



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 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 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 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 type="checkbox"/> no
3. Are there legal or ethical restrictions on judges' freedom of expression in your legal system?	<input 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 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 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 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 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:
6.1. Does the disciplinary authority consider any of the following aspects when imposing a disciplinary measure?	<input 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 type="checkbox"/> the content and manner of the impugned statement <input type="checkbox"/> the context in which the statement was made <input 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="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 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:
7. Do judges have access to a court to challenge the disciplinary measures?	<input 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 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)?

#### 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))?

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?

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?

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

#### 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?

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?

#### E. Freedom of assembly / Membership of political party

17. May judges 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?