



FREEDOM OF EXPRESSION OF JUDGES

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Freedom of Expression of Judges

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GUIDELINES ON FREEDOM OF EXPRESSION OF JUDGES IN MONTENEGRO

The Guidelines have been developed upon request of the Ethical Commission for judges in Montenegro. It provides for an overview of international and national standards related to the right of judges to freedom of expression and defines key principles and safeguards regarding judges' freedom of expression.

Freedom of expression is one of fundamental political freedoms and can be restricted in only very specific circumstances only when some other rights, freedom or security of State has to be protected judges as holders of judicial power are in specific position.

That is why the freedom of expression has to be monitored and evaluated in respect of principles which govern judges' function like independence, impartiality, dignity and diligence.

For the purpose of these Guidelines, the term *expression* should be applied to any form of expression of thoughts, attitudes, opinions, and statements regardless of place or time, and regardless of the way in which expression is manifested, including through non-verbal communication.

- Judges are, like other citizens, entitled to freedom of expression, belief, association and assembly. A judge must not have an expectation that exercising the right to freedom of expression would result in disciplinary sanctions (Bangalore Principles para 4.6). The judge must be allowed to freely and unhinderedly express his own opinion when making a decision.
- Any limitation by a State of the exercise of these rights by judges is subject to the general criteria under international law for such restrictions, including as regards necessity and proportionality (*mutas mutandis* Baka vs Hungary para 174 and Eminagagoglu vs Turkey para 152, Kudeshkina vs Russia para 86).
- Restrictions on the exercise of these freedoms that are specifically related to their judicial functions should be established by the judiciary itself or another independent body with majority membership of judges (Recommendation CM/Rec (2010)12 para 19, 21 and 25).
- Not all violation of freedom of expression constitutes grounds for disciplinary liability. Disciplining all cases of unethical expression may have a "chilling effect" on the emergence or realization of a different opinion in the system (please see the case: Kudeshkina vs Russia para 99 - 100).
- Any proceedings against a judge on grounds related to the exercise of these freedoms shall be governed in accordance with Article 6 of ECHR (Baka vs. Hungary 174. Kudeshina vs Russia para 83).
- Restrictions to their exercise of these freedoms, can in principle be justified if they are necessary and appropriate to guarantee impartiality and independence of judges (Harabin vs. Slovakia).

- Judges should recuse themselves where it is necessary to ensure that justice is independent and impartial, and seen to be independent and impartial regardless are activities occurred in public, private or professional life (please the case: *Eminagagoglu vs Turkey*, para 122).
- Exercise of these freedoms can lead to a requirement to recuse, and judges should seek to minimize the situations in which they may eventually be called upon to recuse themselves (please see the case: *Eminagagoglu vs Turkey* para 120-121. *Guz vs Poland* para 89).
- At the same time, the above considerations do not mean that a judge can never engage in expression, association or assemblies that touch on issues or parties that could come before the courts at some future point. Total isolation from the community and society is neither realistic nor required of judges. In particular a judge should avoid political controversy. It is important to avoid using judicial office to promote personal views and to avoid the appearance of capture by particular organisations or causes. Judges should avoid expressing opinions on matters which may arise in litigation, and which may lead to concern about the impartiality of the judge (please see the cases: *Baka vs Hungary* para 165, *Simic vs Bosnia and Herzegovina* para 35-36, *Guz vs Poland* para 90).
- Authorities should not restrict exercise of these freedoms for these purposes, or to impose disciplinary or other consequences for having done so. This applies whether or not the matter is otherwise seen as politically controversial (please see the case: *Eminagagoglu vs Turkey* para 152, *Kudeshina vs Russia* para 98)
- Freedom of expression cannot jeopardize the equality of all, regardless of their race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, education, social status or another feature.
- Judges should be aware of their obligation to raise awareness, both within the judiciary and in the public, of all challenges related to judicial integrity, including issues of judicial integrity related to gender equality and equal opportunities, and to contribute to affirmation of the principle of gender equality in the judiciary and in society as a whole.
- The above standards and principles apply to online forms of expression and association (including social media).

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