



MINISTRY OF JUSTICE
Department of Press and International Relations

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Appendix to note no. II-K/ID/125/201/2018

I.

Both judges and prosecutors have the right to freedom of expression, assembly and association in Hungary. However, having regard to the public law status of those professions, the legislation in force contains several provisions to ensure that judges and prosecutors make use of their fundamental rights while they - as private individuals - do not infringe the dignity of their office, and their impartiality could not be challenged.

As regards both professions, it can be said that ethical issues have both written and unwritten rules, however the written set of rules only marginally address the specific issues related to the use of digital technologies or the presence in social media.

II.

In view of the close correlation, we give the answer to Question 2 in section VI, together with the answer to Question 6.

III/A

On the basis of Section 103 (1) (e) of Act CLXI of 2011 on the organisation and administration of courts of Hungary, the National Judicial Council (hereinafter referred to as 'NJC') adopted The Code of Judicial Conduct¹ in its meeting of 10 November 2014; The Code of Judicial Conduct is an internal regulatory framework drafted relying upon the Bangalore Principles of Judicial Conduct, thus its development falls outside the roles and competences of the Ministry of Justice.

Pursuant to Article 2 (1) of The Code of Judicial Conduct, a judge shall not be involved in political activity, or take part in political gatherings and shall refrain from political expressions in public. A judge shall not be part of nor have relations to an organisation, a permanent or temporary gathering the aim or activity of which is either in violation of the law, discriminative or is in breach of the public trust regarding the judicial profession.

¹ <https://birosag.hu/en/code-judicial-conduct>

Pursuant to Article 2 (3) of The Code of Judicial Conduct, a judge shall not support any enterprise, charitable or civil organisation which can be linked to political activity.

Pursuant to Article 3 (4) of The Code of Judicial Conduct, a judge shall use the World Wide Web with due foresight. Information, sound and video recordings about themselves and their relatives shall only be shared in case it does not impair judicial dignity. Opinions can be shared as long as they do not undermine the authority of the court or the dignity of the judicial profession and the regulations in relation to press statements.

Relying upon the position statements of the NJC issued between 2015 and 2017, we can summarize the practice of enforcing The Code of Judicial Conduct as follows. Please note that the NJC adopted the position statements in accordance with its own internal rules of procedure, the Ministry of Justice was not involved in taking them.

As set out in Position Statement no. 1/2015 (VII.7.) of the NJC², the freedom of expression, assembly and association are fundamental rights also available to judges, however by reason of the public law status of judges, the requirement of their political independence and their obligation to serve in the public interest they must preserve their impartiality also as private individuals and must live up to their office at all times.

It is not in itself unethical if a judge participates at a lawfully organized event, however he must pay attention to avoid the impression of any political commitment or commitment to any other extremism, and he should avoid any conduct that is suitable to cause displeasure to the public or any part thereof.

In general, it is not prohibited that a judge expresses his opinion. However, he may only exercise that right in a manner that it will not jeopardize the reputation of the judiciary, and will not infringe the public confidence in the justice system. To this end, he should actively aim to avoid inducing others, by expressing his opinion, to draw conclusions which are dubious or of actual policy nature.

It could be expected that a judge as a private individual only supports matters in public through which his judicial independence, impartiality or imperviousness cannot be challenged in any case within the jurisdiction of the courts. To this end, he must always obtain information with due diligence, and take particular care that his verbal or any other expressions not provide any content which might seem as political or related to politics for others.

Pursuant to Position Statement no. 3/2016 (XI.13.) of the NJC³, it is an unethical behaviour where a judge expresses an opinion which publicly - on a Facebook site operated by the judge - insults other judges in person, as a private opinion, or expresses an opinion that challenges their professional competence.

As set out in Position Statement no. 4/2016 (IX.14.) of the NJC⁴, it is an unethical behaviour of a judge, as a result of which a letter written by other judges and addressed to the President of a district court or a regional court about the operation of a district court, and also the answer sent

² <https://birosag.hu/biroi-etika/etikai-allasfoglalasok>

³ <https://birosag.hu/biroi-etika/etikai-allasfoglalasok>

⁴ <https://birosag.hu/biroi-etika/etikai-allasfoglalasok>

by the President of the regional court, are made accessible to anyone on the Internet - on a Facebook site operated by the judge -, in spite of the fact that their publication is against the will of the judges writing those letters, or the disposition of the President of the regional court.

Furthermore, it is an unethical behaviour where a judge publicly, on the Internet - on a Facebook site operated by that judge - expresses a sarcastic private opinion to another judge which contains a negative value judgment about a letter calling for the restoration of legitimacy, written by the President of the regional court exercising the employer's rights.

Pursuant to Position Statement no. 1/2017 (I.10.) of the NJC⁵, a judge also has the right to privacy including, as part of his recreational activities to be carried out in a civilised manner, to participate at social, cultural, sporting and other events, however the rules of integrity, morality and decency apply to his appearance and behaviour at those occasions, too.

Pursuant to Position Statement no. 5/2017 (II.13.) of the NJC⁶, it is an indecent behaviour, incompatible with the judicial profession, where a judge or a judicial executive publicly expresses - generally negative - critical opinion against the participants involved in court proceedings or any other professional group.

III/B

The Rules of the Hungarian Association of Prosecutors⁷ provides for the fundamental rights, duties and responsibilities of prosecutors in the section on general ethical requirements, setting out that a prosecutor, when leading his private life, should strive to build respect and reputation both for himself and the entire prosecutors' organisation. In order to ensure the impartiality and independence of prosecutors, it is set forth in those Rules that a prosecutor shall not be member of an organisation which unlawfully discriminates between the people on the grounds of race, sex, religion, nationality or otherwise. The Rules cover the official activities and any other behaviour affecting the professional activities of the prosecutors who are members of the Hungarian Association of Prosecutors. A prosecutor who culpably breaches the standards of the Code, commits an ethical abuse which is to be investigated by the Ethics Committee of the Hungarian Association of Prosecutors in a procedure regulated by special rules of procedure and approved by the Delegates' Meeting of the Hungarian Association of Prosecutors. If the prosecutor is condemned in the case, admonition or reprimand may be imposed on him, or he can be found indecent to be a member of the Association.

IV-V/A

Pursuant to Article 26 (1) of the Fundamental Law, judges are independent, they are only subjected to law, and they may not be instructed in relation to their activities in the administration of justice. Judges may only be removed from office for the reasons and in a procedure specified in a cardinal Act. Judges may not be members of political parties or engage in political activities.

⁵ <https://birosag.hu/biroi-etika/etikai-allasfoglalasok>

⁶ <https://birosag.hu/biroi-etika/etikai-allasfoglalasok>

⁷ <http://www.ugyeszek.hu/dokumentumok/etikai+kodex/dokumentumok+-+etikai+kodex.html>

Judicial independence does not only mean that the judiciary is independent but also means the independence of the adjudicating judge and the personal independence of judges. Judicial independence excludes any other dependence or subordination but being subject to law. In order that a judge can appear as an independent, impartial and neutral judicial practitioner before the public, the effective legislation sets out the conflict of interest rules, the consistent enforcement is a pre-requisite of judicial independence.

Pursuant to Section 39 (1)-(2) of Act CLXII 2011 on the legal status and remuneration of judges (hereinafter referred to as 'Bjt. '), judges may not be members of a political party, and may not engage in any political activity. Judges may not be Members of Parliament, members of the European Parliament, local authority representatives, nationality advocates, mayors or state leaders under the Act on central administrative bodies and on the legal status of Government members and state secretaries.

Pursuant to Section 40 (1)-(2) of the Bjt., beside their offices, judges may only perform scientific and educational, training, referee, artistic, copyright, as well as proof-reading, language editing, and technical creation work as paid activities, and may be employed as a foster parent, but this may not jeopardise or give the impression of jeopardising their independence and impartiality, and may not prevent them from fulfilling their official responsibilities. Judges shall not be executive officers or personally involved members in companies, cooperation companies or cooperatives, or members of Supervisory Boards in companies, cooperation companies or cooperatives, or members with unlimited liability of companies and cooperation companies, or sole traders, and may not be executive officers in civil organisations also carrying out economic and business activities.

Pursuant to Section 40 (5) of the Bjt., judges shall not be members of any arbitration court.

In addition to the above-mentioned, a judge must behave in a way both in and outside the office that his conduct complies with the high standards that are put on representatives of judicial power by the members of the society. In all circumstances, a judge must take care to the fact that he is in the centre of attention; by his conduct and lifestyle, he must preserve the confidence in the justice system, the courts and the judicial action. The fundamental ethical requirements of judicial conduct are laid down in the Bjt., while its detailed rules are set out in The Code of Judicial Conduct.

Pursuant to Section 37 (2) of the Bjt., judges shall conduct themselves in an impeccable manner worthy of their office, and refrain from any manifestations which would undermine the trust in judicial proceedings or the authority of the court.

Pursuant to Section 43 of the Bjt., a judge may not publicly express an opinion on a case currently or previously before the court outside his service relationship, with special regard to cases adjudicated by him.

Pursuant to Section 44 (1) of the Bjt., a judge may not provide information on cases under his administration for the press, radio stations and television channels.

IV-V/B

Pursuant to Article 29 (6) of the Fundamental Law, prosecutors may not be members of political parties or engage in political activities.

Pursuant to Section 44 (1) of Act CLXIV of 2011 on the status of the Prosecutor General, Prosecutors and other prosecution employees and the prosecution career (hereinafter referred to as 'Üjt. '), prosecutors may not be Members of Parliament, members of the European Parliament, local authority representatives, nationality advocates, mayors or state leaders.

Pursuant to Section 45 (1)-(2) of the Üjt., beside their offices, prosecutors may not be engaged in a gainful occupation, except for scientific and educational (training, umpire, referee), artistic, copyright, as well as proof-reading, language editing, and technical creation work, and being employed as a foster parent, provided that this does not jeopardise their independence and impartiality, and not prevent them from fulfilling their official responsibilities. Prosecutors shall not be executive officers or personally involved members in companies, cooperation companies or cooperatives, or members of Supervisory Boards in companies, cooperation companies or cooperatives, or members with unlimited liability of companies and cooperation companies, or sole traders.

The Prosecutor General's Recommendation on the ethical rules of the profession of prosecutor contains standards which serve as guidance and also call the attention to ethical risks. The Rules are based on Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System, and on the Draft Opinion no. 9 (2014) of the Working Group of the Consultative Council of European Prosecutors (CCPE-GT) revising that Recommendation, as well as on the European Guidelines on Ethics and Conduct For Public Prosecutors (the so-called Budapest Guidelines).

Among the general standards of exercising the profession of prosecutor, the Recommendation sets out that in the course of their impartial and uniform procedure the prosecutors must pay attention also to the impression that they act impartially and uniformly; they should refrain from participating any kind of political activity which is incompatible with the requirement of impartiality; and they must exercise the freedom of expression and the right to association in a manner that it is not in conflict with their office, and not affect or give the impression of affecting the independence or impartiality of the public prosecution service.

As laid down in the Recommendation, when handling contacts with the media, prosecutors must act in a manner that is compatible with their office, and their conduct may not breach the independence or impartiality of the public prosecution service; they must respect the freedom of the press, must comply with their obligation of confidentiality, must respect the confidential nature of the investigation as well as the integrity of privacy and human dignity.

When carrying out their activities in private life, prosecutors may not undermine the actual or reasonable integrity, fairness and impartiality of the prosecutors' organisation; they must at all times conduct themselves in a manner that is law-abiding and compatible with their profession; by their conduct they must contribute to the increase of public confidence in their office; under all living conditions they must be aware that the organisation they represent might be judged through their person, consequently they must refrain from any uncivilised form of appearance or expression that might be contrary to the standards of morality and decency, or might give rise to displeasure. The prosecutors may not use the information obtained in the course of exercising their profession to unduly promote their own interests or the interests of others; and they must avoid any expression which might lead to the disclosure of ambiguous, misleading or

unnecessary information about the prosecutors' organisation, its activities and duties, as well as its members.

II-VI/A

Pursuant to Section 105 of the Bjt., a judge commits a disciplinary breach if he curtails or jeopardises the reputation of the judicial profession by virtue of his lifestyle or behaviour. The service court shall proceed in disciplinary cases; the members of the service court shall be appointed by the National Judicial Council.

Pursuant to Section 108 (1)-(2) of the Bjt., if the judge's culpability is minor and the breach did not involve consequences or only involved minor consequences, the institution of disciplinary proceedings may be dispensed with; in that case the person authorised to initiate disciplinary proceedings shall warn the judge. In all other cases, the appointed disciplinary chamber of the service court shall decide on the institution of disciplinary proceedings, the refusal of disciplinary proceedings or the institution of a preliminary investigation, subject to the simultaneous notification of the judge concerned as set out in Section 111 of the Bjt.

Pursuant to Section 124 (1) of the Bjt., disciplinary sanctions that may be imposed on judges committing disciplinary breaches are the following: reprimand, censure, demotion by one pay grade, demotion by two pay grades, exemption from senior office, motion seeking removal from the office of judge.

If the judge's culpability is minor and the breach did not involve consequences or only involved minor consequences, the service court chamber may in its reasoned decision dispense with the imposition of a disciplinary sanction and may serve a warning on the judge parallel with the termination of the proceedings.

An appeal may be submitted against the decision of the service court of first instance to the service court of second instance.

II-VI/B

As set out in Section 82 (1) of the Üjt., if a prosecutor curtails or jeopardises the reputation of his profession by virtue of his lifestyle or behaviour then he commits a disciplinary breach.

Pursuant to Section 82 (3) of the Üjt., if the disciplinary breach is minor then the person exercising the disciplinary power may dispense with the institution of disciplinary proceedings and the imposition of a disciplinary penalty. In that case the person exercising the disciplinary power may warn the prosecutor in writing. The warning shall give rise to legal remedy in accordance with the rules relating to disciplinary resolution if the prosecutor challenges that he committed the breach brought against him.

In all other cases the disciplinary proceedings shall be ordered in a reasoned decision issued by the person exercising the disciplinary power in writing. If the prosecutor is guilty of the disciplinary breach, the person exercising the disciplinary power may impose the following disciplinary penalties on him in a decision: reprimand, censure, revocation of an award - also including any title - granted to him by the Prosecutor General, demotion by one pay grade, degradation, exemption from senior office, removal from post.

An objection may be submitted against the decision which will be assessed by the Prosecutor General; the Prosecutor General's decisions adopted in disciplinary matters may be contested before the court.

VII.

The trainings for judges and prosecutors are organized by the prosecutors' network and the judiciary, respectively; the Ministry of Justice has no official information on the implementation of those trainings consequently the National Office for the Judiciary and the Office of the Prosecutor General can provide information about Question 7.