'intérêt public ?

Le Conseil supérieur de Justice a été établi en 2018 et depuis ce temps il a connu une seule affaire qui concernait la liberté d'expression d'un juge. Dans cette affaire le Conseil a aussi pris en compte l'importance du sujet et il a constaté que dans ce cas il n'y a pas de faute disciplinaire.

12. L'autorité disciplinaire, lorsqu'elle évalue le caractère proportionnel d'une restriction à la liberté d'expression d'un juge, attribue-t-elle plus d'importance aux déclarations d'un juge d'une juridiction supérieure, portant sur des questions qui intéressent le corps judiciaire ? Si le juge a également pour mission statutaire de représenter le corps judiciaire au sujet de ces questions, cela entre-t-il en jeu ?

Aucun plaint de ce genre n'a été porté devant le Conseil supérieur de Justice.

13. Votre système juridique prévoit-il d'imposer des sanctions disciplinaires lorsqu'un juge emploie un langage choquant, dérangeant et offensant ou raciste/homophobe dans ses déclarations en tant que juge / dans un cadre extrajudiciaire ?

Oui, un tel comportement serait considéré comme discréditant la justice.

D. Cas récents de restrictions à la liberté d'expression des juges dans les États membres

14. Avez-vous connaissance d'affaires (judiciaires) récentes ayant suscité un débat public sur la question de savoir si un juge a négligé ses obligations légales ou éthiques dans ses déclarations en tant que juge / dans un cadre extrajudiciaire ? Le cas échéant, pourriez-vous décrire brièvement les faits survenus dans les affaires les plus pertinentes, en indiquant les questions juridiques ou éthiques soulevées et, le cas échéant, les décisions finales des juridictions ou des instances disciplinaires ?

Au cours de l'entretien, le juge a interprété les dispositions légales qui, selon l'initiateur de la procédure disciplinaire, pourraient avoir un impact sur la suite de l'affaire, qui fait toujours l'objet d'une enquête devant un autre juge. Dans cette affaire le Conseil supérieur de Justice a déclaré que le droit à la liberté d'expression est l'un des droits inaliénables des juges, garanti par la Constitution et les traités internationaux ratifiés par la République d'Arménie. Cependant, ce droit n'est pas absolu ; pour un certain groupe de personnes, ce droit peut être soumis à des restrictions plus larges. Les juges, en tant que représentants de l'une des branches du pouvoir de l'État, sont officiellement tenus de faire preuve de discrétion, et ils doivent s'abstenir de toute actes qui peuvent mettre en danger leur impartialité et l'indépendance du pouvoir judiciaire.

Le Conseil a stipulé que chaque norme juridique peut d'une manière ou d'une autre être liée à l'affaire examinée par un autre juge, ainsi les juges ne devraient pas être privés du droit d'exprimer une opinion sur une norme juridique. Il finalement constaté que dans le cadre de cette procédure disciplinaire, l'initiateur de la procédure n'a pas fourni de preuve que l'acte a été commis intentionnellement ou par grosse négligence.

15. Observez-vous une évolution de la situation relative à la liberté d'expression des juges (par exemple, une augmentation des déclarations sur certains sujets ou de nouveaux forums ou types d'expression des juges) ? Observez-vous une augmentation des restrictions juridiques ou éthiques de la liberté d'expression des juges ?

Oui, les juges sont libres à donner des entretiens et de faire des manifestations publiques.

16. Quelles sont actuellement les questions éthiques les plus urgentes en matière de déclarations et autres formes d'expression des juges ? Pouvez-vous donner des exemples ?

-

E. Liberté de réunion / Appartenance à un parti politique

17. Les juges peuvent-ils participer à des manifestations publiques ?

Oui.

18. Les juges sont-ils autorisés à adhérer à un parti politique ? Les restrictions à la liberté d'expression des juges s'appliquent-elles sans distinction selon qu'un juge fait une déclaration en tant que membre d'un parti politique, d'une organisation judiciaire ou d'une organisation non judiciaire ? Des critères différents s'appliquent-ils lorsqu'un juge exerce un mandat politique et est en congé lorsqu'il fait une déclaration litigieuse ?

Non, les juges doivent s'abstenir de toute action politique.



CCJE-BU(2022)1

CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

Questionnaire for the preparation of the CCJE Opinion No. 25 (2022) on the
freedom of expression of judges and the judicial duty of independence,
submitted by the Austrian members of CCJE
Yvonne SUMMER and Markus THOMA

A. General legal and ethical framework

| | |
|--|---|
| 1. Can judges rely on a constitutional right to freedom of expression? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 1.1. Can judges rely on this right for | an opinion, statement made in the judge's capacity as such (e.g. in court): Yes, but under restrictions provided by law obliging to official secrecy (<i>Amtsverschwiegenheit</i>) and the duty to abstain from any comments on open cases |
| 1.2. Can judges rely on this right for | an extrajudicial statement made in a judge's private capacity <input checked="" type="checkbox"/> in private <input checked="" type="checkbox"/> in public ... but always in compliance with his/her general duty provided by law to behave in and outside of office in a manner safeguarding the trust in judiciary |

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| 1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no Yes, but under the above mentioned restrictions; in general, court presidents are reluctant in public statements |
| 2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?) | <input type="checkbox"/> yes; please specify: <input checked="" type="checkbox"/> no |
| 3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no legal restrictions for comments on open case (see above) and general obligation to behave in and outside office in a manner safeguarding the trust in judiciary; code of conduct + judicial ethics (see below) |
| 3.1. If yes, please specify the nature of these restrictions | <input type="checkbox"/> constitutional provisions <input type="checkbox"/> statutory provisions <input type="checkbox"/> administrative regulations <input checked="" type="checkbox"/> code of conduct (issued by the ministry of justice) <input checked="" type="checkbox"/> code of judicial ethics (issued by the judges' association) <input type="checkbox"/> informal judicial standards <input type="checkbox"/> other |
| 3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)? | <input type="checkbox"/> yes <input checked="" type="checkbox"/> no Not directly applicable, but there might be a relevance as a guideline for the interpretation of the law on judicial service |
| 3.3. Do these restrictions impose a duty of judicial restraint? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of | <input checked="" type="checkbox"/> judicial independence and impartiality <input checked="" type="checkbox"/> the authority of the judiciary / public trust in the judiciary <input checked="" type="checkbox"/> the prestige / image of the judiciary <input checked="" type="checkbox"/> the confidentiality of the proceedings |

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| | <input checked="" type="checkbox"/> the procedural rights of the parties to the proceedings <input checked="" type="checkbox"/> the confidentiality of internal judicial matters <input type="checkbox"/> other, please specify: |
| 5. Are (extra-)judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no but only if it proves the bias of the judge in the case concerned |
| 6. Which disciplinary measures may be applied? | <input type="checkbox"/> formal advice <input checked="" type="checkbox"/> formal warning <input type="checkbox"/> reprimand <input checked="" type="checkbox"/> relocation (= transfer) <input checked="" type="checkbox"/> removal (= dismissal under the loss of all expectancies on benefits as pension) <input checked="" type="checkbox"/> other, please specify: pecuniary penalty |
| 6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure? | <input checked="" type="checkbox"/> nature and severity of the restriction on the judicial freedom of expression, especially <input checked="" type="checkbox"/> the specific position of the judge <input checked="" type="checkbox"/> the content and manner of the impugned statement <input checked="" type="checkbox"/> the context in which the statement was made <input checked="" type="checkbox"/> the nature and severity of the disciplinary measure imposed |
| 6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no (called ' <i>Generalprävention</i> ', i.e. aspects of general prevention) |
| 6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 6.4. Which state authority is responsible for issuing disciplinary sanctions? | <input type="checkbox"/> the respective court president <input type="checkbox"/> the highest judge(s) of the judiciary (e.g. Lord Chief Justice / Lord Chancellor) |

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| | <input checked="" type="checkbox"/> an independent judicial body (disciplinary courts) <input type="checkbox"/> an executive body (e.g. disciplinary chamber) <input checked="" type="checkbox"/> other, please specify: at the Supreme Administrative Court: plenary assembly |
| 7. Do judges have access to a court to challenge the disciplinary measures? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no ..., except the disciplinary court is a court of last resort (for judges of the Supreme Court) |
| 7.1. If not, do they have access to an appeal procedure before | <input type="checkbox"/> an executive disciplinary chamber <input type="checkbox"/> a judicial disciplinary chamber <input type="checkbox"/> other or non |
| 7.2. If not, is an Ombudsman available, who may review the process? | <input type="checkbox"/> yes <input type="checkbox"/> no |
| 8. What may be the consequences of <u>unethical</u> behavior of a judge related to restrictions on his/her freedom of expression? | <input checked="" type="checkbox"/> initiation of disciplinary proceedings <input checked="" type="checkbox"/> impact on promotion of a judge ... but only, if unethical behavior simultaneously is a violation of legal duties of the judge! |

B. Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private? When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

Limitations provided by law do not discern between public and private behaviour (statements).

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e.g. home stories)?

Judges must not comment their open cases (Art. 58 para. 5 of the Federal Law on Judges' and Public Prosecutors' Service); aside that they are restricted by their general duty to behave in and outside their office in a way to safeguard the public trust in judiciary (Art. 58 para. 1).

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression?

There is no specific case law of disciplinary courts available.

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression? Is it relevant if that judge also has the statutory task of representing the judiciary in such matters?

The Austrian judicial system does not have judges or bodies responsible to represent the judiciary as a whole. Court president are responsible for the functioning of the court and thus for public statements concerning their courts, but are submitted to orders in the hierarchy of the administration of courts (so they don't enjoy judicial independence in the administration of courts and - if necessary - in statements).

The rank of the judge in question is/should be irrelevant.

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements?

Yes, and significant sanctions have already been imposed in the case law of disciplinary courts.

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial / extrajudicial statement? If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

Case of *Hohenecker* (see <https://www.derstandard.at/story/2000108988260/ehemann-von-buwog-richterin-wegen-grasser-tweets-bestaft> - quoting the full name of the judge):

The husband of a judge presiding a penal case of public interest (against inter alia the former minister of finance *Grasser*), a judge himself appointed at an other court, published his negative comments on the accused on Twitter. (The attempt of the defence to challenge the sitting judge as biased failed for now; the Supreme Court however could still take it up). The tweeting judge was found guilty having violated his general duties as a judge and sentenced by the disciplinary court to a significant pecuniary penalty. As an aggravating moment the disciplinary court assessed that the tweet in question gave reason for the defence in the penal process to challenge the sitting judges, the wife of the tweeting judge (see full text of the final decision:

https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JT_20190704_OGH0002_0020D500004_1910000_000).

According to media, the penalized judge filed a complaint to the European Court of Human Rights.

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new fora for or types of judicial expressions)? Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

Yes, regarding judges participating in social media etc; ethic codes recommend caution

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples?

E.g. publishing comments or photos (portraits), also of embarrassing nature, as a juvenile on social media, which are years later, when he/she applies for a public office, still available.

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations?

Yes, observing their general duties described above.

18. May judges be members of a political party? Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization? Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement?

Yes, membership in political parties or organizations near them is not against the law, although it is a topic of discussion in the judges' associations. Ethic codes issued by the association recommend to abstain from membership to political parties.

Restrictions on judges' freedom of expression apply anyway.

According to the principle of separation of powers, a judge holding a political mandate (in parliament) has to be on leave and enjoys immunity for statements delivered in his/her function as member of parliament.

Belgium/Belgique

A. Cadre juridique et éthique général

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| 1. Les juges peuvent-ils se prévaloir d'un droit constitutionnel à la liberté d'expression ? | <input checked="" type="checkbox"/> oui <input type="checkbox"/> non |
| 1.1. Les juges peuvent-ils se prévaloir de ce droit pour | les avis et les déclarations qu'ils font en qualité de juge (par exemple, au tribunal) ? <i>Oui, mais dans le respect des principes déontologiques.</i> |
| 1.2. Les juges peuvent-ils se prévaloir de ce droit pour | les déclarations qu'ils font à titre privé, en dehors du cadre judiciaire ? <input checked="" type="checkbox"/> en privé <input checked="" type="checkbox"/> en public |
| 1.3. Les juges peuvent-ils se prévaloir de ce droit pour une déclaration faite en dehors du cadre judiciaire, en public, au nom de la défense des intérêts de la justice (par exemple, lorsqu'un président de tribunal critique des réformes touchant l'organisation judiciaire) ? | <input checked="" type="checkbox"/> oui <input type="checkbox"/> non |
| 2. Existe-t-il d'autres dispositions assurant une protection légale de la liberté d'expression des juges (par exemple, des règles d'immunité) ? | <input type="checkbox"/> oui ; veuillez préciser : <input checked="" type="checkbox"/> non |
| 3. Votre système juridique prévoit-il des restrictions légales ou éthiques de la liberté d'expression des juges ? | <input checked="" type="checkbox"/> oui <input type="checkbox"/> non |
| 3.1. Dans l'affirmative, veuillez préciser la nature de ces restrictions : | <input type="checkbox"/> dispositions constitutionnelles <input type="checkbox"/> dispositions légales <input type="checkbox"/> règlements administratifs <input checked="" type="checkbox"/> code de conduite <input checked="" type="checkbox"/> code de déontologie judiciaire <input checked="" type="checkbox"/> normes judiciaires informelles <input type="checkbox"/> autres |

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| <p>3.2. S'il existe un code de conduite ou de déontologie judiciaire, celui-ci a-t-il des effets juridiques (par exemple, contient-il des recommandations aux autorités disciplinaires pour leurs décisions en matière disciplinaire) ?</p> | <p><input checked="" type="checkbox"/> oui <input type="checkbox"/> non</p> <p><i>Les articles 305 et 404 du Code judiciaire disposent que les devoirs, la dignité et les tâches de la charge de magistrat doivent être interprétés notamment à la lumière des principes généraux relatifs à la déontologie, et que ces principes généraux doivent être établis par le Conseil supérieur de la Justice après avis du Conseil consultatif de la magistrature. Ces principes généraux n'ont, à ce jour, pas encore été établis. Cependant, en 2012, avant l'entrée en vigueur de ces articles, le Conseil supérieur de la Justice et le Conseil consultatif de la magistrature ont rédigé ensemble le « Guide pour les magistrats – Principes, Valeurs et Qualités ». ¹ Ce guide a été distribué à tous les magistrats et est généralement considéré comme un outil de référence et de grande qualité.</i></p> |
| <p>3.3. Ces restrictions imposent-elles un devoir de réserve de la part des juges ?</p> | <p><input checked="" type="checkbox"/> oui <input type="checkbox"/> non</p> |
| <p>4. Veuillez indiquer à quelles fins la liberté d'expression des juges peut être restreinte – pour la protection de :</p> | <p><input checked="" type="checkbox"/> l'indépendance et l'impartialité de la justice</p> <p><input checked="" type="checkbox"/> l'autorité de la justice / la confiance du public dans la justice</p> <p><input checked="" type="checkbox"/> le prestige / l'image de la justice</p> <p><input checked="" type="checkbox"/> la confidentialité de la procédure</p> <p><input checked="" type="checkbox"/> les droits procéduraux des parties à la procédure</p> <p><input checked="" type="checkbox"/> la confidentialité des affaires internes de la justice</p> <p><input type="checkbox"/> autres ; veuillez préciser :</p> |

¹ Disponible sur le site internet du Conseil supérieur de la Justice : <https://csj.be/fr/publications/2012/guide-pour-les-magistrats> .

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|---|--|
| <p>5. Les déclarations faites en justice ou dans un cadre extrajudiciaire sont-elles un motif reconnu par la loi d'exclure un juge en exercice d'une affaire ou un motif de recours devant une juridiction supérieure ?</p> | <p><input checked="" type="checkbox"/> oui <input type="checkbox"/> non</p> |
| <p>6. Quelles sont les mesures disciplinaires applicables ?</p> | <p><input type="checkbox"/> note formelle</p> <p><input checked="" type="checkbox"/> avertissement formel</p> <p><input checked="" type="checkbox"/> réprimande</p> <p><input type="checkbox"/> mutation</p> <p><input checked="" type="checkbox"/> révocation</p> <p><input checked="" type="checkbox"/> autres ; veuillez préciser :</p> <p>- la retenue de traitement ;</p> <p>- la suspension disciplinaire ;</p> <p>- la régression barémique ou la perte du dernier supplément de traitement ;</p> <p>- la rétrogradation ou le retrait de mandat.</p> <p><i>Remarque : il s'agit de peines disciplinaires qui sanctionnent les manquements disciplinaires <u>en général</u>, et non de peines spécifiques sanctionnant spécialement le non-respect des restrictions déontologiques à la liberté d'expression.</i></p> |
| <p>6.1. L'autorité disciplinaire tient-elle compte des aspects suivants lorsqu'elle impose une mesure disciplinaire ?</p> | <p><input checked="" type="checkbox"/> nature et gravité de la restriction de la liberté d'expression des juges, en particulier</p> <p><input checked="" type="checkbox"/> position spécifique du juge</p> <p><input checked="" type="checkbox"/> contenu et modalités de la déclaration litigieuse</p> <p><input checked="" type="checkbox"/> contexte dans lequel la déclaration a été faite</p> <p><input checked="" type="checkbox"/> nature et gravité des mesures disciplinaires imposées</p> |
| <p>6.2. L'autorité disciplinaire prend-elle en considération l'effet dissuasif des sanctions disciplinaires ?</p> | <p><input checked="" type="checkbox"/> oui <input type="checkbox"/> non</p> |
| <p>6.3. L'autorité disciplinaire considère-t-elle la révocation d'un juge de son poste de juge comme un moyen de dernier recours ?</p> | <p><input checked="" type="checkbox"/> oui <input type="checkbox"/> non</p> |

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|---|--|
| <p>6.4. Quelle est l'autorité chargée de prononcer des sanctions disciplinaires ?</p> | <p><input checked="" type="checkbox"/> le président de la juridiction concernée <i>Le président de la juridiction concernée peut infliger une peine disciplinaire <u>mineure</u> aux juges de sa juridiction.</i></p> <p><input checked="" type="checkbox"/> le(s) plus haut(s) magistrat(s) du système judiciaire (par exemple, Lord Chief Justice / Lord Chancellor) <i>Le premier président de la Cour de cassation est l'autorité disciplinaire à l'égard des premiers présidents des cours d'appel. Les premiers présidents des cours d'appel sont l'autorité disciplinaire à l'égard des présidents des tribunaux de première instance. Ces présidents peuvent infliger une peine disciplinaire <u>mineure</u> aux magistrats précités.</i></p> <p><input checked="" type="checkbox"/> un organe judiciaire indépendant <i>Le tribunal disciplinaire et le tribunal disciplinaire d'appel sont les seules instances habilitées à infliger une peine disciplinaire <u>majeure</u> à charge d'un magistrat, quel qu'il soit. Le tribunal disciplinaire est saisi par le président de la juridiction dont le magistrat fait partie ou, si le magistrat est lui-même président de juridiction, par le président de la juridiction supérieure.</i></p> <p><input checked="" type="checkbox"/> un organe de l'exécutif (par exemple, une chambre disciplinaire) <i>Un seul cas : le ministre de la Justice fait office d'autorité disciplinaire à l'égard du procureur général près la Cour de cassation.</i></p> <p><input type="checkbox"/> autres ; veuillez préciser :</p> |
| <p>7. Les juges ont-ils accès à une juridiction pour contester les mesures disciplinaires ?</p> | <p><input checked="" type="checkbox"/> oui <input type="checkbox"/> non</p> <p><i>Le magistrat auquel une peine disciplinaire mineure a été infligée peut introduire un recours devant le tribunal disciplinaire. Le tribunal disciplinaire peut également être saisi des recours introduits par les magistrats concernés, contre les sanctions disciplinaires déguisées dont ils s'estiment victimes, après avoir exercé un recours administratif sur lequel il a été statué. Le magistrat auquel le tribunal disciplinaire a infligé une peine disciplinaire majeure peut introduire un recours devant le tribunal disciplinaire d'appel.</i></p> |

| | |
|---|---|
| 7.1. Dans la négative, ont-ils accès à une procédure d'appel devant : | <input type="checkbox"/> une chambre disciplinaire de l'exécutif ? <input type="checkbox"/> une chambre disciplinaire du système judiciaire ? <input type="checkbox"/> autres ou non |
| 7.2. Dans la négative, existe-t-il une institution de médiation pouvant examiner l'affaire ? | <input type="checkbox"/> oui <input type="checkbox"/> non |
| 8. Quelles peuvent être les conséquences du comportement d'un juge contraire à l'éthique relative aux restrictions de sa liberté d'expression ? | <input checked="" type="checkbox"/> ouverture d'une procédure disciplinaire <input checked="" type="checkbox"/> conséquences pour l'évolution de carrière <input type="checkbox"/> autres ; veuillez préciser : |

B. Restrictions à la liberté d'expression des juges

9. Les restrictions à la liberté d'expression des juges prévoient-elles des exceptions pour les déclarations (ou autres formes d'expression telles que les clips vidéo) faites en privé ? Dans quelles conditions votre système juridique considère-t-il qu'une communication relève du cadre privé, c'est-à-dire non public (par exemple, messages d'une personne à une autre personne, ou communication au sein d'un groupe fermé d'« amis » virtuels, où de nouveaux amis doivent être admis) ?

Le juge jouit dans sa vie privée d'une entière liberté d'expression, mais il est attendu, même dans le cadre de sa vie privée, qu'il en fasse usage avec discernement et précaution, pour éviter de porter atteinte à la dignité de ses fonctions, à sa capacité de les exercer, à son indépendance et à son impartialité.

C. Aspects relatifs au contenu, aux modalités et au contexte des déclarations des juges

10. Votre système juridique fixe-t-il des limites aux sujets que les juges sont autorisés à commenter c'est-à-dire leurs propres affaires, les critiques visant leurs jugements, les affaires (internes) du système judiciaire, la politique, les questions privées (par exemple, des affaires familiales) ?

Le magistrat ne peut commenter ou faire état d'un dossier qu'il traite ou a traité. Il ne peut pas émettre de critique concernant un dossier traité par un autre magistrat. Il va de soi que cette règle ne l'empêche pas de commenter ou de critiquer un jugement rendu par un autre magistrat dans le cadre d'une étude ou d'une prise de parole scientifique ou juridique (articles de doctrine, colloques, débats etc.).

Les juges sont tenus par le « devoir de réserve », lequel est compris comme l'obligation de s'abstenir de certains comportements incompatibles avec la nature de la fonction de magistrat.

Ce devoir a pour but de garantir l'impartialité des magistrats et de préserver la confiance du public dans celle-ci. Le juge doit dès lors faire usage de sa liberté d'expression avec prudence, en veillant à ne pas heurter des catégories ou groupes de citoyens.

En outre, il appartient au juge de ne pas altérer, par des prises de paroles trop catégoriques sur un sujet déterminé, sa capacité apparente à juger de manière indépendante et impartiale une affaire qui serait liée à une problématique qu'il a évoquée en public.

Le devoir de réserve n'empêche pas le magistrat de s'exprimer pour défendre la démocratie et l'Etat de droit, par exemple pour dénoncer des atteintes à l'indépendance de la Justice ou pour s'inquiéter des carences de fonctionnement ou de financement de la Justice. Ainsi, le « Guide pour les magistrats, Principes, Valeurs et Qualités », rédigé en 2012 par le Conseil supérieur de la Justice et le Conseil consultatif de la magistrature, énonce : « Lorsque la démocratie et les libertés fondamentales sont en péril, la réserve cède devant le droit d'indignation ».

Notamment dans le cadre de ses activités au sein d'une association de magistrats, la critique des législations ou de l'action du gouvernement ou du ministre de la justice est admise.

Toutefois, même lorsqu'il défend la démocratie, le respect des droits fondamentaux, l'Etat de droit et une Justice indépendante et de qualité, le juge doit veiller à s'exprimer de manière adéquate et conforme à ce que le public attend d'un magistrat, c'est-à-dire avec intelligence et pertinence, en adoptant un ton et un vocabulaire approprié. Cela ne veut pas dire que ses propos doivent être mièvres et sans relief, ni que la critique ne puisse pas, si nécessaire, être exprimée avec force et sans langue de bois.

En ce qui concerne la liberté d'expression sur les réseaux sociaux (Facebook, Instagram, Twitter etc.), le « Guide pour les magistrats » énonce : « La participation aux réseaux sociaux informatisés relève d'un choix personnel, mais demande une grande prudence pour éviter la mise en cause de l'indépendance, de l'impartialité et de l'intégrité du magistrat ».

11. L'autorité disciplinaire, lorsqu'elle évalue le caractère proportionnel d'une restriction à la liberté d'expression d'un juge, attribue-t-elle plus d'importance aux déclarations qui concernent des questions d'intérêt public ?

Cela est concevable, puisque les autorités disciplinaires et les tribunaux disciplinaires exercent leur fonction en tenant compte des circonstances concrètes et particulières de la cause.

12. L'autorité disciplinaire, lorsqu'elle évalue le caractère proportionnel d'une restriction à la liberté d'expression d'un juge, attribue-t-elle plus d'importance aux déclarations d'un juge d'une juridiction supérieure, portant sur des questions qui intéressent le corps judiciaire ? Si le juge a également pour mission statutaire de représenter le corps judiciaire au sujet de ces questions, cela entre-t-il en jeu ?

C'est possible, puisque, ainsi qu'il vient d'être dit, les autorités disciplinaires et les tribunaux disciplinaires exercent leur fonction en tenant compte des circonstances concrètes et particulières de la cause.

13. Votre système juridique prévoit-il d'imposer des sanctions disciplinaires lorsqu'un juge emploie un langage choquant, dérangeant et offensant ou raciste/homophobe dans ses déclarations en tant que juge / dans un cadre extrajudiciaire ?

Oui. Il est probable qu'un tel comportement sera poursuivi et sanctionné disciplinairement.

D. Cas récents de restrictions à la liberté d'expression des juges dans les États membres

14. Avez-vous connaissance d'affaires (judiciaires) récentes ayant suscité un débat public sur la question de savoir si un juge a négligé ses obligations légales ou éthiques dans ses déclarations en tant que juge / dans un cadre extrajudiciaire ? Le cas échéant, pourriez-vous décrire brièvement les faits survenus dans les affaires les plus pertinentes, en indiquant les questions juridiques ou éthiques soulevées et, le cas échéant, les décisions finales des juridictions ou des instances disciplinaires ?

Le cas suivant concerne un magistrat du ministère public et non un juge, mais les problèmes évoqués sont, pour l'essentiel, transposable à la situation du juge.

Un substitut du procureur du Roi de Bruxelles, a rédigé une carte blanche, intitulée « Et juge et soumis », publiée dans le journal Le Soir du 31 janvier 2019. Il s'y est exprimé sur le projet de réforme porté par le ministre de la Justice visant à supprimer le juge d'instruction au profit d'une procédure qui verrait le rôle du ministère public renforcé. Dans sa carte blanche, le substitut met en exergue les difficultés que pose, selon lui, cette réforme en termes d'indépendance de la justice et de respect des droits et libertés fondamentales compte tenu de la relation hiérarchique du ministère public vis-à-vis du pouvoir exécutif. Plus particulièrement, il lui est fait grief par sa hiérarchie, d'y avoir indiqué notamment : « Le ministère public est une bureaucratie aux petits pieds. Le doute comme hygiène intellectuelle ne lui est pas consubstantiel. Il ne fait pas partie de son ADN ». Le procureur du Roi de Bruxelles dans sa décision disciplinaire estime que : 1) cet article peut gravement mettre en péril la confiance que le citoyen doit placer dans l'institution judiciaire ; 2) les termes employés peuvent avoir un caractère insultant pour les magistrats du ministère public. En outre, il est reproché au substitut d'avoir évoqué une affaire judiciaire précise et hautement médiatique n'ayant pas acquis force de chose jugée.²

Le procureur du Roi de Bruxelles a infligé au substitut la sanction disciplinaire mineure du « blâme ».

Statuant sur le recours exercé par le magistrat sanctionné, le tribunal disciplinaire a annulé cette sanction, en substance aux motifs que « Dans une société démocratique, le magistrat a non seulement le droit mais le devoir de s'exprimer sur le fonctionnement du système judiciaire. Ne manque pas aux devoirs de sa charge ni ne porte atteinte au bon fonctionnement de la justice, le magistrat qui, dans un article publié dans un quotidien, alerte les citoyens quant aux conséquences d'une réforme envisagée par le pouvoir politique, notamment en termes de séparation des pouvoirs ».

Ce jugement a été accueilli de manière positive par de nombreux magistrats, dans la mesure où il affirme la liberté d'expression des magistrats, singulièrement lorsqu'ils critiquent des décisions générales relatives à l'organisation de la justice. Cependant, des commentateurs autorisés, tout en saluant le fait que le tribunal ait appliqué en Belgique le principe de la liberté d'expression conformément aux standards généralement admis dans la jurisprudence européenne, ont regretté le fait que la juridiction disciplinaire n'ait pas examiné les trois questions suivantes : « 1° un magistrat a-t-il le droit de s'exprimer publiquement et de formuler des critiques sur le fonctionnement interne du corps dont il fait partie ? 2° Le magistrat de parquet a-t-il le droit de s'exprimer sur une affaire individuelle, qui plus est une affaire en cours, alors qu'il n'exerce pas des fonctions de magistrat de presse ? 3° Dans les deux cas qui précèdent, comment déterminer si les termes utilisés sont dénigrants, voire insultants, pour l'institution à laquelle il appartient ? »³

15. Observez-vous une évolution de la situation relative à la liberté d'expression des juges (par exemple, une augmentation des déclarations sur certains sujets ou de nouveaux forums ou types d'expression des juges) ?

La tendance, au cours des deux dernières décennies, est d'admettre une plus grande liberté d'expression des juges, surtout en ce qui concerne les questions relatives aux moyens et au financement de la Justice, ou celles qui concernent l'indépendance des juges. On a évolué, en Belgique, d'une appréciation sans doute trop rigide du devoir de réserve, vers une

² Cet texte est directement repris de l'exposé des faits du jugement du tribunal disciplinaire francophone du 4 octobre 2019 (J.T., 2020, p. 14).

³ J.-Fr. Funck, « Liberté d'expression des magistrats : vers une culture du débat ? », obs. sous Trib. disc. f., 4 octobre 2019, J.T., p. 16 ; voy. aussi M. Cadelli, « Un blâme mal mis (à néant) », obs. sous Trib. disc. f., 4 octobre 2019, J.L.M.B., 2020, p. 27.

approche plus orientée vers le respect de la légitime confiance que les citoyens sont en droit d'attendre de la part des acteurs judiciaires.

Avant les dernières élections législatives qui ont eu lieu le 26 mai 2019, les associations de magistrats – néerlandophones, francophones et germanophone - ont mené une action commune appelée « 66 jours pour sauver la justice - 66 dagen om justitie te redden – 66 Tage zur Rettung der Justiz ». Au travers de cette action, les juges ont fait usage de leur liberté d'expression pour dénoncer les risques liés à la diminution ou à l'inadéquation des moyens alloués à la justice. Ces actions n'ont pas suscité de critiques notables du point de vue de l'usage adéquat, par les magistrats, de leur liberté d'expression.

Observez-vous une augmentation des restrictions juridiques ou éthiques de la liberté d'expression des juges ?

Non, pas à notre connaissance.

16. Quelles sont actuellement les questions éthiques les plus urgentes en matière de déclarations et autres formes d'expression des juges ? Pouvez-vous donner des exemples ?

Bien que, en Belgique, nous ne soyons que rarement confrontés à des interventions publiques du monde politique à propos des décisions prises par les juges dans des affaires particulières, il est important que les hommes et femmes politiques respectent les décisions judiciaires et s'abstiennent de les critiquer sans connaître le fond du problème, à des fins démagogiques ou électoralistes.

Il est important que les juges s'expriment pour expliquer au grand public l'importance fondamentale d'une justice de qualité et indépendante. Les juges n'ont pas seulement le droit d'expliquer le rôle crucial de la justice dans l'organisation de la société, mais ils en ont aussi le devoir.

E. Liberté de réunion / Appartenance à un parti politique

17. Les juges peuvent-ils participer à des manifestations publiques ?

En principe, oui.

Toutefois, le juge est tenu au devoir de réserve (voy. la réponse à la question n° 10). Il doit toujours garder à l'esprit que sa présence à une manifestation publique, même à titre privé, est susceptible d'être interprétée par l'opinion publique comme une perte de son indépendance et de son devoir d'impartialité. En outre, pareil engagement public pourrait rendre le juge inapte à juger certaines affaires.

La nature exacte de la manifestation publique à laquelle il participe est donc particulièrement importante et le juge doit être très attentif à ne pas, par sa présence ou ses propos éventuels, compromettre son indépendance et son impartialité ou l'apparence de son indépendance ou de son impartialité.

18. Les juges sont-ils autorisés à adhérer à un parti politique ? Les restrictions à la liberté d'expression des juges s'appliquent-elles sans distinction selon qu'un juge fait une déclaration en tant que membre d'un parti politique, d'une organisation judiciaire ou d'une organisation non judiciaire ? Des critères différents s'appliquent-ils lorsqu'un juge exerce un mandat politique et est en congé lorsqu'il fait une déclaration litigieuse ?

L'affiliation à un parti politique n'est pas interdite, mais la propagande politique active, en revanche, menace l'indépendance et l'impartialité du magistrat et du pouvoir judiciaire.

La même remarque vaut, à notre avis, pour les mouvements et associations à caractère politique au sens large.

En raison du serment qu'il a prêté⁴, le magistrat ne peut participer à une association quelconque qui développerait des opinions combattant l'Etat belge ou ses institutions. Tel pourrait être le cas de l'adhésion à un parti politique préconisant des atteintes aux droits fondamentaux de l'homme reconnus par les traités internationaux auxquels la Belgique a adhéré.⁵

Tout autre est la situation du juge qui s'exprime dans le cadre de l'organisation judiciaire dont il fait partie, ou encore dans le cadre d'une association de magistrats (voy. la réponse à la question n° 10).

⁴ Avant d'entrer en fonctions, le juge doit jurer fidélité au Roi, obéissance à la Constitution et aux lois du Peuple belge.

⁵ X. De Riemaeker et M.-A. Franquinet, « FAQ – Foire aux questions », *Statut et déontologie du magistrat*, 2^{ème} éd., la Charte, Bruxelles, 2020, p. 498 ; J. Englebert, « La liberté d'expression et la liberté d'association [du magistrat] », *op. cit.*, p. 458.

Bosnia and Herzegovina/Bosnie-Herzégovine

A. General legal and ethical framework

| | |
|---|---|
| 1. Can judges rely on a constitutional right to freedom of expression? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 1.1. Can judges rely on this right for | an opinion, statement made in the judge's capacity as such (e.g. in court) <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 1.2. Can judges rely on this right for | an extrajudicial statement made in a judge's private capacity <input checked="" type="checkbox"/> in private <input type="checkbox"/> in public |
| 1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?) | <input checked="" type="checkbox"/> yes; please specify: Art. 87 of the Law on high judicial and prosecutorial Council of Bosnia and Herzegovina, prescribes that a judge or prosecutor shall not be prosecuted, arrested, or detained, nor be subject to civil liability for opinions expressed or decisions taken within the scope of official duties. The privilege of immunity shall not bar or delay the criminal or civil investigation, conducted in accordance with the law, of a matter concerning a judge or prosecutor. <input type="checkbox"/> no |
| 3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |

| | |
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| <p>3.1. If yes, please specify the nature of these restrictions</p> | <p><input type="checkbox"/> constitutional provisions</p> <p><input type="checkbox"/> statutory provisions</p> <p><input type="checkbox"/> administrative regulations</p> <p><input type="checkbox"/> code of conduct</p> <p><input checked="" type="checkbox"/> code of judicial ethics</p> <p><input type="checkbox"/> informal judicial standards</p> <p><input type="checkbox"/> other</p> |
| <p>3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>3.3. Do these restrictions impose a duty of judicial restraint?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> <p>Some of them</p> |
| <p>4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of</p> | <p><input checked="" type="checkbox"/> judicial independence and impartiality</p> <p><input checked="" type="checkbox"/> the authority of the judiciary / public trust in the judiciary</p> <p><input checked="" type="checkbox"/> the prestige / image of the judiciary</p> <p><input checked="" type="checkbox"/> the confidentiality of the proceedings</p> <p><input checked="" type="checkbox"/> the procedural rights of the parties to the proceedings</p> <p><input checked="" type="checkbox"/> the confidentiality of internal judicial matters</p> <p><input type="checkbox"/> other, please specify:</p> |
| <p>5. Are (extra-)judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> <p>In certain cases</p> |

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| <p>6. Which disciplinary measures may be applied?</p> | <p><input type="checkbox"/> formal advice</p> <p><input checked="" type="checkbox"/> formal warning</p> <p><input checked="" type="checkbox"/> reprimand</p> <p><input checked="" type="checkbox"/> relocation</p> <p><input checked="" type="checkbox"/> removal</p> <p><input type="checkbox"/> other, please specify:</p> <p>- A written warning which shall not be made public;</p> <p>- Reduction in salary up to a maximum of 50% for a period of up to one year;</p> <p>- Demotion of a Court President to an ordinary judge or the Chief Prosecutor or Deputy Chief Prosecutor to an ordinary prosecutor.</p> |
| <p>6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure?</p> | <p><input checked="" type="checkbox"/> nature and severity of the restriction on the judicial freedom of expression, especially</p> <p><input checked="" type="checkbox"/> the specific position of the judge</p> <p><input checked="" type="checkbox"/> the content and manner of the impugned statement</p> <p><input checked="" type="checkbox"/> the context in which the statement was made</p> <p><input checked="" type="checkbox"/> the nature and severity of the disciplinary measure imposed</p> |
| <p>6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions?</p> | <p><input type="checkbox"/> yes <input checked="" type="checkbox"/> no</p> |
| <p>6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>6.4. Which state authority is responsible for issuing disciplinary sanctions?</p> | <p><input type="checkbox"/> the respective court president</p> <p><input type="checkbox"/> the highest judge(s) of the judiciary (e.g. Lord Chief Justice / Lord Chancellor)</p> <p><input type="checkbox"/> an independent judicial body</p> <p><input type="checkbox"/> an executive body (e.g. disciplinary chamber)</p> <p><input checked="" type="checkbox"/> other, please specify:</p> <p>Office of the Disciplinary Counsel within High Judicial and Prosecutorial Council of Bosnia and Herzegovina (HJPC)</p> |

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| <p>7. Do judges have access to a court to challenge the disciplinary measures?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> <p>When judge or prosecutor has been removed by decision of the Council may appeal to the Court of Bosnia and Herzegovina on one or both of following grounds only:</p> <p>(a) that the Council, during the disciplinary proceedings which led to the decision to impose the measure of removal, materially violated the procedures set out in the HJPC Law;</p> <p>(b) that the Council, during the disciplinary proceedings which led to the decision to impose the measure of removal, erroneously applied the law.</p> |
| <p>7.1. If not, do they have access to an appeal procedure before</p> | <p><input type="checkbox"/> an executive disciplinary chamber</p> <p><input type="checkbox"/> a judicial disciplinary chamber</p> <p><input checked="" type="checkbox"/> other or non</p> <p>they have access to an appeal procedure before the Second Instance Disciplinary Panel. Also, an appeal to the full membership of the Council is possible against a disciplinary measure determined by the Second Instance Disciplinary Panel</p> |
| <p>7.2. If not, is an Ombudsman available, who may review the process?</p> | <p><input type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>8. What may be the consequences of unethical behaviour of a judge related to restrictions on his/her freedom of expression?</p> | <p><input checked="" type="checkbox"/> initiation of disciplinary proceedings</p> <p><input type="checkbox"/> impact on promotion of a judge</p> <p><input type="checkbox"/> other, please specify:</p> |

B. Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private? When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

There are no prescribed exceptions for statements made in private, neither our system defines what private communication of judges means.

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e.g. home stories))?

- Judge should not comment in public or private any completed or ongoing cases
- Judge is not allowed to reply on any critiques of his judgement
- Judge should take care about inappropriate statements in private conversations, and statements that may bring into question his impartiality or the dignity of the judicial office
- Judge may express own views and opinions publicly for the purpose of improving the law and the legal system and comment on social phenomena, but taking into account the principles of impartiality and independence of the judiciary
- Judge should not promote business entities and commercial activities in media appearances, nor influence the promotion of other legal or natural persons by the reputation of his position
- When deciding whether to appear in public, judge should take into account the preservation of the dignity of the judicial office and public confidence in the impartiality and independence of the judiciary, and take into account the following factors:
 1. Whether the issues to be discussed concerns law, the legal system and the judiciary
 2. Whether the public appearance will contribute to education or better information of the public about specific issues
 3. Whether these are issues concerning the professional community or only him individually, and
 4. Whether it is better to address these issues through professional associations.

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression?

Yes.

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression? Is it relevant if that judge also has the statutory task of representing the judiciary in such matters?

There is no strict regulation in that regard. Law on HJPC prescribes that before pronouncing the measures for a disciplinary offence, the following aspects shall be taken into consideration by the Disciplinary Panels:

- (a) the number and severity of the disciplinary offence committed and its consequences;
- (b) the degree of responsibility;
- (c) the circumstances under which the disciplinary offence was committed;
- (d) the previous work and behavior of the offender; and
- (e) any other circumstances that may affect the decision on the severity and type of disciplinary measure, including the degree of remorse and/or cooperation shown by the judge or prosecutor during the disciplinary proceedings.

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements?

Yes.

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial /extrajudicial statement? If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

Yes, there is example that was publicly discussed. Judge of the Court of Bosnia and Herzegovina was subject of an investigation by the HJPC's Office of the Disciplinary Prosecutor. The Association of Victims and Witnesses of Genocide in BiH have initiated the disciplinary proceedings due to alleged inappropriate appearances in the media. During the main hearing, disciplinary prosecutor said that the complaint against Judge was filed due to his public presentation of views on certain ongoing cases, which, as he says, violated the code of judicial ethics and damaged the reputation of the judiciary. The first-instance Disciplinary Commission rejected the lawsuit, and as an explanation, they stated that they believe that Judge did not exceed the allowed freedoms of expression. They accepted Judge's explanation that he did not comment on the actions, but only pointed out the impact of politics on the judicial system and "warned of possible consequences for the judiciary."

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new fora for or types of judicial expressions)? Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

Not lately.

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples?

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations?

No.

18. May judges be members of a political party? Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization? Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement?

Judges may not be members of political parties.

Croatia/Croatie

A. General legal and ethical framework

| | |
|---|---|
| 1. Can judges rely on a constitutional right to freedom of expression? | X yes <input type="radio"/> no |
| 1.1. Can judges rely on this right for | an opinion statement made in the judge's capacity as such (e.g. in court) YES |
| 1.2. Can judges rely on this right for | an extrajudicial statement made in a judge's private capacity <input type="radio"/> in private <input type="radio"/> in public Answer is not so easy. Yes in principle as any other citizen, but it could be subject to criticism from the judicial hierarchy, other colleagues and media. So far there was no example of any proceedings against judges for their statements in private or in public |
| 1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | X yes <input type="radio"/> no Please see answer under 1.2 |
| 2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?) | X yes ; please specify: Judges have so called functional immunity. According to Constitution and Law on Courts judge cannot be responsible for the opinion given in judgment or vote as a member of the panel. <input type="radio"/> no |
| 3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system? | <input type="radio"/> yes X no |
| 3.1. If yes, please specify the nature of these restrictions | <input type="radio"/> constitutional provisions X statutory provisions <input type="radio"/> administrative regulations <input type="radio"/> code of conduct X code of judicial ethics <input type="radio"/> informal judicial standards <input type="radio"/> other |

| | |
|---|---|
| 3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)? | <input type="radio"/> yes <input checked="" type="radio"/> no Breach of ethical standards cannot lead to disciplinary proceedings. But, there is autonomous disciplinary offence “Harming the authority of the court and of a judiciary in other way” which could be used in cases where judges are over exercising their right to speak publicly, but it was never used. |
| 3.3. Do these restrictions impose a duty of judicial restraint? | <input checked="" type="radio"/> yes <input type="radio"/> no |
| 4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of | <input checked="" type="radio"/> judicial independence and impartiality <input checked="" type="radio"/> the authority of the judiciary / public trust in the judiciary <input checked="" type="radio"/> the prestige / image of the judiciary <input checked="" type="radio"/> the confidentiality of the proceedings <input checked="" type="radio"/> the procedural rights of the parties to the proceedings <input checked="" type="radio"/> the confidentiality of internal judicial matters <input type="radio"/> other, please specify: |
| 5. Are (extra-)judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court? | <input checked="" type="radio"/> yes <input type="radio"/> no In principle YES, but it will be judges on case to case basis using ECtHR criteria of subjective and objective impartiality. |
| 6. Which disciplinary measures may be applied? | <input type="radio"/> formal advice <input type="radio"/> formal warning <input checked="" type="radio"/> <u>reprimand</u> <input type="radio"/> relocation <input checked="" type="radio"/> <u>removal</u> <input checked="" type="radio"/> <u>other, please specify: Fine</u> <u>Never happened in practice so far.</u> |
| 6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure? | <input checked="" type="radio"/> <u>nature and severity of the restriction on the judicial freedom of expression, especially</u> <input checked="" type="radio"/> <u>the specific position of the judge</u> <input checked="" type="radio"/> <u>the content and manner of the impugned statement</u> <input checked="" type="radio"/> <u>the context in which the statement was made</u> <input checked="" type="radio"/> <u>the nature and severity of the disciplinary measure imposed</u> All of these criteria could be used in my opinion bit as there is no case law on the issue answers are only theoretical. |
| 6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions? | <input type="radio"/> yes <input type="radio"/> no They should, but no case law so far. |

| | |
|---|--|
| 6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort? | <input type="radio"/> yes <input type="radio"/> no They should, but there is no case law. |
| 6.4. Which state authority is responsible for issuing disciplinary sanctions? | <input type="radio"/> the respective court president <input type="radio"/> the highest judge(s) of the judiciary (e.g. Lord Chief Justice / Lord Chancellor) <u>X an independent judicial body</u> <input type="radio"/> an executive body (e.g. disciplinary chamber) <input type="radio"/> other, please specify: |
| 7. Do judges have access to a court to challenge the disciplinary measures? | <u>X yes</u> <input type="radio"/> no Appeal to Constitutional Court |
| 7.1. If not, do they have access to an appeal procedure before | <input type="radio"/> an executive disciplinary chamber <input type="radio"/> a judicial disciplinary chamber <input type="radio"/> other or non |
| 7.2. If not, is an Ombudsman available, who may review the process? | <input type="radio"/> yes <u>X no</u> |
| 8. What may be the consequences of unethical behaviour of a judge related to restrictions on his/her freedom of expression? | <input type="radio"/> initiation of disciplinary proceedings <input type="radio"/> impact on promotion of a judge <u>x other, please specify:</u> <u>If a judge breaches ethical standards Council of Judges delivers such decision and it is made public.</u> |

B. Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private? When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

There is no such distinction in Code of Ethic. Theoretically any statement could be seen as a misuse of freedom of speech.

For the sake of the argument one could ask are there statements in private, and can such statements if reviled out of the private circle are considered as private.

As mentioned before, in our practice we had no such cases so far.

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e.g. home stories))?

Article 89. Law on Court says that a judges judge must behave in a manner that preserves his or her reputation and that of the judiciary and does not call into question his or her impartiality and independence in the trial and the independence of the judiciary.

In The Code of Ethic for Judges there are some provisions and goals in regard to judges' freedom of expression which can be *mutas mutandis* applied to freedom to comment.

For example:

-A judge should preserve the reputation of the judge's position and position through the written and spoken word.

-A judge should promote the reputation of the judicial profession in public appearances.

- The judge should refrain from express an opinion on certain ongoing court proceedings and on court decisions in those proceedings.

-A judge may participate in public hearings on the law, the legal system and the functioning of the judiciary.

-When appearing in public or commenting on social phenomena through the media, written articles, radio or television programs, public gatherings, lectures, etc., the judge must strive to ensure that his appearance is based on regulations, and the views expressed and his overall conduct in accordance with provisions of this Code.

- A judge should avoid highlighting his or her identity and expressing his or her views and opinions during and on the proceedings, especially through the media.

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression?

This is fortunately only theoretical question for judiciary in Croatia because in almost 30 years High Council for Judiciary (body responsible for appointment, promotion and discipline) there was not a case caused by judge's statements.

In general disciplinary cases are conducted following principles of criminal law so I believe all circumstances should be taken in account.

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression? Is it relevant if that judge also has the statutory task of representing the judiciary in such matters?

See answer under 11.

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements?

No such examples for the moment and in the past.

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial /extrajudicial statement? If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

In Croatia there is general view in public sphere (MP, Government, media, academia) that judges should never take public stand and openly speak about issues which are connected with politics, even in defending position of the judiciary, principles of independence acts of other two powers towards judiciary.

When judge do so, and they do,(mostly Association, some judges who recognized as ones who can and have something to say), very often they are "accused" that judges are getting out of their borders, that they do not have democratic legitimacy and that as it is for judges prohibited to be members of political party and to take part in

political activities (Law on Courts) judge should completely withdraw from such actions.

So far, even sometimes pressure is high to initiate discipline proceedings, or judges are called to resign and go to politics, fortunately authority to initiate disciplinary proceedings stay with judiciary and this haven't happen yet.

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new fora for or types of judicial expressions)? Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

No for the moment, beside situation explained under 14.

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples?

The area which is not explored so far are social media, judge's activities in such media.

[E. Freedom of assembly / Membership of political party](#)

17. May judges take part in public demonstrations?

I think not because according to Law on Courts judges are prohibited to be members of political party and to participate in political activities (Article 90/1).

So if demonstrations would have pure political purpose (i.e. demands for Government to step down) that easely could be seen as a breach , but if a judge will participate in demonstrations not to close shelter for abused women this perhaps would be permitted or some other universal humanitarian issue .

Also decisive moment could be who is organizing demonstrations.

18. May judges be members of a political party? Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization? Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement?

Judges are not allowed to be members of political party.

Cyprus/Chypre

A. General legal and ethical framework

| | |
|---|--|
| 1. Can judges rely on a constitutional right to freedom of expression? | <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No (1*) |
| 1.1. Can judges rely on this right for | an opinion, statement made in the judge's capacity as such (e.g. in court) Yes |
| 1.2. Can judges rely on this right for | an extrajudicial statement made in a judge's private capacity <input checked="" type="checkbox"/> in private <input checked="" type="checkbox"/> in public |
| 1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?) | <input checked="" type="checkbox"/> yes; please specify: For anything said in Court and in their judgments <input type="checkbox"/> no |
| 3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 3.1. If yes, please specify the nature of these restrictions | <input type="checkbox"/> constitutional provisions <input type="checkbox"/> statutory provisions <input type="checkbox"/> administrative regulations <input checked="" type="checkbox"/> code of conduct <input type="checkbox"/> code of judicial ethics <input checked="" type="checkbox"/> informal judicial standards <input type="checkbox"/> other |

| | |
|---|---|
| 3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)? | <input type="checkbox"/> yes <input checked="" type="checkbox"/> no (2*) |
| 3.3. Do these restrictions impose a duty of judicial restraint? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of | <input checked="" type="checkbox"/> judicial independence and impartiality <input checked="" type="checkbox"/> the authority of the judiciary / public trust in the judiciary <input checked="" type="checkbox"/> the prestige / image of the judiciary <input checked="" type="checkbox"/> the confidentiality of the proceedings <input checked="" type="checkbox"/> the procedural rights of the parties to the proceedings <input checked="" type="checkbox"/> the confidentiality of internal judicial matters <input type="checkbox"/> other, please specify: |
| 5. Are (extra-)judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 6. Which disciplinary measures may be applied? | <input type="checkbox"/> formal advice <input checked="" type="checkbox"/> formal warning <input checked="" type="checkbox"/> reprimand <input type="checkbox"/> relocation <input checked="" type="checkbox"/> removal <input checked="" type="checkbox"/> other, please specify: Reprimand published in the Official Gazette of the Republic of Cyprus |

| | |
|--|---|
| <p>6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure?</p> | <p><input checked="" type="checkbox"/> nature and severity of the restriction on the judicial freedom of expression, especially</p> <p><input checked="" type="checkbox"/> the specific position of the judge</p> <p><input checked="" type="checkbox"/> the content and manner of the impugned statement</p> <p><input checked="" type="checkbox"/> the context in which the statement was made</p> <p><input checked="" type="checkbox"/> the nature and severity of the disciplinary measure imposed</p> |
| <p>6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>6.4. Which state authority is responsible for issuing disciplinary sanctions?</p> | <p><input type="checkbox"/> the respective court president</p> <p><input checked="" type="checkbox"/> the highest judge(s) of the judiciary (e.g. Lord Chief Justice / Lord Chancellor)</p> <p><input type="checkbox"/> an independent judicial body</p> <p><input type="checkbox"/> an executive body (e.g. disciplinary chamber)</p> <p><input type="checkbox"/> other, please specify:</p> |
| <p>7. Do judges have access to a court to challenge the disciplinary measures?</p> | <p><input type="checkbox"/> yes <input checked="" type="checkbox"/> no</p> |
| <p>7.1. If not, do they have access to an appeal procedure before</p> | <p><input type="checkbox"/> an executive disciplinary chamber</p> <p><input type="checkbox"/> a judicial disciplinary chamber</p> <p><input type="checkbox"/> other or non No. (3*)</p> |
| <p>7.2. If not, is an Ombudsman available, who may review the process?</p> | <p><input type="checkbox"/> yes <input checked="" type="checkbox"/> no</p> |
| <p>8. What may be the consequences of unethical behaviour of a judge related to restrictions on his/her freedom of expression?</p> | <p><input checked="" type="checkbox"/> initiation of disciplinary proceedings</p> <p><input checked="" type="checkbox"/> impact on promotion of a judge</p> <p><input type="checkbox"/> other, please specify:</p> |

B. Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private?

No

When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

Communication that has not been revealed publicly by the person who made it.

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e.g. home stories))?

Strictly speaking no, subject to the law on defamation.

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression?

Yes

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression?

No

Is it relevant if that judge also has the statutory task of representing the judiciary in such matters?

Yes

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements?

No, concerning their judicial statements.

Concerning extrajudicial statements, they are subject to the relevant provisions of the law, and if using such language constitutes a criminal offence, they are criminally liable.

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial /extrajudicial statement?

No

If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

N/A

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new fora for or types of judicial expressions)?

No

Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

Yes

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples?

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations?

Judges should exercise their freedom to talk to the media or in a public debate with caution. [D.6.1]

Judges should be aware that they should not comment publicly or in the press on politically sensitive or controversial matters. [D.6.2]

Judges should not participate in public demonstrations which would associate them with a political viewpoint or cause, diminish their authority as a judicial officeholder or cast doubt on their independence and create a perception of bias. [D.5.2]

18. May judges be members of a political party?

A judge shall not have, nor shall he or she appear to have, any political ties, e.g. by attending / participating in political gatherings or events of a political cause. [D.5.1]

Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization?

Yes

Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement?

No. A judge cannot hold a political mandate and cannot be on leave.

NOTES:

Letters and numbers in brackets [] refer to the GUIDE TO JUDICIAL CONDUCT issued by the Supreme Court of Cyprus.

FOOTNOTES:

(1*) [A]

Subject to the provisions of the Constitution, of statute law and of the case law, this Guide on Judicial Conduct is based on the Bangalore principles of Judicial Conduct and the Guide to Judicial Conduct of England and Wales. It contains core guiding principles on judicial

conduct to enhance Judicial Integrity. These principles are intended to offer guidance and assistance to judges (the term includes both men and women of the judiciary) who are responsible for their own decisions as to whether a certain activity or conduct is appropriate or not.

[C.4.6]

A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

(2*) [B.2]

The legal nature of this Guide for Guidance and Assistance to Judges with a corresponding assignment of their own responsibility for their choice of course of conduct, is indicated in the INTRODUCTION.

[B.3]

Therefore, non-conformity with the provisions of the Guide does not necessarily constitute a disciplinary offence/ but it would, depend on factors such as the severity of non-compliance, the consequences of it to third parties, or to the judicial system as a whole, or whether there is a consistent pattern of impropriety / misconduct of such kind Nevertheless, these guiding principles are binding and constitute the quintessence of judicial conduct and any breach of them may result to disciplinary action, in accordance with Articles 133 and 153 of the Constitution in as far as the President and the Justices of the Supreme Court are concerned and Article 157 of the Constitution in as far as judicial officeholders of inferior courts are concerned The applicable procedure is laid down in the Rules of Court of 2015 and 2000, respectively.

The Procedural Rules concerning the Exercise of the Disciplinary Authority of the Supreme Council of Judicature 2000, provide that a serious violation of the provisions of the GUIDE TO JUDICIAL CONDUCT, subject to [B.3] (above), may constitute a disciplinary offence.

(3*)

This is an issue that can be further discussed. If is of your interest I would be more than happy to give more information.

Denmark/*Danemark*

A. General legal and ethical framework

| | |
|---|---|
| 1. Can judges rely on a constitutional right to freedom of expression? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 1.1. Can judges rely on this right for | an opinion, statement made in the judge's capacity as such (e.g. in court) Yes |
| 1.2. Can judges rely on this right for | an extrajudicial statement made in a judge's private capacity <input checked="" type="checkbox"/> in private <input checked="" type="checkbox"/> in public |
| 1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?) | <input type="checkbox"/> yes; please specify: <input checked="" type="checkbox"/> no |
| 3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system? Not generally, but please see answer to question 4. | <input type="checkbox"/> yes <input checked="" type="checkbox"/> no |
| 3.1. If yes, please specify the nature of these restrictions N/A | <input type="checkbox"/> constitutional provisions <input type="checkbox"/> statutory provisions <input type="checkbox"/> administrative regulations <input type="checkbox"/> code of conduct <input type="checkbox"/> code of judicial ethics <input type="checkbox"/> informal judicial standards <input type="checkbox"/> other |
| 3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)? | <input type="checkbox"/> yes <input checked="" type="checkbox"/> no The Danish Association of Judges has adopted ethical principles for judges. The guide includes the following: „A judge, like any other, has constitutional rights, including freedom of expression and freedom of association. In the exercise of their rights, a judge must be aware of the courts' and judges' special role in society“ |
| 3.3. Do these restrictions impose a duty of judicial restraint? | <input type="checkbox"/> yes <input type="checkbox"/> no N/A |

| | |
|---|--|
| <p>4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of</p> | <p><input type="checkbox"/> judicial independence and impartiality</p> <p><input type="checkbox"/> the authority of the judiciary / public trust in the judiciary</p> <p><input type="checkbox"/> the prestige / image of the judiciary</p> <p><input checked="" type="checkbox"/> the confidentiality of the proceedings</p> <p><input checked="" type="checkbox"/> the procedural rights of the parties to the proceedings</p> <p><input type="checkbox"/> the confidentiality of internal judicial matters</p> <p><input type="checkbox"/> other, please specify:</p> |
| <p>5. Are (extra-)judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>6. Which disciplinary measures may be applied?</p> | <p><input type="checkbox"/> formal advice</p> <p><input type="checkbox"/> formal warning</p> <p><input checked="" type="checkbox"/> reprimand</p> <p><input type="checkbox"/> relocation</p> <p><input checked="" type="checkbox"/> removal</p> <p><input checked="" type="checkbox"/> other, please specify: a fine</p> |
| <p>6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure?</p> <p>N/A – because there is no restriction on judges’ freedom of expression, please see answer to question 3</p> | <p><input type="checkbox"/> nature and severity of the restriction on the judicial freedom of expression, especially</p> <p><input type="checkbox"/> the specific position of the judge</p> <p><input type="checkbox"/> the content and manner of the impugned statement</p> <p><input type="checkbox"/> the context in which the statement was made</p> <p><input type="checkbox"/> the nature and severity of the disciplinary measure imposed</p> |
| <p>6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions?</p> | <p><input type="checkbox"/> yes <input type="checkbox"/> no N/A</p> |
| <p>6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>6.4. Which state authority is responsible for issuing disciplinary sanctions?</p> | <p><input type="checkbox"/> the respective court president</p> <p><input type="checkbox"/> the highest judge(s) of the judiciary (e.g. Lord Chief Justice / Lord Chancellor)</p> <p><input checked="" type="checkbox"/> an independent judicial body</p> <p><input type="checkbox"/> an executive body (e.g. disciplinary chamber)</p> <p><input type="checkbox"/> other, please specify:</p> |
| <p>7. Do judges have access to a court to challenge the disciplinary measures?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |

| | |
|---|--|
| 7.1. If not, do they have access to an appeal procedure before N/A | <input type="checkbox"/> an executive disciplinary chamber <input type="checkbox"/> a judicial disciplinary chamber <input type="checkbox"/> other or non |
| 7.2. If not, is an Ombudsman available, who may review the process? N/A | <input type="checkbox"/> yes <input type="checkbox"/> no |
| 8. What may be the consequences of unethical behaviour of a judge related to restrictions on his/her freedom of expression? | <input checked="" type="checkbox"/> initiation of disciplinary proceedings <input type="checkbox"/> impact on promotion of a judge <input type="checkbox"/> other, please specify: |

B. Restrictions on judicial freedom of expression N/A, please see answers to questions 3 and 4.

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private? When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e.g. home stories))? **Regarding own cases: yes. Otherwise: no.**

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression? **N/A, please see answers to questions 3 and 4.**

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression? Is it relevant if that judge also has the statutory task of representing the judiciary in such matters? **N/A, please see answers to questions 3 and 4.**

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements? **Yes.**

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial /extrajudicial statement? If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

Yes, however cases are extremely rare. In a recent case a judge had expressed views on Facebook to the effect that his complete impartiality was deemed to be questionable. The Eastern High Court found that he should not have handled the case. The Eastern High Court decided that the entire case should be retried by a different judge. As to the disciplinary matter the case is currently pending before The Special Court of Indictment and Revision.

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new fora for or types of judicial expressions)? Do you observe an increase in legal or ethical restrictions on judicial freedom of expression? **No.**

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples? **No pressing issues.**

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations? **Yes.**

18. May judges be members of a political party? **Yes.** Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization? **No. Please see answers to questions 3 and 4.** Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement? **No.**

Estonia/Estonie

A. General legal and ethical framework

| | |
|---|--|
| 1. Can judges rely on a constitutional right to freedom of expression? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 1.1. Can judges rely on this right for | an opinion, statement made in the judge's capacity as such (e.g. in court) <input checked="" type="checkbox"/> yes |
| 1.2. Can judges rely on this right for | an extrajudicial statement made in a judge's private capacity <input checked="" type="checkbox"/> in private <input checked="" type="checkbox"/> in public |
| 1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?) | <input type="checkbox"/> yes; please specify: <input checked="" type="checkbox"/> no |
| 3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 3.1. If yes, please specify the nature of these restrictions | <input type="checkbox"/> constitutional provisions <input type="checkbox"/> statutory provisions <input type="checkbox"/> administrative regulations <input type="checkbox"/> code of conduct <input checked="" type="checkbox"/> code of judicial ethics <input checked="" type="checkbox"/> informal judicial standards <input type="checkbox"/> other |
| 3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |

| | |
|---|---|
| 3.3. Do these restrictions impose a duty of judicial restraint? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of | <input checked="" type="checkbox"/> judicial independence and impartiality <input checked="" type="checkbox"/> the authority of the judiciary / public trust in the judiciary <input checked="" type="checkbox"/> the prestige / image of the judiciary <input checked="" type="checkbox"/> the confidentiality of the proceedings <input checked="" type="checkbox"/> the procedural rights of the parties to the proceedings <input checked="" type="checkbox"/> the confidentiality of internal judicial matters <input type="checkbox"/> other, please specify: |
| 5. Are (extra-)judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 6. Which disciplinary measures may be applied? | <input type="checkbox"/> formal advice <input checked="" type="checkbox"/> formal warning <input checked="" type="checkbox"/> reprimand <input type="checkbox"/> relocation <input checked="" type="checkbox"/> removal <input checked="" type="checkbox"/> other, please specify: fine, lower salary for a limited period of time |
| 6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure? | <input checked="" type="checkbox"/> nature and severity of the restriction on the judicial freedom of expression, especially <input checked="" type="checkbox"/> the specific position of the judge <input checked="" type="checkbox"/> the content and manner of the impugned statement <input checked="" type="checkbox"/> the context in which the statement was made <input checked="" type="checkbox"/> the nature and severity of the disciplinary measure imposed |

| | |
|---|--|
| 6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 6.4. Which state authority is responsible for issuing disciplinary sanctions? | <input type="checkbox"/> the respective court president <input type="checkbox"/> the highest judge(s) of the judiciary (e.g. Lord Chief Justice / Lord Chancellor) <input checked="" type="checkbox"/> an independent judicial body <input type="checkbox"/> an executive body (e.g. disciplinary chamber) <input checked="" type="checkbox"/> other, please specify: Independent judicial body consists of judges only and are elected by judges. |
| 7. Do judges have access to a court to challenge the disciplinary measures? | <input type="checkbox"/> yes <input checked="" type="checkbox"/> no |
| 7.1. If not, do they have access to an appeal procedure before | <input type="checkbox"/> an executive disciplinary chamber <input type="checkbox"/> a judicial disciplinary chamber <input checked="" type="checkbox"/> other: to the Supreme Court |
| 7.2. If not, is an Ombudsman available, who may review the process? | <input type="checkbox"/> yes <input type="checkbox"/> no |
| 8. What may be the consequences of unethical behaviour of a judge related to restrictions on his/her freedom of expression? | <input checked="" type="checkbox"/> initiation of disciplinary proceedings <input checked="" type="checkbox"/> impact on promotion of a judge <input checked="" type="checkbox"/> other, please specify: public humiliation by Minister of Justice, Chief Justice or other officials in media or other events |

B. Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private? When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

Limitations in general exist in situations where a judge is presenting itself as a judge or is recognized as a judge by others (bear in mind that Estonia is a small country and specially in small places person's occupation is well known).

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e.g. home stories))?

Code of ethics states that a judge can not go public with internal affairs of the judiciary, should avoid to comment his own cases as well as cases of other judges. A judge should refrain from political activities.

Recently, Committee of Judicial Ethics found that it is against the Code of Judicial Ethics when judges publicly criticize Chief Justice's actions. These matters were made public by Chief Justice himself. It is also unethical when judges are remaining anonymous while talking to media, according to the Committee. This opinion was given after Chief Justice made his complaint to the Ethics Committee against judges who criticized him. However, there was never a claim that these critical statements made by judges were untrue. Committee of Judicial Ethics consists of judges but is situated at the Supreme Court.

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression?

We not have such cases yet.

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression? Is it relevant if that judge also has the statutory task of representing the judiciary in such matters?

We not have such cases yet.

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements?

Yes, a judge who allowed herself to express racist language during the hearing was dismissed as a outcome of the disciplinary proceedings.

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial / extrajudicial statement? If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

We not have such cases yet.

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new fora for or types of judicial expressions)? Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

Judges don't feel free to express their concerns about the judiciary. The latest concern has been about promotions and appointments of judges, Supreme Court Justices and Court Presidents. After the Chief Justice's complaint to the Committee of Judicial Ethics, it is

“unethical” to remain anonymous as well while talking to media (see answer 10). Judges are strongly discouraged to express their opinion specially if it is critical one.

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples?

See answers 10 and 15.

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations?

Not encouraged. Estonian judge’s participation in Judges March in Warsaw, Poland prompted newspaper article in a major newspaper as novelty. However, no other actions or public outcry followed. Minister of Justice restrained himself from commenting, opinion within judiciary was mostly positive.

18. May judges be members of a political party? Do restrictions on judges’ freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization? Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement?

No, judges can not be members of political party, prohibited by law.

Finland/*Finlande*

A. General legal and ethical framework

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|---|--|
| 1. Can judges rely on a constitutional right to freedom of expression? | <input checked="" type="checkbox"/> yes <input checked="" type="checkbox"/> no |
| 1.1. Can judges rely on this right for | an opinion, statement made in the judge's capacity as such (e.g. in court) In principle yes. A judgment must, however, always be based on the facts and legal evaluation of the case in question. |
| 1.2. Can judges rely on this right for | an extrajudicial statement made in a judge's private capacity <input checked="" type="checkbox"/> in private <input checked="" type="checkbox"/> in public |
| 1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no However, it is not clear how far a judge can go in relying on this right. According to section 14 sub-section 2 of the Public Officials Act a public official (including judges) must behave in a manner which is compatible with his/her position and tasks. |
| 2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?) | <input checked="" type="checkbox"/> yes; please specify: <input type="checkbox"/> no A judge may only be dismissed from his/her office through a judgment of the court (section 103 of the Constitution of Finland). |
| 3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |

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| <p>3.1. If yes, please specify the nature of these restrictions</p> | <p> <input type="checkbox"/> constitutional provisions <input checked="" type="checkbox"/> statutory provisions <input type="checkbox"/> administrative regulations <input type="checkbox"/> code of conduct <input checked="" type="checkbox"/> code of judicial ethics <input type="checkbox"/> informal judicial standards <input type="checkbox"/> other </p> <p>Statutory provisions about secrecy of certain judicial proceedings or certain information within otherwise public judicial proceedings prevent judges from disclosing the information which is to be kept secret. The deliberations of the court shall also be kept secret. Otherwise it is not altogether clear to what extent a judge's freedom of expression is restricted through statutory provisions.</p> <p>The code of judicial ethics („Ethical Principles for Judges“) adopted by the Finnish Association of Judges and the Association of Supreme Court Justices includes provisions relating to the freedom of expression of judges (principles 5 and 15).</p> <p>The main principles regarding the freedom of expression of judges are stated in principle 5 according to which „A judge enjoys the freedom of speech and freedom of association in the same manner as other members of society. When making use of these rights, a judge must take into account the responsible nature of their official duties and the independence, impartiality and fairness of the courts.“</p> |
| <p>3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)?</p> | <p><input type="checkbox"/> yes <input checked="" type="checkbox"/> no</p> |

| | |
|--|--|
| <p>3.3. Do these restrictions impose a duty of judicial restraint?</p> | <p><input type="checkbox"/> yes <input checked="" type="checkbox"/> no</p> <p>The code of conduct is recommendatory.</p> |
| <p>4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of</p> | <p><input checked="" type="checkbox"/> judicial independence and impartiality</p> <p><input type="checkbox"/> the authority of the judiciary / public trust in the judiciary</p> <p><input type="checkbox"/> the prestige / image of the judiciary</p> <p><input checked="" type="checkbox"/> the confidentiality of the proceedings</p> <p><input checked="" type="checkbox"/> the procedural rights of the parties to the proceedings</p> <p><input checked="" type="checkbox"/> the confidentiality of internal judicial matters</p> <p>The purposes for which judicial freedom of expression may be restricted are yet to be tested in Finland. It may be possible that also the matters referred to in the boxes not ticked in here could qualify as acceptable purposes for restricting judicial freedom of expression, at least under certain circumstances.</p> <p><input type="checkbox"/> other, please specify:</p> |
| <p>5. Are (extra-)judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> <p>Depending on the contents of the statement and the matters which are relevant in the court case in question they may constitute grounds for disqualifying the judge from deciding on the case.</p> |

| | |
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| <p>6. Which disciplinary measures may be applied?</p> | <p> <input type="checkbox"/> formal advice <input checked="" type="checkbox"/> formal warning <input type="checkbox"/> reprimand <input type="checkbox"/> relocation <input type="checkbox"/> removal <input type="checkbox"/> other, please specify: Formal (written) warning is the only actual disciplinary measure. In less severe cases the Court President may discuss with the judge in question (in a more or less informal manner). </p> |
| <p>6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure?</p> | <p> <input checked="" type="checkbox"/> nature and severity of the restriction on the judicial freedom of expression, especially <input checked="" type="checkbox"/> the specific position of the judge <input checked="" type="checkbox"/> the content and manner of the impugned statement <input checked="" type="checkbox"/> the context in which the statement was made <input checked="" type="checkbox"/> the nature and severity of the disciplinary measure imposed All these aspects may be significant in the consideration. </p> |
| <p>6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions?</p> | <p> <input checked="" type="checkbox"/> yes <input type="checkbox"/> no At least it should. </p> |
| <p>6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort?</p> | <p> <input type="checkbox"/> yes <input checked="" type="checkbox"/> no A judge may only be dismissed from his/her office through a judgment of the court, in practice as a result of being sentenced to imprisonment in a criminal case against him/her. </p> |

| | |
|---|--|
| 6.4. Which state authority is responsible for issuing disciplinary sanctions? | <input checked="" type="checkbox"/> the respective court president <input type="checkbox"/> the highest judge(s) of the judiciary (e.g. Lord Chief Justice / Lord Chancellor) <input type="checkbox"/> an independent judicial body <input type="checkbox"/> an executive body (e.g. disciplinary chamber) <input type="checkbox"/> other, please specify: |
| 7. Do judges have access to a court to challenge the disciplinary measures? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 7.1. If not, do they have access to an appeal procedure before | <input type="checkbox"/> an executive disciplinary chamber <input type="checkbox"/> a judicial disciplinary chamber <input type="checkbox"/> other or non |
| 7.2. If not, is an Ombudsman available, who may review the process? | <input type="checkbox"/> yes <input type="checkbox"/> no |
| 8. What may be the consequences of unethical behaviour of a judge related to restrictions on his/her freedom of expression? | <input checked="" type="checkbox"/> initiation of disciplinary proceedings <input checked="" type="checkbox"/> impact on promotion of a judge <input checked="" type="checkbox"/> other, please specify: criminal prosecution |

B. Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private? When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

The statutory limitations on the freedom of expression (secret proceedings, deliberations of the court etc.) apply also to statements made in private. The sphere of "private" has not been properly defined in this respect.

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e.g. home stories))?

There are no statutory limitations other than the ones which have to do with the secrecy of the proceedings and of the judgments in such proceedings (although in certain cases a judgment may be public despite of the fact that the access of the public to the proceedings in question has been restricted) or the secrecy of the deliberations of the court. It must be

noted, however, that also internal affairs of the judiciary may involve matters of confidential (non-public) nature.

The commenting on a judge's own case is not forbidden through statutory provisions as far as the secrecy of the deliberations of the court is not violated. In principle 15 of the "Ethical Principles for Judges" it is stated that "The decision of the court is the most important statement of the judge in their capacity as a member of the judiciary. When taking part in social or academic debate, the judge must consider their judicial obligations, such as the confidentiality of the meetings in which the judgements are decided."

It has been a well-established practice in Finland that judges do not comment on their own judgments in public. There have been a few exceptions to this rule, e.g. a long time ago two Supreme Court Justices sought to clarify a certain Supreme Court Judgment in public, with rather questionable success.

There are no statutory limitations regarding political statements of judges. Some judges have been politically active, even on parliamentary level. However, when serving as an MP a judge must be on leave from his/her office as a judge.

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression?

This has not been tested, to our knowledge.

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression? Is it relevant if that judge also has the statutory task of representing the judiciary in such matters?

These matters have not been tested either, to our knowledge. However, if the judge in question has a statutory task of representing the judiciary in matters that his/her statement is concerned with he/she cannot give contradictory statements on such matters, ie. he/she cannot utter different opinions in a "private capacity" from the ones he/she has given in his/her "official capacity".

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements?

Such statements could be grounds for disciplinary proceedings leading to a written warning or even grounds for prosecution e.g. for ethnic agitation or perhaps for discrimination according to the provisions in Chapter 11 of the Criminal Code of Finland.

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial / extrajudicial statement? If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

We cannot recollect any such cases.

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new fora for or types of judicial expressions)? Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

We do not anticipate any substantial increase in statements on specific topics, although the use of social media has increased and is likely to further increase among judges. The level of

political activity among judges has been relatively low in Finland and it is hard to foresee any change in this respect. There are certainly some topical issues which may induce more involvement in public debate among persons serving as judges than before. The perhaps most notable example of such issues are environmental matters, especially climate change and measures to prevent or slow down it. It is, however, difficult to see involvement in this kind of social or political discussion as problematic from the point of view of the judges' freedom of expression.

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples?

The most topical issue may be the extent and ways in which a judge can be involved in discussions concerning his/her work as a judge in social media.

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations?

Yes.

18. May judges be members of a political party? Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization? Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement?

Yes. Judges can be members of political parties. Restrictions on judges' freedom of expression do not depend on whether his/her statements are made as a member of a political party or any other organization. A judge who is on leave from his/her office due to holding a political mandate (e.g. a mandate of an MP) has the same freedom of expression as any other person holding the same kind of political mandate. This does not, of course, exempt him/her from refraining to reveal such information received in an office as a judge which according to statutory provisions is to be kept secret or confidential.

The 4th of February, 2022

Kimmo Vanne

Judge in Court of Appeal

Päivi Hirvelä

Justice of the Supreme Court

France

A. Cadre juridique et éthique général

| | |
|--|---|
| 1. Les juges peuvent-ils se prévaloir d'un droit constitutionnel à la liberté d'expression ? | <input checked="" type="checkbox"/> oui <input type="checkbox"/> non Oui, comme tous les citoyens, mais ce droit est limité notamment par leur obligation de réserve. |
| 1.1. Les juges peuvent-ils se prévaloir de ce droit pour | les avis et les déclarations qu'ils font en qualité de juge (par exemple, au tribunal) ? Dans l'exercice de leurs fonctions, ils doivent motiver leurs décisions, mais ils ont une obligation de réserve dans leurs déclarations orales. |
| 1.2. Les juges peuvent-ils se prévaloir de ce droit pour | les déclarations qu'ils font à titre privé, en dehors du cadre judiciaire ? <input checked="" type="checkbox"/> en privé <input checked="" type="checkbox"/> en public En public, ils doivent néanmoins respecter leur obligation de réserve. |
| 1.3. Les juges peuvent-ils se prévaloir de ce droit pour une déclaration faite en dehors du cadre judiciaire, en public, au nom de la défense des intérêts de la justice (par exemple, lorsqu'un président de tribunal critique des réformes touchant l'organisation judiciaire) ? | <input checked="" type="checkbox"/> oui <input type="checkbox"/> non |
| 2. Existe-t-il d'autres dispositions assurant une protection légale de la liberté d'expression des juges (par exemple, des règles d'immunité) ? | <input type="checkbox"/> oui ; veuillez préciser <input checked="" type="checkbox"/> non |
| 3. Votre système juridique prévoit-il des restrictions légales ou éthiques de la liberté d'expression des juges ? | <input checked="" type="checkbox"/> oui <input type="checkbox"/> non |

| | |
|---|--|
| <p>3.1. Dans l'affirmative, veuillez préciser la nature de ces restrictions :</p> | <p><input type="checkbox"/> dispositions constitutionnelles</p> <p><input checked="" type="checkbox"/> dispositions légales</p> <p>« Toute manifestation d'hostilité au principe et à la forme du Gouvernement de la République est interdite aux magistrats, de même que toute démonstration de nature politique incompatible avec la réserve que leur imposent leurs fonctions », selon l'article 10 alinéa 2 du statut de la magistrature.</p> <p><input type="checkbox"/> règlements administratifs</p> <p><input type="checkbox"/> code de conduite</p> <p><input checked="" type="checkbox"/> code de déontologie judiciaire</p> <p>http://www.conseil-superieur-magistrature.fr/publications/recueil-des-obligations-deontologiques/discretion-et-reserve</p> <p><input type="checkbox"/> normes judiciaires informelles</p> <p><input type="checkbox"/> autres</p> |
| <p>3.2. S'il existe un code de conduite ou de déontologie judiciaire, celui-ci a-t-il des effets juridiques (par exemple, contient-il des recommandations aux autorités disciplinaires pour leurs décisions en matière disciplinaire) ?</p> | <p><input type="checkbox"/> oui <input checked="" type="checkbox"/> non, pas vraiment</p> <p>Le recueil des obligations déontologiques des magistrats élaboré par le conseil supérieur de la magistrature (CSM) n'a pas d'effet juridique direct, mais il a été rédigé par le CSM qui est la juridiction disciplinaire, et il reprend les principes déjà dégagés par la jurisprudence disciplinaire du CSM.</p> |
| <p>3.3. Ces restrictions imposent-elles un devoir de réserve de la part des juges ?</p> | <p><input checked="" type="checkbox"/> oui <input type="checkbox"/> non</p> |

| | |
|---|---|
| <p>4. Veuillez indiquer à quelles fins la liberté d'expression des juges peut être restreinte – pour la protection de :</p> | <p><input checked="" type="checkbox"/> l'indépendance et l'impartialité de la justice</p> <p><input checked="" type="checkbox"/> l'autorité de la justice / la confiance du public dans la justice</p> <p><input type="checkbox"/> le prestige / l'image de la justice</p> <p><input checked="" type="checkbox"/> la confidentialité de la procédure</p> <p><input checked="" type="checkbox"/> les droits procéduraux des parties à la procédure</p> <p><input type="checkbox"/> la confidentialité des affaires internes de la justice</p> <p><input type="checkbox"/> autres ; veuillez préciser :</p> |
| <p>5. Les déclarations faites en justice ou dans un cadre extrajudiciaire sont-elles un motif reconnu par la loi d'exclure un juge en exercice d'une affaire ou un motif de recours devant une juridiction supérieure ?</p> | <p><input checked="" type="checkbox"/> oui <input type="checkbox"/> non</p> |
| <p>6. Quelles sont les mesures disciplinaires applicables ?</p> | <p><input checked="" type="checkbox"/> note formelle</p> <p><input checked="" type="checkbox"/> avertissement formel</p> <p><input checked="" type="checkbox"/> réprimande</p> <p><input checked="" type="checkbox"/> mutation</p> <p><input checked="" type="checkbox"/> révocation (en théorie)</p> <p><input checked="" type="checkbox"/> autres ; veuillez préciser : mise à la retraite d'office.</p> |
| <p>6.1. L'autorité disciplinaire tient-elle compte des aspects suivants lorsqu'elle impose une mesure disciplinaire ?</p> | <p><input checked="" type="checkbox"/> nature et gravité de la restriction de la liberté d'expression des juges, en particulier</p> <p><input checked="" type="checkbox"/> position spécifique du juge</p> <p><input checked="" type="checkbox"/> contenu et modalités de la déclaration litigieuse</p> <p><input checked="" type="checkbox"/> contexte dans lequel la déclaration a été faite</p> <p><input checked="" type="checkbox"/> nature et gravité des mesures disciplinaires imposées</p> |

| | |
|---|--|
| 6.2. L'autorité disciplinaire prend-elle en considération l'effet dissuasif des sanctions disciplinaires ? | <input type="checkbox"/> oui <input type="checkbox"/> non Probablement |
| 6.3. L'autorité disciplinaire considère-t-elle la révocation d'un juge de son poste de juge comme un moyen de dernier recours ? | <input checked="" type="checkbox"/> oui <input type="checkbox"/> non |
| 6.4. Quelle est l'autorité chargée de prononcer des sanctions disciplinaires ? | <input type="checkbox"/> le président de la juridiction concernée <input type="checkbox"/> le(s) plus haut(s) magistrat(s) du système judiciaire (par exemple, Lord Chief Justice / Lord Chancellor) <input checked="" type="checkbox"/> un organe judiciaire indépendant Le conseil supérieur de la magistrature (CSM), en formation disciplinaire, présidé par le premier président de la Cour de cassation. <input type="checkbox"/> un organe de l'exécutif (par exemple, une chambre disciplinaire) <input type="checkbox"/> autres ; veuillez préciser : |
| 7. Les juges ont-ils accès à une juridiction pour contester les mesures disciplinaires ? | <input checked="" type="checkbox"/> oui <input type="checkbox"/> non Les décisions disciplinaires du CSM peuvent être contestées devant le conseil d'Etat par un recours en cassation. |
| 7.1. Dans la négative, ont-ils accès à une procédure d'appel devant : | <input type="checkbox"/> une chambre disciplinaire de l'exécutif ? <input type="checkbox"/> une chambre disciplinaire du système judiciaire ? <input type="checkbox"/> autres ou non Ce n'est pas une procédure d'appel, mais de cassation, devant le conseil d'Etat. |
| 7.2. Dans la négative, existe-t-il une institution de médiation pouvant examiner l'affaire ? | <input type="checkbox"/> oui <input checked="" type="checkbox"/> non |
| 8. Quelles peuvent être les conséquences du comportement d'un juge contraire à l'éthique relative aux restrictions de sa liberté d'expression ? | <input checked="" type="checkbox"/> ouverture d'une procédure disciplinaire <input checked="" type="checkbox"/> conséquences pour l'évolution de carrière <input type="checkbox"/> autres ; veuillez préciser : |

B. Restrictions à la liberté d'expression des juges

9. Les restrictions à la liberté d'expression des juges prévoient-elles des exceptions pour les déclarations (ou autres formes d'expression telles que les clips vidéo) faites en privé ? Dans quelles conditions votre système juridique considère-t-il qu'une communication relève du cadre privé, c'est-à-dire non public (par exemple, messages d'une personne à une autre personne, ou communication au sein d'un groupe fermé d'« amis » virtuels, où de nouveaux amis doivent être admis) ?

La question des réseaux sociaux est délicate. Il semble que quand un juge ne fait pas état de sa qualité dans son message, il dispose de la liberté d'expression de tout citoyen.

Cependant, si le message révèle un parti-pris, ou un manque d'impartialité, il pourra être utilisé par des citoyens justiciables pour faire dessaisir le juge d'une affaire, ou à l'appui d'une voie de recours.

C. Aspects relatifs au contenu, aux modalités et au contexte des déclarations des juges

10. Votre système juridique fixe-t-il des limites aux sujets que les juges sont autorisés à commenter c'est-à-dire leurs propres affaires, les critiques visant leurs jugements, les affaires (internes) du système judiciaire, la politique, les questions privées (par exemple, des affaires familiales) ?

Il arrive que des juges, une fois qu'ils ne sont plus en charge du dossier, ou qu'ils ont pris leur retraite, commentent leurs affaires anciennes, ou les critiques dont ils ont fait l'objet. Certains ont rédigé des livres de souvenirs.

Mais tant qu'un juge est saisi d'un dossier, il doit s'abstenir de toute expression pouvant faire douter de son impartialité.

Il doit également s'abstenir de révéler des informations devant être tenues secrètes selon la loi (en raison du secret de l'enquête et de l'instruction en matière pénale, ou du respect de la vie privée des parties).

« Toute manifestation d'hostilité au principe et à la forme du Gouvernement de la République est interdite aux magistrats, de même que toute démonstration de nature politique incompatible avec la réserve que leur imposent leurs fonctions », aux termes de l'article 10 alinéa 2 du statut de la magistrature.

11. L'autorité disciplinaire, lorsqu'elle évalue le caractère proportionnel d'une restriction à la liberté d'expression d'un juge, attribue-t-elle plus d'importance aux déclarations qui concernent des questions d'intérêt public ?

Les juges peuvent s'exprimer très largement sur des questions d'intérêt public, en particulier celles qui intéressent le corps judiciaire (indépendance, budget de la justice, conditions de travail...)

12. L'autorité disciplinaire, lorsqu'elle évalue le caractère proportionnel d'une restriction à la liberté d'expression d'un juge, attribue-t-elle plus d'importance aux déclarations d'un juge d'une juridiction supérieure, portant sur des questions qui intéressent le corps judiciaire ? Si le juge a également pour mission statutaire de représenter le corps judiciaire au sujet de ces questions, cela entre-t-il en jeu ?

Les juges des juridictions supérieures (Cour de cassation, premiers présidents des cours d'appel), lorsqu'ils s'expriment publiquement, le font en règle générale dans le cadre de leur mission de représentation du corps judiciaire.

Ils n'encourent pas de sanctions disciplinaires pour cela, et leur liberté d'expression est, en pratique, très grande

13. Votre système juridique prévoit-il d'imposer des sanctions disciplinaires lorsqu'un juge emploie un langage choquant, dérangeant et offensant ou raciste/homophobe dans ses déclarations en tant que juge / dans un cadre extrajudiciaire ?

Oui. Le cas n'est pas spécialement prévu par le statut de la magistrature, mais des déclarations de cette nature, effectuées en tant que juge, sont passibles de sanctions disciplinaires. Dans un cadre extra-judiciaire, elles peuvent également donner lieu à des poursuites disciplinaires, en plus des poursuites pénales encourues par un juge comme par tout citoyen.

D. Cas récents de restrictions à la liberté d'expression des juges dans les États membres

14. Avez-vous connaissance d'affaires (judiciaires) récentes ayant suscité un débat public sur la question de savoir si un juge a négligé ses obligations légales ou éthiques dans ses déclarations en tant que juge / dans un cadre extrajudiciaire ? Le cas échéant, pourriez-vous décrire brièvement les faits survenus dans les affaires les plus pertinentes, en indiquant les questions juridiques ou éthiques soulevées et, le cas échéant, les décisions finales des juridictions ou des instances disciplinaires ?

Il n'y a pas, à ma connaissance, d'affaires judiciaires récentes et ayant donné lieu à une décision disciplinaire, concernant la liberté d'expression des juges.

15. Observez-vous une évolution de la situation relative à la liberté d'expression des juges (par exemple, une augmentation des déclarations sur certains sujets ou de nouveaux forums ou types d'expression des juges) ? **OUI** Observez-vous une augmentation des restrictions juridiques ou éthiques de la liberté d'expression des juges ? **NON**

On peut observer la multiplication considérable des prises de position publiques des juges, à tous les niveaux de la hiérarchie, sur l'insuffisance de leurs moyens budgétaires et de leurs effectifs.

Le suicide d'une jeune collègue surchargée de travail, à la fin de l'année 2021, a donné lieu à une pétition publique signée par plus de 7000 juges et procureurs, et à des manifestations dans toutes les juridictions judiciaires.

Mais il n'y a pas, pour l'instant, d'augmentation des restrictions à la liberté d'expression des juges.

16. Quelles sont actuellement les questions éthiques les plus urgentes en matière de déclarations et autres formes d'expression des juges ? Pouvez-vous donner des exemples ?

Il n'y a pas, à mon avis, de questions urgentes concernant l'expression des juges.

Les attaques dont la justice fait l'objet, notamment de la part de responsables politiques, sont un sujet de préoccupation important, mais différent.

E. Liberté de réunion / Appartenance à un parti politique

17. Les juges peuvent-ils participer à des manifestations publiques ? **Oui**

18. Les juges sont-ils autorisés à adhérer à un parti politique ? **Oui**

Les restrictions à la liberté d'expression des juges s'appliquent-elles sans distinction selon qu'un juge fait une déclaration en tant que membre d'un parti politique, d'une organisation judiciaire ou d'une organisation non judiciaire ?

Un juge qui s'exprime en tant que membre d'un parti politique, et non en tant que juge, sans faire état de sa qualité, dispose en principe d'une très grande liberté d'expression.

Il en va de même lorsqu'il s'exprime en tant que membre d'une organisation professionnelle de magistrats – alors que, par définition, sa qualité de juge est connue puisqu'il prend la parole au nom de son organisation professionnelle.

Il y a en France des syndicats de magistrats (juges et procureurs) dont les représentants s'expriment dans les médias sans restrictions.

Des critères différents s'appliquent-ils lorsqu'un juge exerce un mandat politique et est en congé lorsqu'il fait une déclaration litigieuse ?

Un juge en congé de la magistrature, ou qui exerce exclusivement un mandat politique (c'est-à-dire qui n'exerce plus son activité de juge le temps de ce mandat), ne peut pas faire l'objet de poursuites disciplinaires.

Les juges qui s'expriment dans le cadre d'un mandat politique parallèle (ce qui est rare en raison des incompatibilités prévues par le statut de la magistrature en son article 9) ne font pas, en pratique l'objet de poursuites disciplinaires.

Article 9 du statut de la magistrature :

« L'exercice des fonctions de magistrat est incompatible avec l'exercice d'un mandat au Parlement, au Parlement européen ou au Conseil économique, social et environnemental (...) »

Nul ne peut être nommé magistrat ni le demeurer dans une juridiction dans le ressort de laquelle se trouve tout ou partie du département dont son conjoint est député ou sénateur.

L'exercice des fonctions de magistrat est également incompatible avec l'exercice d'un mandat de conseiller régional, de conseiller départemental, de conseiller municipal ou de conseiller d'arrondissement, de conseiller de Paris, de conseiller de la métropole de Lyon, de conseiller de l'Assemblée de Corse, de conseiller de l'Assemblée de Guyane ou de conseiller de l'Assemblée de Martinique dans le ressort de la juridiction à laquelle appartient ou est rattaché le magistrat.

Nul ne peut être nommé magistrat ni le demeurer dans une juridiction dans le ressort de laquelle il aura exercé depuis moins de cinq ans, une fonction publique élective visée au présent article ou fait acte de candidature à l'un de ces mandats, à l'exception du mandat de représentant au Parlement européen, depuis moins de trois ans.

Les dispositions des trois alinéas qui précèdent ne s'appliquent pas aux magistrats de la Cour de cassation. »

Le recueil des obligations déontologiques des magistrats publié par le CSM indique que :

« Si le magistrat peut se présenter à des élections, dans les limites fixées par les textes, il évite que son engagement politique et son expression publique soient de nature à nuire à l'exercice impartial de ses fonctions. »

Ce recueil contient des développements importants sur la liberté d'expression des magistrats, et, en annexe, sur les réseaux sociaux et les nouvelles technologies.

Il peut être consulté sous le lien suivant :

http://www.conseil-superieur-magistrature.fr/sites/default/files/atoms/files/csm_recueilobligationsdeontologiques.pdf

Valéry Turcey

Germany/*Allemagne*

A. General legal and ethical framework

| | |
|--|---|
| 1. Can judges rely on a constitutional right to freedom of expression? | x yes O no But there is no specific provision for judges. |
| 1.1. Can judges rely on this right for | <p>an opinion statement made in the judge's capacity as such (e.g. in court).</p> <p>Yes, but judges do not have a specific right for an opinion made in the judge's capacity as such. In their personal capacity (citizen) they can rely – in general - on the constitutional right for opinion statement made in court and out of court. A constitutional provision provides the judicial independence and impartiality of judges. The opinion statement made in court must be in accordance with judicial independence and impartiality. On the one hand, this principle reinforces the judge's right to an opinion statement in court, but on the other hand, may lead to restriction of the judge's freedom of expression.</p> <p>The statutory provision requires: "In case of political activities within and outside the office the judge has to observe behavioural standards that keep the trust in his independence unimpaired."</p> <p>To that extent, the general freedom of expression is restricted.</p> |
| 1.2. Can judges rely on this right for | <p>an extrajudicial statement made in a judge's private capacity</p> <p>x in private</p> <p>x in public</p> <p>subject to restrictions (see 3)</p> |

| | |
|---|---|
| 1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no subject to restrictions (see 3) |
| 2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?) | <input checked="" type="checkbox"/> yes; please specify: Constitutional provision of independence and impartiality of judges <input type="checkbox"/> no |
| 3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 3.1. If yes, please specify the nature of these restrictions | <input checked="" type="checkbox"/> constitutional provisions <input checked="" type="checkbox"/> statutory provisions <input type="checkbox"/> administrative regulations <input type="checkbox"/> code of conduct <input type="checkbox"/> code of judicial ethics <input type="checkbox"/> informal judicial standards <input type="checkbox"/> other |
| 3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)? | <input type="checkbox"/> yes <input type="checkbox"/> no |
| 3.3. Do these restrictions impose a duty of judicial restraint? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of | <input checked="" type="checkbox"/> judicial independence and impartiality <input checked="" type="checkbox"/> the authority of the judiciary / public trust in the judiciary <input checked="" type="checkbox"/> the prestige / image of the judiciary <input checked="" type="checkbox"/> the confidentiality of the proceedings <input checked="" type="checkbox"/> the procedural rights of the parties to the proceedings <input checked="" type="checkbox"/> the confidentiality of internal judicial matters <input type="checkbox"/> other, please specify: |
| 5. Are (extra-)judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no Subject to the specific case and circumstances/substance of the statement |
| 6. Which disciplinary measures may be applied? | <input checked="" type="checkbox"/> formal advice <input checked="" type="checkbox"/> formal warning <input checked="" type="checkbox"/> reprimand <input checked="" type="checkbox"/> relocation <input checked="" type="checkbox"/> removal <input type="checkbox"/> other, please specify: Depending on federal or state judges |

| | |
|---|--|
| 6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure? | <input checked="" type="checkbox"/> nature and severity of the restriction on the judicial freedom of expression, especially <input checked="" type="checkbox"/> the specific position of the judge <input checked="" type="checkbox"/> the content and manner of the impugned statement <input checked="" type="checkbox"/> the context in which the statement was made <input checked="" type="checkbox"/> the nature and severity of the disciplinary measure imposed |
| 6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions? | <input type="radio"/> yes <input type="radio"/> no There may/should do, no data available. |
| 6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 6.4. Which state authority is responsible for issuing disciplinary sanctions? | <input checked="" type="checkbox"/> the respective court president <input type="radio"/> the highest judge(s) of the judiciary (e.g. Lord Chief Justice / Lord Chancellor) <input type="radio"/> an independent judicial body <input checked="" type="checkbox"/> an executive body (e.g. disciplinary chamber) minister of justice <input type="radio"/> other, please specify: Depending on federal or state judges |
| 7. Do judges have access to a court to challenge the disciplinary measures? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 7.1. If not, do they have access to an appeal procedure before | <input type="radio"/> an executive disciplinary chamber <input type="radio"/> a judicial disciplinary chamber <input type="radio"/> other or non |
| 7.2. If not, is an Ombudsman available, who may review the process? | <input type="radio"/> yes <input type="radio"/> no |
| 8. What may be the consequences of unethical behaviour of a judge related to restrictions on his/her freedom of expression? | <input checked="" type="checkbox"/> initiation of disciplinary proceedings <input checked="" type="checkbox"/> impact on promotion of a judge <input type="radio"/> other, please specify: |

B. Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private? When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

As far as I see there are no specific limitations. Recently, there have been cases dealing with Facebook/Meta and other postings. The general rules of judicial restraint have been applied so far. I am not aware of cases of private communication. According to the general rules, the judicial restrictions should not apply in general to person-to-person messaging. In this case, the independence of the judiciary is not at stake.

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e.g. home stories))?

There are no specific regulations so far. But by long-standing convention, it is regarded as inappropriate for a judge to comment publicly on own cases or to reply to a critique of their judgements. Scientific discussions or contributions in legal journals are accepted.

In general, judges do not comment on the internal affairs of the judiciary. Exceptions apply to political statements on legal/governance questions that are related to the specific position of the judge in the legal system (court president or representative of judicial organizations).

General public or private statements on political questions are rarely made by judges in their professional capacity. These statements are only admissible according to the standards of judicial restraint (judicial moderation) and neutrality. Therefore – as far as I know - judges remain cautious in presenting themselves in their capacity on social media platforms. Home stories are not common, their appropriateness is discussed.

See above 1.1.

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression?

Yes. Disciplinary proceedings must follow proportionality standards. All facts and circumstances must be considered, such as the subject matter of the opinion statement, the individual position of the judge and his/her duties in the judiciary.

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression? Is it relevant if that judge also has the statutory task of representing the judiciary in such matters?

Yes, see answer 11.

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements?

Yes.

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial /extrajudicial statement? If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

There are very rare, published cases decided by courts. There is no provision that disciplinary measures will be published.

I am not aware of cases that are related to Federal Judges or judges of higher ranking (on the court of appeal or comparable level). Cases in which disciplinary measures were applied did concern mostly first instance judges (judges on the lower level of the judiciary).

Cases that were decided by courts of the last instance related to political PR (such as advertisements), press statements or similar political campaigns which were initiated with explicit reference to the judge's judicial status.

There has been one recent case in Germany, in which a former judge who changed his office and became a district attorney and who was a member of the (right-wing) AfD party and posted AfD positions attacking foreigners, was dismissed from the civil service.

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new fora for or types of judicial expressions)?

No. Potentially, younger judges use social media as a form of expression in their professional capacity.

Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

No. However, the appropriateness and scope of social media use is being discussed.

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples?

None come into my mind. The Covid situation has not had a significant impact on the judicial statements or other types of expressions of judges.

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations?

In general, there is no prohibition of taking part in public demonstrations. In general, judges are allowed to take part in public demonstrations subject to the general rules. Political statements (expressions) of judges always must observe the separation of individual personality and the judge's office. The judge is not allowed to use his/her judicial position to stress the importance of the political statement in question. Different standards apply in cases in which the public demonstrations/ public statements are related to internal questions of the judiciary and the judge's rights and interests are at stake (such as funding, judges' remuneration or the organization of the courts).

18. May judges be members of a political party? Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization? Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement?

Judges could be members of political parties. Judges can exercise their freedom of political activity like every other citizen. The same applies to the exercise of their freedom of expression. They could make statements as a member of a political party or as a member of a judicial or non – judicial (for example professional) organization. However, judges must act within their office and outside their office in political activities in a way that does not endanger the trust in his/her impartiality. Opinions expressed in public by judges are only protected by the (general) freedom of expression if these opinions observe the standards of moderation and (judicial) restraint. In every individual case, the opinion expressed has to comply with the judicial obligations of the judge. These vary, depending to what extent the judge acts as a private person or links his/her political activity to his/her office as a judge.

In case a judge exercises a (full-time) political mandate (such as a member of parliament seat) he/she is no longer allowed to exercise his/her judicial office. The strict principle of separation of powers applies.

Hungary/Hongrie

A. General legal and ethical framework

| | |
|---|---|
| 1. Can judges rely on a constitutional right to freedom of expression? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 1.1. Can judges rely on this right for | an opinion, statement made in the judge's capacity as such (e.g. in court) YES |
| 1.2. Can judges rely on this right for | an extrajudicial statement made in a judge's private capacity <input checked="" type="checkbox"/> in private <input checked="" type="checkbox"/> in public |
| 1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?) | <input checked="" type="checkbox"/> yes; please specify: Under section 2(1) of Act No. CLXII of 2011 on the Legal Status and Remuneration of Judges (henceforth: „Act on Judges“), judges shall enjoy the same privilege of immunity as Members of Parliament. <input type="checkbox"/> no |
| 3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 3.1. If yes, please specify the nature of these restrictions | <input checked="" type="checkbox"/> constitutional provisions <input checked="" type="checkbox"/> statutory provisions <input checked="" type="checkbox"/> administrative regulations <input type="checkbox"/> code of conduct <input checked="" type="checkbox"/> code of judicial ethics <input checked="" type="checkbox"/> informal judicial standards <input type="checkbox"/> other |

| | |
|---|---|
| 3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)? | <input type="checkbox"/> yes <input checked="" type="checkbox"/> no |
| 3.3. Do these restrictions impose a duty of judicial restraint? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of | <input checked="" type="checkbox"/> judicial independence and impartiality <input checked="" type="checkbox"/> the authority of the judiciary / public trust in the judiciary <input checked="" type="checkbox"/> the prestige / image of the judiciary <input checked="" type="checkbox"/> the confidentiality of the proceedings <input checked="" type="checkbox"/> the procedural rights of the parties to the proceedings <input checked="" type="checkbox"/> the confidentiality of internal judicial matters <input type="checkbox"/> other, please specify: |
| 5. Are (extra-)judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court? | <input type="checkbox"/> yes <input checked="" type="checkbox"/> no |
| 6. Which disciplinary measures may be applied? | <input type="checkbox"/> formal advice <input checked="" type="checkbox"/> formal warning <input checked="" type="checkbox"/> reprimand <input type="checkbox"/> relocation <input checked="" type="checkbox"/> removal, which has two forms: removal from managerial position and removal from judicial position <input checked="" type="checkbox"/> other, please specify: moving the judge to one or two salary grades lower |

| | |
|--|---|
| <p>6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure?</p> | <p><input checked="" type="checkbox"/> nature and severity of the restriction on the judicial freedom of expression, especially</p> <p><input checked="" type="checkbox"/> the specific position of the judge -</p> <p><input checked="" type="checkbox"/> the content and manner of the impugned statement</p> <p><input checked="" type="checkbox"/> the context in which the statement was made</p> <p><input checked="" type="checkbox"/> the nature and severity of the disciplinary measure imposed</p> |
| <p>6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/></p> |
| <p>6.4. Which state authority is responsible for issuing disciplinary sanctions?</p> | <p><input type="checkbox"/> the respective court president</p> <p><input type="checkbox"/> the highest judge(s) of the judiciary (e.g. Lord Chief Justice / Lord Chancellor)</p> <p><input checked="" type="checkbox"/> an independent judicial body: service court</p> <p><input type="checkbox"/> an executive body (e.g. disciplinary chamber)</p> <p><input type="checkbox"/> other, please specify:</p> |
| <p>7. Do judges have access to a court to challenge the disciplinary measures?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> <p>Disciplinary proceedings are conducted before the service court both at first instance and at second instance</p> |
| <p>7.1. If not, do they have access to an appeal procedure before</p> | <p><input type="checkbox"/> an executive disciplinary chamber</p> <p><input type="checkbox"/> a judicial disciplinary chamber</p> <p><input type="checkbox"/> other or non</p> |

| | |
|---|--|
| 7.2. If not, is an Ombudsman available, who may review the process? | <input type="checkbox"/> yes <input type="checkbox"/> no |
| 8. What may be the consequences of unethical behaviour of a judge related to restrictions on his/her freedom of expression? | <input checked="" type="checkbox"/> initiation of disciplinary proceedings <input type="checkbox"/> impact on promotion of a judge <input type="checkbox"/> other, please specify: |

B. Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private? When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

Under the rule set out in section 43(1) of the Act on Judges, a judge may not express an opinion "in public", outside his/her official capacity, on a case pending before or heard by a court. Article 2(1) of the Code of Ethics for Judges (henceforth: „Code of Ethics“) also requires judges to refrain from making statements of political nature "in public".

However, Article 3 of the Code of Ethics also contains provisions pertaining to judges' private life. In particular, "a judge shall conduct his/her personal and private relations [...] in such a manner as not to compromise the dignity, impartiality or appearance of impartiality of his/her profession. [...] When using the Internet, a judge shall exercise due care. He/She should only disclose information, audio and video material about himself/herself and his/her relatives which do not undermine the dignity of the judge. Expression of opinion on the Internet may not prejudice the authority of the court and the dignity of the judicial profession and may not violate the rules governing the giving of statements."

Article 26(1) of the Fundamental Law of Hungary and section 39(1) of the Act on Judges also relate to the private life of judges. According to these provisions, judges may not be members of political parties and may not engage in political activities.

Thus, while the statutory provisions restricting expressions of opinions by judges primarily relate to opinions expressed "in public", expressions of opinions by judges in private are subject to ethical norms (though judges' engagement in political activity is prohibited by constitutional and statutory rules).

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e.g. home stories))?

Yes, the subject matters on which a judge may express an opinion are limited. A judge may not express publicly, outside his/her official capacity, opinion on a case pending before or heard by a court, especially on cases adjudicated by himself/herself (section 43 of the Act on Judges). However, in exercising academic, teaching, or other professional activities a judge

may, in a constructive manner, evaluate and express an opinion on court decisions (see Article 6(3) of the Code of Ethics).

Moreover, judges must refrain from making political statements publicly (Article 2 of the Code of Ethics) and may, in general, not engage in "political activities" (Article 26(1) of the Fundamental Law of Hungary, section 39 (1) of the Act on Judges).

Under section 44(1)-(2) of the Act on Judges, a judge may not provide information to the press, radio and television on a case he/she has dealt with. Information on a case pending before or heard by a court may be provided to the press, radio and television by the president of the court, or by a person authorised by the president of the court.

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression?

No published jurisprudence is available on this issue.

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression? Is it relevant if that judge also has the statutory task of representing the judiciary in such matters?

No published jurisprudence is available on this issue.

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements?

No published jurisprudence is available on this issue.

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial /extrajudicial statement? If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

No published jurisprudence is available on this issue.

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new fora for or types of judicial expressions)? Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

A review of the Code of Ethics and of the regulation applicable to service courts hearing disciplinary cases is under way. It remains to be seen to what extent these processes will lead to new developments in the field of expressions of opinions by judges.

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples?

As to the freedom of expression of judges, a current issue is how to strike the right balance between the freedom of expression a judge enjoys in his/her teaching activities, and his/her obligation related to the prohibition of evaluating judicial decisions.

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations?

It depends on the subject-matter and the nature of the demonstration.

Judges have a legal obligation to refrain from engaging in political activities. The Code of Ethics explains this obligation in more detail when it states that a judge "shall not attend political meetings and rallies and shall refrain from political utterances in public." The Code of Ethics further states that a judge "shall not associate with any organisation or permanent or occasional grouping whose purpose or activities are unlawful, discriminatory or prejudicial to public confidence in the judicial profession. [...] In his/her private life, a judge shall live a law abiding life and his/her conduct shall enhance public confidence in and respect for the judiciary. [...] A judge shall not publicly put himself/herself in a position that is unworthy of his/her judicial office. [...] He/She shall conduct his/her personal and private relations and his/her leisure time in such a manner as not to compromise the dignity, impartiality or appearance of impartiality of his/her office." At statutory level, the same standards are set out in section 37(2) of the Act on Judges, which provides that "a judge shall conduct himself/herself in an irreproachable manner befitting his/her office, and shall refrain from any conduct which would undermine confidence in the judicial processes or the authority of the court."

Judges may take part in public demonstrations by observing the above rules.

18. May judges be members of a political party? Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization? Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement?

No, both the Fundamental Law of Hungary and the Act on Judges prohibit judges from being members of political parties. The prohibition of political activity is also expressed in the rule that a judge shall be released from office if he/she has been elected a Member of Parliament, a Member of the European Parliament, a member of a local government, a representative for a national minority or a mayor, or has been elected or appointed a senior political leader, a state secretary or deputy state secretary in public administration.

Ireland/Irlande

A. General legal and ethical framework

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|---|---|
| 1. Can judges rely on a constitutional right to freedom of expression? | Yes |
| 1.1. Can judges rely on this right for | an opinion statement made in the judge's capacity as such (e.g. in court) Judges are immune from suit for anything said in court unless <i>mal fides</i> is established |
| 1.2. Can judges rely on this right for | an extrajudicial statement made in a judge's private capacity No |
| 1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | No Conventionally, Judges do not criticise government policy due to the separation of powers issue under the Constitution |
| 2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?) | Yes please specify: Immunity from suit as stated above |
| 3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system? | Yes - ethical only though implicit rather than enumerated |
| 3.1. If yes, please specify the nature of these restrictions | Informal judicial standards Code of conduct/judicial standards to be implemented in coming months |
| 3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)? | Not applicable |
| 3.3. Do these restrictions impose a duty of judicial restraint? | Not applicable |
| 4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of | Judicial independence and impartiality, the authority of the judiciary / public trust in the judiciary, the prestige / image of the judiciary, the confidentiality of the proceedings, the procedural rights of the parties to the proceedings and the confidentiality of internal judicial matters. |
| 5. Are (extra-)judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court? | Yes Case law dictates that a statement which would give a perception of bias would disqualify a judge from hearing a case |

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| 6. Which disciplinary measures may be applied? | None - the government may only remove a judge for stated misbehaviour or incapacity. |
| 6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure? | Not applicable |
| 6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions? | Not applicable |
| 6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort? | Not applicable |
| 6.4. Which state authority is responsible for issuing disciplinary sanctions? | Not applicable save for removal from office as outlined above |
| 7. Do judges have access to a court to challenge the disciplinary measures? | Not applicable |
| 7.1. If not, do they have access to an appeal procedure before | Not applicable |
| 7.2. If not, is an Ombudsman available, who may review the process? | No |
| 8. What may be the consequences of unethical behaviour of a judge related to restrictions on his/her freedom of expression? | There currently are no formal consequences |

B. Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private? When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)? **There are no formal limitations**

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e.g. home stories))? **Not currently applicable**

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression? **Not currently applicable**

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression? Is it relevant if that judge also has the statutory task of representing the judiciary in such matters? **Not currently applicable**

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements? **Not currently applicable**

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial /extrajudicial statement?

There are none

If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

Not applicable

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new fora for or types of judicial expressions)? Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

The adoption by the Irish judiciary of guidelines on judicial conduct and ethics in 2022 will provide for a system of overseeing allegations of judicial misconduct, which will provide a structure for considering whether a judicial expression amounts to misconduct.

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples? **None arise**

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations? **Conventionally Judges do participate in such demonstrations**

18. May judges be members of a political party? **No**

Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization? Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement? **Not applicable**

A. General legal and ethical framework

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|---|---|
| 1. Can judges rely on a constitutional right to freedom of expression? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no Article 21 of the Constitution states in a general way: "Everyone has the right to freely express their thoughts by word, writing and any other means of dissemination". This constitutional provision also applies to judges and prosecutors. |
| 1.1. Can judges rely on this right for | an opinion, statement made in the judge's capacity as such (e.g. in court) <input checked="" type="checkbox"/> yes |
| 1.2. Can judges rely on this right for | an extrajudicial statement made in a judge's private capacity <input checked="" type="checkbox"/> in private <input checked="" type="checkbox"/> in public |
| 1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |

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| <p>2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?)</p> | <p><input checked="" type="checkbox"/> yes; please specify: Italian law does not provide for specific rules of immunity to protect judges' freedom of expression. However, disciplinary jurisprudence applies the general grounds for the justifying circumstances of fulfillment of duty and state of necessity. According to a ruling by the Disciplinary Chamber of the Superior Council of the Judiciary (decision no. 65, of 10 May 2013), the public prosecutor who, in violation of the rules of organization of his office, provides the press with the information aimed to protect his professional integrity, commits a disciplinary offense, if he has not previously made use of the institutional protection tools provided for by the law. However, the decision was annulled by the Italian Supreme Court (Grand Chamber, decision no. 6827 of 28 January 2014) which affirmed the principle of law according to which: "the conduct with which the magistrate defends himself against the attribution, on the basis of declarations disseminated by the media, of a judicial measure different from the one adopted and irreconcilable with his duties and with the image that he must give of himself for his own credibility and that of the judiciary, it does not arise in itself, but only for the means actually used, in contrast with the fundamental value of impartiality, which the magistrate must always comply with, even in terms of image. It follows that, in the event that the magistrate makes use of interviews and press releases to defend himself, the legitimacy of the conduct on a disciplinary level, in relation to the configurability of the exemptions of the state of necessity and fulfillment of duty, must be assessed with an ex ante judgment that has regard to the specific circumstances that characterized the damage to his professional honor, in relation to the defense needs as concretely emerged".</p> <p><input type="checkbox"/> no</p> |
| <p>3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |

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| <p>3.1. If yes, please specify the nature of these restrictions</p> | <p><input checked="" type="checkbox"/> constitutional provisions</p> <p>Art. 27 (2) – Presumption of innocence</p> <p>Art. 101 (1), 104 (1), 108 – Judicial independence and impartiality</p> <p>art. 111 (1) – Due process of law</p> <p><input checked="" type="checkbox"/> statutory provisions</p> <p><input checked="" type="checkbox"/> administrative regulations</p> <p><input checked="" type="checkbox"/> code of conduct</p> <p><input checked="" type="checkbox"/> code of judicial ethics</p> <p><input checked="" type="checkbox"/> informal judicial standards</p> <p>See paragraphs 10./18.</p> <p><input type="checkbox"/> other</p> |
| <p>3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> <p>1. Disciplinary authorities and responsibility - The guarantee of independence requires a specific disciplinary procedure before a special jurisdiction. As regards disciplinary matters, the Superior Council of the Judiciary is competent for all decisions. Disciplinary measures are taken by a special division of the Council (Disciplinary Chamber of the Superior Council of the Judiciary - Sezione Disciplinare del Consiglio Superiore della Magistratura); its decisions are subject to lawfulness control by the Court of Cassation, the highest body of the Italian judicial system. Since 2006, disciplinary breaches are specifically defined in Italy's legislation (see following paragraphs 9-16). Reference is also made in general terms to conducts making a judge/prosecutor unworthy of the trust to be placed in him/her or otherwise affecting the prestige of the judiciary. It is left to the SCJ to assess, on a case-by-case basis, whether a breach of trust has occurred or the reputation of the judiciary has been affected, and subsequently to decide the appropriate measures to be taken – i.e., warning, reprimand, seniority loss, relocation, dismissal from office (see, paragraph 6).</p> <p>2. As for the infringements of the Code of ethics of the National Judicial Associations (Associazione Nazionale Magistrati), see paragraph 8, last part, and paragraph 10, part 2.</p> |

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| 3.3. Do these restrictions impose a duty of judicial restraint? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of | <input checked="" type="checkbox"/> judicial independence and impartiality <input checked="" type="checkbox"/> the authority of the judiciary / public trust in the judiciary <input checked="" type="checkbox"/> the prestige / image of the judiciary <input checked="" type="checkbox"/> the confidentiality of the proceedings <input checked="" type="checkbox"/> the procedural rights of the parties to the proceedings <input checked="" type="checkbox"/> the confidentiality of internal judicial matters <input type="checkbox"/> other, please specify: |
| 5. Are extra-judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no <p>Judicial and extra-judicial statements can lead to disqualifying a sitting judge from his/her case or to the judge recusing him/herself.</p> |
| 6. Which disciplinary measures may be applied? | <input checked="" type="checkbox"/> formal advice <input checked="" type="checkbox"/> formal warning <input checked="" type="checkbox"/> reprimand <input checked="" type="checkbox"/> relocation <input checked="" type="checkbox"/> removal <p>X other, please specify: seniority loss. Disciplinary sanctions are: a) warning, which is to recognize the misconduct and remind the judge the need to comply with his/her obligations; b) reprimand, formal disapproval of transgression found; c) loss of seniority, resulting in the delay in the career progression; d) dismissal from office, which is ordered when the disciplinary misconduct prevents, because of its nature and severity, the magistrate to perform his duties. The relocation may result, as additional penalty, from sanctions more severe than warning.</p> |

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| <p>6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure?</p> | <p><input checked="" type="checkbox"/> nature and severity of the restriction on the judicial freedom of expression, especially</p> <p><input checked="" type="checkbox"/> the specific position of the judge</p> <p><input checked="" type="checkbox"/> the content and manner of the impugned statement</p> <p><input checked="" type="checkbox"/> the context in which the statement was made</p> <p><input checked="" type="checkbox"/> the nature and severity of the disciplinary measure imposed</p> |
| <p>6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>6.4. Which state authority is responsible for issuing disciplinary sanctions?</p> | <p><input type="checkbox"/> the respective court president</p> <p><input type="checkbox"/> the highest judge(s) of the judiciary (e.g. Lord Chief Justice / Lord Chancellor)</p> <p><input type="checkbox"/> an independent judicial body</p> <p><input type="checkbox"/> an executive body (e.g. disciplinary chamber)</p> <p><input checked="" type="checkbox"/> other, please specify: The Disciplinary Chamber of the Superior Council of the Judiciary is responsible for issuing disciplinary sanctions (see paragraph 3.2.)</p> |
| <p>7. Do judges have access to a court to challenge the disciplinary measures?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no Against the disciplinary sanctions judges can lodge an appeal in cassation (Corte di cassazione – Sezioni Unite civili)</p> |
| <p>7.1. If not, do they have access to an appeal procedure before</p> | <p><input type="checkbox"/> an executive disciplinary chamber</p> <p><input type="checkbox"/> a judicial disciplinary chamber</p> <p><input type="checkbox"/> other or non</p> |
| <p>7.2. If not, is an Ombudsman available, who may review the process?</p> | <p><input type="checkbox"/> yes <input type="checkbox"/> no</p> |

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| <p>8. What may be the consequences of unethical behavior of a judge related to restrictions on his/her freedom of expression?</p> | <p><input checked="" type="checkbox"/> initiation of disciplinary proceedings (See paragraphs 3.2., 10-16).</p> <p>In the preliminary investigations of disciplinary proceedings, the Ministry of Justice's General Inspection Service plays a very important role. The Minister of Justice may give it mandate to gather information useful for his decision to prosecute or not, at his discretion.</p> <p>Disciplinary proceedings can be set in motion also at the initiative of the Attorney General of the Court of Cassation, whose prosecution in disciplinary cases is mandatory.</p> <p>Disciplinary proceedings take place according to the rules of the Code of Criminal Procedure.</p> <p>Even outside of cases of disciplinary action, the CSM may decide to transfer a judge or a prosecutor, when "for whatever reason, even without fault of their own, they are no longer able to perform their duties in a manner consistent with the prestige of the judiciary". This is not a disciplinary action, but rather a tool to protect the prestige of the judiciary in case the magistrate is found to be "incompatible" with the environment/place in which he/she is performing his duties.</p> <p><input checked="" type="checkbox"/> impact on promotion of a judge</p> <p><input checked="" type="checkbox"/> other, please specify: Sanctions by the governing body of the National Judicial Associations (Associazione Nazionale Magistrati). In fact, professional ethics covers another dimension beyond responsibility; it is not limited to the area of reparations and sanctions. Professional ethics represent a positive vision of judge's duties and constitute both common founding values of the functioning of judging and preventative principles. In this regard, it</p> |
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| | <p>should be noted that since 1993, on the authority of Parliament, the Italian Government imposed on all branches of the State to adopt codes of ethics to "ensure high standards for the services provided to citizens." Pursuant this regulation, the National Association of Magistrates has adopted a "Code of Ethics for judges." The code has not been adopted by law and does not have the same strength. It is divided into three parts: a) general principles; b) Independence, impartiality, accuracy; c) Conduct of judges in the performance of their duties. The Code reflects the attempt to define judicial obligations and ethics, and indirectly the profile of a "good judge". It contains many explicit references to the fundamental principles of independence, impartiality, diligence, rejection of undue external interference. One can also find in the code more innovative provisions, such as those regarding the relationship between the judiciary and the media (<i>"Article 6. Relations with the press and other means of mass communication - In its contacts with the press and other means of communication, the magistrate does not solicit the dissemination of news about his activity. When not bound to secrecy or confidentiality about information known for reasons related to its function and considered that it provides news on judicial activity to ensure that the public receives correct information and to protect the honor and reputation of citizens, it avoids the creation or use of personal, reserved or privileged channels of information. Without prejudice to the principle of absolute freedom of expression of thought, the magistrate is inspired by criteria of balance and moderation in statements and interviews to newspapers and other means of mass communication."</i>). See paragraph 10, part 2.</p> |
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B.

Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private? When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

The statements made by the judge in discussions on social networks or even in confidential mailing lists, where journalists can ask to have access and, therefore, likely to be reported by the press, can give rise to disciplinary offenses.

The infringement of confidentiality and self-restraint has been also recorded regarding communications made by a judge in his private sphere and eventually made public by the recipient. Disciplinary responsibility was thus affirmed for a conduct damaging the image of the magistrate, in the case of statements with offensive or defamatory content made to a journalist during a phone call, even if the journalist himself does not inform the judge of the subsequent publication of his declarations (CSM, Disciplinary Chamber, n. 39/2009, relating to declarations aimed at representing the Constitutional Court as conditioned and contiguous - at least in some of its exponents - to a different state power).

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e.g. home stories))?

1. Under the current **disciplinary system**, only statements or communications of information concerning the criminal proceedings dealt with by the magistrate can be ascribed to the judge's functional infringements, whether they concern the preliminary investigation phase or other phases of the judicial proceedings. Declarations concerning the so-called political criticism or statements of other kinds (e.g. self-promotion statements), on the other hand, fall within the sphere of extra functional infringements and can now be prosecuted only insofar as they result from an offence.

Judges who are exercising their functions are required to the duty of "self restraint" which commonly extends to judges' activities not related to their institutional function (Lgs. D. no. 109 of 2006, art. 1). As stated by the Italian Supreme Court, *"this is an attitude required of judges for the obvious purpose of avoiding that, by making their feelings and opinions perceived, they may raise doubts about their independence and impartiality, damaging the consideration that judges must enjoy in the public opinion"* (Italian Supreme Court, Grand Chamber, decision no. 6827 of 24 March 2014).

Among the **disciplinary offences** in the exercise of the functions there are: a) the disclosure, even due to negligence, of procedural documents covered by secrecy or prohibited from publication, as well as the violation of the duty of restraint on the affairs under discussion, or on the defined affairs, when it is likely to unduly infringe the rights of others; b) public statements or interviews that concern the judgements under discussion or on the judgements defined when it is capable of infringing the rights of others; c) having relations with media concerning the activities of their office outside the procedures laid down by law; d) soliciting the advertising of news related to their office activity or the establishment and use of confidential or privileged personal information channels; e) making declarations and interviews in violation of the criteria of balance and measurement (Lgs. D. No. 109 of 2006, art. 2)

2. Article 58-bis of Legislative Decree no. 29 of 1993 entrusted the professional associations with drawing up the relevant codes of conduct, and the code of ethics was drafted in order to implement this law provision (See last part of paragraph 8).

The **code of ethics** states that in contacts with the press and other media, judges shall not solicit the divulgation of news pertaining to their institutional activity.

Also when they are not bound to secrecy or restraint with regard to information concerning the activity of their office, or that they know for reasons of their office and consider necessary

to provide information on judicial activity in order to ensure the correct information to citizens, or to protect the honour and reputation of citizens, judges shall avoid the creation or use of confidential or privileged personal information channels.

Without prejudice to the principle of full freedom of thought, judges shall be driven by criteria of balance, dignity and moderation when issuing statements and interviews to newspapers and other mass media, as well as in all writings and statements intended for circulation. They shall avoid taking part in broadcasts in which they know that the events relating to pending judicial proceedings will be featured (Article 6).

Violation of the code of ethics leads to sanctions by the governing body of the National Judicial Association to which the vast majority of judges -more than 92%- voluntarily subscribe.

The power of investigation and disciplinary action lies with the Association's Board for Internal Appeals.

There are three sanctions that can be imposed, in increasing order of their seriousness.

The least serious is censure, which consists of a formal reprimand communicated to the member concerned -through his/her Sectional Council- by the President of the Association, in execution of the resolution of the Association's Central Executive Committee; then there is disqualification from the Association-related rights, which cannot last more than five years; finally, the most serious: expulsion, which is limited to cases of exceptional gravity.

All these sanctions can only be applied to Association's members.

A judge who is a member of the National Judicial Association and who wishes to avoid internal disciplinary proceedings may resign from the Association, thereby depriving its organs of the power to take action against him/her. By way of exception, the Central Executive Committee, in accordance with the provisions of the Articles of Association, may suspend the resignation of the accused member, provided that the resignation has not been finalised with the relevant resolution of acceptance, which falls within the competence of the individual territorial sections.

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression?

By resolution of the Italian Superior Council for the Judiciary of 11 June 2018, "*Guidelines for the organisation of judicial courts for the purposes of effective public information and proper institutional communication*" were adopted on the basis of the principle that "*transparency and comprehensibility of judicial action are values that derive from the democratic character of the system and are related to the principles of independence and autonomy of the Judiciary as well as to a modern notion of judicial responsibility*". The resolution recommends that the offices provide information on the state of the judicial proceedings having public interest -by means of an abstract "*consisting in the synthetic illustration (usually a maximum of 6 lines), in simple, clear and understandable language, of the decisions and of their reasons*"- but ban "*any representation of the investigations able to determine in the public the conviction of the guilt of the persons investigated*".

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression? Is it relevant if that judge also has the statutory task of representing the judiciary in such matters?

Article 5 of Legislative Decree no. 106 of 2006 reserves to the head of the office, possibly through a delegated judge, the relations with the media.

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements?

Art. 4 of Legislative Decree no. 109/2006 provides for "disciplinary offenses resulting from a crime". The criminal relevance of the defamatory declarations has been assessed for expressions seriously defamatory and unnecessarily humiliating that constitute a gratuitous and unjustified verbal aggression against the personal sphere of the criticized subject (Court of cassation, 13 aprile 2011, n. 15060; 27 gennaio 2011, n. 3047). The law of 25 June 1993, n. 205 establishes that phrases, gestures, actions, and slogans having the purpose of hate speech, incitement to violence, discrimination and violence on racial, ethnic, religious or national grounds constitutes a crime.

Public statements or interviews concerning persons involved in judicial proceedings still being dealt with, or heard but not decided with a measure not subject to ordinary appeal, when they are intended to unduly prejudice the rights of others, constitute a disciplinary infringement under Article 2(2)(v) of Legislative Decree no. 109 of 2006.

In a case (Disciplinary Chamber of the Superior Council of the Judiciary, no. 11 of 4 February 2009), the disciplinary board found that the accused judge had made serious statements at a press conference in which he described the actions of prosecutors in a different public prosecution office as an *"institutionally inadmissible"* and *"scandalous and subversive"* act, to be responded to with timely initiatives *"suitable for restoring the rule of law, independence and autonomy that have always constituted the cultural and moral heritage of the Judicial Order"*. On this occasion, the disciplinary board noted that these statements, defined as *"impulsive and irresponsible"*, lent themselves to media considerations such as *"war between prosecution offices"* and *"clash between judges"* and contributed to damaging the prestige of the Judiciary.

The Italian Supreme Court, in upholding the disciplinary board's precautionary order, stated that the declarations concerned *"persons involved in the pending proceedings"* and were intended to unduly prejudice their rights.

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial /extrajudicial statement? If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

The Italian Constitutional Court (decision no. 170 of 2018) has stated that impartiality and independence, as set out by the Constitution (Articles 101(2) and 104(1)), *"must be protected not only with specific reference to the concrete exercise of judicial functions, but also as a deontological rule to be observed in all behaviour in order to avoid any reasonable doubt as to their independence and impartiality"*;

In a case concerning the statements made by a public prosecutor, in the context of a documentary film produced by Netflix on the murder of Meredith Kercher -judicial proceedings now definitively closed following the judgment of the Italian Supreme Court-, the disciplinary sanction was excluded. The Disciplinary Chamber of the Superior Council of the Judiciary took into account the circumstance that the criminal proceedings had already been decided by the same judge and were terminated, as well as the considerable media

resonance and the absence of expressions likely to unduly affect the rights of others, considering it to be the narration of procedural facts entirely similar to that which could be assumed in relation to a book written a year after the facts. (Disciplinary Chamber of the Superior Council of the Judiciary, no. 163 of 22 October 2018).

In a case brought before the European Court of Human Rights (9 July 2013, *Di Giovanni v. Italy*, Application no. 51160/06), the applicant, a judge, in addition to criticising the Italian judicial system in a press article, had highlighted the lack of impartiality of a recent public competition for entry into the Judiciary by referring to a colleague - generically identified - who had allegedly exercised his influence to favour his daughter. Dismissing the applicant's appeal for violation of Article 10 of the European Convention on Human Rights against the warning imposed on her by the Disciplinary Chamber of the Superior Council of the Judiciary, the Strasbourg court held that the applicant had not shown the discretion required of a judge. The magistrate had failed to take account of possible doubts as to the veracity of the information, thus contributing to presenting as well-founded to public opinion a rumour which subsequently turned out to be unfounded. The final part of the decision states: "*Stressing the utmost discretion imposed on the judicial authorities, the Court recalls that this discretion must lead them not to use the press, not even to respond to provocations*".

In the case of statements made by a Minister in relation to the activities of the office carried out by a judge and subsequent denial of the same judge to two newspapers, the Disciplinary Chamber of the Superior Council of the Judiciary inflicted the minimum sanction of censure; the Grand Chamber of the Italian Supreme Court (judgment no. 6827 of 24 March 2014) ruled that the person concerned had the right to defend herself against defamation. This, in fact, affected her as a judge, but also the court itself: "*The protection of judges against defamatory denigration is, in addition to being a task of the Superior Council, a right for each judge and an institutional duty – as laid down in the decision - which cannot be abdicated, since the credibility of the judicial institution and the trust of citizens in its impartiality are an absolute safeguard of democratic life*".

In the case of the public prosecutor who, in the exercise of his judicial functions, had lacked appropriate caution to prevent the diffusion of news pertaining to pending judicial proceedings, thus leading to repeated and uncontrolled leaks of information, the Disciplinary Chamber of the Superior Council of the Judiciary (no. 3 of 18 January 2008) acquitted the judge because the infringement concerned a negligence but was not defined as complete with regard to the object, thus remaining indeterminate.

In another case, a Deputy Prosecutor was charged of having made statements in place of the Chief Prosecutor; from the judicial decision not to proceed it emerges that in this case no specific reference was made by the magistrate to court documents, and that the statements were generic and, therefore, deemed to be legitimate (Disciplinary Chamber of the Superior Council of the Judiciary no. 19 of 7 March 2008). The same episode, re-examined (Disciplinary Chamber of the Superior Council of the Judiciary no. 14326 of October 2009), was then considered not to be a violation because the interview, although lively, had not to be considered on its own but showed a troubled state of mind and a imperfect lucidity with regard to the duties and objectives that must never be forgotten by a public prosecutor. (The judge was then definitively sentenced to the disciplinary sanction of temporary inability to hold a directory or semi-directory position for one year with transfer to another office and other functions due to Article 2 of Legislative Decree no. 109 of 2006).

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new fora for or types of judicial expressions)? Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples?

Article 2 of Legislative Decree no. 188 of 8 November 2021 (which entered into force on 14 December 2021) states that public authorities are prohibited from publicly identifying a person under investigation or an accused person as guilty until they have been found guilty by an irrevocable judgment. In the event of violation of this prohibition, the law provides for the right of rectification in favour of the person concerned, without preventing criminal and disciplinary sanctions and compensation for damages. Article 3 introduces a number of amendments to Legislative Decree no. 106/2006 (Re-organisation of the Public Prosecution Office). In particular, the modalities of public disclosure of information relating to criminal proceedings are provided for, which must take place *'exclusively through official communications or, in cases of particular public relevance of the facts, through press conferences'*. The same modalities of communication of relevant news are foreseen for judicial police officers, subject to the authorisation of the public prosecutor.

Furthermore, the provision sets the conditions for the diffusion of the news, which is allowed only *"when it is strictly necessary for the prosecution of the investigations or there are other specific reasons of public interest" and "in such a way as to clarify the phase in which the judicial proceedings are pending and to assure, in any case, the right of the person under investigation and of the accused not to be indicated as guilty until guilt has been ascertained with irrevocable judgment or criminal decree of conviction"*.

Article 4 first of all introduces into the Code of Criminal Procedure Article 115 bis, entitled "Guarantee of the presumption of innocence". The provision imposes on the judicial authorities a twofold obligation when drafting measures in criminal matters:

- "in measures other than those aimed at deciding on the criminal responsibility of the accused" the obligation not to indicate the suspect or the accused "as guilty until guilt has been established by an irrevocable judgment or criminal decree of conviction",
- "in measures other than those aimed at deciding on the criminal responsibility of the accused, which presuppose the assessment of evidence, proof or indications of guilt" the obligation to limit "references to the guilt of a person under investigation or of an accused to only those indications necessary to satisfy any conditions or requirements set out by law for the adoption of the measure".

In addition, the provision introduces changes to the obligation of investigative secrecy, in Article 329 of the Code of Criminal Procedure, stating that the exception to the prohibition on the publication of documents operates only when it is strictly necessary for the continuation of the investigation

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations?

Yes, judges may take part in public demonstrations.

18. May judges be members of a political party? Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization? Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement?

Membership of, and active participation in, a political party fall within the scope of disciplinary infringements (Articles 1 and 3 of Legislative Decree no. 1094 of 23 February 2006 (as amended by Law no. 269 of 24 October 2006)).

A judge on leave of absence, has been subject to disciplinary proceedings on the grounds that, by joining a political party and taking part in it (and even leading it) on a systematic and continuous basis, he has allegedly infringed, since 2007, those provisions deemed applicable to all judges - including those who do not temporarily hold such office - in order to safeguard independence and impartiality of the Judiciary.

In the course of the disciplinary proceedings, however, (no. 111 of 27 July 2017, the Disciplinary Chamber raised a question on the constitutional legitimacy (of Article 3 of Legislative Decree no. 109 of 26 February 2006) with special regard to Articles 2, 3, 18, 49 and 98 of the Italian Constitution, in so far as that provision makes it a disciplinary infringement to "belong to, or participate in, political parties on a systematic and continuous basis", including for judges who are not on active service because they are on leave of absence for electoral reasons.

The Italian Constitutional Court, having been called upon to address this question, ruled (judgement no. 170 of 2018) that the issues raised by the Disciplinary Chamber were unfounded.

According to the Constitutional Court, the choice made by the law to establish, by means of the contested provision, that membership of, or systematic and continuous participation in, political parties constitutes a disciplinary wrong for judges is fully within the legitimate exercise of the power conferred on it by Article 98 of the Constitution.

It follows that, according to the Constitutional Court, such a legislative choice, resulting from the balance that the Constitutional Charter prescribes between the right of judges to all fundamental rights and the protection of the principles of independence and impartiality, does not hinder in any way -as also stated in Judgment no. 224 of 2009- the recognition of the fundamental rights of citizens who are judges under Articles 17, 18 and 21 of the Constitution, including, in particular, the right to express their ideas, even political ideas.

Lithuania/Lituanie

A. General legal and ethical framework

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| 1. Can judges rely on a constitutional right to freedom of expression? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no A judge has the rights and freedoms of a citizen of the Republic of Lithuania provided for in the Constitution and laws of the Republic of Lithuania (Part 1, Art. 44 „Judge's rights and freedoms“, Law on Courts). |
| 1.1. Can judges rely on this right for | an opinion, statement made in the judge's capacity as such (e. g. in court) Yes, if it meets the requirements of the relevant norms the Code of Ethics for Judges of Lithuania. |
| 1.2. Can judges rely on this right for | an extrajudicial statement made in a judge's private capacity <input checked="" type="checkbox"/> in private <input checked="" type="checkbox"/> in public |
| 1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 2. Are there further provisions that legally protect judges' freedom of expression (e. g. rules of immunity) | <input checked="" type="checkbox"/> yes; please specify: <input type="checkbox"/> no The Constitution (Part 2, Art. 114) establishes immunity of a judge: a judge may not be held criminally liable, arrested or have his freedom restricted otherwise without the consent of the Seimas, or, in the period between the sessions of the Seimas, without the consent of the President of the Republic of Lithuania. |
| 3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |

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| <p>3.1. If yes, please specify the nature of these restrictions</p> | <p><input checked="" type="checkbox"/> constitutional provisions. The Constitution imposes general restrictions on freedom of expression for all persons, including judges.</p> <p>Freedom to express convictions, to receive and impart information may not be limited otherwise than by law, if this is necessary to protect the health, honour and dignity, private life, and morals of a human being, or to defend the constitutional order.</p> <p>Freedom to express convictions and to impart information shall be incompatible with criminal actions—incitement of national, racial, religious, or social hatred, violence and discrimination, with slander and disinformation. (Parts 3, 4 of Article 25, Article 28, the Constitution of the Republic of Lithuania)</p> <p><input checked="" type="checkbox"/> statutory provisions. The Law on Courts provides, that a judge must comply with the Constitution and other laws of the Republic of Lithuania and comply with the requirements of the Rules of Ethics of Judges (Part 1 of Article 43).</p> <p><input type="checkbox"/> administrative regulations</p> <p><input type="checkbox"/> code of conduct</p> <p><input checked="" type="checkbox"/> code of judicial ethics</p> <p><input checked="" type="checkbox"/> informal judicial standards</p> <p><input type="checkbox"/> other</p> |
| <p>3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e. g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |

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| 3.3. Do these restrictions impose a duty of judicial restraint? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of | <input checked="" type="checkbox"/> judicial independence and impartiality <input checked="" type="checkbox"/> the authority of the judiciary / public trust in the judiciary <input checked="" type="checkbox"/> the prestige / image of the judiciary <input checked="" type="checkbox"/> the confidentiality of the proceedings <input checked="" type="checkbox"/> the procedural rights of the parties to the proceedings <input type="checkbox"/> the confidentiality of internal judicial matters <input type="checkbox"/> other, please specify: |
| 5. Are (extra-) judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 6. Which disciplinary measures may be applied? | <input type="checkbox"/> formal advice <input checked="" type="checkbox"/> formal warning <input checked="" type="checkbox"/> reprimand <input type="checkbox"/> relocation <input checked="" type="checkbox"/> removal <input checked="" type="checkbox"/> other, please specify: <p>Item 1, Part 1, Article 87 of the Law on Courts establishes, that the Court of Honor of Judges may impose one of the following disciplinary sanctions: 1) make a remark; 2) to reprimand; 3) to make a strong reprimand. In addition, the Court of Honor of Judges may not impose a disciplinary sanction and limit itself to the consideration of a disciplinary case (Item 3, Part 1, Art. 86, Law on Courts), or may by its decision (Part 2, Art. 86, Law on Courts: 1) propose to the President of the Republic or the Seimas (the Parliament) to dismiss a judge in accordance with the procedure established by law; 2) to propose to the President of the Republic to apply to the Seimas for impeachment to a judge.</p> |

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| <p>6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure?</p> | <p><input checked="" type="checkbox"/> nature and severity of the restriction on the judicial freedom of expression, especially</p> <p><input checked="" type="checkbox"/> the specific position of the judge</p> <p><input checked="" type="checkbox"/> the content and manner of the impugned statement</p> <p><input checked="" type="checkbox"/> the context in which the statement was made</p> <p><input checked="" type="checkbox"/> the nature and severity of the disciplinary measure imposed</p> |
| <p>6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> <p>A proposal to the President of the Republic or the Seimas to dismiss the judge from office is recognized as the last resort.</p> |
| <p>6.4. Which state authority is responsible for issuing disciplinary sanctions?</p> | <p><input type="checkbox"/> the respective court president</p> <p><input type="checkbox"/> the highest judge(s) of the judiciary (e. g. Lord Chief Justice / Lord Chancellor)</p> <p><input type="checkbox"/> an independent judicial body</p> <p><input type="checkbox"/> an executive body (e. g. disciplinary chamber)</p> <p><input checked="" type="checkbox"/> other, please specify:</p> <p>The Court of Honor of Judges is an institution of self-government of judges, accountable to the General Meeting of Judges. The Court of Honor is composed from judges and members of the public.</p> <p>Two candidates are appointed by the President of the Republic, two candidates by the Speaker of the Seimas, and six candidates by the Council of Judges. The President of the Republic and the Speaker of the Seimas appoint representatives of the public as members of the Court of Honor. One member from the Supreme Court, the Court of Appeal and the Supreme Administrative Court, three members from among all the judges of the district courts, the district administrative courts and the district courts are elected to the Court of Honor of Judges by the Council of Judges. (Item 3, Part 1 and Part 2, Article 114, Law on Courts).</p> |

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| 7. Do judges have access to a court to challenge the disciplinary measures? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no : The decision of the Court of Honor of Judges may be appealed to the Supreme Court (Part 4, Article 86 of the Law on Courts). |
| 7.1. If not, do they have access to an appeal procedure before | <input type="checkbox"/> an executive disciplinary chamber <input type="checkbox"/> a judicial disciplinary chamber <input type="checkbox"/> other or non |
| 7.2. If not, is an Ombudsman available, who may review the process? | <input type="checkbox"/> yes <input type="checkbox"/> no |
| 8. What may be the consequences of unethical behaviour of a judge related to restrictions on his/her freedom of expression? | <input checked="" type="checkbox"/> initiation of disciplinary proceedings <input checked="" type="checkbox"/> impact on promotion of a judge <input type="checkbox"/> other, please specify: |

B. Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private?

No exceptions are provided. Article 1 of the Code of Ethics for Judges establishes, that the Code regulates the conduct of judges in the performance of direct duties and conduct not related to the performance of direct duties. Thus, the standards of the Code are binding on the judge in private life as well and include all forms of expression.

When does your legal system regard communication as private, i. e. non-public (consider e. g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

The notion of privacy, including private communication, in Lithuanian legal system is interpreted by the Constitutional Court and corresponds to the notion of private life, as developed in the case-law of the European Court of Human Rights. In the context of judges, it would generally encompass communication outside judicial functions, having regard also to the context and particular circumstances of each situation (e. g. the content and means of the communication, number of participants, reasonable expectations of privacy, access of the third persons, etc.).

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e. g. home stories))?

Yes, The Constitution establishes prohibition for judges to be involved in political activities. According to Items 2 and 3, Article 7 of the Code of Ethics for Judges of Lithuania a judge is required to act in a politically neutral and correct manner, not to express one's political beliefs in public, not to engage in agitation.

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression?

Yes, it does.

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression? Is it relevant if that judge also has the statutory task of representing the judiciary in such matters?

If there were such cases in practice, greater weight should theoretically be given to the circumstances highlighted in this Question. To date, there have been no such cases in the case law of the Court of Honor of Judges.

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements?

Yes, it does. Since 2002 there were 4 decisions of the Court of Honor of Judges, by which disciplinary sanctions were imposed on judges for their unethical statements: 3 decisions were made in respect of judge N. V., one - in respect of judge I.Š. The statements of both of these judges in the mass media (I. Š.– also on the social network *Facebook*) were acknowledged as violating the norms of the Code of Ethics for Judges. Both judges gave disrespectful, humiliating and offensive remarks about other judges (in the case of N.V. - also about prosecutors, pre-trial investigation officers), the judiciary in general, about the decisions made by the judicial self-government institutions. In doing so they exceeded the limits of the freedom of expression of the judges, thus undermined the authority of the courts.

There have been no cases in which judges have used racist language.

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial /extrajudicial statement? If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

14.1. Case of judge I. Š. (the decision of the Court of Honor of Judges in this case began to shape the principles of the conduct of judges as public persons in social networks and public space, and provides a broad line of argument regarding the content and limits of a judge's self-expression):

Disciplinary case against the judge of the district court I.Š. was initiated by the chairman of that court. The chairman specified that judge I. Š. has made a number of publications available to the public in the media, undermining the courts system, judicial self -government institutions, and judges engaged in self-governmental activities, as well as court colleagues - judges and court staff; in addition, I.Š. made disrespectful and derogatory comments on her own and the media's Facebook accounts responded to colleagues, decisions of judicial self-government institutions, etc. In the opinion of the chairman of the court, judge I. Š. violated by such actions a number of principles of the Code of Ethics for Judges.

The Judicial Ethics and Discipline Commission (hereinafter – Commission)decided to satisfy the application of the chairman of the court and to institute disciplinary proceedings against I.Š. The disciplinary proceedings were instituted for violating the principles of decency, exemplariness, solidarity, respect for human beings and the

principle of duty enshrined in the Code of Ethics for Judges. The Commission concluded that I.Š. by her conduct degraded the name of the judge and undermined the authority of the court.

The Court of Honor ruled that part of the violations indicated by the Commission had not been committed by the judge, in that part the disciplinary case was terminated (the case in part was terminated for violation of the principles of decency, exemplarity, solidarity, respect for human beings (for publications in the media and speech and comments on Facebook in 2020, as well as speech in one criminal case heard by I. Š. in 2019). In the opinion of the Court of Honor, public discussion of court problems is possible and should not be restricted. The ECtHR has emphasized in a number of cases that the courts do not operate in a vacuum, so the public has a right to know what problems arise within the judiciary.

At the same time, however, it was acknowledged that the judge had in fact violated certain principles of judicial ethics. The Court of Honor stated that a judge in a public space must be subject to stricter standards of conduct than those who do not perform these duties. When writing or speaking in public, the judge must assess the meaning of his or her words and the possible influence on the authority of the judiciary and the guarantees of impartiality in general.

The decision to impose a remark (the most lenient disciplinary penalty) was caused by three facts: firstly, by one judge's I. Š. post on her *Facebook* account after the shared article of 18 July, 2020 of online portal *lytas.lt*, in which I.Š. commented unfavorably and critically on all judges, pointing out that the negative qualities of judges are also reflected in their handling of cases; secondly, by the fact that a judge on the *Facebook* positively assessed another user's critical and negative feedback about all judges. In the opinion of the Court of Honor, an overly broad negative generalization of all judges harms or is likely to damage public confidence in both the judiciary and the ability of courts to hear cases properly. Also the Court of Honor stated that I. Š., by marking the summary comments about judges on the social network with a "like" sign, did not assess her own legal status and position, and supported the negative evaluations of fellow judges, thus reinforcing the descriptions provided.

According to the Court of Honor, judge's I. Š. speaking and marking on *Facebook*, however, went beyond the limits of freedom of expression and did not comply with the requirements of principles of respect for human beings (Article 6 (1)), decency (Article 13 (3), (4), (5) and (7)), excellence (Article 14 (1), (2)) enshrined in the Code of Ethics for Judges. According to the Court of Honor, such judge's I. Š. Conduct is incompatible with the good name of the judge and is detrimental to the authority of the court.

Judgment of the Court of Honor, by which I.Š. has been recognized as having committed a disciplinary offense, has not yet entered into force, it has been appealed to the Supreme Court of Lithuania and is awaiting trial.

14.2. Case *Augustė v Lithuania* (<https://hudoc.echr.coe.int/eng?i=001-192177>):

Pursuant to Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which guarantees freedom of expression, Judge R. A. applied to the ECtHR for the invoked disciplinary liability (for the imposed disciplinary measure) for her opinion expressed in procedural decisions, in which, according to R.A., she disagreed with the case law of a higher regional court in consumer rights cases, which, on her opinion, is contrary to the interpretations of the Constitutional Court, the Supreme Court and the law of the European Union.

Disciplinary proceedings were instituted against R.A. on the basis of a request from the Council of Judges, which, following a request from the President of the Klaipėda

Regional Court to assess the actions of Judge R. A. in the civil proceedings, set up a commission to carry out a targeted inspection. In the disciplinary case it was established that in civil proceedings regarding the issuance of a court order the judge did not comply with the provisions of the Code of Civil Procedure, which obliged to resolve these issues expeditiously, in a concentrated manner, formally applied the institute for the elimination of deficiencies in the action, disregarded the rules of application of law established by the higher court and the instructions given by the higher court in specific cases. The Court of Honor of the Judges issued a severe reprimand to R.A. Judge's R. A. appeal against the decision of the Court of Honor of Judges was rejected by the Supreme Court of Lithuania.

The European Court of Human Rights (ECtHR) has been asked to assess whether the judge's R.A. freedom of expression has been violated:

- whether the applicant's exercise of her freedom of expression has been interfered by the disciplinary proceedings for her views on procedural decisions;
- if the applicant's freedom of expression had been restricted by a disciplinary sanction –severe reprimand, than whether there had been a violation of Article 10 of the Convention according to the circumstances of the case.

The ECtHR declared the application of R.A. inadmissible.

15. Do you see new developments regarding judicial freedom of expression (e. g. an increase in statements on specific topics, new fora for or types of judicial expressions)? Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

In Lithuania, in recent years we have not been talking about cases of restriction of judges' freedom of expression, but about individual cases when judges seem to be abusing their freedom of expression, especially in social networks.

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples?

At present, issues of judicial ethics related to the content and limits of judges' self-expression are relevant. It is especially important to continue to formulate the principles of the behavior of judges as public persons in social networks and public space. For more details see also the answer to Questions 14.

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations?

Yes, they may, if their participation complies with the requirements of the Law on Courts and the Code of Ethics for Judges.

18. May judges be members of a political party? Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization? Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement?

No, Part 5, Article 48 of the Law on Courts stipulates that a judge may not participate in the activities of political parties or other political organizations.

According to Items 2 and 3, Article 7 of the Code of Ethics for Judges of Lithuania a judge is required to act in a politically neutral and correct manner, not to express one's political beliefs in public, not to engage in agitation.

Luxembourg

A. Cadre juridique et éthique général

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| 1. Les juges peuvent-ils se prévaloir d'un droit constitutionnel à la liberté d'expression ? | <input type="checkbox"/> oui <input checked="" type="checkbox"/> non |
| 1.1. Les juges peuvent-ils se prévaloir de ce droit pour | les avis et les déclarations qu'ils font en qualité de juge (par exemple, au tribunal) ? |
| 1.2. Les juges peuvent-ils se prévaloir de ce droit pour | les déclarations qu'ils font à titre privé, en dehors du cadre judiciaire ? <input type="checkbox"/> en privé <input type="checkbox"/> en public |
| 1.3. Les juges peuvent-ils se prévaloir de ce droit pour une déclaration faite en dehors du cadre judiciaire, en public, au nom de la défense des intérêts de la justice (par exemple, lorsqu'un président de tribunal critique des réformes touchant l'organisation judiciaire) ? | <input type="checkbox"/> oui <input type="checkbox"/> non |
| 2. Existe-t-il d'autres dispositions assurant une protection légale de la liberté d'expression des juges (par exemple, des règles d'immunité) ? | <input type="checkbox"/> oui ; veuillez préciser : <input checked="" type="checkbox"/> non |
| 3. Votre système juridique prévoit-il des restrictions légales ou éthiques de la liberté d'expression des juges ? | <input checked="" type="checkbox"/> oui <input type="checkbox"/> non |
| 3.1. Dans l'affirmative, veuillez préciser la nature de ces restrictions : | <input type="checkbox"/> dispositions constitutionnelles <input type="checkbox"/> dispositions légales <input type="checkbox"/> règlements administratifs <input type="checkbox"/> code de conduite <input type="checkbox"/> code de déontologie judiciaire <input checked="" type="checkbox"/> normes judiciaires informelles <input type="checkbox"/> autres |
| 3.2. S'il existe un code de conduite ou de déontologie judiciaire, celui-ci a-t-il des effets juridiques (par exemple, contient-il des recommandations aux autorités disciplinaires pour leurs décisions en matière disciplinaire) ? | <input type="checkbox"/> oui <input checked="" type="checkbox"/> non |
| 3.3. Ces restrictions imposent-elles un devoir de réserve de la part des juges ? | <input checked="" type="checkbox"/> oui <input type="checkbox"/> non |

| | |
|---|---|
| <p>4. Veuillez indiquer à quelles fins la liberté d'expression des juges peut être restreinte – pour la protection de :</p> | <p><input checked="" type="checkbox"/> l'indépendance et l'impartialité de la justice</p> <p><input checked="" type="checkbox"/> l'autorité de la justice / la confiance du public dans la justice</p> <p><input checked="" type="checkbox"/> le prestige / l'image de la justice</p> <p><input checked="" type="checkbox"/> la confidentialité de la procédure</p> <p><input checked="" type="checkbox"/> les droits procéduraux des parties à la procédure</p> <p><input checked="" type="checkbox"/> la confidentialité des affaires internes de la justice</p> <p><input type="checkbox"/> autres ; veuillez préciser :</p> |
| <p>5. Les déclarations faites en justice ou dans un cadre extrajudiciaire sont-elles un motif reconnu par la loi d'exclure un juge en exercice d'une affaire ou un motif de recours devant une juridiction supérieure ?</p> | <p><input type="checkbox"/> oui <input checked="" type="checkbox"/> non</p> |
| <p>6. Quelles sont les mesures disciplinaires applicables ?</p> | <p><input type="checkbox"/> note formelle</p> <p><input checked="" type="checkbox"/> avertissement formel</p> <p><input checked="" type="checkbox"/> réprimande</p> <p><input type="checkbox"/> mutation</p> <p><input checked="" type="checkbox"/> révocation</p> <p><input type="checkbox"/> autres ; veuillez préciser : amende, exclusion temporaire ou mise à la retraite</p> |
| <p>6.1. L'autorité disciplinaire tient-elle compte des aspects suivants lorsqu'elle impose une mesure disciplinaire ?</p> <p>Libre appréciation de l'autorité disciplinaire (il n'existe à notre connaissance aucune affaire disciplinaire introduite contre un juge dans le cadre de la liberté d'expression</p> | <p><input type="checkbox"/> nature et gravité de la restriction de la liberté d'expression des juges, en particulier</p> <p><input type="checkbox"/> position spécifique du juge</p> <p><input type="checkbox"/> contenu et modalités de la déclaration litigieuse</p> <p><input type="checkbox"/> contexte dans lequel la déclaration a été faite</p> <p><input type="checkbox"/> nature et gravité des mesures disciplinaires imposées</p> |
| <p>6.2. L'autorité disciplinaire prend-elle en considération l'effet dissuasif des sanctions disciplinaires ?</p> | <p><input type="checkbox"/> oui <input type="checkbox"/> non</p> |

| | |
|---|---|
| 6.3. L'autorité disciplinaire considère-t-elle la révocation d'un juge de son poste de juge comme un moyen de dernier recours ? | <input type="checkbox"/> oui <input type="checkbox"/> non |
| 6.4. Quelle est l'autorité chargée de prononcer des sanctions disciplinaires ? | <input type="checkbox"/> le président de la juridiction concernée <input checked="" type="checkbox"/> le(s) plus haut(s) magistrat(s) du système judiciaire (par exemple, Lord Chief Justice / Lord Chancellor) <input type="checkbox"/> un organe judiciaire indépendant <input type="checkbox"/> un organe de l'exécutif (par exemple, une chambre disciplinaire) <input type="checkbox"/> autres ; veuillez préciser : |
| 7. Les juges ont-ils accès à une juridiction pour contester les mesures disciplinaires ? | <input type="checkbox"/> oui <input checked="" type="checkbox"/> non |
| 7.1. Dans la négative, ont-ils accès à une procédure d'appel devant : | <input type="checkbox"/> une chambre disciplinaire de l'exécutif ? <input type="checkbox"/> une chambre disciplinaire du système judiciaire ? <input checked="" type="checkbox"/> autres ou non |
| 7.2. Dans la négative, existe-t-il une institution de médiation pouvant examiner l'affaire ? | <input type="checkbox"/> oui <input checked="" type="checkbox"/> non |
| 8. Quelles peuvent être les conséquences du comportement d'un juge contraire à l'éthique relative aux restrictions de sa liberté d'expression ? | <input checked="" type="checkbox"/> ouverture d'une procédure disciplinaire <input checked="" type="checkbox"/> conséquences pour l'évolution de carrière <input type="checkbox"/> autres ; veuillez préciser : |

B. Restrictions à la liberté d'expression des juges

9. Les restrictions à la liberté d'expression des juges prévoient-elles des exceptions pour les déclarations (ou autres formes d'expression telles que les clips vidéo) faites en privé ? Dans quelles conditions votre système juridique considère-t-il qu'une communication relève du cadre privé, c'est-à-dire non public (par exemple, messages d'une personne à une autre personne, ou communication au sein d'un groupe fermé d'« amis » virtuels, où de nouveaux amis doivent être admis) ?

Suivant le « Recueil des principes déontologiques des magistrats luxembourgeois » (document qualifié d'« outil d'autorégulation interne à la magistrature »), le magistrat a une obligation de réserve et de discrétion qui lui interdit de parler des affaires dont il a à connaître. Suivant ce texte, le magistrat doit encore s'abstenir de tout prosélytisme et militantisme politique, philosophique ou religieux pouvant porter atteinte à l'indépendance de l'autorité judiciaire. Il doit éviter l'expression publique d'engagements politiques incompatibles avec l'image d'impartialité qu'il doit offrir à la société. Ces interdictions sont générales et s'appliquent tant dans la sphère privée que dans la sphère professionnelle. Quant à la limite entre ces deux sphères, il n'existe pas de définition spécifique en matière de liberté d'expression des juges. Par analogie, en droit du travail, il est de principe que le salarié a droit, même au temps et lieu de travail, au respect de sa vie privée qui implique en particulier le secret de la correspondance dont font partie les courriers électroniques reçus et envoyés par lui grâce à un outil informatique mis à sa disposition pour son travail et ce même au cas où l'employeur aurait interdit une utilisation non professionnelle de l'ordinateur. Mais il a encore été décidé de n'écarter de la sphère d'ingérence de l'employeur que les

fichiers personnels des salariés. Partant, si les intérêts de l'entreprise l'exigent et que certaines conditions sont remplies, il doit être permis à l'employeur de porter atteinte à la vie privée de son salarié.

C. Aspects relatifs au contenu, aux modalités et au contexte des déclarations des juges

10. Votre système juridique fixe-t-il des limites aux sujets que les juges sont autorisés à commenter c'est-à-dire leurs propres affaires, les critiques visant leurs jugements, les affaires (internes) du système judiciaire, la politique, les questions privées (par exemple, des affaires familiales) ?

voir sub 9)

11. L'autorité disciplinaire, lorsqu'elle évalue le caractère proportionnel d'une restriction à la liberté d'expression d'un juge, attribue-t-elle plus d'importance aux déclarations qui concernent des questions d'intérêt public ?

voir sub 6-1

12. L'autorité disciplinaire, lorsqu'elle évalue le caractère proportionnel d'une restriction à la liberté d'expression d'un juge, attribue-t-elle plus d'importance aux déclarations d'un juge d'une juridiction supérieure, portant sur des questions qui intéressent le corps judiciaire ? Si le juge a également pour mission statutaire de représenter le corps judiciaire au sujet de ces questions, cela entre-t-il en jeu ?

voir sub 6-1

13. Votre système juridique prévoit-il d'imposer des sanctions disciplinaires lorsqu'un juge emploie un langage choquant, dérangeant et offensant ou raciste/homophobe dans ses déclarations en tant que juge / dans un cadre extrajudiciaire ?

Suivant l'article 155 de la loi coordonnée du 7 mars 1980 sur l'organisation judiciaire, est qualifié de faute disciplinaire tout acte commis dans l'exercice ou hors de l'exercice des fonctions, qui peut compromettre le caractère dont les magistrats sont revêtus, donner lieu à scandale, blesser les convenances et compromettre le service de la justice. Un comportement inadapté dans le cadre de la liberté d'expression est susceptible de tomber dans le champ d'application de cet article et donner lieu à des sanctions disciplinaires (cf aussi le « Recueil des principes déontologiques des magistrats luxembourgeois » suivant lequel le magistrat doit s'abstenir de tout prosélytisme et militantisme politique, philosophique ou religieux pouvant porter atteinte à l'indépendance de l'autorité judiciaire. Le juge doit éviter l'expression publique d'engagements politiques incompatibles avec l'image d'impartialité qu'il doit offrir à la société).

D. Cas récents de restrictions à la liberté d'expression des juges dans les États membres

14. Avez-vous connaissance d'affaires (judiciaires) récentes ayant suscité un débat public sur la question de savoir si un juge a négligé ses obligations légales ou éthiques dans ses déclarations en tant que juge / dans un cadre extrajudiciaire ? Le cas échéant, pourriez-vous décrire brièvement les faits survenus dans les affaires les plus pertinentes, en indiquant les questions juridiques ou éthiques soulevées et, le cas échéant, les décisions finales des juridictions ou des instances disciplinaires ?

non

15. Observez-vous une évolution de la situation relative à la liberté d'expression des juges (par exemple, une augmentation des déclarations sur certains sujets ou de nouveaux forums

ou types d'expression des juges) ? Observez-vous une augmentation des restrictions juridiques ou éthiques de la liberté d'expression des juges ?

non

16. Quelles sont actuellement les questions éthiques les plus urgentes en matière de déclarations et autres formes d'expression des juges ? Pouvez-vous donner des exemples ?

Il n'existe à l'heure actuelle pas de débat sur cette question

E. Liberté de réunion / Appartenance à un parti politique

17. Les juges peuvent-ils participer à des manifestations publiques ?

Ni le « Recueil informel des principes déontologiques des magistrats luxembourgeois » ni les dispositions de la loi coordonnée du 7 mars 1980 sur l'organisation judiciaire, ni aucun autre texte n'interdit formellement à un magistrat de participer à des manifestations publiques, sous réserve du devoir de délicatesse, de réserve et de discrétion.

18. Les juges sont-ils autorisés à adhérer à un parti politique ? Les restrictions à la liberté d'expression des juges s'appliquent-elles sans distinction selon qu'un juge fait une déclaration en tant que membre d'un parti politique, d'une organisation judiciaire ou d'une organisation non judiciaire ? Des critères différents s'appliquent-ils lorsqu'un juge exerce un mandat politique et est en congé lorsqu'il fait une déclaration litigieuse ?

Le « Recueil informel des principes déontologiques » précise de façon expresse que le magistrat a le droit d'adhérer à un parti politique. Mais il y est également précisé que le juge doit éviter l'expression publique d'engagements politiques incompatibles avec l'image d'impartialité qu'il doit offrir à la société. Toujours suivant ce même texte, le juge doit veiller que ses engagements d'ordre politique n'interfèrent pas avec son domaine de compétence au sein de sa juridiction d'affectation. Il doit choisir ses engagements de manière à ne pas créer de nouvelles incompatibilités au-delà de celles prévues par la loi. Il ne saurait adhérer à aucun organisme ou groupement ne reconnaissant pas les droits fondamentaux garantis par la Constitution et les instruments internationaux.

Même en l'absence d'interdiction formelle par les textes, il est inconcevable en pratique qu'un magistrat luxembourgeois revête un mandat politique concomitamment avec sa carrière de magistrat.

Republic of Moldova/République de Moldova

A. General legal and ethical framework

| | |
|---|--|
| 1. Can judges rely on a constitutional right to freedom of expression? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 1.1. Can judges rely on this right for | an opinion, statement made in the judge's capacity as such (e.g. in court) Yes |
| 1.2. Can judges rely on this right for | an extrajudicial statement made in a judge's private capacity <input checked="" type="checkbox"/> in private <input checked="" type="checkbox"/> in public |
| 1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?) | <input type="checkbox"/> yes; please specify: <input checked="" type="checkbox"/> no |
| 3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system? | <input type="checkbox"/> yes <input checked="" type="checkbox"/> no |
| 3.1. If yes, please specify the nature of these restrictions | <input type="checkbox"/> constitutional provisions <input type="checkbox"/> statutory provisions <input type="checkbox"/> administrative regulations <input type="checkbox"/> code of conduct <input type="checkbox"/> code of judicial ethics <input type="checkbox"/> informal judicial standards <input type="checkbox"/> other |
| 3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |

| | |
|---|--|
| 3.3. Do these restrictions impose a duty of judicial restraint? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of | <input type="checkbox"/> judicial independence and impartiality <input type="checkbox"/> the authority of the judiciary / public trust in the judiciary <input type="checkbox"/> the prestige / image of the judiciary <input checked="" type="checkbox"/> the confidentiality of the proceedings <input checked="" type="checkbox"/> the procedural rights of the parties to the proceedings <input checked="" type="checkbox"/> the confidentiality of internal judicial matters <input type="checkbox"/> other, please specify: |
| 5. Are (extra-)judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 6. Which disciplinary measures may be applied? | <input checked="" type="checkbox"/> formal advice <input checked="" type="checkbox"/> formal warning <input type="checkbox"/> reprimand <input type="checkbox"/> relocation <input checked="" type="checkbox"/> removal <input type="checkbox"/> other, please specify: |
| 6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure? | <input checked="" type="checkbox"/> nature and severity of the restriction on the judicial freedom of expression, especially <input checked="" type="checkbox"/> the specific position of the judge <input checked="" type="checkbox"/> the content and manner of the impugned statement <input checked="" type="checkbox"/> the context in which the statement was made <input checked="" type="checkbox"/> the nature and severity of the disciplinary measure imposed |

| | |
|---|---|
| 6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 6.4. Which state authority is responsible for issuing disciplinary sanctions? | <input type="checkbox"/> the respective court president <input type="checkbox"/> the highest judge(s) of the judiciary (e.g. Lord Chief Justice / Lord Chancellor) <input type="checkbox"/> an independent judicial body <input type="checkbox"/> an executive body (e.g. disciplinary chamber) <input type="checkbox"/> other, please specify: an independent body called Councils for the Judiciary, that submits to the judicial self-administration body Superior Council of Magistracy |
| 7. Do judges have access to a court to challenge the disciplinary measures? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 7.1. If not, do they have access to an appeal procedure before | <input type="checkbox"/> an executive disciplinary chamber <input type="checkbox"/> a judicial disciplinary chamber <input type="checkbox"/> other or non |
| 7.2. If not, is an Ombudsman available, who may review the process? | <input type="checkbox"/> yes <input type="checkbox"/> no |
| 8. What may be the consequences of unethical behaviour of a judge related to restrictions on his/her freedom of expression? | <input checked="" type="checkbox"/> initiation of disciplinary proceedings <input checked="" type="checkbox"/> impact on promotion of a judge <input type="checkbox"/> other, please specify: |

B. Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private? When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

A: The private life of a judge is not limited if it does not violate the ethical code and is not related to his own cases ruled in the court.

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e.g. home stories))?

A: All statements mentioned above are prohibited.

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression?

A: The proportionality is always analyzed individually and according to the case. Furthermore, no such cases were known so far.

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression? Is it relevant if that judge also has the statutory task of representing the judiciary in such matters?

A: No.

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements?

A: As I already mentioned above, no such cases happened so far.

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial /extrajudicial statement? If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

A: There are only a few cases involving the violation of the freedom of speech in my country, and no judge was removed based on the decision taken.

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new fora for or types of judicial expressions)? Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

A: There are certain developments. Judges feel more freedom while expressing their opinion on the matters that are not related to their own case.

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples?

A: According to the Law on the Status of the Judges, judges cannot always collaborate with the media, thus often decisions are covered wrongly by the press. This creates a wrong image of the judicial body and of the decision-making process in the society.

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations?

A: No.

18. May judges be members of a political party? Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or

a judicial / non-judicial organization? Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement?

A: According to the Law on the Status of the Judges it is prohibited for a judge to be a member of a political party or of any other political assembly. It is possible though to become a member of the Association of Judges of the Republic of Moldova.

Netherlands/Pays-Bas

A. General legal and ethical framework

| | |
|--|---|
| 1. Can judges rely on a constitutional right to freedom of expression? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 1.1. Can judges rely on this right for | an opinion, statement made in the judge's capacity as such (e.g. in court) YES |
| 1.2. Can judges rely on this right for | <p>an extrajudicial statement made in a judge's private capacity</p> <p><input checked="" type="checkbox"/> in private</p> <p><input type="checkbox"/> in public; <u>not always</u>. Par. 2.5.4 of the Judges Code adopted by the Dutch Association for the Judiciary (only in Dutch).</p> <p>High demands are placed on the judge because of his public function. At the same time, the judge has the right to a private life. The judge is looking for a balance between the demands placed on him and his private life. The judge ensures that his social activities do not harm the proper performance of his office. The judge is entitled to his own opinion just like anyone else. <u>The judge realizes, however, that he will be seen in public as a representative of the judiciary and that a public action could harm his authority as a judge and the authority of the judiciary as a whole. He therefore in any case does not speak publicly on matters that still require a judicial decision. In addition, the judge will not comment on judgements of colleagues unless he acts as a press judge or expresses himself in scientific publication.</u> The judge is reluctant to use social media and realizes that its use can lead to the creation of undesired connections.</p> |

| | |
|--|--|
| <p>1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary)</p> | <p><input type="checkbox"/> yes <input checked="" type="checkbox"/> no:</p> <p>Judges Code par. 2.4.3 : The judge is able to communicate well with the parties and the other actors within the judiciary. He knows how to deal adequately with the presence of media in the courtroom. He is aware of the professional role he fulfills and he has thought through beforehand what influence his message can have. Other than in its capacity as press judge or in scientific publications, the judge does not comment publicly on judgements by colleagues.</p> |
| <p>2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?)</p> | <p><input type="checkbox"/> yes; please specify:</p> <p><input checked="" type="checkbox"/> no</p> |
| <p>3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> <p>Yes there are ethical restrictions, see 1.3</p> |
| <p>3.1. If yes, please specify the nature of these restrictions</p> | <p><input type="checkbox"/> constitutional provisions</p> <p><input type="checkbox"/> statutory provisions</p> <p><input type="checkbox"/> administrative regulations</p> <p><input type="checkbox"/> code of conduct</p> <p><input checked="" type="checkbox"/> code of judicial ethics</p> <p><input checked="" type="checkbox"/> informal judicial standards</p> <p><input type="checkbox"/> other</p> |
| <p>3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)?</p> | <p><input type="checkbox"/> yes <input checked="" type="checkbox"/> no</p> |
| <p>3.3. Do these restrictions impose a duty of judicial restraint?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |

| | |
|--|---|
| <p>4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of</p> | <p><input type="checkbox"/> judicial independence and impartiality</p> <p><input checked="" type="checkbox"/> the authority of the judiciary / public trust in the judiciary</p> <p><input checked="" type="checkbox"/> the prestige / image of the judiciary</p> <p><input checked="" type="checkbox"/> the confidentiality of the proceedings</p> <p><input type="checkbox"/> the procedural rights of the parties to the proceedings</p> <p><input type="checkbox"/> the confidentiality of internal judicial matters</p> <p><input type="checkbox"/> other, please specify:</p> |
| <p>5. Are (extra-)judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court?</p> | <p><input type="checkbox"/> yes <input checked="" type="checkbox"/> no</p> |
| <p>6. Which disciplinary measures may be applied?</p> | <p><input type="checkbox"/> formal advice</p> <p><input checked="" type="checkbox"/> formal warning</p> <p><input type="checkbox"/> reprimand</p> <p><input type="checkbox"/> relocation</p> <p><input type="checkbox"/> removal</p> <p><input type="checkbox"/> other, please specify:</p> |
| <p>6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure?</p> | <p><input checked="" type="checkbox"/> nature and severity of the restriction on the judicial freedom of expression, especially</p> <p><input checked="" type="checkbox"/> the specific position of the judge</p> <p><input checked="" type="checkbox"/> the content and manner of the impugned statement</p> <p><input checked="" type="checkbox"/> the context in which the statement was made</p> <p><input checked="" type="checkbox"/> the nature and severity of the disciplinary measure imposed</p> |
| <p>6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |

| | |
|---|---|
| 6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort? | <input type="checkbox"/> yes <input checked="" type="checkbox"/> no |
| 6.4. Which state authority is responsible for issuing disciplinary sanctions? | <input checked="" type="checkbox"/> the respective court president <input checked="" type="checkbox"/> the highest judge(s) of the judiciary (e.g. Lord Chief Justice / Lord Chancellor) <input type="checkbox"/> an independent judicial body <input type="checkbox"/> an executive body (e.g. disciplinary chamber) <input type="checkbox"/> other, please specify: |
| 7. Do judges have access to a court to challenge the disciplinary measures? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 7.1. If not, do they have access to an appeal procedure before | <input type="checkbox"/> an executive disciplinary chamber <input type="checkbox"/> a judicial disciplinary chamber <input type="checkbox"/> other or non |
| 7.2. If not, is an Ombudsman available, who may review the process? | <input type="checkbox"/> yes <input type="checkbox"/> no |
| 8. What may be the consequences of unethical behaviour of a judge related to restrictions on his/her freedom of expression? | <input checked="" type="checkbox"/> initiation of disciplinary proceedings <input checked="" type="checkbox"/> impact on promotion of a judge <input type="checkbox"/> other, please specify: |

B. Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private? When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

There is no framework for this matter, other than the code of conduct stated above.

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e.g. home stories))?

There are no formal limits in statutory law. However, according to the Judges' Code (see question 1.2) judges are not supposed to comment on their own cases or decisions, nor reply to criticism, nor on cases which are not yet decided.

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression?

Unknown due to low number of examples/cases.

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression?

No.

Is it relevant if that judge also has the statutory task of representing the judiciary in such matters?

No.

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements?

Not the legal system, but based on the code of conduct (previously mentioned Judges Code) such statements will be punished by a disciplinary sanction.

A judge may be subject to a disciplinary measure, for example, if he/she behaves in a way that seriously damages confidence in the judiciary.

Until recently, judges who go over the line in one way or another, could be served with a written warning or be dismissed. On 1 January 2019, two possible sanctions were added that can be situated between the written warning (which is as of now called the 'reprimand') and the dismissal. The judicial official may be punished with a deduction of his salary for half a month and he/she can be suspended for a maximum of three months.

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial /extrajudicial statement? If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

We are not aware of any disciplinary proceedings. However, there have been a few incidents.

In the Netherlands, the discussion on the limits of the judges' personal freedom of expression in the public domain is ongoing. Many judges and members of the board of the courts and the Council for the Judiciary have personal accounts on Twitter, LinkedIn and Facebook, and use these channels to provide information to the public. This is generally much appreciated, although this may also lead to debate on the limits of the freedom of expression for judges. This debate takes place among judges, but is sometimes also carried out in the public media, in legal professional journals, in the general press and on television. Please see below for a few examples.

Op-ed Column on the internal court network

In 2019 a judge's op-ed column on the internal network of the court, was banned because it contained criticism of the way in which the Court President had been allowed to stretch the special premium provisions to their limit to increase her salary.

Letter on the internal court network

Shortly after that, one of his colleagues at the same court, who was the chair of the internal Ethics Commission, stepped down because of the working climate inside the court. When she tried to publish her resignation letter on the internal network, this was 'strongly discouraged' by the President and the Board of the court. The Attorney General of the Supreme court, who is in charge for initiating disciplinary sanctions, was asked for his opinion, but he let it to the judge to choose whether to publish the letter or not. The judge then spoke to the press about the issue. Some time afterwards, the president of the court had to resign after a negative report about the work environment at the court. This does, however, not imply that there is a connection between these events.

Twitter

Another Judge who posted a rather critical piece about the leader of the second largest (right wing) party in parliament on her Twitter account, was called to the office of the president of the court for a visit in which they had a conversation about her online activities. She is currently no longer active on Twitter.

Interviews criticizing fellow judges

The (former) president of the Association of Judges gave interviews in a legal professional journal, on TV and in a number of newspapers and , about her personal experiences with Youth Services and the juvenile judge when she herself was involved in a difficult divorce and problems with her children. She criticized the operation and interaction between youth care and the civil courts, and did not spare her fellow judges. The president and the board of her court were not amused, and she was referred to the Attorney-General of the Supreme Court, who is the authority for filing disciplinary complaints. Afterwards, she stated that this had not interfered with her freedom of speech. In the end, she made a transfer to another regional court. She characterized the reaction to her criticism of the judiciary as 'not professional'.

The 1000-Robes March

The attendance of several Judges at the 1000-robles March in Warsaw in 2020, provoked a number of diverse reactions. However, no disciplinary measures were taken. A judge who wrote a thesis on the freedom of speech of judges, described the wearing of a judge's robe at the demonstration as a possible misrepresentation to the public. This could create negative repercussions for other judges, she wrote in a legal Magazine. One of the judges who attended the March reacted in the legal magazine stating that judges should not keep silent when the Rule of Law is at stake, as it is in Poland. Under such exceptional circumstances, demonstrating as a judge and wearing a robe is allowed, she opined.

Challenge (“*wraking*”)

A deputy judge sitting in at the court of Amsterdam, who also happens to be the president of Judges for Judges, was challenged by the Public Prosecution in a European Arrest Warrant case concerning a Polish national, because she was present at the 1000 robes march in Warsaw and had previously expressed her views about the Polish rule of law situation in the media. The court accepted the prosecutor's complaint and ruled that fear of bias was justified by the firmness of her expressions and the wording used in the public domain. The court decided to remove her from the case.

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new fora for or types of judicial expressions)? Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

The use of social media can certainly be regarded an important new development. So far, however, we do not observe an increase in restrictions on judicial freedom of expression.

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples?

There are no salient issues that would warrant specific mention.

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations?

Yes, see 14.

18. May judges be members of a political party?

Yes.

Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization?

No.

Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement?

Yes. When a judge is a member of parliament, however, he/she should resign as a judge or at least take special leave without pay. He/she is not considered a judge during his/her membership of parliament. However, as a follow up to an opinion issued by GRECO, legislation is being prepared to exclude members of the judiciary from membership of parliament. When this legislation will enter into force it will no longer be possible for a judge to become member of parliament with special leave.

A. General legal and ethical framework

| | |
|---|---|
| 1. Can judges rely on a constitutional right to freedom of expression? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 1.1. Can judges rely on this right for | an opinion, statement made in the judge's capacity as such (e.g. in court) Restricted law - not in absolute form but in relation to cases and trials |
| 1.2. Can judges rely on this right for | an extrajudicial statement made in a judge's private capacity <input type="checkbox"/> in private <input checked="" type="checkbox"/> in public |
| 1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?) | <input checked="" type="checkbox"/> yes; please specify: Rules of immunity International standards - judges are not accountable for their opinions expressed in the decision <input type="checkbox"/> no |
| 3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 3.1. If yes, please specify the nature of these restrictions | <input checked="" type="checkbox"/> constitutional provisions <input checked="" type="checkbox"/> statutory provisions <input type="checkbox"/> administrative regulations <input type="checkbox"/> code of conduct <input checked="" type="checkbox"/> code of judicial ethics <input type="checkbox"/> informal judicial standards <input type="checkbox"/> other |

| | |
|---|--|
| 3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 3.3. Do these restrictions impose a duty of judicial restraint? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of | <input checked="" type="checkbox"/> judicial independence and impartiality <input type="checkbox"/> the authority of the judiciary / public trust in the judiciary <input type="checkbox"/> the prestige / image of the judiciary <input checked="" type="checkbox"/> the confidentiality of the proceedings <input checked="" type="checkbox"/> the procedural rights of the parties to the proceedings <input type="checkbox"/> the confidentiality of internal judicial matters <input type="checkbox"/> other, please specify: |
| 5. Are (extra-)judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 6. Which disciplinary measures may be applied? | <input type="checkbox"/> formal advice <input type="checkbox"/> formal warning <input type="checkbox"/> reprimand <input type="checkbox"/> relocation <input type="checkbox"/> removal <input type="checkbox"/> other, please specify: Exclusion of the judge |

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| <p>6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure?</p> | <p><input type="checkbox"/> nature and severity of the restriction on the judicial freedom of expression, especially</p> <p><input checked="" type="checkbox"/> the specific position of the judge</p> <p><input type="checkbox"/> the content and manner of the impugned statement</p> <p><input checked="" type="checkbox"/> the context in which the statement was made</p> <p><input type="checkbox"/> the nature and severity of the disciplinary measure imposed</p> |
| <p>6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions?</p> | <p><input type="checkbox"/> yes <input checked="" type="checkbox"/> no</p> |
| <p>6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>6.4. Which state authority is responsible for issuing disciplinary sanctions?</p> | <p><input type="checkbox"/> the respective court president</p> <p><input type="checkbox"/> the highest judge(s) of the judiciary (e.g. Lord Chief Justice / Lord Chancellor)</p> <p><input checked="" type="checkbox"/> an independent judicial body</p> <p><input type="checkbox"/> an executive body (e.g. disciplinary chamber)</p> <p><input type="checkbox"/> other, please specify:</p> <p>Judicial Council of the Republic of Northern Macedonia</p> |
| <p>7. Do judges have access to a court to challenge the disciplinary measures?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>7.1. If not, do they have access to an appeal procedure before</p> | <p><input type="checkbox"/> an executive disciplinary chamber</p> <p><input type="checkbox"/> a judicial disciplinary chamber</p> <p><input checked="" type="checkbox"/> other or non</p> <p>Appel Council at the Supreme Court of the Republic of Northern Macedonia</p> |
| <p>7.2. If not, is an Ombudsman available, who may review the process?</p> | <p><input type="checkbox"/> yes <input checked="" type="checkbox"/> no</p> |

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| <p>8. What may be the consequences of unethical behaviour of a judge related to restrictions on his/her freedom of expression?</p> | <p><input checked="" type="checkbox"/> initiation of disciplinary proceedings</p> <p><input checked="" type="checkbox"/> impact on promotion of a judge</p> <p><input type="checkbox"/> other, please specify:</p> |
|--|--|

B. Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private? When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

-The Code of Ethics for Judges and Jurors does not contain rules and restrictions related to the conduct of judges. But the judge in his private life and as a member of society, must always be careful to avoid any conflict of interest and ensure transparency of his impartiality. The judge should act in a way that preserves the dignity and dignity of the judicial office and should be guided by the principles of independence, integrity and decency of the judge.

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e.g. home stories))?

- Yes, the law says that the court decision is not commented.

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression?

- According to our positive legislation and above all the law on courts and the law on judicial council, of course and according to the Constitution, everyone is equal before the law and every statement as well as a court statement dealing with issues of public interest is valued equally with all other statements.

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression? Is it relevant if that judge also has the statutory task of representing the judiciary in such matters?

- Law on Judicial Council, there is no difference in the weight of the statement of a higher ranked judge or a lower ranked judge. I will emphasize that the Supreme Court as the highest court in accordance with the law on courts, the general positions adopted at the general session are legally binding for the lower courts. It is not relevant at all if a high-ranking judge represents the judiciary, his statements are equal to all others.

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements?

- According to the legal regulations, when using such disturbing and offensive statements with racist and homophobic language, such appearances of judges are inadmissible and subject to disciplinary sanctions in a procedure before a court council, which is prescribed by the law on courts and the law on judicial council.

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial /extrajudicial statement? If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

- No, in our country there is no such case

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new fora for or types of judicial expressions)? Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

- No, I do not see new developments

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples?

- Yes, can a judge use social media as a way to communicate with other judges, is colleagues (prosecutors, lawyers, professors, lawyers, etc.) and to what extent can he / she use them?

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations?

- No judges can take part in public demonstrations

18. May judges be members of a political party? Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization? Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement?

- Non judges cannot be members of political parties

Shpend Devaja
Supreme Court Judge
Republic of North Macedonia

Norway/Norvège

A. General legal and ethical framework

| | |
|---|--|
| 1. Can judges rely on a constitutional right to freedom of expression? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 1.1. Can judges rely on this right for | an opinion, statement made in the judge's capacity as such (e.g. in court) Yes |
| 1.2. Can judges rely on this right for | an extrajudicial statement made in a judge's private capacity <input checked="" type="checkbox"/> in private <input checked="" type="checkbox"/> in public |
| 1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?) | <input type="checkbox"/> yes; please specify: <input checked="" type="checkbox"/> no |
| 3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 3.1. If yes, please specify the nature of these restrictions | <input type="checkbox"/> constitutional provisions <input type="checkbox"/> statutory provisions <input type="checkbox"/> administrative regulations <input type="checkbox"/> code of conduct <input type="checkbox"/> code of judicial ethics <input type="checkbox"/> informal judicial standards <input checked="" type="checkbox"/> other <i>Ethical principles for Norwegian judges.</i> |
| 3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |

| | |
|---|---|
| 3.3. Do these restrictions impose a duty of judicial restraint? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of | <input checked="" type="checkbox"/> judicial independence and impartiality <input type="checkbox"/> the authority of the judiciary / public trust in the judiciary <input type="checkbox"/> the prestige / image of the judiciary <input checked="" type="checkbox"/> the confidentiality of the proceedings <input type="checkbox"/> the procedural rights of the parties to the proceedings <input type="checkbox"/> the confidentiality of internal judicial matters <input type="checkbox"/> other, please specify: |
| 5. Are (extra-)judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 6. Which disciplinary measures may be applied? | <input checked="" type="checkbox"/> formal advice <input checked="" type="checkbox"/> formal warning <input checked="" type="checkbox"/> reprimand <input type="checkbox"/> relocation <input type="checkbox"/> removal <input type="checkbox"/> other, please specify: |
| 6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure? | <input checked="" type="checkbox"/> nature and severity of the restriction on the judicial freedom of expression, especially <input type="checkbox"/> the specific position of the judge <input checked="" type="checkbox"/> the content and manner of the impugned statement <input checked="" type="checkbox"/> the context in which the statement was made <input type="checkbox"/> the nature and severity of the disciplinary measure imposed |

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|---|--|
| 6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort? | <input type="checkbox"/> yes <input checked="" type="checkbox"/> no |
| 6.4. Which state authority is responsible for issuing disciplinary sanctions? | <input type="checkbox"/> the respective court president <input type="checkbox"/> the highest judge(s) of the judiciary (e.g. Lord Chief Justice / Lord Chancellor) <input checked="" type="checkbox"/> an independent judicial body <input type="checkbox"/> an executive body (e.g. disciplinary chamber) <input type="checkbox"/> other, please specify: |
| 7. Do judges have access to a court to challenge the disciplinary measures? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 7.1. If not, do they have access to an appeal procedure before | <input type="checkbox"/> an executive disciplinary chamber <input type="checkbox"/> a judicial disciplinary chamber <input type="checkbox"/> other or non |
| 7.2. If not, is an Ombudsman available, who may review the process? | <input type="checkbox"/> yes <input type="checkbox"/> no |
| 8. What may be the consequences of unethical behaviour of a judge related to restrictions on his/her freedom of expression? | <input checked="" type="checkbox"/> initiation of disciplinary proceedings <input type="checkbox"/> impact on promotion of a judge <input type="checkbox"/> other, please specify: |

B. Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private? When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

Limitations will apply irrespective of whether statements are made in private or not.

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e.g. home stories))?

Judges should pursuant to the ethical principles be cautious when commenting on pending court cases, and on his or her own decisions. Generally on statements: Judges shall in their exercise of their rights pay attention to the dignity and impartiality of the court, as well as to its independence and neutrality,

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression? *No*

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression? Is it relevant if that judge also has the statutory task of representing the judiciary in such matters? *No for both questions.*

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements?

See answer under question 10 above.

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial /extrajudicial statement? If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

No for both questions.

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new fora for or types of judicial expressions)? Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

No for both questions, but with the exception that we can see increased amount of statements by judges on social media.

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples?

No particular pressing ethical issues. It should, however, be mentioned that a judge applying for a position of court president has sued has filed a lawsuit, arguing that his critical comments in public regarding a new judicial map in Norway has prevented his promotion.

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations?

Yes, but see comments under question 10 above

18. May judges be members of a political party? Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization? Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement?

Judges can be members of political parties. Same criteria for judges as for other citizens, except for what is described under question 10 above.

Portugal/Portugal

A. General legal and ethical framework

| | |
|---|---|
| 1. Can judges rely on a constitutional right to freedom of expression? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 1.1. Can judges rely on this right for | an opinion, statement made in the judge's capacity as such (e.g. in court) Depends on the contempt of the statement (read below). |
| 1.2. Can judges rely on this right for | an extrajudicial statement made in a judge's private capacity <input checked="" type="checkbox"/> in private YES <input checked="" type="checkbox"/> in public YES |
| 1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?) | <input type="checkbox"/> yes; please specify: <input checked="" type="checkbox"/> no |
| 3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 3.1. If yes, please specify the nature of these restrictions | <input type="checkbox"/> constitutional provisions <input checked="" type="checkbox"/> statutory provisions <input type="checkbox"/> administrative regulations <input checked="" type="checkbox"/> code of conduct <input type="checkbox"/> code of judicial ethics <input checked="" type="checkbox"/> informal judicial standards <input type="checkbox"/> other |
| 3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)? | <input type="checkbox"/> yes <input checked="" type="checkbox"/> no Although there are different points of view on this possible intersection between codes of conduct and disciplinary matters. |

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| 3.3. Do these restrictions impose a duty of judicial restraint? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of | <input checked="" type="checkbox"/> judicial independence and impartiality <input type="checkbox"/> the authority of the judiciary / public trust in the judiciary <input type="checkbox"/> the prestige / image of the judiciary <input checked="" type="checkbox"/> the confidentiality of the proceedings <input checked="" type="checkbox"/> the procedural rights of the parties to the proceedings <input type="checkbox"/> the confidentiality of internal judicial matters <input type="checkbox"/> other, please specify: |
| 5. Are (extra-)judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 6. Which disciplinary measures may be applied? | <input checked="" type="checkbox"/> formal advice <input checked="" type="checkbox"/> formal warning <input checked="" type="checkbox"/> reprimand <input checked="" type="checkbox"/> relocation <input checked="" type="checkbox"/> removal <input type="checkbox"/> other, please specify: |
| 6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure? | <input checked="" type="checkbox"/> nature and severity of the restriction on the judicial freedom of expression, especially <input type="checkbox"/> the specific position of the judge <input checked="" type="checkbox"/> the content and manner of the impugned statement <input checked="" type="checkbox"/> the context in which the statement was made <input checked="" type="checkbox"/> the nature and severity of the disciplinary measure imposed |
| 6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |

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|---|--|
| 6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 6.4. Which state authority is responsible for issuing disciplinary sanctions? | <input type="checkbox"/> the respective court president <input type="checkbox"/> the highest judge(s) of the judiciary (e.g. Lord Chief Justice / Lord Chancellor) <input checked="" type="checkbox"/> an independent judicial body <input type="checkbox"/> an executive body (e.g. disciplinary chamber) <input type="checkbox"/> other, please specify: |
| 7. Do judges have access to a court to challenge the disciplinary measures? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 7.1. If not, do they have access to an appeal procedure before | <input type="checkbox"/> an executive disciplinary chamber <input type="checkbox"/> a judicial disciplinary chamber <input type="checkbox"/> other or non |
| 7.2. If not, is an Ombudsman available, who may review the process? | <input type="checkbox"/> yes <input type="checkbox"/> no |
| 8. What may be the consequences of unethical behaviour of a judge related to restrictions on his/her freedom of expression? | <input checked="" type="checkbox"/> initiation of disciplinary proceedings <input type="checkbox"/> impact on promotion of a judge <input type="checkbox"/> other, please specify: |

B. Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private? When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

Legally, the restrictions on judicial freedom of expression regarding private (non-public) communications are limited mostly to statements about concrete judicial proceedings. However, the duty of judicial restriction (and correction) was, among several other reasons, use as argument, for example, to expel, recently, a judge because of the publication by this judge of a series of videos on various social networks, in which, while invoking his capacity as a judge, he encouraged breaches of health rules related to the pandemic Covid/19 and made defamatory statements on this topic directed at specific persons and groups of persons.

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e.g. home stories))?

Yes.

The main rule regarding restrictions to freedom of expression is the article 7-B, nº 2 of the Law n.º 21/85, July 30 1985 (Statute of Judges), that imposes:

“Judges shall not make public statements or comments about any judicial proceedings, unless authorized by the Council of the Judiciary in order to defend their honor or to pursue an appropriate interest.”

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression?

Yes. One recent example, as already mentioned, was several statements by a specific judge mostly on social media questioning the measures taken to avoid Covid19 and the nature of the pandemic itself.

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression? Is it relevant if that judge also has the statutory task of representing the judiciary in such matters?

Yes. Although there is no hierarchical distinction among judges, the higher the rank, the higher the liability; this is a reasoning that normally can be assumed by the disciplinary authority on a concrete assessment even if the law has no provision regarding the rank or statutory task of any judge.

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements?

Yes. These situations will be clearly seen as a reason for disciplinary sanctions.

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial /extrajudicial statement?

Yes. A recent case about a judge that was a “negationist” about the Covid19 pandemic had a high repercussion on the country with a large media cover. There was a disciplinary proceeding against this judge and the sanction was expulsion. The decision taken by the Council of the Judiciary is still pending since it is possible an appeal to the Court.

If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

In October 2021, the Portuguese Council for the Judiciary (CSM) unanimously decided to expel a judge for "incentivizing the violation of the law and health rules" in denial of the COVID-19 pandemic. The CSM said that the judge used his position to make "defamatory statements" on social media and undermine disease control. The CSM thus agreed on a "sanction of dismissal that implies the immediate termination of service."

In February 2020, the Supreme Court confirmed a decision from the Council of the Judiciary punishing an Appeal Court judge with a formal warning. The disciplinary sanction was determined because this judges used in a ruling he wrote "expressions that are inappropriate, unnecessary and damaging to the personal dignity and social consideration" of victims of domestic violence in general. Furthermore, the use of such expressions according to the decision of the Supreme Court "harms the image of (...) impartiality that the justice system should convey to society".

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new fora for or types of judicial expressions)? Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

The statements about high-profile topics - like the restriction measures related with the pandemic or general comments in topics like gender discrimination, domestic violence, racism - are now more scrutinized by the media and the population in general.

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples?

Read previous answers to explain the present context – there are a growing pressure among judges regarding the expression of opinions in public, particularly in social media, about questions that are controversial in civil society.

The expression of opinions or the issuing of statements is always circumscribed by the duty of self-restraint applicable to all judges.

Legally, the duty of reserve covers, mostly but not exclusively, statements or comments (positive or negative) made by all judges, involving evaluative conclusions about cases they, or other colleagues, are in charge of.

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations?

Yes, although there are strong restrictions. For instance, it could be seen as a disciplinary breach to participate in a public political demonstration.

18. May judges be members of a political party? Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization? Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement?

According to the already mentioned Statute of Judges (Law 21785) in its article 6-A, nº1 "Judicial magistrates shall be prohibited from engaging in public political activities." It is also determined that "judges may not hold political offices, with the exception of those of the President of the Republic, member of the Government, member of the Council of State or representative of the Republic for the autonomous Regions (Madeira and Azores).

Romania/Roumanie

A. General legal and ethical framework

| | |
|---|---|
| 1. Can judges rely on a constitutional right to freedom of expression? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 1.1. Can judges rely on this right for | an opinion, statement made in the judge's capacity as such (e.g. in court) No, because they have a reserve obligation, in relation to the orders they rule in the ongoing lawsuits. |
| 1.2. Can judges rely on this right for | an extrajudicial statement made in a judge's private capacity <input type="checkbox"/> in private <input type="checkbox"/> in public No, because they have an obligation not to infringe any right of the parties they are judging. |
| 1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?) | <input checked="" type="checkbox"/> yes; please specify: <input type="checkbox"/> no Law no. 303/2004, as subsequently amended, regarding the status of judges and prosecutors; Code of Ethics for judges and prosecutors. |
| 3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |

| | |
|--|---|
| <p>3.1. If yes, please specify the nature of these restrictions</p> | <p><input type="checkbox"/> constitutional provisions</p> <p><input checked="" type="checkbox"/> statutory provisions</p> <p><input type="checkbox"/> administrative regulations</p> <p><input checked="" type="checkbox"/> code of conduct</p> <p><input checked="" type="checkbox"/> code of judicial ethics</p> <p><input type="checkbox"/> informal judicial standards</p> <p><input type="checkbox"/> other</p> |
| <p>3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)?</p> | <p><input type="checkbox"/> yes <input checked="" type="checkbox"/> no</p> |
| <p>3.3. Do these restrictions impose a duty of judicial restraint?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of</p> | <p><input type="checkbox"/> judicial independence and impartiality</p> <p><input type="checkbox"/> the authority of the judiciary / public trust in the judiciary</p> <p><input type="checkbox"/> the prestige / image of the judiciary</p> <p><input checked="" type="checkbox"/> the confidentiality of the proceedings</p> <p><input checked="" type="checkbox"/> the procedural rights of the parties to the proceedings</p> <p><input checked="" type="checkbox"/> the confidentiality of internal judicial matters</p> <p><input type="checkbox"/> other, please specify:</p> |
| <p>5. Are (extra-)judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |

| | |
|--|---|
| <p>6. Which disciplinary measures may be applied?</p> | <p><input type="checkbox"/> formal advice</p> <p><input checked="" type="checkbox"/> formal warning</p> <p><input type="checkbox"/> reprimand</p> <p><input checked="" type="checkbox"/> relocation</p> <p><input checked="" type="checkbox"/> removal</p> <p><input type="checkbox"/> other, please specify:</p> |
| <p>6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure?</p> | <p><input checked="" type="checkbox"/> nature and severity of the restriction on the judicial freedom of expression, especially</p> <p><input checked="" type="checkbox"/> the specific position of the judge</p> <p><input checked="" type="checkbox"/> the content and manner of the impugned statement</p> <p><input checked="" type="checkbox"/> the context in which the statement was made</p> <p><input checked="" type="checkbox"/> the nature and severity of the disciplinary measure imposed</p> |
| <p>6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>6.4. Which state authority is responsible for issuing disciplinary sanctions?</p> | <p><input type="checkbox"/> the respective court president</p> <p><input checked="" type="checkbox"/> the highest judge(s) of the judiciary (e.g. Lord Chief Justice / Lord Chancellor)</p> <p><input type="checkbox"/> an independent judicial body</p> <p><input checked="" type="checkbox"/> an executive body (e.g. disciplinary chamber)</p> <p><input type="checkbox"/> other, please specify:</p> |

| | |
|---|---|
| 7. Do judges have access to a court to challenge the disciplinary measures? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 7.1. If not, do they have access to an appeal procedure before | <input type="checkbox"/> an executive disciplinary chamber <input type="checkbox"/> a judicial disciplinary chamber <input type="checkbox"/> other or non |
| 7.2. If not, is an Ombudsman available, who may review the process? | <input type="checkbox"/> yes <input type="checkbox"/> no |
| 8. What may be the consequences of unethical behaviour of a judge related to restrictions on his/her freedom of expression? | <input checked="" type="checkbox"/> initiation of disciplinary proceedings <input checked="" type="checkbox"/> impact on promotion of a judge <input type="checkbox"/> other, please specify: |

B. Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private? When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

Yes, Art. 19(1) of the Code of Ethics for judges and prosecutors provides that judges and prosecutors may publicly express their opinion by exercising the right of reply if defamatory statements have been made against them in press articles or in audio-visual programmes.

The disciplinary division of the Romanian Superior Council of Magistracy ordered the exclusion of a judge from the magistracy for posting two videos on TikTok in his extrajudicial activities (this was his second disciplinary procedure), for the disciplinary violation sanctioned by Art. 99(a) of Law no. 303/2004, as subsequently amended, regarding the status of judges and prosecutors, namely actions that damage the professional honour or integrity of the prestige of justice committed during or outside the exercise of the job duties.

The decision was appealed by the judge at the High Court of Cassation and Justice, Panel of Judges no. 5, for other matters.

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e.g. home stories))?

Romanian judges and prosecutors may not publicly express their opinion concerning ongoing proceedings or cases referred to the prosecutor's office, this being a provision provided for by Art. 10(1) of Law no. 303/2004, as subsequently amended, regarding the status of judges and prosecutors.

In addition, Romanian judges and prosecutors have the obligation not to disclose or use, for purposes other than those directly related to the exercise of their profession, any information they have obtained in this capacity.

At the same time, if, in accordance with law, the works are confidential, the Romanian judges and prosecutors are obliged to keep those materials inside the court premises or the prosecutor's office, and to allow their consultation only within the framework provided by law and regulation (these obligations are provided for by Art. 15 of the Code of Ethics for the Romanian judges and prosecutors).

In the cases they hear, the judges are obliged to respect the secrecy of deliberation and they cannot comment on or analyse what they have ordered before the case becomes final.

Art. 5(2) of Law no. 303/2004, as subsequently amended, regarding the status of judges and prosecutors, establishes the obligation of Romanian judges and prosecutors to refrain from any activity related to the act of justice if they involve the existence of a conflict between their interests and the public interest in the administration of justice or defending the general interests of society.

Regarding the criticisms of some judged political persons or negative statements regarding the decisions ruled by judges, they can address the Romanian Superior Council of Magistracy with a request to defend their professional reputation.

Romanian judges and prosecutors must refrain from making political statements and they cannot attend public political meetings (Art. 4(3) of the Code of Ethics for the Romanian judges and prosecutors).

Romanian judges and prosecutors are allowed to provide legal aid, under the conditions provided by law, only in their personal cases of their ascendants, descendants or spouses, as well as of persons under their guardianship or tutorship. In such situations, they are not allowed to use their position as judges or prosecutors to influence the decision of the court or prosecutor's office or to create the appearance of such an influence.

In addition, the family and social relationships of judges and prosecutors must not influence the solutions they adopt in the exercise of their duties.

Romanian judges and prosecutors are prohibited from intervening in the settlement of claims, from claiming or accepting the settlement of personal interests, of family members or of other persons, other than within the legal framework. (Art. 10(3) of Law no. 303/2004, as subsequently amended, regarding the status of judges and prosecutors and Art. 11(1), (2), (3) of the Code of Ethics for Romanian judges and prosecutors).

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression?

Yes.

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression? Is it relevant if that judge also has the statutory task of representing the judiciary in such matters?

Yes. No.

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements?

Yes.

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial /extrajudicial statement? If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

As shown in the answer to point 9.

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new fora for or types of judicial expressions)? Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

Following critical statements by some judges and prosecutors on virtual forums, concerning other magistrates or politicians, the Judicial Inspection Office took action ex officio, and a disciplinary investigation procedure is underway. No.

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples?

There are no examples.

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations?

No.

18. May judges be members of a political party? Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization? Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement?

According to Art. 9(1) of Law no. 303/2004, as subsequently amended, regarding the status of Romanian judges and prosecutors, Romanian judges and prosecutors may not be part of political parties or groups, nor may they carry out or participate in political activities.

Moreover, Art. 4 and 5 of the Code of Ethics for judges and prosecutors stipulate that, in the performance of their duties, Romanian judges and prosecutors must not be influenced by political doctrines. Nor may they advocate for other people to adhere to political parties, participate in fundraising for political parties, or allow their prestige or image to be used for such purposes. They cannot provide any support to a candidate for a political public office.

Romanian judges and prosecutors may not use the acts they perform in the exercise of their duties in order to express or exert their political opinions. Romanian judges and prosecutors may not attend public political meetings. Yes. Not applicable.

Judge Ph. in law Rodica Aida Popa

High Court of Cassation and Justice, Criminal Section

27 january 2022

Russian Federation/Fédération de Russie

A. General legal and ethical framework

| | |
|---|---|
| 1. Can judges rely on a constitutional right to freedom of expression? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 1.1. Can judges rely on this right for | an opinion, statement made in the judge's capacity as such (e.g. in court) <input checked="" type="checkbox"/> |
| 1.2. Can judges rely on this right for | an extrajudicial statement made in a judge's private capacity <input checked="" type="checkbox"/> in private <input checked="" type="checkbox"/> in public |
| 1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?) | <input type="checkbox"/> yes; please specify: <input checked="" type="checkbox"/> no |
| 3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 3.1. If yes, please specify the nature of these restrictions | <input type="checkbox"/> constitutional provisions <input type="checkbox"/> statutory provisions <input type="checkbox"/> administrative regulations <input type="checkbox"/> code of conduct <input checked="" type="checkbox"/> code of judicial ethics <input type="checkbox"/> informal judicial standards <input type="checkbox"/> other |

| | |
|---|---|
| 3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)? | ✓ yes <input type="checkbox"/> no |
| 3.3. Do these restrictions impose a duty of judicial restraint? | ✓ yes <input type="checkbox"/> no |
| 4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of | ✓ judicial independence and impartiality ✓ the authority of the judiciary / public trust in the judiciary ✓ the prestige / image of the judiciary ✓ the confidentiality of the proceedings ✓ the procedural rights of the parties to the proceedings ✓ the confidentiality of internal judicial matters <input type="checkbox"/> other, please specify: |
| 5. Are (extra-)judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court? | ✓ yes <input type="checkbox"/> no |
| 6. Which disciplinary measures may be applied? | <input type="checkbox"/> formal advice ✓ formal warning <input type="checkbox"/> reprimand <input type="checkbox"/> relocation ✓ removal ✓ other, please specify: “notice” (oral reprimand, by a qualification board of judges, as opposed to a more serious formal warning); “reduction in qualification class” (judge’s professional rank). |

| | |
|--|---|
| <p>6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure?</p> | <p>✓ nature and severity of the restriction on the judicial freedom of expression, especially</p> <p>✓ the specific position of the judge</p> <p>✓ the content and manner of the impugned statement</p> <p>✓ the context in which the statement was made</p> <p>✓ the nature and severity of the disciplinary measure imposed</p> |
| <p>6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions?</p> | <p>✓ yes <input type="checkbox"/> no</p> |
| <p>6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort?</p> | <p>✓ yes <input type="checkbox"/> no</p> |
| <p>6.4. Which state authority is responsible for issuing disciplinary sanctions?</p> | <p><input type="checkbox"/> the respective court president</p> <p><input type="checkbox"/> the highest judge(s) of the judiciary (e.g. Lord Chief Justice / Lord Chancellor)</p> <p>✓ an independent judicial body</p> <p><input type="checkbox"/> an executive body (e.g. disciplinary chamber)</p> <p><input type="checkbox"/> other, please specify:</p> |
| <p>7. Do judges have access to a court to challenge the disciplinary measures?</p> | <p>✓ yes <input type="checkbox"/> no</p> |
| <p>7.1. If not, do they have access to an appeal procedure before</p> | <p><input type="checkbox"/> an executive disciplinary chamber</p> <p><input type="checkbox"/> a judicial disciplinary chamber</p> <p><input type="checkbox"/> other or non</p> |
| <p>7.2. If not, is an Ombudsman available, who may review the process?</p> | <p><input type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>8. What may be the consequences of unethical behaviour of a judge related to restrictions on his/her freedom of expression?</p> | <p>✓ initiation of disciplinary proceedings</p> <p>✓ impact on promotion of a judge</p> <p><input type="checkbox"/> other, please specify:</p> |

B. Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private? When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

Law of the Russian Federation No. 3132-1 of 26 June 1992 "On the Status of Judges in the Russian Federation" (hereinafter – the Law)¹ requires the judges to avoid everything that may diminish their dignity, the authority of the judiciary or raise doubts regarding their objectiveness, fairness and impartiality.

The Code of Judicial Ethics adopted by the 8th All-Russia Congress of Judges on 19 December 2012 (as amended on 8 December 2016; hereinafter – the Code)², which stipulates rules of conduct that are obligatory for every judge and apply to all judges in Russia (including retired judges), also requires the judges to take into account the established limitations on the freedom of opinion in any setting, both in the administration of justice and in extrajudicial activities.

Restrictions pertaining to political activities are stipulated in the Law and the Code; they do not give grounds to believe that a judge cannot hold own political views, convictions, preferences, etc.

As regards the topic of the questionnaire, the prohibition for judges to engage in political activities should primarily be construed as prohibition to publicly demonstrate their political views. Otherwise, public trust in the court as a body that administers justice irrespective of political views and preferences would be undermined.

Moreover, in other spheres of life (not pertaining to political activities) a judge enjoys her right to freedom of expression in a way compatible with the limitations related to the status of a judge. A judge should act with reserve in all cases, when doubts may arise regarding the authority of the court and the impartiality of justice; abstain from making public statements or remarks that may harm the interests of justice, the judge's independence and impartiality (Art. 22 of the Code).

Public expression takes place in all situations when it is addressed to the general public or combined with a reference to the fact that the statement's author is a judge (or when the existence of this status is directly presumed from the setting in which such a statement is made).

Any statement made by a judge during the exercise of her powers, made for the media, at official meetings, discussions, at round tables and other public events should be construed as a public expression of opinion.

The same may be said about statements made by a judge at such meetings and conferences which clearly allow for the expressed opinion to be disseminated within the general public – even if the judge participated in such an event not due to professional activities, but solely as a private matter (e.g. parent-teacher conference at school, alumni gathering, a meeting of residents and flat-owners in an apartment building, etc.).

As regards the Internet, this space can practically almost always be considered as a public space.

¹ Rather new English translation available at: https://vsrf.ru/en/judicial_system/law_status_judges/

² Current English translation available at: https://vsrf.ru/en/judicial_system/code_judicial_ethics/

In particular, this proceeds from the fact that no matter the privacy settings, information published in an Internet network or transmitted to an individual via different messenger programs can be made public.

The attempts of an Internet user to remain anonymous (e.g. by using a nickname) cannot always be successful, as modern digital technology allows identifying the actual persons who are the authors of a statement, picture, video or even of a “like” hit.

By exchanging electronic messages with another person, communicating within invitations-only groups (chats) of virtual friends, creating “private” accounts, the user hopes to maintain a confidential nature of communications and does not aim to advertise her opinion.

Such communications may be regarded as private, which “allows” neither to ignore the moral and ethical requirements, nor the absolute freedom from all limitations existing for the judge due to her public status.

A judge’s opinion (conduct), expressed in private, not intended for dissemination, but contradicting the norms of law and morals may end up “reproduced” contrary to the judge’s wish.

Taking into account the heightened interest to the personality of a judge as of a public figure, the content of information produced by the judge, if it is something that law and morals frown upon, gives grounds for casual observers to conclude that justice is administered by unworthy, immoral persons. This can undermine not only a single judge’s dignity and authority, but those of the whole judiciary.

As an example of assessment of such “private” conduct of a judge, the case of P., a justice of the peace, can be quoted. She was removed from office after a video clip was published online, in which she was reciting a toast using strong language accompanied by obscene gestures. P’s argument that the video clip was not intended for publication and was uploaded by another person was rejected both by the qualification board of judges and the Supreme Court of the Russian Federation.

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e.g. home stories))?

It follows from the prohibition to engage in political activities stipulated in the Law and the Code that judges are restricted in expressing their opinion on political issues.

As for a judge’s right to express opinion in regard of the cases, Art. 13 of the Code imperatively prohibits to make comments on cases in which a final judicial act has not yet been passed.

This restriction is aimed at ensuring independence, objectiveness and impartiality of the court considering the case, independent of what judge (court) the case is pending before.

A judge may provide comments or clarifications on her judgments, express opinions about the established practice of application of substantive and/or procedural law, but must show restraint and act correctly in commenting on the judgments of her colleagues.

A judge may participate in events aimed at development of law and improvement of legislation, of the judiciary and justice; make public speeches and lectures; participate in public hearings, scientific fora and conferences, write articles and books, engage in scientific and teaching activities (including remunerated ones), and engage in other activities

pertaining to the spheres of law, legislation and justice, where this does not contradict the legislation on the status of judges.

A judge may freely express her opinion and participate in public discussions, in particular on issues of efficiency of court activities. However, in her statements (comments) the judge must show restraint and discretion, be impartial to the persons participating in the case and preserve loyalty to the judiciary.

Within the judiciary itself, a judge has a significantly greater degree of freedom of expression regarding the drawbacks in the sphere of court proceedings and critical assessment of her colleagues' conduct.

For example, a 2019 judgment by the Disciplinary Chamber of the Russian Supreme Court states the following: "... where a judge expresses her opinion about the established practice of application of law norms, this does not constitute unethical conduct of the judge (Item 4 of Art. 13 of the Code)".

In another case, the Disciplinary Chamber has stated the following:

In certain cases, where a judge presents complaints against the actions of her superiors or colleagues, this may be unlawful or unethical, which allows to qualify them as a disciplinary offence. The unlawfulness may lie in abuse of law (formal use of one's subjective right not for the purpose of protecting one's rights, but for the purpose of harming another person or for another unlawful purpose), as well as in slander, insult, false accusations. Such things as deceit (in particular, knowing reporting of false data presented as a fact), rudeness, pettiness, unfounded disclosure of actual or supposed dishonouring information (defamation) may also be recognized as unethical. Similarly, where a judge constantly fights for her (as a rule) purported or exaggerated rights and encroached interests (litigiousness), this may also be recognized as unethical. Among other things, such actions destabilize the work of the judiciary, of the collective of a particular court and undermines the authority of the judiciary.

Considering a case in which judge U. challenged a decision of a qualification board of judges, the Disciplinary Chamber did not find such facts. It stated that "addresses made by U. did not have an aim of making the issues he had with his colleagues public and at creating public uproar over those issues. He suggested discussing those issues within the judiciary, i.e. while preserving the exterior image of the court system as a stable institution. Therefore, the board's conclusion that U's actions diminished the authority of the judiciary is untenable. On the contrary, in this context U's actions were reasonable, restrained and did not harm justice, which corresponds to Art. 22 of the Code".

A judge is not deprived of the right to react to critical remarks in her address, including those made by the media, if such remarks, in her opinion, create a false or distorted image of her and her work.

Based on Item 5 of Art. 13 of the Code (which applies not only to conflicts with the media), the judge has to decide how to react to such statements on her own, based on the legal means she has as a citizen.

Still, the Russian judiciary deems it viable for a judge to apply to law enforcement (for protection of honor and dignity) or to the media (to publicly reply to criticism) only if other options of responding have been exhausted or it seems impossible to resort to them.

In case of defamation of a judge (in particular due to her professional activities), a corresponding address (statement) by a body of the judiciary is more preferable.

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression?

Every concrete situation requires thorough verification and taking all circumstances into account.

On the one hand, we may suppose that the negative effect of a statement incompatible with the status of a judge and made directly during administration of justice (e.g. in a courtroom, in the presence of participants of proceedings and the public) is multiplied as compared to the negative effect of the same statement made unofficially. In the first case, there is no doubt that the judge wearing a gown accepts the statement she made as a norm, while in the latter case even to the public eye such a statement may look as “insufficiently contemplated”.

If a judge makes an un contemplated statement about the system of communal services and its workers during a gathering of residents discussing heating problems in an apartment building, this does not have the same weight as the same statement made by the judge in considering of a particular case regarding the work of the communal services.

On the other hand, it is the content of a judge’s opinion, not the setting in which such an opinion is voiced (demonstrated), which may play a more significant role.

A judge should be extremely cautious and reserved in discussing and commenting on topics that are of heightened interest, special significance for the society or cause particular tension.

An example of the fact that it is the public significance of the addressed problem which may be the decisive factor in choosing the measure of disciplinary liability for the judge is provided in the following case. In 2013, V., a justice of the peace, published an anti-Muslim image on his social media page, accompanying it with an antisemitic comment.

The qualification board of judges proceeded from the fact that the content of those materials directly showed negative attitude to jews as representatives of a particular nationality and to Muslims as representative of a particular confession, were aimed at inciting hatred and strife.

The board decided that “independent of the motives and aims of publication of said image... V. has undermined the faith of parties to the proceedings in his impartiality as a judge and in the judiciary as a whole”. The judge was removed from office.

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression? Is it relevant if that judge also has the statutory task of representing the judiciary in such matters?

When assessing the public statement of a judge on matters of concern for the judiciary, the first step is to evaluate whether the statement is compatible with the requirements of professional judicial ethics, such as reserve and discretion, the requirements to stay loyal to the judiciary, not to undermine the public trust in the authority of the judiciary, to abstain from public statements, opinions and assertions in regard of activities of state bodies and local self-government bodies, as well as the heads of those bodies.

If a statement is incompatible, by form and content, with the limitations placed upon a judge by her status, then in resolving the issue of disciplinary liability of that judge, the position occupied by her may play a role in the final decision of the disciplinary body, in particular when choosing the measure of liability.

The limitation of the judges' freedom of expression has an aim of protecting the independent constitutional value of authority and impartiality of justice. This is crucial for the public trust which the courts must enjoy in a democratic society to effectively administer justice.

The higher the position occupied by a judge making a statement incompatible with her status, the greater the public resonance caused by such action, the greater trust the public will lend to such a statement. This is why a poorly weighed statement of a high-ranking judge may cause stronger negative impact on the authority of the court.

By virtue of Art. 12.1 of the Law, the consequences of a judge's disciplinary offence must be taken into account when imposing a disciplinary punishment. Therefore, it cannot be said that a judge's rank in the court system will play no role if that judge is held disciplinarily liable, where there are corresponding grounds.

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements?

In accordance with Item 1 of Art. 12.1 of the Law, a disciplinary offence resulting in disciplinary punishment is a culpable act (culpable failure to act) in the performance of professional duties or in extraoccupational activities, resulting in violation of provisions of the Law and (or) the provisions of the Code, which leads to the diminishing of authority of the judiciary and harms the reputation of the judge, in particular due to a gross violation of rights of the participants of proceedings.

Therefore, the violation of requirements of the Code constitutes independent grounds to hold the judge disciplinarily liable; at that, those requirements apply not only to the professional activities of the judge, but to all the spheres of her life and activities.

The Code contains numerous provisions which directly result in the judge's duty to abstain from such statements – shocking, disturbing and offensive, etc. – that contradict the universal principles of moral and ethical conduct in the society, international standards of justice. This fully applies to racist or homophobic language.

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial /extrajudicial statement? If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

Unfortunately, at the time I do not have information that would be sufficient to provide a substantiated answer to this question.

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new fora for or types of judicial expressions)? Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

In my opinion, the developments regarding judicial freedom of expression are mostly related to the universal digitization of the society, the pervasion of the Internet in all spheres of life. Nowadays, judges routinely use social media and various messengers to communicate.

Apart from its undisputed advantages as regards the possibilities of obtaining, spreading and exchanging information, the unique nature of virtual space creates additional risks that

require even more reserve and discretion from the judge as compared to real life communications.

Herewith, there is no increase in legal or ethical restrictions to be mentioned, in particular as regards the judges' enjoyment of their right to freedom of expression with the use of Internet resources. The provisions regarding judicial freedom of expression established in the Code are sufficient.

Any action performed by a judge online must adhere to the general principles of conduct in non-judicial activities, stipulated in the Code. Herewith, a judge's actions in virtual space are evaluated based on their content and not on their "online form" – just as the same actions committed in the actual society would be evaluated.

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples?

It cannot be denied that there are some current issues pertaining to judicial freedom of expression, as well as the fact that there is a multitude of opinions in regard of every such issue.

A recent example from the practice of the Ethics Commission of the Council of Judges of the Russian Federation (hereinafter – the Ethics Commission) is presented by a request for clarifications filed by T., a retired judge, as to whether he has a right to be elected deputy of a legislative body of a constituent entity of the Russian Federation as an independent candidate (i.e. not a member of any particular party) without termination of his retirement as a judge³.

In principle, current legislation on judges' status allows a judge to become a deputy as an independent candidate and does not cite election of a retired judge to the position of a deputy as grounds for termination of a judge's retirement (although this constitutes grounds for removal of an acting judge).

It is evident that the activities of a deputy of a legislative (representative) body of any level are political. The public nature of a deputy's activities requires her to constantly express her position, in particular at the initiative of political parties.

Therefore, a collision arises between political freedom, which is a pre-requisite for a deputy's work, and the limitations on participation in political activities applying to the same person due to the status of a retired judge. No matter how discreet she is in expressing her position in performing a deputy's powers, it will be problematic for her as a retired judge to adhere to the requirements of Item 3 of Art. 3 of the Law and Art. 21 of the Code.

In discussing this request, the Commission has outlined the following issue: is the necessary balance ensured for retired judges between the prohibition to participate in political activities and the limitations on freedom of expression proceeding from it on the one side and the aims for which such a prohibition is stipulated on the other?

In particular, this issue is topical because after retiring a judge does not have the power to administer justice and does not perform judicial duties, while the prohibition to engage in political activities is explained by the need for judges to be subordinate only to the Constitution and the law in the administration of justice; its aim is to ensure the independence of the court.

³ The Commission was not able to make a decision via remote voting and has decided to consider this issue at its next in-person session.

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations?

The Code, regulating a judge's participation in public activities, stipulates that she may be a member of non-commercial public organizations, including professional, charity, educational and other similar organizations (Item 2 of Art. 17).

Herewith, the judge needs to observe the limitations set in Items 3, 4 and 5 of that Article: she may not offer legal advice and render legal assistance on issues which may become subject matter of court proceedings, act as an agent or representative in the interests of private or legal persons, act in fundraising for a public organization, etc.

When providing its clarifications, the Commission proceeds from the premise that the following should not be regarded as political activities, in which a retired judge cannot participate: public activities in the spheres of science, culture, art, healthcare and health protection, social welfare services, social support and protection of citizens, protection of motherhood and childhood, social support of disabled persons, promotion of healthy life style and sports, protection of the flora and fauna, charity.

The Commission has issued various conclusions regarding participation of judges in different types of public activities which, in particular, presuppose the judge's expression of her opinion regarding certain issues⁴.

18. May judges be members of a political party? Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization? Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement?

In accordance with Item 3 of Art. 3 of the Law, judges in the Russian Federation cannot be members of political parties, provide material support for the aforementioned parties or participate in their political actions or in any other political activities; moreover, they cannot publicly state their opinion regarding political parties and other public associations.

Art. 21 of the Code prohibits judges from participating in political activities. A judge must neither be a member, nor head of any kind of a political organization, nor occupy any position within such an organization. A judge must neither support political organizations, nor a candidate for an elective position; nor publicly support or oppose a candidate for an elective position; nor participate in fundraising, make contributions or render financial assistance to a political organization or a candidate; nor visit events, sponsored by a political organization or candidate; nor publicly state her political views, participate in marches and demonstrations of political nature or in other political actions.

This excludes the very possibility of making a statement as a member of a political party or of occupying a political position.

This limitation is not confined solely to situations of administration of justice per se. It applies both when a judge is on leave and in retirement, since a retired judge retains the title of a judge, the personal immunities and membership in the judiciary.

⁴ These include conclusions of a judge's right to be a member or preside over a council of residents at an apartment building; a retired judge's right to be founder, president or member of a regional public organisation not pertaining to the work of the judiciary; a retired judge's right to be a member of a regional Civic Chamber; a retired judge's right to be member of a regional clemency board, etc.



CCJE-BU(2022)1

Strasbourg, 14 January 2022

CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

**Questionnaire for the preparation of the CCJE Opinion No. 25 (2022)
on the freedom of expression of judges and the judicial duty of independence**

*Please in your answers do not send extracts of your legislation
but describe the situation in brief and concise manner.*

A. General legal and ethical framework

| | |
|--|--|
| 1. Can judges rely on a constitutional right to freedom of expression? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 1.1. Can judges rely on this right for | <p>an opinion, statement made in the judge's capacity as such (e.g. in court)</p> <p>Yes. In the exercise of his judicial functions, the Judge is independent in the interpretation of rules and in the assessment of facts and evidence. However, he must adopt an appropriate and respectful conduct and language with regard to the parties involved.</p> |
| 1.2. Can judges rely on this right for | <p>an extrajudicial statement made in a judge's private capacity</p> <p><input checked="" type="checkbox"/> in private</p> <p><input type="checkbox"/> in public</p> <p>The small size of the Republic of San Marino requires particular caution.</p> <p>The Judge has full freedom of opinion and thought in extra-judicial activities with regard to legal issues when participating in legal events or conferences.</p> <p>The Judge may freely express his opinion and thoughts in extra-judicial contexts on non-legal issues, provided that such expression does not compromise his impartiality in the community.</p> <p>In particular, the Judge is not permitted:</p> <ul style="list-style-type: none"> - to exercise any form of political and trade union activity; - to give public statements or interviews without the authorisation of the Head Magistrate; - to participate in events, meetings and conferences organised by political parties or movements, trade union, private or religious associations, or in any case by bodies or persons whose orientation or opinions may compromise his impartiality; - to belong to power groupings, which can compromise even the image of his independence; - to disclose to the press or use social networks to make certain news related to his proceedings public. |

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| 1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?) | <input checked="" type="checkbox"/> yes; please specify: Pursuant to Article 11 of Constitutional Law no. 1/2021, the Judge, in the exercise of his judicial functions, has no civil liability for the interpretation of law provisions and the assessment of facts and evidence. The Code of Ethics also expressly provides for the possibility for the Judge to participate in legal conferences and events, where he can publicly express his thoughts on legal issues. <input type="checkbox"/> no |
| 3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 3.1. If yes, please specify the nature of these restrictions | <input checked="" type="checkbox"/> constitutional provisions <input type="checkbox"/> statutory provisions <input type="checkbox"/> administrative regulations <input type="checkbox"/> code of conduct <input checked="" type="checkbox"/> code of judicial ethics <input type="checkbox"/> informal judicial standards <input type="checkbox"/> other |
| 3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)? | <input type="checkbox"/> yes <input checked="" type="checkbox"/> no Worth specifying is that the Code of Ethics lays down rules that cannot be invoked to interfere with the independence and impartiality of judges. These are autonomous rules of good conduct addressed to Judge to guarantee appropriate standards of behaviour. The violations of the Code of Ethics do not automatically entail the adoption of |

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| | disciplinary sanctions, since it is always necessary to assess, in concrete terms, the seriousness of the conduct and whether such conduct represents a disciplinary offence strictly established by Constitutional Law no. 1/2021 and committed intentionally or with gross negligence. |
| 3.3. Do these restrictions impose a duty of judicial restraint? | <input type="checkbox"/> yes <input checked="" type="checkbox"/> no |
| 4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of | <input checked="" type="checkbox"/> judicial independence and impartiality <input checked="" type="checkbox"/> the authority of the judiciary / public trust in the judiciary <input checked="" type="checkbox"/> the prestige / image of the judiciary <input checked="" type="checkbox"/> the confidentiality of the proceedings <input checked="" type="checkbox"/> the procedural rights of the parties to the proceedings <input type="checkbox"/> the confidentiality of internal judicial matters <input type="checkbox"/> other, please specify: |
| 5. Are (extra-)judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court? | <input type="checkbox"/> yes <input checked="" type="checkbox"/> no <p>If the parties involved in proceedings believe that the Judge's impartiality is compromised by extra-judicial statements, they may request to initiate objection proceedings. The Judge for Extraordinary Remedies will decide on such request through specific adversarial proceedings between the parties and the objected Judge.</p> |
| 6. Which disciplinary measures may be applied? | <input type="checkbox"/> formal advice <input type="checkbox"/> formal warning <input type="checkbox"/> reprimand <input type="checkbox"/> relocation <input type="checkbox"/> removal |

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| | <p><input checked="" type="checkbox"/> other, please specify:</p> <p>The violations of the Code of Ethics concerning limitations of freedom of speech and thought do not automatically entail the adoption of disciplinary sanctions, since it is always necessary to assess, in concrete terms, the seriousness of the conduct and whether such conduct represents a disciplinary offence strictly established by Constitutional Law no. 1/2021.</p> <p>It is therefore necessary to assess the seriousness of the Judge's concrete conduct, and above all, whether or not it represents a disciplinary offence strictly established by Constitutional Law no. 1/2021 committed intentionally or with gross negligence.</p> <p>Article 10 of Constitutional Law no. 1/2021 expressly provides for the incompatibility of judicial activity with the exercise of political and trade union activity and with the Judge's membership in secret associations.</p> |
| <p>6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure?</p> | <p><input type="checkbox"/> nature and severity of the restriction on the judicial freedom of expression, especially</p> <p><input type="checkbox"/> the specific position of the judge</p> <p><input checked="" type="checkbox"/> the content and manner of the impugned statement</p> <p><input checked="" type="checkbox"/> the context in which the statement was made</p> <p><input checked="" type="checkbox"/> the nature and severity of the disciplinary measure imposed</p> <p>Note: The disciplinary authority imposes a disciplinary sanction only for the disciplinary conduct strictly established by Constitutional Law no. 1/2021.</p> |
| <p>6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions?</p> | <p><input type="checkbox"/> yes <input checked="" type="checkbox"/> no</p> |

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| 6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 6.4. Which state authority is responsible for issuing disciplinary sanctions? | <input type="checkbox"/> the respective court president <input type="checkbox"/> the highest judge(s) of the judiciary (e.g. Lord Chief Justice / Lord Chancellor) <input checked="" type="checkbox"/> an independent judicial body <input type="checkbox"/> an executive body (e.g. disciplinary chamber) <input type="checkbox"/> other, please specify: |
| 7. Do judges have access to a court to challenge the disciplinary measures? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 7.1. If not, do they have access to an appeal procedure before | <input type="checkbox"/> an executive disciplinary chamber <input type="checkbox"/> a judicial disciplinary chamber <input type="checkbox"/> other or non |
| 7.2. If not, is an Ombudsman available, who may review the process? | <input type="checkbox"/> yes <input type="checkbox"/> no |
| 8. What may be the consequences of unethical behaviour of a judge related to restrictions on his/her freedom of expression? | <input checked="" type="checkbox"/> initiation of disciplinary proceedings <input type="checkbox"/> impact on promotion of a judge <input type="checkbox"/> other, please specify: |

B. Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private? When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

The small size of the Republic of San Marino imposes particular caution with respect to the public opinions expressed by the Judge.

The Judge has full freedom of opinion and thought in extra-judicial activity with regard to legal issues when participating in legal events or conferences.

The Judge may freely express his opinion and thoughts in extra-judicial contexts on non-legal issues, provided that such expression does not compromise his impartiality in the community.

The Judge is not permitted:

- to publicly express his thought on non-legal issues when such expression may compromise his impartiality;
- to participate in events, meetings and conferences organised by political parties or movements, trade union, private or religious associations, or in any case by bodies or persons whose orientation or opinions may compromise his impartiality;
- to exercise any form of political and trade union activity;
- to belong to power groupings, which can compromise even the image of his independence;
- to give public statements or interviews without the authorisation of the Head Magistrate;
- to disclose to the press or use social networks to make certain news related to his proceedings public.

Communications may be considered public, even if made through social networks or sites, when there is an open and wide category of recipients.

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e.g. home stories))?

The Judge has full freedom of expression in private communications. However, there are restrictions on public expressions of thought and opinion, which may compromise his impartiality and/or impair the prestige of the judiciary.

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression?

The independent disciplinary authority is the Judicial Council (Art. 15 of Constitutional Law no. 1/2021). The Council shall impose a sanction only for one of the conducts strictly established by law and committed intentionally or with gross negligence. The violation of the limitations to the Judge's freedom of expression and thought provided for in the Code of Ethics does not automatically represent a disciplinary offence, since it is necessary to assess the seriousness of the concrete conduct and whether such conduct constitutes an offence strictly established by the constitutional law.

After having assessed the case, the independent disciplinary authority may progressively and proportionately apply the disciplinary sanction on the basis of a procedure in full consultation with the Judge concerned. This procedure has recently been reformed in line with the standards by means of Constitutional Law no. 1/2021.

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression? Is it relevant if that judge also has the statutory task of representing the judiciary in such matters?

In the freedom of expression of opinion and thought there are no distinctions based on the Judge's rank. All Judges have the same freedom of expression of opinion and thought within the limits established.

Judges have full freedom of opinion and thought also with regard to facts related to the judiciary and the judicial system, provided that they are expressed in the forms and fora established by law, and respecting all other institutional stakeholders.

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements?

Yes. In such circumstances, it is necessary to assess the actual conduct, which could also represent a criminal offence.

Moreover, Constitutional Law no. 1/2021 expressly provides for the Judge's obligation to act with prudent balance, to have an irreproachable behaviour, to protect the rights and freedoms of all persons and to respect their dignity.

The Code of Ethics requires the Judge:

- to act in a dignified and impartial manner, without any conditioning or prejudice;
- when motivating their measures and judgements, to avoid delivering an opinion on facts or persons unrelated to the subject matter of the case, to issue judgements or make assessments about the professional capacity of judges or defence counsels, or about persons involved in the proceedings;
- to act kindly and to respect all persons involved.

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial / extrajudicial statement? If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

Some recent judicial cases have concerned the conduct of Judges, who have been involved in criminal proceedings. However, these proceedings did not concern freedom of opinion and/or thought, but criminal conduct in both judicial and non-judicial contexts. The proceedings are currently ongoing.

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new fora for or types of judicial expressions)? Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

Recently there have been important reforms in the Republic of San Marino. In particular, the constitutional law reforming the judiciary (no. 1/2021) has recently been adopted. This law introduces a more modern regulatory framework, which complies with the standards. These provisions set out in detail the rights and obligations of Judges and provide for a proportionate and gradual disciplinary procedure, where the Judges have the right to be heard and the outcome can be appealed against.

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples?

In my opinion, the most pressing current ethical issues concern the Judges' behavioural obligations. Such ethical issues are even more important in small countries such as the Republic of San Marino.

I think it is fundamental to reiterate that Judge shall act in a dignified, respectful and impartial manner, using appropriate language without any conditioning or prejudice. Moreover, it is crucial that Judges are completely uninvolved in political parties or private economic interests.

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations?

No. The Judge's participation in events, meetings and conferences organised by political parties or movements, trade union, private or religious associations, or in any case by bodies or persons whose orientation or opinions may compromise his impartiality shall be prohibited.

18. May judges be members of a political party? Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization? Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement?

No. Under Article 10 of Constitutional Law no. 1/2021, Judges shall be prohibited from exercising any form of political or trade union activity and in any case from publicly showing support or aversion to a person or body engaged in political or trade union activities.

Slovak Republic/République slovaque

A. General legal and ethical framework

| | |
|---|--|
| 1. Can judges rely on a constitutional right to freedom of expression? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 1.1. Can judges rely on this right for | an opinion, statement made in the judge's capacity as such (e.g. in court) |
| 1.2. Can judges rely on this right for | an extrajudicial statement made in a judge's private capacity <input checked="" type="checkbox"/> in private <input checked="" type="checkbox"/> in public |
| 1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?) | <input type="checkbox"/> yes; please specify: <input checked="" type="checkbox"/> no |
| 3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 3.1. If yes, please specify the nature of these restrictions | <input checked="" type="checkbox"/> constitutional provisions <input checked="" type="checkbox"/> statutory provisions <input type="checkbox"/> administrative regulations <input checked="" type="checkbox"/> code of conduct <input checked="" type="checkbox"/> code of judicial ethics <input type="checkbox"/> informal judicial standards <input type="checkbox"/> other |
| 3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |

| | |
|---|--|
| 3.3. Do these restrictions impose a duty of judicial restraint? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of | <input checked="" type="checkbox"/> judicial independence and impartiality <input checked="" type="checkbox"/> the authority of the judiciary / public trust in the judiciary <input checked="" type="checkbox"/> the prestige / image of the judiciary <input checked="" type="checkbox"/> the confidentiality of the proceedings <input checked="" type="checkbox"/> the procedural rights of the parties to the proceedings <input checked="" type="checkbox"/> the confidentiality of internal judicial matters <input type="checkbox"/> other, please specify: |
| 5. Are (extra-)judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 6. Which disciplinary measures may be applied? | <input type="checkbox"/> formal advice <input type="checkbox"/> formal warning <input checked="" type="checkbox"/> reprimand <input checked="" type="checkbox"/> relocation <input checked="" type="checkbox"/> removal <input type="checkbox"/> other, please specify: |
| 6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure? | <input checked="" type="checkbox"/> nature and severity of the restriction on the judicial freedom of expression, especially <input type="checkbox"/> the specific position of the judge <input checked="" type="checkbox"/> the content and manner of the impugned statement <input checked="" type="checkbox"/> the context in which the statement was made <input checked="" type="checkbox"/> the nature and severity of the disciplinary measure imposed <p>Note: should, but given the creation of a new disciplinary body, we have no practical experience yet</p> |

| | |
|---|--|
| 6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no Note: should, but given the creation of a new disciplinary body, we have no practical experience yet |
| 6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no Note: should, but given the creation of a new disciplinary body, we have no practical experience yet |
| 6.4. Which state authority is responsible for issuing disciplinary sanctions? | <input type="checkbox"/> the respective court president <input type="checkbox"/> the highest judge(s) of the judiciary (e.g. Lord Chief Justice / Lord Chancellor) <input checked="" type="checkbox"/> an independent judicial body <input type="checkbox"/> an executive body (e.g. disciplinary chamber) <input type="checkbox"/> other, please specify: |
| 7. Do judges have access to a court to challenge the disciplinary measures? | <input type="checkbox"/> yes <input checked="" type="checkbox"/> no |
| 7.1. If not, do they have access to an appeal procedure before | <input type="checkbox"/> an executive disciplinary chamber <input type="checkbox"/> a judicial disciplinary chamber <input checked="" type="checkbox"/> other or non |
| 7.2. If not, is an Ombudsman available, who may review the process? | <input type="checkbox"/> yes <input checked="" type="checkbox"/> no |
| 8. What may be the consequences of unethical behaviour of a judge related to restrictions on his/her freedom of expression? | <input checked="" type="checkbox"/> initiation of disciplinary proceedings <input checked="" type="checkbox"/> impact on promotion of a judge <input type="checkbox"/> other, please specify: |

B. Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private? When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

Even in civil life, a judge must refrain from anything that could undermine the seriousness and dignity of judge's office or jeopardize confidence in the independent, impartial and fair decision-making of the courts.

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e.g. home stories))?

Even in the exercise of the office of judge a judge must refrain from anything that could undermine the seriousness and dignity of judge's office or jeopardize confidence in the independent, impartial and fair decision-making of the courts.

A judge may not be a member of any political party or political movement, or engage in active political activity in political parties or political movements. Candidacy on the list of candidates of a political party or political movement in election to the national Parliament and in elections to the European Parliament is also considered to be an active political activity.

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression?

Given the creation of a new disciplinary body, we have no practical experience yet. Some cases are pending.

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression? Is it relevant if that judge also has the statutory task of representing the judiciary in such matters?

We have no practical experience yet.

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements?

Formally yes, but we have no practical experience yet

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial /extrajudicial statement? If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

Yes, we are waiting for the final decision. The judge in the public interest (according to him) published the electronic communication in a corruption case, which was not the subject of his decision.

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new fora for or types of judicial expressions)? Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

There is currently a debate on the adequacy of judges' statements on legal changes regarding their status and independence. For the most part, this is online communication between judges.

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples?

see answer 15

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations?

The constitution prohibits judges from striking and a judge may not engage in active political activity in political parties or political movements.

18. May judges be members of a political party? Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization? Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement?

see answer 10

Slovenia/Slovénie

A. General legal and ethical framework

| | |
|---|--|
| 1. Can judges rely on a constitutional right to freedom of expression? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 1.1. Can judges rely on this right for | an opinion, statement made in the judge's capacity as such (e.g. in court) <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 1.2. Can judges rely on this right for | an extrajudicial statement made in a judge's private capacity <input checked="" type="checkbox"/> in private <input checked="" type="checkbox"/> in public |
| 1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?) | <input checked="" type="checkbox"/> yes; please specify: <i>rules on functional immunity</i> <input type="checkbox"/> no |
| 3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |

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| <p>3.1. If yes, please specify the nature of these restrictions</p> | <p>X constitutional provisions:</p> <p><i>/.../ Human rights and fundamental freedoms shall be limited only by the rights of others /.../ (Art. 15/3 of the Constitution of the Republic of Slovenia; hereinafter Constitution)</i></p> <p><input type="checkbox"/> statutory provisions</p> <p><i>No, human rights and fundamental freedoms shall be exercised directly on the basis of the Constitution.</i></p> <p><input type="checkbox"/> administrative regulations</p> <p><input type="checkbox"/> code of conduct</p> <p>x code of judicial ethics</p> <p><i>In judicial proceedings, a judge should maintain the appearance of impartiality by exercising restraint, showing tolerance, adopting a neutral stance until he makes a decision on the case, protecting the dignity of everyone involved and maintaining equality of arms between the parties.</i></p> <p><i>In extrajudicial conduct, a judge, from the standpoint from judicial ethics, may participate in activities, associations and relations outside the court, but in so doing, he should be aware that his/her statements, which he/she may himself/herself see as harmless, may undermine the appearance of impartiality and independence, the reputation of the judiciary, and other principles set out in the code. A judge serves all people, regardless of their political or social beliefs, and should therefore strive to earn and maintain the trust of all people insofar as this is reasonably practicable. At the same time, he/she should be aware that he/she might very quickly exceed the limits of what is ethically acceptable, thereby compromising the reputation of the judiciary and the public's confidence therein.</i></p> <p><input type="checkbox"/> informal judicial standards</p> <p><input type="checkbox"/> other</p> |
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| <p>3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> <p><i>Despite the fact that disciplinary accountability is in principle distinct from ethical duties, the code of ethics gives guidance to the disciplinary authorities for their decisions in disciplinary matters.</i></p> |
| <p>3.3. Do these restrictions impose a duty of judicial restraint?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of</p> | <p><input checked="" type="checkbox"/> judicial independence and impartiality</p> <p><input checked="" type="checkbox"/> the authority of the judiciary / public trust in the judiciary</p> <p><input checked="" type="checkbox"/> the prestige / image of the judiciary</p> <p><input checked="" type="checkbox"/> the confidentiality of the proceedings</p> <p><input checked="" type="checkbox"/> the procedural rights of the parties to the proceedings</p> <p><input checked="" type="checkbox"/> the confidentiality of internal judicial matters</p> <p><input type="checkbox"/> other, please specify:</p> |
| <p>5. Are (extra-)judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> <p><i>Extrajudicial statements are not recognized as a specific statutory ground for exclusion of a judge; however, they may constitute a factual situation where a judge is disqualified from exercising his/her judicial office on the ground of fear of bias or prejudice (iudex suspectus).</i></p> |
| <p>6. Which disciplinary measures may be applied?</p> | <p><input type="checkbox"/> formal advice</p> <p><input checked="" type="checkbox"/> formal warning</p> <p><input checked="" type="checkbox"/> reprimand</p> <p><input checked="" type="checkbox"/> relocation</p> <p><input checked="" type="checkbox"/> removal</p> <p><input type="checkbox"/> other, please specify:</p> |

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| <p>6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure?</p> | <p><input checked="" type="checkbox"/> nature and severity of the restriction on the judicial freedom of expression, especially</p> <p><input checked="" type="checkbox"/> the specific position of the judge</p> <p><input checked="" type="checkbox"/> the content and manner of the impugned statement</p> <p><input checked="" type="checkbox"/> the context in which the statement was made</p> <p><input checked="" type="checkbox"/> the nature and severity of the disciplinary measure imposed</p> |
| <p>6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>6.4. Which state authority is responsible for issuing disciplinary sanctions?</p> | <p><input type="checkbox"/> the respective court president</p> <p><input type="checkbox"/> the highest judge(s) of the judiciary (e.g. Lord Chief Justice / Lord Chancellor)</p> <p><input checked="" type="checkbox"/> an independent judicial body</p> <p><i>The disciplinary court consists of nine members:</i></p> <p><i>three Judicial Council members and six judges, of which two are Supreme Court judges, two higher court judges and two first instance court judges.</i></p> <p><input type="checkbox"/> an executive body (e.g. disciplinary chamber)</p> <p><input type="checkbox"/> other, please specify:</p> |
| <p>7. Do judges have access to a court to challenge the disciplinary measures?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>7.1. If not, do they have access to an appeal procedure before</p> | <p><input type="checkbox"/> an executive disciplinary chamber</p> <p><input type="checkbox"/> a judicial disciplinary chamber</p> <p><input type="checkbox"/> other or non</p> |

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|---|---|
| 7.2. If not, is an Ombudsman available, who may review the process? | <input type="checkbox"/> yes <input type="checkbox"/> no |
| 8. What may be the consequences of unethical behaviour of a judge related to restrictions on his/her freedom of expression? | <input checked="" type="checkbox"/> initiation of disciplinary proceedings <input checked="" type="checkbox"/> impact on promotion of a judge <i>It may have a general impact on the assessment of the performance of the judge. Apart from competence a judge must demonstrate personal qualities of courage, wisdom, humanity, dignity, empathy...</i> <input type="checkbox"/> other, please specify: |

B. Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private? When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

There is not explicit Supreme Court case-law regarding these two questions. It can reasonably be assumed, however, that the Supreme Court in such cases would follow the jurisprudence of the ECtHR which 1) considers that judges are public figures and 2) distinguishes between statements made in "inner private circle", "private social circle" or public.

As to the second question, in 2021, the Ethics Commission developed guidelines on the use of social media by judges where it has recommended to judges i. a. to exercise due care and diligence when creating online connections, including e. g. closed Facebook groups.

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e.g. home stories))?

The Judicial Service Act (Art, 38/2) provides that judges are obliged to keep to themselves everything they learn about the parties and their de jure and de facto relations in the course of performing judicial service and to safeguard the confidentiality of all information to which the public does not have access (the normative aspect of the duty of professional secrecy). The protection of the dignity, integrity and privacy of natural and legal persons is also a central ethical principle of a judge's professional life and is implemented in the principle of discretion, which includes the duty to safeguard the confidentiality not only of information to which the public does not have access but also of all information which comes to the knowledge of a judge during the performance of judicial office.¹⁰ Furthermore, for the purposes of the protection of judicial independence and impartiality, pursuant to the Judicial Service Act (Art, 38/2) judges may not publicly express themselves in advance regarding de jure and de facto matters that are the subject of a case on which a final decision has not yet been passed or a case in which any extraordinary legal remedies have been lodged.

¹⁰ The Code of Ethics (Principle VII) states: "A judge shall respect the principle of professional secrecy in relation to personal, business and all other information which has come to his knowledge during the performance of judicial office."

In 2019, the Ethics Commission developed guidelines on the communication among judges and public expression of opinion on the functioning of judiciary and judicial self-governance where it held i. a. that when criticizing judiciary, judges should be aware of the importance and weight of their words. Their statements should therefore be based on facts and arguments. In a critical dialogue on the functioning of judiciary and judicial self-governance they should exercise restraint, loyalty and discretion to their colleagues, whereby direct contacts with media are not excluded. However, from the point of view of judicial ethics, it is considered more appropriate to do so when the foreseen internal mechanisms have been exhausted or are unavailable. Similarly, the Commentary on the Code of Judicial Ethics points out that the quality of impartiality and the reputation of the judiciary can quickly become undermined if a judge publicly expresses an opinion about himself, his colleagues, judicial decisions, the judiciary as an institution or controversial political topics, if he publicly supports a particular political party or political candidate...

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression?

There is not explicit Disciplinary Court case-law regarding this question. It can reasonably be assumed that this would be one of the criteria taken into account.

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression? Is it relevant if that judge also has the statutory task of representing the judiciary in such matters?

There is not explicit Supreme Court case-law regarding these two questions. It can reasonably be assumed, however, that these circumstances would be considered relevant.

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements?

The Judicial Service Act (Art. 81/2-14 and 15) provides that a disciplinary sanction may be imposed if:

- *a judge's action or behaviour that conflicts with his/her impartiality or that damages the reputation of the judicial profession;*
- *a judge uses inappropriate, undignified or insulting behaviour or language towards individuals, state bodies and legal persons in relation to the performance of judicial service or outside it.*

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial /extrajudicial statement? If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

Three recent cases are worth mentioning.

In the first case at issue, Janez Janša (alternately the Slovenian Prime Minister and the leader of the opposition) was convicted of the criminal offence (accepting a gift for unlawful intervention). The judgement was upheld by the Supreme Court in October 2014. Former President of the Supreme Court Branko Masleša participated in deciding on the Janša's extraordinary remedy before the Supreme Court, after he had critically responded, in his speech in June 2014, to the positions expressed by the Janez Janša in connection with the

Ljubljana Higher Court regarding the conviction of the latter. On the basis of the complaint lodged by Janez Janša the Constitutional Court annulled the Supreme Court and lower courts judgements and remanded the case to a different local court judge. It recalled among other things that the President of the Supreme Court as the highest representative of the judicial branch of power and of all judges must have the possibility to respond when he deems that the judicial branch of power must be protected against attacks. However, if in doing so he critically responds to the conduct of a specific convicted person, his statements may cast doubt on the appearance of his impartiality that cannot as such be deemed to be objectively unjustified. The fact that the President of the Supreme Court responded to the criticisms of the judiciary in a public speech in which he also criticised the convicted person's statements regarding the appellate court and subsequently, as the president of a panel of the Supreme Court, participated in deciding on the convicted person's request for the protection of legality against a final judgment, casts doubt on the impartiality of the proceedings before the Supreme Court.

In the second case at issue, a Supreme Court judge in his extrajudicial statements (TV and radio interviews, weekly columns) harshly criticized the court management, particularly the President of the Supreme Court, accusing him of lack of transparency and authoritarian leadership. His statements have given rise to the development of guidelines on the communication among judges and public expression of opinion on the functioning of judiciary and judicial self-governance by the Ethics Commission.

In the third case at issue, a first instance judge, in her closed Facebook group criticized the Slovenian Prime Minister labelling him "the great dictator". She also wrote among other things that coronavirus in Slovenia had given rise to "frustrated characters with criminal past". Related to her post, the Judicial Council emphasized that the use of disrespectful language in communication by a judge, be it private or public, disagrees with the integrity of a judge. Noting that full privacy cannot be reckoned with in social networks, the Judicial Council said that judges must be reserved and dignified also in their communication on social networks. Disciplinary proceedings were initiated against the judge; however, the Disciplinary Court found that she had not violated disciplinary rules. Her statements have also given rise to the development of guidelines on the use of social media by the Ethics Commission.

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new fora for or types of judicial expressions)? Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

Over the last decade judges in Slovenia have become more involved in discussions on judges and judiciary, not only among judges and lawyers but also in popular media, whereby using all means of communication, new fora and platforms. There has been a clear demand from inside of judiciary or at least part thereof for more transparency and self-reflection in the judiciary.

No, but there is certainly more debate on judicial freedom of expression than in the recent past.

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples?

- *The relationship between the right to freedom of expression and duty of a judge to restraint (e. g. judges regularly participating in TV and radio talks, writing weekly columns)*
- *Should the right to freedom of expression of a judge be considered (also) as an inherent element of his/her internal independence?*

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations?

While no practical experience can be reported as regards Slovenia, it should be noted that the Constitution guarantees the right of freedom of association to everyone including judges (Art. 42). With respect to the right of assembly the Commentary on the Code of Judicial Ethics provides: "In assessing to what extent the judiciary (judges) may participate in public debate (on the basis of the constitutional right to freedom of expression, assembly and association), it is recommended to take into account two considerations: first whether, from the point of view of a reasonable observer, a judge's expression of opinion/participation is likely to undermine the appearance of impartiality and second whether such conduct on his part is likely to leave him open to political attacks or be inconsistent with the dignity of the judiciary. However, when the fundamental values of society (democracy, judicial integrity and independence, human rights, etc.) are at stake, a judge's restraint may and indeed should give way to his duty to express his disagreement."

18. May judges be members of a political party? Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization? Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement?

While the Constitution prohibits judges from holding office in bodies of political parties, it does not prohibit them from being members thereof (Art. 133). A judge may stand as a candidate for certain political offices, such as the office of President of the Republic, the office of deputy of the National Assembly, the office of Prime Minister, and the office of member of the Government. A judge may be appointed as minister, state-secretary, President or Deputy President of the Commission for the Prevention of Corruption, or member of the European Commission. In the event of his being elected or appointed to such office, a judge will have his judicial office and all rights and duties deriving from judicial service suspended. On the other hand, judges should be aware that they are representatives of one of the three branches of power and that their role differs from that of members of the legislative branch or that of members of the executive branch, this requiring them to exercise a certain restraint with regard to political developments. As far as is reasonably possible, judges should be, and be seen to be, free from any political influence or pressure; otherwise public confidence in the impartiality and independence of the judiciary might be undermined.

The Judicial Council took the view that judge's political restraint would not be adequately enforced if he/she contributed financially to or acted in support of a political party or an independent candidate for political office; publicly supported or criticised a candidate of a political party or an independent candidate; took part in political gatherings or meetings, or participated in the consultative bodies of a political party.

As to the question whether different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement the Ethics Commission (in a case where a judge was appointed state-secretary and his judicial office and all rights and duties deriving from judicial service were suspended during this time) held that while it cannot be reasonably expected that a judge holding a political function shall be independent and impartial, he/she, in performing his/her office is expected to comply with certain ethical standards of judicial conduct, such as protecting the reputation of judiciary.

Spain/Espagne

A. General legal and ethical framework

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| 1. Can judges rely on a constitutional right to freedom of expression? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 1.1. Can judges rely on this right for | an opinion, statement made in the judge's capacity as such (e.g. in court) Yes |
| 1.2. Can judges rely on this right for | an extrajudicial statement made in a judge's private capacity <input checked="" type="checkbox"/> in private <input checked="" type="checkbox"/> in public |
| 1.1. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?) | <input type="checkbox"/> <input checked="" type="checkbox"/> no |
| 3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 3.1. If yes, please specify the nature of these restrictions | <input type="checkbox"/> constitutional provisions <input checked="" type="checkbox"/> statutory provisions <input type="checkbox"/> administrative regulations <input type="checkbox"/> code of conduct <input checked="" type="checkbox"/> code of judicial ethics <input type="checkbox"/> informal judicial standards <input type="checkbox"/> other |

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| <p>3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)?</p> <p>)?</p> | <p><input type="checkbox"/> yes <input checked="" type="checkbox"/> no</p> |
| <p>3.3. Do these restrictions impose a duty of judicial restraint?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of</p> | <p><input checked="" type="checkbox"/> judicial independence and impartiality</p> <p><input checked="" type="checkbox"/> the authority of the judiciary / public trust in the judiciary</p> <p><input checked="" type="checkbox"/> the prestige / image of the judiciary</p> <p><input checked="" type="checkbox"/> the confidentiality of the proceedings</p> <p><input checked="" type="checkbox"/> the procedural rights of the parties to the proceedings</p> <p><input checked="" type="checkbox"/> the confidentiality of internal judicial matters</p> <p><input checked="" type="checkbox"/> other, please specify: Lack of respect.</p> |
| <p>5. Are (extra-)judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>6. Which disciplinary measures may be applied?</p> | <p><input type="checkbox"/> formal advice</p> <p><input checked="" type="checkbox"/> formal warning</p> <p><input type="checkbox"/> reprimand</p> <p><input checked="" type="checkbox"/> relocation</p> <p><input checked="" type="checkbox"/> removal</p> <p><input checked="" type="checkbox"/> other, please specify: Penalty. Suspension of employment and salary</p> |

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| <p>6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure?</p> | <p><input checked="" type="checkbox"/> nature and severity of the restriction on the judicial freedom of expression, especially</p> <p><input checked="" type="checkbox"/> the specific position of the judge</p> <p><input checked="" type="checkbox"/> the content and manner of the impugned statement</p> <p><input checked="" type="checkbox"/> the context in which the statement was made</p> <p><input checked="" type="checkbox"/> the nature and severity of the disciplinary measure imposed</p> |
| <p>6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions?</p> | <p><input type="checkbox"/> yes <input checked="" type="checkbox"/> no</p> |
| <p>6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> <p>Only when they reveal sensitive information they have obtained as judges</p> |
| <p>6.4. Which state authority is responsible for issuing disciplinary sanctions?</p> | <p><input type="checkbox"/> the respective court president</p> <p><input type="checkbox"/> the highest judge(s) of the judiciary (e.g. Lord Chief Justice / Lord Chancellor)</p> <p><input type="checkbox"/> an independent judicial body</p> <p><input type="checkbox"/> an executive body (e.g. disciplinary chamber)</p> <p><input checked="" type="checkbox"/> other, please specify: Authority depends on the severity of the sanction. It may be the President of the Court, the Governing Chamber of the Court or the General Council of the Judiciary (CGPJ). The CGPJ is the highest sanctioning authority, but its decisions can be appealed to the Supreme Court.</p> |
| <p>7. Do judges have access to a court to challenge the disciplinary measures?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>7.1. If not, do they have access to an appeal procedure before</p> | <p><input type="checkbox"/> an executive disciplinary chamber</p> <p><input type="checkbox"/> a judicial disciplinary chamber</p> <p><input type="checkbox"/> other or non</p> |

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| 7.2. If not, is an Ombudsman available, who may review the process? | <input type="checkbox"/> yes <input type="checkbox"/> no |
| 8. What may be the consequences of unethical behaviour of a judge related to restrictions on his/her freedom of expression? | <input checked="" type="checkbox"/> initiation of disciplinary proceedings <input type="checkbox"/> impact on promotion of a judge <input checked="" type="checkbox"/> other, please specify: The parties to the proceedings may refuse the judge if they think that his expressions compromise his neutrality. |

B. Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private? When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

In Spain, the Constitution guarantees freedom of expression for all citizens, and therefore also for judges. However, there are certain kinds of conduct that are punishable and limit freedom of expression. If the conduct is not specifically regulated, the judge cannot be punished for exercising his freedom of expression.

Vgr: The disclosure by the judge or magistrate of facts or information known in the exercise of his office or on the occasion of it, when any prejudice may be caused to the conduct of the proceeding or to any person. Also, a lack of respect for superiors or the parties. Such conducts are not protected by freedom of expression.

The participation of judges in social media/media has been analyzed by the Judicial Ethics Committee of Spain. The Committee asserts that there is no legal limit to the participation of judges in social media. However, the Committee recommends extreme caution, as impartiality may be compromised, when they can be recognized as such. The Committee recommends that judges avoid any reference to matters relating to cases before them. Expressions such as "like" in social media, can compromise the judge's impartiality if he can be identified.

The Committee on Judicial Ethics welcomes the fact that judges participate in social debates whenever they do so with prudence and moderation.

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e.g. home stories))?

The judge's freedom of expression allows them to set out their legal points of view, and even, they can criticize the decisions of other courts. But freedom of expression does not project the disclosure of private information that has been obtained as a judge.

The Committee on Judicial Ethics reported that it is possible, for the judge, for example, in conferences, to refer to their cases, but always without revealing sensitive information.

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression?

In the case of matters of public interest the protection obtained by the right to freedom of expression is greater.

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression? Is it relevant if that judge also has the statutory task of representing the judiciary in such matters?

No, but he has the ethical duty to be more cautious in his statements, given the greater relevance of his position.

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements?

Our law makes possible to sanction judges who use offensive or disrespectful language in their judicial decisions.

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial /extrajudicial statement? If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

I don't know any recent case of a judge sanctioned for exercising his freedom of expression. In general, it is very rare for a judge in Spain to be punished for exercising his freedom expression.

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new fora for or types of judicial expressions)? Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

No, in Spain judges are granted freedom of expression.

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples?

Probably, the lack of prudence of some judges when making statements on the social media and in the media (TV, radio). At present, however, judges have a wide margin of discretion in expressing their opinions, as they must be cautious and avoid their impartiality being called into question.

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations?

Yes, judges can take part in public demonstrations. But they must be especially careful not to compromise their impartiality.

18. May judges be members of a political party? Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization? Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement?

In Spain, judges can not be members of a political party, but they can join judicial associations. Membership of a political party or a trade union is punishable.

When a judge acts as a representative of a judicial association, he has a wide freedom of expression in defence of the interests of the judges.

When a judge engages in politics and ceases to serve as a judge, he has the freedom of expression of a politician.

Sweden/Suède

A. General legal and ethical framework

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| 1. Can judges rely on a constitutional right to freedom of expression? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 1.1. Can judges rely on this right for | <p>an opinion, statement made in the judge's capacity as such (e.g. in court) Yes</p> <p>- <i>Generally, the judge can rely on this right. However, the judge must of course consider the overarching principles of independence, impartiality, and equal treatment etcetera.</i></p> |
| 1.2. Can judges rely on this right for | <p>an extrajudicial statement made in a judge's private capacity</p> <p><input checked="" type="checkbox"/> in private - yes</p> <p><input checked="" type="checkbox"/> in public – yes</p> <p>– <i>the answer is the same as 1.1. although judges may feel freer in a private context than in a public one, distinguishing between one or the other can prove difficult.</i></p> |
| 1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?) | <p><input type="checkbox"/> yes; please specify:</p> <p><input checked="" type="checkbox"/> no</p> |
| 3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |

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| <p>3.1. If yes, please specify the nature of these restrictions</p> | <p><input type="checkbox"/> constitutional provisions</p> <p><input checked="" type="checkbox"/> statutory provisions - secrecy provisions in law</p> <p><input type="checkbox"/> administrative regulations</p> <p><input type="checkbox"/> code of conduct</p> <p><input checked="" type="checkbox"/> code of judicial ethics</p> <p><input type="checkbox"/> informal judicial standards</p> <p><input type="checkbox"/> other</p> |
| <p>3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)?</p> | <p><input type="checkbox"/> yes <input checked="" type="checkbox"/> no – <i>not applicable</i></p> |
| <p>3.3. Do these restrictions impose a duty of judicial restraint?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of</p> | <p><input type="checkbox"/> judicial independence and impartiality</p> <p><input type="checkbox"/> the authority of the judiciary / public trust in the judiciary</p> <p><input type="checkbox"/> the prestige / image of the judiciary</p> <p><input checked="" type="checkbox"/> the confidentiality of the proceedings</p> <p><input checked="" type="checkbox"/> the procedural rights of the parties to the proceedings</p> <p><input type="checkbox"/> the confidentiality of internal judicial matters</p> <p><input type="checkbox"/> other, please specify:</p> |
| <p>5. Are (extra-)judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |

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| <p>6. Which disciplinary measures may be applied?</p> | <p><input type="checkbox"/> formal advice</p> <p><input checked="" type="checkbox"/> formal warning</p> <p><input type="checkbox"/> reprimand</p> <p><input type="checkbox"/> relocation</p> <p><input checked="" type="checkbox"/> removal</p> <p><input type="checkbox"/> other, please specify: <i>Report the matter to the prosecutor, order medical examination by force, decide on suspension and salary deduction.</i></p> |
| <p>6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure?</p> | <p><input checked="" type="checkbox"/> nature and severity of the restriction on the judicial freedom of expression, especially</p> <p><input checked="" type="checkbox"/> the specific position of the judge</p> <p><input checked="" type="checkbox"/> the content and manner of the impugned statement</p> <p><input checked="" type="checkbox"/> the context in which the statement was made</p> <p><input checked="" type="checkbox"/> the nature and severity of the disciplinary measure imposed</p> <p><i>The board makes an overall assessment in all cases.</i></p> |
| <p>6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions?</p> | <p><input type="checkbox"/> yes <input checked="" type="checkbox"/> no</p> |
| <p>6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort?</p> | <p><input type="checkbox"/> yes <input checked="" type="checkbox"/> no</p> |
| <p>6.4. Which state authority is responsible for issuing disciplinary sanctions?</p> | <p><input type="checkbox"/> the respective court president</p> <p><input type="checkbox"/> the highest judge(s) of the judiciary (e.g. Lord Chief Justice / Lord Chancellor)</p> <p><input type="checkbox"/> an independent judicial body</p> <p><input type="checkbox"/> an executive body (e.g. disciplinary chamber)</p> <p><input checked="" type="checkbox"/> other, please specify: <i>The State Liability Board (Statens ansvarsnämnd) has the task of deciding on matters of disciplinary measures.</i></p> |

| | |
|---|---|
| 7. Do judges have access to a court to challenge the disciplinary measures? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no <i>The Board's decision may in some cases be the subject of a labor law dispute.</i> |
| 7.1. If not, do they have access to an appeal procedure before | <input type="checkbox"/> an executive disciplinary chamber <input type="checkbox"/> a judicial disciplinary chamber <input type="checkbox"/> other or non |
| 7.2. If not, is an Ombudsman available, who may review the process? | <input type="checkbox"/> yes <input type="checkbox"/> no |
| 8. What may be the consequences of unethical behaviour of a judge related to restrictions on his/her freedom of expression? | <input checked="" type="checkbox"/> initiation of disciplinary proceedings <input type="checkbox"/> impact on promotion of a judge <input checked="" type="checkbox"/> other, please specify: <i>It may also give rise to a report and statement by the Ombudsman.</i> |

B. Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private? When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

Judges may feel freer in a private context than in a public one, distinguishing between one or the other can prove difficult.

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e.g. home stories))? *No*

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression? *No*

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression? Is it relevant if that judge also has the statutory task of representing the judiciary in such matters? *No*

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements?

It is possible that this type of statement could lead to the initiation of a disciplinary case or a statement from the Ombudsman.

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial /extrajudicial statement? If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

In a criminal case in Malmö District Court during 2014 a judge outside a courtroom submitted a written notice (regarding how the prosecutor should handle the case) to the prosecutor in an ongoing case. The judge's action led to the judge being declared bias and disqualified the court and to an extensive trial, which lasted for just over 30 days, had to start all over again.

The State Liability Board found that the judge, through his actions, had violated the judge's fundamental principle of objectivity and thereby intentionally breached the obligations in his role as a judge. Since the wrongdoing was of the more serious kind, the Board considered that the disciplinary sanction should be a salary deduction for 15 days.

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new fora for or types of judicial expressions)? Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

Social media, Twitter etc. have started forums for faster communication and eager debate concerning issues of a legal nature. It is not uncommon for judges to participate in these discussions as well, for better or worse.

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples?

At present this is not a major issue in the current legal debate.

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations?

Yes

18. May judges be members of a political party? Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization? Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement?

Yes. Yes. Yes.

Turkey/Turquie

We would like to express that we have thoroughly analyzed your questionnaires about CCJE Opinion No.25 on the freedom of expression of judges and the judicial duty of independence.

First of all, it is crucial to state that in our legal system, in articles 25 and 26 of the Constitution of the Republic of Turkey (No. 2709) “freedom of expression”, which is a fundamental right, is regulated and secured and restrictions to this right figure in the provisions of the Constitution as well.

The abovementioned provisions are as follows:

VII. Freedom of thought and opinion

ARTICLE 25- Everyone has the freedom of thought and opinion. No one shall be compelled to reveal his/her thoughts and opinions for any reason or purpose; nor shall anyone be blamed or accused because of his/her thoughts and opinions.

VIII. Freedom of expression and dissemination of thought

ARTICLE 26- Everyone has the right to express and disseminate his/her thoughts and opinions by speech, in writing or in pictures or through other media, individually or collectively. This freedom includes the liberty of receiving or imparting information or ideas without interference by official authorities. This provision shall not preclude subjecting transmission by radio, television, cinema, or similar means to a system of licensing.

The exercise of these freedoms may be restricted for the purposes of national security, public order, public safety, safeguarding the basic characteristics of the Republic and the indivisible integrity of the State with its territory and nation, preventing crime, punishing offenders, withholding information duly classified as a state secret, protecting the reputation or rights and private and family life of others, or protecting professional secrets as prescribed by law, or ensuring the proper functioning of the judiciary.

Nevertheless, as you know, the freedom of expression is regulated as a fundamental right in article 10 of the European Convention on Human Rights (ECHR) to which our country is party.

In this context, it should be expressed that like all other individuals in our country, judges also have the freedom of expression that is recognized and protected by our Constitution and ECHR. Nonetheless, as we have already mentioned, restrictions to the freedom of expression become possible within the framework of the conditions specified in the Constitution.

On the other hand, “the [Declaration](#) of Ethics for Turkish Judiciary” that puts forward the norms that judges and prosecutors are subject to and have to abide by was adopted on 06/03/2019 by the Plenary of the Council of Judges and Prosecutors (CJP) and published in the Official Gazette on 14/03/2019. Within the framework of principles of this Declaration, CJP issues advisory decisions as a response to the questions that judges and prosecutors ask to get advice on various issues and evaluates the situations that lead to ethics breaches.

In the section 5 entitled “judges represent trust in judiciary” the following provision figures: *“5.6. judges use their freedom of expression in such a manner that they do not harm trust in the judiciary or do not show political bias.”* Furthermore in the section 6 entitled “judges consider confidentiality” the following provisions figure: *“6.5. judges accurately identify the information that must be kept confidential. In cases where confidentiality interferes with the principles of openness and transparency, the right not to be labelled as criminal, the right to information, the right to defense, and freedoms of press, information, and expression, they act in consideration with keeping the sensitive balance between the honor and reputation of persons and public interest.”* and *“6.6. judges ensure confidence that the information and secrets entrusted to the judiciary are protected, and they respect the confidentiality of such information and secrets even after the end of their service.”*

Consequently, to sum up, the freedom of expression of all citizens and also judges is guaranteed by the Constitution. Likewise, the possible restrictions to the freedom of expression, which is a fundamental right, are specified in the Constitution. Moreover, the Declaration of Ethics for Turkish Judiciary has once again emphasized that judges (and prosecutors) have the freedom of expression. Nonetheless, the preparations of a detailed “practical guide” about the Declaration of Ethics for Turkish Judiciary that is binding for judges (and prosecutors) continue and they have been completed to a great extent. At this point, to give an example, “the guide on the use of social media” that we deem to be important for answering the questionnaire and we need the most for the implementation of codes of ethics, has been prepared and is at the decision phase before the Plenary of CJP. Accordingly, we think that at this stage, the answers of our Council to the questionnaire cannot reflect the real situation. Nevertheless, we submit the Declaration of Ethics for Turkish Judiciary for your information in the attachment of this e-mail.

We would like to express that we appreciate all your work and efforts and we will be happy to work with the Secretariat of CCJE and make our contributions.

Yours respectfully,

Mr. Ali Rıza ÜLKER, Rapporteur Judge, Member of CCJE
Mr. Mehmet Emre SARIYILDIZ, Rapporteur Judge, Member of CCJE
Council of Judges and Prosecutors, TURKEY

Ukraine

A. General legal and ethical framework

| | |
|---|--|
| 1. Can judges rely on a constitutional right to freedom of expression? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 1.1. Can judges rely on this right for | an opinion, statement made in the judge's capacity as such (e.g. in court) <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 1.2. Can judges rely on this right for | an extrajudicial statement made in a judge's private capacity <input checked="" type="checkbox"/> in private <input type="checkbox"/> in public |
| 1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?) | <input checked="" type="checkbox"/> yes; please specify: The judge shall be immune from detention or arrest. A judge may not be held liable for a court decision made by him/her. <input type="checkbox"/> no |
| 3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 3.1. If yes, please specify the nature of these restrictions | <input type="checkbox"/> constitutional provisions <input checked="" type="checkbox"/> statutory provisions <input type="checkbox"/> administrative regulations <input type="checkbox"/> code of conduct <input checked="" type="checkbox"/> code of judicial ethics <input type="checkbox"/> informal judicial standards <input type="checkbox"/> other |

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|---|---|
| 3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)? | <input type="checkbox"/> yes <input checked="" type="checkbox"/> no |
| 3.3. Do these restrictions impose a duty of judicial restraint? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of | <input type="checkbox"/> judicial independence and impartiality <input checked="" type="checkbox"/> the authority of the judiciary / public trust in the judiciary <input type="checkbox"/> the prestige / image of the judiciary <input checked="" type="checkbox"/> the confidentiality of the proceedings <input checked="" type="checkbox"/> the procedural rights of the parties to the proceedings <input checked="" type="checkbox"/> the confidentiality of internal judicial matters <input type="checkbox"/> other, please specify: |
| 5. Are (extra-)judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court? | <input checked="" type="checkbox"/> yes <input type="checkbox"/> no |
| 6. Which disciplinary measures may be applied? | <input type="checkbox"/> formal advice <input type="checkbox"/> formal warning <input type="checkbox"/> reprimand <input type="checkbox"/> relocation <input checked="" type="checkbox"/> removal <input checked="" type="checkbox"/> other, please specify: ✓ temporary suspension ✓ transfer to a lower-level court |

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| <p>6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure?</p> | <p><input checked="" type="checkbox"/> nature and severity of the restriction on the judicial freedom of expression, especially</p> <p><input type="checkbox"/> the specific position of the judge</p> <p><input checked="" type="checkbox"/> the content and manner of the impugned statement</p> <p><input checked="" type="checkbox"/> the context in which the statement was made</p> <p><input checked="" type="checkbox"/> the nature and severity of the disciplinary measure imposed</p> |
| <p>6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |
| <p>6.4. Which state authority is responsible for issuing disciplinary sanctions?</p> | <p><input type="checkbox"/> the respective court president</p> <p><input type="checkbox"/> the highest judge(s) of the judiciary (e.g. Lord Chief Justice / Lord Chancellor)</p> <p><input type="checkbox"/> an independent judicial body</p> <p><input type="checkbox"/> an executive body (e.g. disciplinary chamber)</p> <p><input checked="" type="checkbox"/> other, please specify:</p> <p>Disciplinary chamber of the High Council of Justice</p> |
| <p>7. Do judges have access to a court to challenge the disciplinary measures?</p> | <p><input checked="" type="checkbox"/> yes <input type="checkbox"/> no</p> |

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| <p>7.1. If not, do they have access to an appeal procedure before</p> | <p><input type="checkbox"/> an executive disciplinary chamber</p> <p><input type="checkbox"/> a judicial disciplinary chamber</p> <p><input checked="" type="checkbox"/> other or non</p> <p>The decisions adopted by a Disciplinary Chamber of the High Council of Justice may be appealed to the High Council of Justice.</p> <p>A decision of the High Council of Justice can be appealed to the Supreme Court.</p> |
| <p>7.2. If not, is an Ombudsman available, who may review the process?</p> | <p><input type="checkbox"/> yes <input type="checkbox"/> no</p> <p>Judges may challenge disciplinary action against them</p> |
| <p>8. What may be the consequences of unethical behaviour of a judge related to restrictions on his/her freedom of expression?</p> | <p><input checked="" type="checkbox"/> initiation of disciplinary proceedings</p> <p><input type="checkbox"/> impact on promotion of a judge</p> <p><input type="checkbox"/> other, please specify:</p> |

B. Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private? When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

The Code of Judicial Ethics stipulates that even in private communication, a judge must avoid breaches of ethics and anything that appears to be a breach of ethics. Judges are prohibited from disclosing confidential information in private conversations with their acquaintances, as well as the content of information covered by secrecy or restricted access.

The legislation of Ukraine provides that communication shall be deemed private insofar as information is transmitted and stored under such physical or legal conditions where participants to the communication can expect that such information is protected from interference on the part of others.

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics and private matters (e.g. home stories))?

The Code of Judicial Ethics defines a judge's conduct in the administration of justice; in public speeches, including the media; during carrying out other activities not prohibited for the judge - literary, scientific, teaching; during Internet communication; in everyday life.

Of course, the Code of Judicial Ethics cannot foresee and define all life situations that will arise both in the administration of justice and in his extrajudicial behavior, it does not reflect specific issues that judges can comment on, but its provisions sufficiently give a general idea of judicial ethics.

Defining a judge's conduct in the administration of justice, the Code states, in particular, that a judge may not make public statements, comment on court cases in the media, and question court decisions that have entered into force; the judge has no right to disclose information that became known to him in connection with the case.

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression?

Yes. In the case of assessing the proportionality of a restriction on judicial freedom of expression, the disciplinary authority gives greater weight to a judicial statement dealing with matters of public concern when.

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression? Is it relevant if that judge also has the statutory task of representing the judiciary in such matters?

Yes. In the case of assessing the proportionality of a restriction on judicial freedom of expression, the disciplinary authority gives greater weight to statements of a high-ranked judge on matters of concern for the judiciary.

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements?

Yes. The Code of Judicial Ethics provides that a judge shall avoid showing any signs of disrespect to a person based on race, sex, nationality, political views, social and economic status, disability, etc. and should not allow others to do this.

In Ukraine, a fact of use of shocking, disturbing and abusive or racist / homophobic language by a judge may be considered a significant disciplinary offense, i.e. if the judge has committed conduct that defames the title of judge or undermines the authority of justice, including ethical standards and standards of conduct, which ensure public confidence in the court.

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial /extrajudicial statement? If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

In recent years in Ukraine, the greatest attention of society has been focused on the extrajudicial behavior of judges, their leisure time, and property status. There are cases of violation by individual judges of moral and ethical principles of extrajudicial behavior that attract public attention, find their constant coverage and discussion in the media.

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new for a for or types of judicial expressions)? Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

Due to the increased public and media attention to the private life of judges, they become more careful and closed regarding the extrajudicial statements made in private communication.

As for the judiciary, the situation is the opposite. Courts become more open and communicate with the media and public society through speaker judges, official websites, and social media.

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples?

In view of the fact that judicial reform is under way in Ukraine and that many provisions are changing, we will provide an answer to this question within 15 days.

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations?

No, Ukrainian legislation prohibits judges from participating in public demonstrations.

18. May judges be members of a political party? Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization? Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement?

Ukrainian law provides that a judge may not belong to a political party and participate in any political activity. Although a judge, like every citizen of Ukraine, has the right to freedom of expression, he/she should not express his/her opinion publicly on political issues if they have been the subject of litigation, as well as he/she has no right to comment the political situation in the country and discuss these issues with the participants in the proceedings.

The professional status of a judge in Ukraine and his/her role in society impose certain ethical constraints on his/her responsibilities to exercise and maintain the authority of the court and the judiciary, including restrictions on freedom of expression as in the administration of justice and extrajudicial life.

United Kingdom/Royaume-Uni

A. General legal and ethical framework

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|---|--|
| 1. Can judges rely on a constitutional right to freedom of expression? | <i>Article 10 of the ECHR is incorporated into UK law but there is no specific provision for judges.</i> |
| 1.1. Can judges rely on this right for | an opinion statement made in the judge's capacity as such (e.g. in court) <i>Yes, but in addition a judge is immune at common law from suit for anything said in court</i> |
| 1.2. Can judges rely on this right for | an extrajudicial statement made in a judge's private capacity O in private <i>Yes, subject to disciplinary procedure</i> O in public <i>Yes, subject to disciplinary procedure</i> |
| 1.3. Can judges rely on this right for an extrajudicial statement made in public on behalf of the interests of the judiciary (e. g. as Court president criticizing reforms that affect the judiciary) | O yes O no <i>Yes, subject to the judicial code of conduct. In addition by long-standing convention it is regarded as inappropriate for a judge to comment publicly on the merits, meaning, or likely effect of government policy or proposals, including proposed legislation. But there is unlikely to be an objection to comment which deals directly with the operation of the courts, the independence of the judiciary or aspects of the administration of justice while, as a matter of desirable practice, judges are encouraged to refrain from commenting on any issue when the judiciary intend to issue a formal, institutional comment, but have not yet done so</i> |
| 2. Are there further provisions that legally protect judges' freedom of expression (e.g. rules of immunity?) | O yes; please specify: O no <i>Judges have functional immunity at common law for things said in court, although there can be disciplinary procedures if a judge misuses their position (e.g. by using racist or sexist language)</i> |
| 3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system? | O yes O no <i>Yes, in the judicial code of conduct. In addition to the points noted above, a judge should not normally join political protests or demonstrations.</i> |

| | |
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| 3.1. If yes, please specify the nature of these restrictions | <input type="radio"/> constitutional provisions <input type="radio"/> statutory provisions <i>Statutory provisions preclude judges from holding political office</i> <input type="radio"/> administrative regulations <input type="radio"/> code of conduct <input type="radio"/> code of judicial ethics <i>The judicial code of conduct contains guidance on freedom of expression.</i> <input type="radio"/> informal judicial standards <i>It is a long-standing convention that judges do not participate in political debate.</i> <input type="radio"/> other |
| 3.2. If a code of conduct/judicial ethics applies, does it have legal effect (e.g. do these codes give guidance to the disciplinary authorities for their decisions in disciplinary matters)? | <input type="radio"/> yes <input type="radio"/> no <i>Yes, but only in so far as it gives guidance to disciplinary authorities</i> |
| 3.3. Do these restrictions impose a duty of judicial restraint? | <input type="radio"/> yes <input type="radio"/> no Yes |
| 4. Please indicate, for which purposes judicial freedom of expression may be restricted – for the protection of | <input type="radio"/> judicial independence and impartiality Yes <input type="radio"/> the authority of the judiciary / public trust in the judiciary Yes <input type="radio"/> the prestige / image of the judiciary Yes <input type="radio"/> the confidentiality of the proceedings <input type="radio"/> the procedural rights of the parties to the proceedings <input type="radio"/> the confidentiality of internal judicial matters <input type="radio"/> other, please specify: |
| 5. Are (extra-)judicial statements a legally recognized reason for disqualifying a sitting judge from his / her case or as ground for appeal to a higher court? | <input type="radio"/> yes <input type="radio"/> no <i>Yes, but only if they amount to actual or perceived bias</i> |
| 6. Which disciplinary measures may be applied? | <input type="radio"/> formal advice <input type="radio"/> formal warning <input type="radio"/> reprimand <input type="radio"/> relocation <input type="radio"/> removal <input type="radio"/> other, please specify: <i>Any of the above, depending on the gravity of the disciplinary infraction. Formal advice is the most common.</i> |
| 6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure? | <input type="radio"/> nature and severity of the restriction on the judicial freedom of expression, especially <input type="radio"/> the specific position of the judge <input type="radio"/> the content and manner of the impugned statement <input type="radio"/> the context in which the statement was made <input type="radio"/> the nature and severity of the disciplinary measure imposed <i>All of the above</i> |

| | |
|---|---|
| 6.2. Does the disciplinary authority consider the chilling effect of disciplinary sanctions? | <input type="radio"/> yes <input type="radio"/> no <i>Not as far as I am aware</i> |
| 6.3. Does the disciplinary authority qualify the removal of a judge from his / her post as a judge as a means of last resort? | <input type="radio"/> yes <input type="radio"/> no <i>Yes, in the case of judges below the level of a High Court judge. A judge of the High Court or the Court of Appeal may only be removed following a resolution by both Houses of Parliament (which has not happened for over 250 years)</i> |
| 6.4. Which state authority is responsible for issuing disciplinary sanctions? | <input type="radio"/> the respective court president <input type="radio"/> the highest judge(s) of the judiciary (e.g. Lord Chief Justice / Lord Chancellor) <input type="radio"/> an independent judicial body <input type="radio"/> an executive body (e.g. disciplinary chamber) <input type="radio"/> other, please specify: <i>The Lord Chief Justice and Lord Chancellor (acting jointly) following an independent investigation by the Judicial Conduct Office.</i> |
| 7. Do judges have access to a court to challenge the disciplinary measures? | <input type="radio"/> yes <input type="radio"/> no <i>Only if the process is unlawful</i> |
| 7.1. If not, do they have access to an appeal procedure before | <input type="radio"/> an executive disciplinary chamber <input type="radio"/> a judicial disciplinary chamber <input type="radio"/> other or non <i>Yes, there is access to a disciplinary panel</i> |
| 7.2. If not, is an Ombudsman available, who may review the process? | <input type="radio"/> yes <input type="radio"/> no <i>Yes. The Ombudsman may review the process, but not the merits of a complaint.</i> |
| 8. What may be the consequences of unethical behaviour of a judge related to restrictions on his/her freedom of expression? | <input type="radio"/> initiation of disciplinary proceedings <input type="radio"/> impact on promotion of a judge <input type="radio"/> other, please specify: <i>Either of the above. The result of disciplinary proceedings is published on the internet.</i> |

B. Restrictions on judicial freedom of expression

9. Do the limitations on judges' freedom of expression provide exceptions for statements (or other kinds of expressions such as video clips) made in private? When does your legal system regard communication as private, i.e. non-public (consider e.g. person-to-person messaging; communication in closed group of virtual "friends", where new friends have to be accepted)?

There is no specific limitation. Whilst blogging by members of the judiciary is not prohibited, judges who blog (or who post comments on other people's blogs) must not identify themselves as members of the judiciary. They must also avoid expressing opinions which, were it to become known that they hold judicial office, could damage public confidence in their own impartiality or in the judiciary in general. This also applies to blogs which purport to be anonymous. Failure to adhere to the guidance can ultimately result in disciplinary action.

C. Aspects regarding content, manner and context of judicial statements

10. Does your legal system limit the subject matters that judges may comment on (i.e. their own cases, replying to critique of their judgments, (internal) affairs of the judiciary, politics

By long-standing convention it is regarded as inappropriate for a judge to comment publicly on the merits, meaning, or likely effect of government policy or proposals, including proposed legislation. But there is unlikely to be an objection to and private matters (e.g. home stories))?

comment which deals directly with the operation of the courts, the independence of the judiciary or aspects of the administration of justice while, as a matter of desirable practice, judges are encouraged to refrain from commenting on any issue when the judiciary intend to issue a formal, institutional comment, but have not yet done so.

Judges are also an obligation not to reply to critiques of their own cases.

11. Does the disciplinary authority give greater weight to a judicial statement dealing with matters of public concern when assessing the proportionality of a restriction on judicial freedom of expression?

No data are available.

12. Does the disciplinary authority give greater weight to statements of a high-ranked judge on matters of concern for the judiciary when assessing the proportionality of a restriction on judicial freedom of expression? Is it relevant if that judge also has the statutory task of representing the judiciary in such matters?

No data are available.

13. Does your legal system impose disciplinary sanctions when judges use shocking, disturbing and offensive or racist/homophobic language in their judicial / extrajudicial statements?

Yes.

D. Recent cases of restrictions of judges' freedom of expression in member states

14. Do you know of any recent (court) cases that prompted a public discussion on whether a judge neglected his / her legal or ethical duties by making a judicial /extrajudicial statement? If applicable, could you please briefly describe the facts of the most pertinent cases, the relevant legal or ethical issues that arose and, if any, the final disciplinary / court decisions?

Only in the context of allegations of bias (e.g. it was alleged (unsuccessfully) that a judge who was prominent in an association of Jewish lawyers was disqualified from hearing a case involving an immigrant from the Palestinian territories). Such cases are very rare.

15. Do you see new developments regarding judicial freedom of expression (e.g. an increase in statements on specific topics, new fora for or types of judicial expressions)? Do you observe an increase in legal or ethical restrictions on judicial freedom of expression?

No

16. What are the most pressing current ethical issues regarding judicial statements or other types of expressions? Could you give examples?

None come to mind.

E. Freedom of assembly / Membership of political party

17. May judges take part in public demonstrations?

Judges should not take part in political demonstrations. There is no guidance on public (but non-political) demonstrations.

18. May judges be members of a political party? Do restrictions on judges' freedom of expression apply regardless if a judge makes a statement as a member of a political party or a judicial / non-judicial organization? Do different criteria apply if a judge holds a political mandate and is on leave when making the impugned statement?

Judges should avoid any appearance of political ties – e.g. by attending political gatherings, political fundraising events, contribution to political parties or speaking within political forums. There is also a statutory prohibition on salaried judges undertaking any kind of political activity or having ties with a political party.