



Freedom of Speech and External Pressures on Judicial Independence: populism and war scenarios

BRIEF REPORT

Within the Project “Support to Ukraine in implementation of the Council of Europe standards on the judiciary”

October 2025

The document was prepared within the framework of the Council of Europe Project “Support to Ukraine in implementation of the Council of Europe standards on the judiciary” which is implemented by the Council of Europe Division of Co-operation Programmes

Table of contents

Introduction.....	3
Brief overview on judicial independence and impartiality and external pressures.....	6
Freedom of expression and its limits when dealing with judicial proceedings by traditional media: coverage of pending cases	9
National responses against interference of traditional media in judicial pending cases ...	13
Freedom of expression and pressure upon judges in the digital age through social media	15
External pressures by the media and the protection of the judicial independence in war time	18
Concluding remarks: some recommendations	21

Introduction

1. Judicial independence is a cornerstone of the rule of law, requiring that judges decide cases impartially, free from outside influence. In stable democracies, subtle forms of external pressure – from political figures, media commentary, or public opinion – can put pressure upon the judges and thus impact upon their impartiality or the image of impartiality of the judiciary. In war or national emergency situations, these pressures often intensify, as judges face heightened political demands, higher public scrutiny, and even threats to their safety.
2. In every society, external pressure has the potential of undermining the judiciary's role as guardian of democracy, but in societies under the increased tensions caused by a war conflict, where parties to judicial proceedings might not only be seen as another accused or suspect, but as the enemy to be neutralized or eliminated, the pressure upon the judges –who are serving within that tensioned social context–, increases the risks of breaches against art. 6 European Convention of Human Rights (ECHR). The pressure coming from civil society, from traditional media (press, radio, TV, etc.) as well as from social media and networks, requires an even closer analysis in times of populism, where there might be political interests funneled through the social media, rather than to provide true information, to spread out disinformation and fake news. In other words, the information of the media –traditional and new social media–, which are protected by the freedom of expression, can also be abused to create a false social opinion as well as to put pressure upon the judges.
3. The risks for the principle of judicial impartiality as well as for the perception of impartiality of the courts increases significantly when, adding to the populism trends existing in current societies, a country is fighting a war, which is the current situation in Ukraine, where during the war, the courts keep on functioning.¹ Article 64.2 of Ukraine's Constitution explicitly provides that even under martial law, *the powers of courts may not be terminated, and the creation of extraordinary or special courts is prohibited*. This entrenchment aims to ensure that regular justice continues and no ad hoc tribunals (often a tool for executive pressure) are formed. Article 64.2 also prohibits shortening or expediting any form of judicial procedure or establishing extraordinary or special courts. Accordingly, the powers of the courts in Ukraine cannot be terminated even during martial law, and justice continues to be administered by the courts only.²

¹ For the scope of derogation of the ECHR and ICCPR by the martial law in Ukraine in 2022, see L. Apostol (2022), "Legal Analysis of the Derogation Made by Ukraine under Article 15 of the European Convention of Human Rights and Article 4 of the International Covenant on Civil and Political Rights Strasbourg", Council of Europe, available at: <https://rm.coe.int/legal-analysis-of-the-derogation-made-by-ukraine-under-article-15-of-t/1680aa8e2c>

² On the functioning of the justice system in Ukraine during the full scale aggression of Russia, see the PRAVO report of A. Adamska-Gallant, Y. Brych, O. Senatorova, et al. (2023) "On the functioning of the judicial system of Ukraine in conditions of full-scale war and martial law", available at: <https://www.pravojustice.eu/storage/app/uploads/public/658/2cb/82b/6582cb82b2505437243322.pdf>

4. Wartime often brings the question: should military courts or special tribunals handle certain cases, especially those involving military personnel, enemy combatants, or national security offenses? While military courts can be necessary to enforce discipline within the armed forces, their use – particularly against civilians – raises serious judicial independence and human rights concerns.
5. Military courts might not be established to take over the judicial powers, thus the role of military courts in war conflicted areas will not be discussed here: the pressure upon the judges by way of external forces –government, enemies, media, safety conditions, or other forms of serious threats, etc.– cannot be countered by way of establishing military courts. Thus, the question whether judges would be more protected against those external pressures during war if they were to be transformed in military courts –which were derogated in Ukraine in 2010–, is out of question, and therefore will not be discussed here.³
6. This report seeks to provide an overview on how external pressures, mainly stemming from the public opinion expressed either through social media or traditional media can be used to put pressure upon the judges, and how this pressure can be risking the fundamental right to an impartial judge, especially in wartime contexts. The issue on how judges should respond to media criticism or pressure falls out of the scope of this report. The limits of the judges in exercising their freedom of expression to maintain their impartiality/image of impartiality is neither the object of this report.
7. The focus will lie on the impact of the public opinion channeled through traditional media as well as social networks upon the judges and the judicial impartiality during Russia's aggression in Ukraine. The main human rights involved in analyzing this topic are the right to freedom of expression and the right to information and its limits by the prohibition of hate speech (art. 10 ECHR); the right to a fair trial and the presumption of innocence (art. 6 ECHR); the right to privacy, honour and own image (art. 8 ECHR); and the protection against abuse of power in destroying any rights or freedoms enshrined in the European Convention of Human Rights (art. 17 ECHR). The balancing of conflicting fundamental rights and opposing interests in society is a core element in the case law of the ECtHR, which would be impossible to cover in this report. However, reference will be made to the leading cases to shed light on the problematic of dealing with uses and abuses of the media and or the public opinion to exert pressure upon judges.
8. Beyond the identification of the elements and rights in conflict, this report will try to reflect on the possible legal safeguards against such influence and will try to identify best practices in the European landscape. The aim is not to propose concrete legal measures for Ukraine or any other war conflicted society to protect judicial independence against the increased influence or pressure by the media upon the impartiality of the judges, a topic that has been widely discussed in legal

³ Ukraine abolished its military courts in 2010, transferring military-related cases to the regular judiciary. This move was in line with European trends and was aimed at ensuring greater independence and uniform standards. Since the conflict with Russia began in 2014, there have been debates in Ukraine about possibly reinstating military courts, due to the large number of war-related cases, but as of now, all war crimes and security cases are being tried in civilian courts. This policy reflects a commitment to ordinary judicial process even during war. Since the Ukrainian Constitution forbids “extraordinary or special courts” even under martial law, it is not worth discussing this point here.

scholarship, without coming to a common understanding on the limits of the right to freedom of expression when it collides or causes risks for the impartiality of judges. The aim is to point at the more stringent issues that need to be addressed when there are increased risks for the fair trial rights and the impartiality of judges because of targeted media campaigns against judges and a general social opinion against certain suspects or accused because of their nationality or involvement in the ongoing war scenario. How to preserve the judicial impartiality under extremely stressed social conditions is for the national policymakers and legislators to decide. The aim here is to present the core elements that need to be considered for a sound discussion about the interests and rights in conflict, and when possible, presenting the experience and/or best practices from other countries. Further, the analysis will try to identify whether the safeguards for protecting the judicial impartiality could be enhanced or should be redrafted when the attacks against judges by the media take place in a war scenario.

This report is structured as follows: 1) Brief overview on judicial independence and impartiality and external pressures; 2) Freedom of expression and its limits when dealing with judicial proceedings by traditional media: coverage of pending cases; 3) Freedom of expression and pressure upon judges through social media; 4) External pressures by the media and the protection of the judicial independence in a war scenario; 5) Some concluding remarks.

9. All these aspects will be addressed from the perspective of the European standards and the leading cases of the European Court of Human Rights (ECtHR). Nevertheless, since the topic of preserving the judicial adjudicating body from external pressures from the media and the public opinion has been studied more deeply in the USA context, precisely focused on the external pressure by the media upon the members of the jury, some reference will also be made to the studies developed in the USA and the response adopted in the common law countries.
10. The report has been prepared by Prof. Dr. Lorena Bachmaier Winter, at the request of the Council of Europe, within the project "Support to Ukraine in implementation of the Council of Europe standards on the judiciary". The study is based on desk research and adheres to the methodological principles of integrity and objectivity. The main findings and recommendations were presented orally to the Ukrainian stakeholders and institutional partners during the international conference which took place during the 24th and 25th October in Kyiv (in a hybrid format", under the title: "The rule of law in the age of populism: freedom of speech and fair trial". I thank the organizers for involving me in the conference and allowing me to have the opportunity to reflect on a much debated and interesting topic, during the conference and during the development of this short study.

Brief overview on judicial independence and impartiality and external pressures

11. The principles on judicial independence have been set out in several Recommendations of the Council of Europe, CCJE Opinions as well as in the Opinions of the Venice Commission. The most important documents defining the European standards on judicial independence are: the Council of Europe Recommendation R(94) 12 of 13 October 1994; updated and completed later by the Council of Europe Recommendation R(2010)12, of 7 November 2010; European Charter on the statute for judges (CoE 1998); The Magna Carta of Judges (CCJE 2010); The Judges' Charter in Europe (European Association of Judges, 1997); the Report "On the independence of the judicial system part I: the independence of judges, adopted by the Venice Commission at its 82nd Plenary Session (Venice, 12-13 March 2010), as well as the Compilation of the Venice Commission opinions and reports concerning courts and judges, since 2010.⁴
12. The CCJE in Opinion No.1 (2001) declared that judges must have guaranteed tenure and be free from arbitrary removal – a fundamental protection against executive pressure. Moreover, disciplinary proceedings should be handled by independent bodies and only for serious misconduct, never for the content of judicial decisions, unless there is gross negligence or malice. If judges fear sanctions for unpopular decisions, impartial justice is compromised.
13. The European standards are aligned with the UN standards mainly set out in "The Bangalore Principles". The value of *Independence* (value 1) demands that judges refrain from any behavior that may make them susceptible to outside pressure or give that appearance. In practice, judges are expected not to discuss pending cases with outsiders, not to seek favor with politicians, and to recuse themselves if any outside relationships raise doubt about their impartiality.
14. The principle of judicial independence which is a requirement for ensuring the principle of impartiality means that the judges are free to decide cases solely according to law and the facts presented at trial, without undue influence from external actors –whether government, media, or any interest groups–, as well as from influence coming from within the judiciary itself. As steadily set out by the ECtHR in applying Article 6.1 ECHR, judicial independence requires both institutional autonomy of the judiciary and adequate safeguards for the individual judge to be able to resist outside pressures. "In determining whether a body can be considered to be "independent" the Court has had regard to the following criteria: the manner of appointment of its members and the duration of their term of office; the existence of guarantees against outside pressures; and whether the body presents an appearance of independence."⁵ Indeed European case law emphasizes that not only must courts be free from actual undue

⁴ Strasbourg, 18 July 2023, CDL-PI(2023)020, accessible at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2023\)020-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2023)020-e)

⁵ *Findlay v. the United Kingdom*, Appl. no. 22107/93, of 25 February 1997, para. 73. See generally, the "Guide on Article 6 ECHR: right to a fair trial, criminal limb", available at: <https://rm.coe.int/1680304c4e>

influence, but they must also appear independent to maintain public confidence. The perception of outside control which might undermine the judicial impartiality can already constitute a breach of the right to a fair trial.⁶ What is at stake is the confidence which the courts in a democratic society must inspire in the public and above all, as far as criminal proceedings are concerned, in the accused.⁷

15. Recently the Consultative Council of European Judges (CCJE), in its Opinion No. 28 (2025), “On the importance of judicial well-being for the delivery of justice” adopted on 14th November 2025,⁸ explicitly addresses the problems related to the misinformation and the impact of social media upon the judicial independence, recognizing that they can exert harmful pressure on judges and damage public trust in the judiciary. The Opinion examines how the well-being of judges may be protected and promoted to enhance the quality and efficiency of work and support judicial independence and impartiality as fundamental components of a proper functioning judicial system. The CCJE specifically recognizes that “significant internal and external pressures can potentially undermine judicial independence and impartiality, and judges’ resilience to withstand such pressures”. It identifies misinformation disseminated through modern communication channels — including social media — as a risk factor that can damage judicial reputation, exert external pressure on decision-making, and influence the broader environment in which justice is administered. The Opinion treats this not only as a reputational problem but as one with potential implications for judicial independence and public trust.
16. Thus, preventing undue influence is as much about eliminating actual interference as it is about avoiding situations that cast doubt on a judge’s impartiality. Impartiality means that there is confidence that the judge will be deciding without prejudice or bias and will only be subject to the law.⁹
17. External pressures can subtly (or overtly) influence judicial behavior and decision-making. Actions against judges can reach high levels of pressure when the individual judge is called to decide in so called sensitive or high-profile cases: those cases involving powerful stakeholders, cases of corruption, high political impact or cases where there is a strong popular movement against the accused or suspects. In such cases it is not infrequent that there is an attempt by powerful actors outside the judiciary to sway judges’ decisions or undermine their impartiality. The external pressure can be political (from governmental institutions, officials or other public representatives who seek to influencing the outcome of the case), social (launching public opinion campaigns, media commenting on pending cases or on the person of the judge and his/her family), economic (financial benefits, career development, favours for themselves or their family members, criminal bribes, etc.), or even personal threats (by way of direct or indirect intimidation, and even violence).
18. **Interference by government or politicians:** Perhaps the most significant threat to judicial independence is undue influence by the executive or legislative

⁶ For example, in *Sramek v. Austria*, Appl. no. 8790/79, of 22 October 1984, the ECtHR found a violation where a tribunal member was hierarchically subordinate to a government party, since “*appearances may also be of importance*” for public trust.

⁷ *Sahiner v. Turkey*, Appl. no. 29279/95, of 25 September 2001.

⁸ CCJE(2025)6.

⁹ *Kyprianou v. Cyprus* [GC], Appl. no. 73797/01, of 15 December 2005, para. 118; *Micallef v. Malta* [GC], Appl. no. 17056/06, of 15 October 2009, para. 93. On the subjective and objective approach in assessing the right to an impartial judge by the ECtHR see “Guide on Article 6 ECHR: right to a fair trial, criminal limb”, p. 16.

branches.¹⁰ Such influence is usually exerted through behind-the-scenes pressure, public statements, or structural control of the judiciary. For instance, judges may face pressure to rule in favour of the government's position in sensitive cases (national security, corruption involving officials, etc.), under implicit threat to their career, to their security or to avoid any kind of retaliation to their family. In some cases, governments have reacted against independent judges by dismissal or demotion. The ECtHR has consistently condemned such practices: a tribunal is not "independent" if the executive can influence judges' tenure or salary, or if an official can give them covert instructions, or when the Minister of Justice or the Prosecutor General are granted broad power to reopen final judgments.¹¹

19. Even absent formal control, political actors may apply informal pressure. Government ministers or other officials sometimes comment on ongoing cases, effectively signaling to judges the "desired" outcome.¹² This too can undermine impartiality. The ECtHR has *repeatedly emphasized the need for public officials, particularly law enforcement and justice officers, to carefully choose their words in statements made before a final court decision.*¹³ Officials must avoid declaring someone guilty or demanding a particular verdict, as it both violates the presumption of innocence and implicitly pressures the court. For example, in *Allenet de Ribemont v. France* (1995),¹⁴ where senior French police officials publicly referred to a suspect as one of the "assassins" before trial – the Court found this violated the suspect's rights, implicitly also signaling to judges that conviction was expected. The ECtHR has underlined that *"the principle of judicial independence imposes obligations on all other state authorities to respect and abide by the judgments and decisions of the courts, and to refrain from interfering in court cases."*¹⁵ In sum, executives and legislatures are obliged not only to avoid direct interferences, but also to comply with court rulings and refrain from pressuring judges to reach certain outcomes.
20. Interference and pressure of the executive comes also through the influence upon the judicial careers. When promotions, disciplinary actions, or reappointments are controlled by political bodies, judges feel pressured to align with those in power. Even if all European standards and safeguards seek to insulate the judicial career decisions from politics, the current situation in many European countries where populism is invading the political arena, shows that

¹⁰ See the 2025 Report of the Secretary General of the Council of Europe entitled "Towards a New Democratic Pact for Europe", key findings under the section of Functioning of Democratic Institutions, p. 35, accessible at: <https://rm.coe.int/2025-report-of-the-secretary-general-of-the-council-of-europe-en-final/1680b5ad96>

See also the Report of the UN Special Rapporteur on the independence of judges and lawyers, 16 July 2020, A/74/176, para 63, accessible at: <https://www.ohchr.org/en/special-procedures/sr-independence-of-judges-and-lawyers>

¹¹ See e.g. *Reczkowicz v. Poland*, Appl. no. 43447/19, of 22 July 2021.

¹² In *Sovtransavto Holding v. Ukraine*, Appl. no. 48553/99, of 25 July 2002, a regional governor's letters to a court during a company dispute (urging consideration of the case's "importance for the region") were deemed inappropriate external influence. The Court underlined that *any* contact from the executive urging a particular outcome is incompatible with judicial independence.

¹³ *Korban v. Ukraine*, Appl. no. 26744/16, of 4 July 2019, highlighted that premature statements by officials can prejudice proceedings.

¹⁴ *Allenet de Ribemont v. France*, Appl. no. 151575/89, of 10 February 1995.

¹⁵ *Agrokompleks v. Ukraine*, Appl. no. 23465/03, of 6 October 2011.

the problems not only persist, but the risks for judicial independence are increasing.¹⁶

21. **Influence by the media:** Open justice and press coverage are vital for transparency, but they also introduce the potential popular pressure on judges. Again, high-profile cases, can become the subject of intense media scrutiny and public debate, which may consciously or unconsciously impact the judicial decision-making. Digital media amplify traditional media pressures manifold, and this deserves its own discussion (see below), but it is worth noting already that the social networks and digital communication campaigns *de facto* act as an extension of public/media pressure. In the internet era, every controversial decision can become a viral news item, and judges may even be personally targeted on social networks.
22. The case law of the ECtHR has addressed the tension between freedom of expression and fair trials in numerous judgments, where the Court has underlined that the media have the right to report on judicial proceedings, but are also limited since they have to protect the presumption of innocence. This will be analysed next, being this the core topic of this report.

Freedom of expression and its limits when dealing with judicial proceedings by traditional media: coverage of pending cases

23. While the principles of judicial independence and impartiality are well known and there are international standards defining the most relevant safeguards to preserve them, the question that it is to be addressed here is whether the judges are protected when there is a harsh public opinion for the judges to take a certain decision and whether they can be immune to public demands for harsher punishment against certain suspects and accused persons. Such a strong public movement can translate into indirect pressure on judges. However, even in such circumstances the judges must preserve their impartiality despite such pressure, and still abide by the law and ensure the fair trial rights and protect the presumption of innocence of the parties to the case. The goal to achieve is clear: resist this “populist” pressure, because trust in the judiciary and an impartial justice are essential elements for the rule of law. Again, the key question is how.
24. Two options could theoretically be considered:
 - 1) Limit the freedom of expression to reduce the pressure upon judges, especially relating to pending cases, and so ensure the protection of the fair trial rights and the presumption of innocence; and/or.

¹⁶ See the 2022 survey by the European Network of Councils for the Judiciary (ENCJ), based upon the perception of the judges themselves, it is stated that in many European countries the “*lack of respect for judicial independence by government and parliament is...a big issue*”. judges report that rulings against government interests lead to negative consequences (e.g. being passed over for promotion or targeted by disciplinary complaints). Such a climate, even if subtle, can influence a judge to decide cautiously in politically sensitive cases so as not to jeopardize their career.

The report is available at:

<https://www.encj.eu/node/620#:~:text=,provided%20by%20government%20affects%20independence>

2) Increase the capacity of judges to resist the pressure.
Here we will focus on 1).

25. In addressing the limits and also the possible mechanisms to enforce those limits, the approach towards the traditional media coverage has to be differentiated from the digital media and social networks. The digital revolution – especially the rise of social networks – has dramatically changed the context in which judges operate. The digital environment poses distinct threats to judicial independence and public confidence in the courts, and this explains why here we address it separately.
26. Traditional media (newspapers, television and radio) perform an essential function in the development of a democratic society. For this reason, the right to impart information and the protection of journalists' professional secrecy enjoy constitutional protection in virtually all modern democracies. However, regarding reporting on pending judicial proceedings, the rights to freedom of expression and information may come into conflict with other fundamental rights, as already noted, in particular the right to a fair trial and the presumption of innocence.
27. In balancing the different conflicting rights, the concept of public interest in the information has been signaled as crucial. If the information is relevant because it affects the general interest –due to the activity it involves, the public nature of the persons involved or the impact on the social context–, information concerning pending judicial proceedings is protected by the right to freedom of expression and the right to inform the society. Where a case acquires social relevance, such reporting enables the formation of public opinion regarding the conduct of judges, which constitutes an integral part of the democratic process.
28. Once it is accepted that the media may—and indeed must—report on pending judicial proceedings, the way such reporting is carried out must avoid giving rise to a *trial by media*, steering public opinion in a particular direction, or persuading the public that the only just outcome is the one advocated by the media outlet. At that point, the social function of press freedom is being abused, since its purpose is no longer to inform or to contribute to the free formation of public opinion, but rather to influence the judicial decision itself. Where the boundary between informing and manipulating is crossed, the freedom to impart information can no longer claim protection under fundamental rights.
29. It is seen in practice that traditional media frequently report on court cases, sometimes with strong editorial stances. Sensationalist coverage can paint a defendant as already guilty or blame a judge for a perceived lenient decision. In theory, judges should ignore all public opinion and rule strictly according to law, but in practice, staying completely indifferent to the public opinion can be difficult. This is particularly challenging in jury systems, and this explains the rules in some countries (e.g. USA) that allow the sequestering jurors to shield them from media influence. However, this is not possible for professional judges although scholarly research studies confirm that media and public opinion can influence the judges' decisions. Empirical research, including interviews with judges, suggests that while judges strongly deny letting media pressure alter the outcome of cases, many do acknowledge being conscious of public opinion.¹⁷ This is also

¹⁷ See, M. Hanych, H. Smekal, J. Benák, "The Influence of Public Opinion and Media on Judicial Decision-Making: Elite Judges' Perceptions and Strategies", *International Journal for Court Administration*, 11.12.2023, pp. 2-19, pp. 9 ff.,

acknowledged by the ECtHR stating that professional judges, although less susceptible than jurors, are not entirely immune to external pressure, particularly in highly publicised cases.¹⁸

30. In response to such situations, the legal system may react in several ways:

(1) By applying rules of journalistic deontology, which impose specific requirements regarding the use of language and ethical limits. This is commonly referred to as self-regulation of the journalistic profession (CoE Recommendation 97/21 On the media and the promotion of a culture of tolerance, of 30 October 1997; and CoE Recommendation (97) 20 on “Hate speech”, of the same date, as well as CoE). These standards require the media to report using neutral language that does not undermine the right to the presumption of innocence. In *Worm v. Austria* (1997), the Court accepted that the conviction of a journalist for commenting on the guilt of an accused person while criminal proceedings were still pending pursued a legitimate aim. The Court held that the article went beyond neutral reporting and amounted to a premature assessment of guilt capable of influencing the judges.

31. **(2) Through civil and criminal liability.** Where specific publications infringe the rights to privacy or honour of judges, the latter may activate civil and criminal remedies by bringing proceedings against those who have made statements violating their individual rights. This has occurred, for example, recently in Spain (September 2025), in the context of the investigation of a sensitive case—namely, a judge investigating an offence of embezzlement allegedly committed by the spouse of the Spanish Prime Minister—when the public television broadcaster aired statements by two government ministers accusing the judge of committing the criminal offence of knowingly issuing decisions manifestly contrary to the law. In response to those statements, which both attacked the judge’s honour and sought to exert pressure on him, as well as to manipulate public opinion, the judge initiated legal proceedings against both the media outlet and the two ministers who made the statements. In addition to claiming damages, the judge may also exercise the right of reply or rectification. Admittedly, this mechanism is slow and costly; nevertheless, it serves as a clear warning that judges cannot be subjected to gratuitous attacks or insults as a means of exerting pressure in high-profile cases.

32. **(3) By limiting freedom of expression through measures of contempt of court.** Courts may also activate specific measures aimed at preventing the dissemination of information relating to a particular judicial investigation, notably by ordering the secrecy of the investigation and imposing criminal sanctions for the disclosure of confidential information on those who breach such secrecy orders.

33. Resorting to contempt of court, to prevent publication of cases sub judice, allows to impose restrictions or sanctions that interfere with the proper administration of justice. In the context of pending judicial proceedings, contempt rules are primarily preventive: they aim to avert external influences capable of prejudicing

available at: <https://iacajournal.org/articles/10.36745/ijca.52>; Judges may employ different strategies: some actively engage with media to explain their decisions and shape public understanding, while others deliberately avoid media exposure to preserve impartiality.

¹⁸ *Worm v. Austria*, Appl. no. 22714/93, of 29 August 1997.

the outcome of the case or undermining the authority and impartiality of the judiciary.

34. The ECtHR has accepted that States may legitimately seek to shield judicial proceedings from external pressure, particularly during sensitive phases such as investigation, trial, or deliberation. However, the ECtHR has consistently emphasised that contempt of court must not be used as a general instrument to suppress debate on matters of public interest or to insulate courts from legitimate criticism.
35. In assessing the contempt of court measures, which necessarily involves the reconciliation of Article 10 ECHR (freedom of expression) and Article 6 ECHR (right to a fair trial by an independent and impartial tribunal), the ECtHR has made clear that neither right has automatic precedence; instead, restrictions on expression must be justified by reference to the concrete needs of the administration of justice. The Court has gradually adopted a more demanding threshold for the use of contempt of court in relation to pending judicial cases, through a stringent analysis of the “necessity” principle. This can be seen already in *The Sunday Times v. United Kingdom* (No. 1, 1979),¹⁹ where the Court addressed a contempt injunction imposed to prevent publication of an article concerning civil proceedings that were still pending. While acknowledging in principle that protecting the authority of the judiciary is a legitimate aim, the Court held that the interference was not “necessary in a democratic society”, and introduced a key standard: only a real and substantial risk of prejudice to judicial proceedings can justify restrictions on media reporting. Mere public interest or discomfort to the courts is insufficient. This judgment laid the foundation for a restrictive interpretation of contempt powers and rejected the idea that the mere existence of pending proceedings automatically warrants limitations on press freedom.
36. Similarly, in *Tourancheau and July v. France* (2005),²⁰ the Court upheld sanctions imposed on journalists who published detailed information from an ongoing criminal investigation involving a minor. The Court accepted that such publications risked undermining the presumption of innocence and the proper conduct of the investigation, thereby justifying interference under Article 10(2).
37. The ECtHR has drawn a careful distinction between legitimate criticism and attacks capable of undermining judicial impartiality during pending proceedings. In *Barfod v. Denmark* (1989),²¹ sanctions against defamatory statements targeting lay judges involved in a pending tax case did not violate article 6 ECCHR. The Court stressed that personal attacks against judges, made while proceedings were ongoing, may undermine public confidence in the judiciary and justify restrictions, that the lay judges’ situation did not raise objectively justified doubts as to impartiality, and that the restriction on freedom of expression (Article 10) was necessary to protect judicial authority and impartiality.
38. By contrast, in *Morice v. France* (2015),²² the Grand Chamber found a violation of Article 10 where a lawyer was sanctioned for criticising investigating judges in a case of public interest. The Court highlighted that the criticism, although sharp, was based on factual elements and contributed to a debate of general interest.

¹⁹ *The Sunday Times v. United Kingdom* (1), Appl. no. 6538/74, of 26 April 1979.

²⁰ *Tourancheau and July v. France*, Appl. no. 53886/00, of 24 November 2005.

²¹ *Barfod v. Denmark*, Appl. no., 11508/85, of 22 February 1989.

²² *Morice v. France*, Appl. no. 29369/10, of 23.4.2015.

Crucially, the Court observed that contempt measures must not be used to shield judges from accountability or silence criticism merely because proceedings are ongoing.

39. Across its case law, the ECtHR has consistently required domestic courts to demonstrate a concrete risk to judicial impartiality or fairness. In *Bédât v. Switzerland* (2016),²³ concerning the publication of confidential material from a pending criminal case, the ECtHR upheld the conviction of a journalist, emphasising the cumulative effect of timing, content, and potential impact on the accused's right to a fair trial. The Court reiterated that restrictions are more easily justified when publications reveal confidential material, assert guilt, or exert pressure on judges at critical stages of the proceedings.

National responses against interference of traditional media in judicial pending cases

40. At the national level, the approach towards the limitation of publication on pending judicial cases is variegated. Nevertheless, it also evidences a gradual convergence towards a contextual, risk-based approach, largely attributable to the interpretative authority of the ECtHR.
41. The **United Kingdom** represents a paradigmatic example of the evolution from a traditionally expansive conception of contempt of court to a more restrained, Convention-compatible model. Historically, the common-law doctrine of *sub judice* imposed broad limitations on media commentary relating to pending proceedings, often with limited regard for the actual risk of prejudice.
42. The enactment of the Contempt of Court Act 1981 marked a decisive recalibration of this approach. By introducing the statutory requirement of a "substantial risk of serious prejudice" to active proceedings, the legislature replaced formalistic restrictions with an effects-based assessment. Subsequent judicial interpretation has reinforced this shift, emphasising the importance of timing, the nature of the proceedings, and the likelihood that the publication could influence adjudication.
43. After the judgment *The Sunday Times v. United Kingdom*, domestic courts have increasingly accepted that the mere existence of pending proceedings cannot, in itself, justify interference with freedom of expression. Instead, they have adopted an analytical framework closely aligned with ECtHR jurisprudence, requiring concrete evidence that the publication poses a real threat to judicial impartiality or trial fairness.
44. Several European countries have laws restricting commentary on pending cases – for instance, France's Code Pénal prohibits attempts to influence a court or witness through public statements during a trial. The French Criminal Code (Articles 434-25) criminalizes public comments, acts or writings that seek to exert pressure on judges or courts in relation to decisions that have not yet been delivered. In substance, the provision punishes: *Any act, comment, or public*

²³ *Bédât v. Switzerland*, Appl. no. 56925/08, of 29 March 2016.

writing intended to influence the conduct or decision of a judge or court in relation to a case that has not yet been finally decided.

45. Within this framework, media publications during ongoing proceedings may give rise to liability where they disclose confidential investigative material, assert the guilt of suspects, or undermine public confidence in judicial institutions. Traditionally, French courts have demonstrated a relatively low tolerance for media intrusions into pending proceedings, reflecting a strong conception of judicial authority and institutional dignity. However, sustained engagement with ECtHR jurisprudence—most notably in cases such as *Tourancheau and July v. France* and *Morice v. France*, quoted above—has limited resorting to criminal sanctions, invoking the proportionality principle.
46. **Spain** does not have a measure of contempt of court comparable to that found in common-law systems. The protection of judicial impartiality against media interference in pending proceedings is achieved through a combination of criminal law provisions, civil liability for harm to honour or reputation, and constitutional adjudication.
47. The Spanish Constitutional Court has consistently adopted a balancing methodology that closely parallels that of the ECtHR. In cases involving media reporting on ongoing judicial proceedings, it has emphasised the need to distinguish between information and opinion, to assess the public interest of the expression, and to evaluate its potential impact on the right to effective judicial protection.
48. Although Spanish courts generally exhibit restraint in imposing sanctions solely on the basis of the *sub judice* character of proceedings, they accept that sustained media pressure, prejudgment of outcomes, or personal attacks on judges during ongoing cases may justify limitations on freedom of expression. This approach illustrates a form of implicit convergence with ECtHR standards, notwithstanding the absence of a formal contempt framework, but the Spanish Constitutional Court has consistently ruled in favour of the freedom of expression in this context.
49. The **German** Constitution (*Grundgesetz*) protects the freedom of expression under Article 5 of the Basic Law, and the case law of the Constitutional Court in exercising the balancing test vis-à-vis the protection of the judicial independence and impartiality has consistently ruled in favour of the freedom of expression. Criminal sanctions for interference with judicial proceedings exist and Article 353d *StGB* (Strafgesetzbuch) provides for restricted publication rules on pending cases (*Verbotene Mitteilungen über Gerichtsverhandlungen*) but its application is exceptional and subject to strict constitutional scrutiny.
50. German courts generally proceed on the assumption that professional judges possess a high degree of resilience to external influence. Nevertheless, they acknowledge that certain forms of media conduct—such as persistent public campaigns against judicial actors, disclosure of confidential judicial material, or accusations capable of undermining public confidence—may affect the appearance of impartial justice. Consistent with ECtHR jurisprudence, German courts therefore rely on a concrete and contextual assessment of risk, focusing less on the protection of judicial authority as such and more on the preservation of public trust in the integrity of judicial decision-making.

51. Despite the differences it can be seen that there is not anymore, an automatic or categorical restriction on media reporting based solely on the pendency of proceedings. The national courts increasingly require a demonstrable, concrete risk to judicial impartiality or trial fairness, where the emphasis is more on safeguarding the objective appearance of impartial justice in the eyes of the public, rather than protecting judges from criticism.

Freedom of expression and pressure upon judges in the digital age through social media

52. Traditionally, the ECtHR has assessed threats to impartiality arising from institutional arrangements, prior involvement of judges, or external interference, including media pressure. In recent years, however, the transformation of public discourse through social media has intensified scrutiny of judicial proceedings, enabling instantaneous, global, and often hostile reactions to pending cases and judicial actors. Social media, online news and instant communication have intensified the public scrutiny of the judiciary and poses new challenges for the judicial independence, impartiality and the public confidence in the courts.
53. Social media enables direct, unfiltered feedback or attacks on judges. What once might have been private criticism or isolated low voice attacks can become mass online campaigns. Judges who handle politically sensitive or high-profile cases might face harassment on social platforms or even threats of violence. This can create a climate of fear or intimidation, requiring in extreme security measures for judges. The online negativity alone can subtly influence a judge's psyche, for instance, by making them conscious that an unpopular decision will trigger a flood of online abuse.
54. Indeed, digital platforms can rapidly spread misinformation about ongoing cases or judges themselves. A manipulated narrative online can shape public opinion rapidly. If judges see false content about a case they are handling it may be difficult to remain unaffected by the perceived public sentiment. Moreover, disinformation campaigns –which can be led by state authorities in geopolitical contexts– might target the judiciary to undermine its credibility. The European Network of Councils for the Judiciary (ENCJ) 2025 Riga Declaration has acknowledged that “*changes in the media landscape and digital advances*” have given rise to new challenges to the rule of law and calls for “*constant vigilance*” by judicial councils to identify threats to independence, as well as efforts to build trust of society in the judiciary to counteract misinformation.²⁴
55. While social media and digital platforms can play an important role in increasing transparency and accountability of the judiciary, it also exposes judges to public pressures. The European Network of Councils for the Judiciary reported in 2022 that “*in most judiciaries, judges feel inappropriate pressure from the (social)*

²⁴ The XXI ENCJ General Assembly took place in Riga the 4-6 June 2025 under the overarching topic “Confronting Threats to the Rule of Law”, see under: <https://www.encj.eu/node/835#:~:text=Recent%C2%A0political%20shifts%2C%20societal%20changes%2C%20changes,it%20provides%20to%20their%20country%27s>

media at case level” and many feel their independence is “not respected by/on the (social) media”.²⁵

56. There is hardly any case law of the ECtHR addressing the impact of social media upon the judicial independence and impartiality. In *Abdulla Ali v. the United Kingdom*,²⁶ the applicant argued that intense adverse publicity, including easily accessible Internet coverage, compromised the impartiality of the tribunal in a retrial context. The Court rejected the complaint, emphasizing that the domestic courts had adopted adequate safeguards, including careful jury directions and procedural management. What is more relevant here is that the ECtHR explicitly acknowledged the relevance of online and Internet-based publicity when assessing the risk to impartiality, thereby implicitly recognizing that modern information ecosystems form part of the Article 6 ECHR analysis.
57. Similarly, in *Paulikas v. Lithuania*,²⁷ the Court examined whether extensive media reporting and public comments by officials during pending proceedings undermined the fairness of the trial. Although the case focused on presumption of innocence and fairness rather than judicial impartiality, it reaffirmed that external narratives surrounding a case can affect the administration of justice and must be assessed contextually.
58. These cases show that for the Strasbourg Court what matters is not whether pressure originates from traditional media or social media, but whether it creates a real and objectively justified risk to impartial adjudication.
59. Beyond these cases focused on fair trial rights the ECtHR has addressed campaigns and attacks directed at judges within a broader rule-of-law framework. In *Żurek v. Poland*,²⁸ the Court examined measures taken against a judge in the context of an alleged campaign of intimidation and public discrediting. While the operative violations concerned Articles 6 and 10, the judgment is significant in acknowledging that systematic pressure on judges—whether institutional or public—threatens judicial independence and the integrity of adjudication. Although *Żurek* does not directly concern social media or trial publicity, it illustrates the Court’s growing sensitivity to external pressures surrounding the judiciary. Social-media-driven campaigns can plausibly fall within this logic when they contribute to an atmosphere of intimidation or delegitimization.
60. The ECtHR has not yet established a standalone doctrine on the impact of social media pressure on judicial impartiality under Article 6 ECHR. Nevertheless, its case law on adverse publicity, Internet coverage, and systemic pressure on judges provides a coherent analytical framework capable of addressing this phenomenon.
61. However, it is my opinion that the response against undue pressures on judges by social media cannot adopt the forms described above when dealing with the traditional media, which work under certain legal rules on the exercise of journalism, can be made liable for defamation and libel, and despite many infringements, their main role is to serve to the general interest of providing a truthful information. The scenario changes completely in communications on the

²⁵ The ENCJ survey is available at: <https://www.encj.eu/node/620#:~:text=,related%20concern%20in%20many%20countries>

²⁶ *Abdulla Ali v. the United Kingdom*, Appl. no. 30971/12, of 30 June 2015.

²⁷ *Paulikas v. Lithuania*, Appl. no. 57435/09, of 24 January 2017.

²⁸ *Żurek v. Poland*, Appl. no. 39650/18, of 16 June 2022.

internet. While it is not the task of this report to deepen in the complex topic on regulating the internet or in finding limits to freedom of expression in the digital environment because they can impact negatively upon the judicial impartiality, some responses that are being considered to protect judges –and therefore the independence and impartiality of the judiciary– might be useful to reflect here.

62. The first step is raising awareness of this new context and try to find out how it is affecting the judges, something which the EJTN has started to do, as mentioned above. The UNODC Discussion Guide on Judges' Use of Social Media,²⁹ acknowledges the risks of "*potential cyberbullying*" of judges and how the social media can impact upon public trust.
63. The Digital Services Act (DSA) of 2022³⁰ also imposes duties on large online platforms to curb illegal content and the rapid removal of illegal content and mitigating systemic risks could indirectly help in scenarios where a judge is the target of coordinated online abuse.
64. In sum, the digital age has amplified external pressures on the judiciary, particularly from social networks. Judges worry that their independence is not respected on social media and that inappropriate pressure at the case level is common via (social) media channels. However, the responses applicable against traditional media when they overstep their limits of freedom of expression and pose threats for the fair trial rights, presumption of innocence and judicial impartiality, cannot be the same as the ones applicable in the context of social media. Beyond the controls of digital platforms and the state response when there is a criminal offence committed against any individual –including a judge–. In many cases there is no way to stop bot-campaigns or the dissemination of fake news, including those related to a pending case or the judge, sine in many cases the sender of those messages is not identified or cannot be identified, and if identified, cannot be prosecuted. For being in another country.
65. It seems that the approach to protect the impartiality of the judges against the information (or misleading information) spread out in the social media, will have to put the focus on the resilience of the judges themselves, on increasing their capacity to resist those pressures. The role of the Councils of the Judiciary in cases of individual attacks shall be crucial, as well as an adequate response through the communication departments of the judiciary. But how the judiciary shall reply to media attacks is not the object of this report. It has been mentioned here, because it is linked to the possibility of reinforcing the capacities of the judges to feel protected, and thus find the needed internal balance to keep their sentiments away from their decisions, to strengthen the resilience and reinforce the subjective impartiality.
66. This is in line with the recommendations set out in the CCJE Opinion 28(2025) draws attention to the main pressures and threats that can directly affect the well-being of judges, including not only the workload, but the difficulties also stemming from funding shortages, threats and safety/security issues as well as political and social media pressures.

²⁹ UNODC, 2018 p. 3, available at: https://www.unodc.org/res/ji/import/policy_papers/social_media_discussion_guide/discussion_guide_social_media.pdf#:~:text=,lt%20can

³⁰ Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act)

67. CCJE contains detailed recommendations for increasing the well-being of judges, because it is considered “essential for the delivery of justice”. Member States and judicial councils should develop systemic frameworks and institutional policies to support judicial well-being. This includes mental health support, safety measures, training, adequate resourcing, mechanisms for countering misinformation and undue external pressure, and workplace cultures that protect independence and impartiality. Regarding the latter, para. 41 specifically reads:

“41. While adverse public comments cannot be avoided,³⁸ the judiciary can implement measures to ensure that judges do not feel isolated and abandoned particularly when deciding on high-profile cases where they are exposed public criticism and abuse. In these situations, the unity and support of colleagues, court presidents and/or councils for the judiciary may provide critical resources to protect the well-being of judges should such personal attacks against them arise.”

68. The Opinion thus reflects a broader trend in European judicial governance: acknowledging that external pressures — including social media narratives— are essential to the effective functioning of an impartial justice.

External pressures by the media and the protection of the judicial independence in war time

69. War and states of emergency pose a severe test to judicial independence. In such scenarios, normal checks and balances may weaken under the stress of national survival, and the judiciary faces extraordinary external pressures. Judges in war must navigate intense political demands (often for unity and harsh measures), a highly charged public atmosphere, and sometimes direct threats to life and liberty. Corruption might continue to influence the judiciary, and even under the cover of the martial law and the priority of investigating war crimes, it may even flourish.³¹

70. During war, external pressures on judges tend to *intensify* and take on unique forms. In active conflict zones or under occupations, judges can also face physical danger that can directly influence their ability to be impartial. Judges (and their families) might be threatened by civilians as well as by armed groups to rule a certain way. A judge constantly fearing for their life can hardly be expected to act without pressure –survival becomes a factor in decision-making.

71. Governments at war often invoke emergency powers or martial law and the general pressure upon judges is increased.³² Democratic constitutions typically

³¹ The U.S. State Department’s 2022 report on Ukraine cited “serious problems with the independence of the judiciary”, noting that “courts remained highly vulnerable to political pressure and corruption”. It specifically observed that outcomes of some trials “appeared predetermined by government or other interference,” and NGOs blamed “possible biases of the judges and political pressure from senior justice and law enforcement officials” for these violations. See, ECOINET USDOS 2023 Country Report on Human Rights Practices: Ukraine, cit.

³² In this vein see also B. Epperly and J. Sievert (2019) “Conflict and courts: Civil war and judicial independence across Democracies”, *Political Research Quarterly* 72(3): 700–713, p. 701 observing that the conflict onset operates as a critical juncture— a moment of rupture that unsettles institutional equilibria and recalibrates the distribution of power between branches of government. And in these contexts, courts are often expected to defer to the executive, prioritizing state security over rights.

allow certain rights to be curtailed during genuine emergencies. The risk is that the executive might accumulate outsized power, sidelining judicial oversight.³³ The risks in war times are specifically mentioned in the CCJE Opinion 28(2025). Paragraph 32 lists the most important challenges for the judges working in war scenarios:

“32. In times of war, the physical and psychological toll on judges can be profound. Aside from the actual or anticipated destruction of court buildings and legal infrastructures, significant resource loss can occur through constant exposure to high-stakes cases, threats to personal safety, and the moral weight of decisions affecting lives and liberties. These cumulative losses create a high-stress environment in which judges must continue to perform their duties under immense psychological strain. Without adequate peer and institutional support, judges can experience acute isolation, and their well-being can rapidly deteriorate.”

72. However, a key point has to be underlined here: war does *not* allow the executive or military authorities to direct judicial outcomes. The Bangalore Principles reiterate that *judicial independence applies “in all circumstances” and judges must resist any attempts to influence their judgments*. Upholding rule of law in wartime is difficult but vital – it distinguishes a law-governed society from the chaos of conflict. Indeed, respecting judicial independence during war is often seen as a mark of a mature democracy.
73. Even if the situation in Ireland during the IRA conflict cannot be labelled as a strict war scenario, it shows how certain additional safeguards might be necessary to preserve not only the impartiality of the court, but also its safety. During the armed conflict with the IRA, the United Kingdom moved sensitive terrorist cases to the so called **“Diplock courts”** (single-judge courts without juries) to avoid jury intimidation. While this removed one external pressure (fear of paramilitary retribution against jurors), it placed great responsibility on judges. The United Kingdom government took care to ensure those judges were experienced and that *convictions* could be appealed. Even so, some Diplock convictions were later questioned. These cases show that any special wartime court procedures must preserve the fair trial rights and the right to appeal to prevent against miscarriages of justice under extreme pressure. The ECtHR addressed this Northern Ireland judge-only system explicitly in *McKeown v. the United Kingdom* (2011)³⁴ confirming that the single-judge court for trying terrorism cases was not against the Convention, but that even in terrorism cases the fair trial rights are to be respected.
74. War can disrupt the judicial system’s functioning – courts destroyed, staff and judges conscripted or displaced, backlogs ballooning. These hardships, while not “pressure” in the intentional sense, affect independence by overloading judges and limiting the courts’ capacity to thoroughly review cases.
75. The Russian invasion has generated a vast docket of new cases: by late 2023, over 80,000 war crimes and related offenses were under investigation.³⁵

³³ See *Baş v. Turkey*, Appl. no. 66448/17, of 3 March 2020, regarding the situation after the 2016 coup attempt where during the emergency state over 4.000 judges and prosecutors were dismissed, even without individual hearings. The ECtHR found a violation of art. 6 ECHR.

³⁴ *McKeown v. the United Kingdom*, Appl. no. 6684/05, of 22 January 2011.

³⁵ See G. Kent, “War and Democracy. Examining Ukraine's Judiciary Under Martial Law”, *The SAIS Journal of Global Affairs*, accessible at:

Ukrainian courts began prosecuting Russian soldiers for war crimes even as fighting raged. Another large set of cases is collaboration trials – Ukrainians accused of aiding Russian forces (passing information, administering occupied towns, etc.). From March 2022 to mid-2024, over 8,000 such proceedings were opened.³⁶ Judges in these cases face the external pressure –media, social media, threats, etc.– and it may be hard to acquit or give a light sentence to someone labeled a collaborator, even if their culpability is minor or unproven. If acquittals or lenient sentences in such cases provoke public outrage, judges may fear that strictly applying due process (which could benefit an unpopular defendant) will ignite backlash or even retaliation. This dynamic severely tests impartiality. The judge's duty to decide in an impartial way and presume an accused collaborator innocent until proven guilty may clash with a society already convinced of –or just wishing–the person's guilt. The weight of public expectation is a heavy external pressure in conflict justice. There have been instances of Ukrainian officials publicly shaming collaborators and implicitly expecting convictions.

76. This has put Ukrainian judges under a unique pressure: the eyes of the world and the Ukrainian public are on these trials. To Ukraine's credit, early war crimes trials have been public and generally adhered to standards (e.g. providing lawyers to captured Russian POWs, holding open hearings). Yet concerns exist. Are Ukrainian judges truly free from bias when the defendant is an enemy soldier who may have killed civilians? The pressure to convict is undoubtedly immense – acquitting a Russian defendant, even if evidence is insufficient, would be exceedingly unpopular. So far, convictions have been secured in dozens of cases 63 convictions by Nov 2023 for war crimes³⁷ and sentences have been significant, including life imprisonment in at least one early case.
77. Judges in Ukraine find themselves under extreme caseload pressure, which might make them to be more prone to error or expediency. Furthermore, in war, evidence gathering is harder and passions run high, and the pressure might lead judges to rely on looser standards (e.g., accepting hearsay if witnesses are unavailable due to conflict.³⁸ All these factors can impact upon the judicial impartiality and/or its perception.
78. The main question to address here is how war conditions influence judges and whether the response to preserve the judicial impartiality could be different as in a context where there is no war. In this context, are the ordinary safeguards to

<https://www.saisjournal.eu/article/98-George-Kent-War-and-Democracy.cfm#:~:text=Autocratic%20and%20democratic%20scholars%20observe,Ukraine%20since%202022%20provides%20an>

³⁶ See INFOJUSTICE, "Collaboration trials in Ukraine. What do court verdicts tell us?", published 11 July 2024, accessible at <https://www.justiceinfo.net/en/134141-collaboration-trials-in-ukraine-what-do-court-verdicts-tell-us.html#:~:text=Collaboration%20trials%20in%20Ukraine%3A%20what,registered%20by%20Ukraine%27s%20Prosecutor%20General>

³⁷ See G. Kent, op. cit.

³⁸ See the ECOINET USDOS 2023 Country Report on Human Rights Practices: Ukraine, available at: <https://www.ecoi.net/en/document/2107670.html#:~:text=The%20criminal%20code%20allowed%20investigations,to%20investigating%20human%20rights%20abuses>

protect the judicial independence and impartiality enough when the judges are subject to extreme external pressures, including media pressures?

79. Leaving aside all these challenges for the judiciary in the current Ukrainian war scenario and the mechanisms to counter or mitigate external pressure coming from government, oligarchs, and or politicians, we will focus here on the possible safeguards against external pressure by the media and public opinion.
80. It is known that the public sentiment in war is often fervently patriotic and intolerant of perceived disloyalty. This can pressure judges to rule harshly against those seen as enemies or traitors. Moreover, the war in Ukraine has been characterized by intense information warfare on social media. This includes propaganda targeting institutions and judges and courts are not immune to digital campaigns attacking them.
81. Would it be possible to depart from the standards laid out by the ECtHR case law on the restriction of the freedom of expression to preserve the judicial impartiality to apply more stringent limitations in this war scenario? The answer is that the war is to be taken into account as the context to assess the necessity of the interference in the right of freedom of expression. The responses for restricting the freedom of expression of traditional media in informing on pending judicial cases, are subject to the concrete risk test, set out by the ECtHR in general: the context of war is another element to take into account whether the information in an ongoing case poses a concrete risk for the judicial impartiality. But, the war cannot be considered as a factor that justifies the interference of the freedom of expression regarding judicial cases. In sum, *per se* the ongoing war and even the digital campaigns and the strong public opinion demanding a certain outcome from the judges in the conflicted scenario, does not justify to automatically restrict the freedom of expression.
82. Even if the ECtHR has stated that targeted attacks and media campaigns against judges, might undermine their impartiality, the way to better balance the competing rights is to reinforce the capacity of the judges to resist those attacks.
- 83.
- 84.

Concluding remarks: some recommendations

85. Ukraine's judiciary is demonstrating that even amid invasion and existential threat, a country can strive to continue having the judiciary working efficiently and upholding judicial independence. Respecting the judicial impartiality in very tensed and conflicted contexts requires conscious effort, strong commitment by all stakeholders: the self-governing bodies of the judiciary, media as well as society preventing personal attacks against judges in social networks. The task of ensuring that even in war, the rule of law prevails over the rule of fear, is a complicated one.
86. Judicial independence is a fragile but essential guarantee – one that must be guarded jealously in calm times, and even more so in times of crisis. External pressures on judges, whether from political authorities, media forces, or the

tumult of war, threaten the fair and impartial administration of justice and ultimately the rule of law. Judges must be free from outside influence, and the State must actively protect them in cases of being subject to external pressure. Where this principle has been undermined – by populist media campaigns, digital-age harassment, or governments exploiting emergencies – the consequences have included unjust verdicts, diminished public trust, and erosion of the rule of law.

87. In sum, external pressures will always exist; the true test of a legal system is how it responds. Upholding judicial independence ensures that even in turbulence – be it public fury or the fog of war – the rule of law remains the guiding star. The criticism of judges is legitimate in a democracy, but campaigns that undermine judicial independence are self-defeating, as they corrode the very mechanism that protects rights and resolves disputes peacefully.
88. While the legal measures to prevent undue influence by the traditional media upon the judges –journalism ethics, civil damages, and contempt of court or other criminal sanctions– might be activated against the traditional media when instead of informing they manipulate and interfere with the fair trial rights and the presumption of innocence, such measures are not effective when the attacks against the judicial impartiality come from the social media or digital platforms.
89. Therefore, the European standards emphasize the resilience of the judiciary as a bulwark also in war conflicted contexts. The ENCJ's 2025³⁹ declaration specifically calls for *“building and maintaining the resilience of the judiciary”* in the face of political and societal upheavals, noting the fundamental value of solidarity among judges in Europe. In practice, resilience might mean judges supporting each other to stand firm against improper orders and the international community reinforcing domestic judges who uphold the law in crisis. Measures for effective physical and mental support for judges, following the CCJE Opinion 28(2025) should be in place. War takes a toll on everyone, judges included. Ensuring judges have safe working conditions is fundamental. Furthermore, given the trauma of war crimes evidence and the stress of being under pressure, psychosocial support for judicial personnel should be implemented. Providing counseling, training and peer support can fortify judges' resilience, making them less susceptible to breakdown or to grasping at outside directions. In addition, personal security for judges in high-profile trials, should be provided as well as continue equipping courts with secure premises and communications.
90. Several measures might be considered in protecting the judges, their well-being their safety and thus their capacity to remain impartial despite the strong public pressure in one direction.
91. For example, in handling collaboration cases the Ukrainian courts should act with scrupulous care, strictly requiring proof of intent to aid the enemy, to prevent doubts about the judicial impartiality. The High Council of Justice or Supreme Court could issue guidance emphasizing the need for impartiality and cautioning judges not to be swayed by public anger. Also, ensuring defense attorneys are available and trials are transparent will help legitimacy. If there are acquittals – even against persons considered as traitors or enemies– authorities must refrain from criticizing the courts. This is crucial to signal that judges will not be punished for doing their duty objectively.

³⁹ ENCJ 2025 Riga Declaration, cit.

92. Even if this report is not focused on communication strategies of the judiciary against attacks, a sound strategy of communication shall support the approach of the judges in handling sensitive cases, and thus protect their impartiality. The Ukrainian judiciary and government should preempt attack against judges by a sound and clear strategic communication: explaining court decisions to the public factually, and swiftly countering false narratives. This is not about press releases to defend individual judges, but about a coordinated effort (perhaps via the High Council of Justice's communications unit) to educate the public that due process is being followed and that the judiciary needs to abide by the human rights standards, even if this leads to acquittal of persons considered as enemies. The Council of Europe's office in Ukraine, recognizing these issues, supported discussions in 2024 on maintaining presumption of innocence and managing information in war.⁴⁰ Such dialogues should continue, and could lead to developing media guidelines for war coverage – e.g., Ukrainian media might adopt a code of conduct on reporting collaboration trials responsibly (avoiding inflammatory language that pressures judges).
93. While protecting judges's impartiality, the oversight of judges during war needs to be functioning as in peace times, to prevent misconducts and raise distrust. If a judge infringes the duty to decide impartially (e.g. by secretly collaborating with the enemy or taking bribes even in wartime), the response by the self-governing bodies of the judiciary needs to be effective, whilst the criminal response takes place. Ukraine has indeed faced instances of judges suspected of collaboration with Russian occupiers. In such cases, it pursued prosecutions or dismissals. This is appropriate as long as due process is given to the judge.⁴¹ Ensuring the fair trial rights in disciplinary proceedings as well as the independence of the body deciding on the misconducts of judges, behaviours against the principle of judicial impartiality need to be addressed effectively purging compromised judges. International observers have mostly praised Ukraine for trying to uphold fair trial rights for Russians, but vigilance is needed to ensure that war crime proceedings are not show trials. Judges must base verdicts on proof, not collective blame.
94. The highest state authorities (President, Parliament) should publicly reaffirm that judges are to decide cases independently – even difficult war-related cases. Official non-interference directives can trickle down to security services and prosecutors. For instance, Ukraine's government could issue a formal policy that any attempt by law enforcement to privately influence a judge is unacceptable and will be punished. Backing this, Ukraine should enforce existing laws against interfering with justice (e.g., Article 376 of its Criminal Code, which criminalizes influencing a judge).
95. Media and public officials should exercise restraint in commenting on ongoing trials of enemy combatants or collaborators. The Ukrainian judiciary, perhaps with CoE assistance, could draft a guideline on media relations in wartime – for instance, discouraging the publication of judges' personal details to prevent targeting and urging the traditional media to adhere to the deontological principles. Additionally, judicial training should include scenarios on handling

⁴⁰ During the event held in Kyiv in September 2024, on "Presumption of innocence and secrecy of investigation", accessible at: <https://www.coe.int/en/web/kyiv/-/presumption-of-innocence-and-secrecy-of-investigation.-the-council-of-europe-supported-a-professional-discussion-justtalk#:~:text=for%20public%20officials%2C%20particularly%20law,Korban%20v.%20Ukraine>

⁴¹ For example, in 2022 a Ukrainian judge was convicted of treason for passing information to Russia – a stark reminder that not all pressures are one-directional; some judges themselves might succumb to pressure or inducement from the enemy.

high-pressure war cases (e.g., how to deal with a courtroom full of aggrieved victims' families demanding a harsh sentence – judges might need communication skills to explain rulings in a humane yet firm way) and psychological support when necessary to be able to activate the necessary resilience mechanisms when digital media might be attacking their efforts to administer justice in an impartial way, even against the enemy.

96. And finally, the actions to strengthen the trust in the judiciary and the fight against corruption need to be even stronger in times of war. Without trust in the judiciary, society will react against judges and will not be willing to stop expressing their opinions in social media, even if such behaviour might damage the reputation of the judge, cause him/her distress and affect the judicial impartiality.