

1. Please provide detailed information on the constitutional, legislative and regulatory provisions on the exercise of the right to freedom of expression, the right to freedom of association, the right to peaceful assembly and the political rights of judges and prosecutors. Do these provisions expressly cover the exercise of these rights online, for instance through digital technologies such as the Internet and social media?

Article 30 of the Romanian Constitution guarantees the freedom of expression for any person: „ (1) *Freedom of expression of thoughts, opinions, or beliefs, and freedom of any creation, by words, in writing, in pictures, by sounds or other means of communication in public are inviolable. (2) Any censorship shall be prohibited.*”

For magistrates, the right to free expression has a limit, namely the right of the citizen to an independent, balanced and vertical justice, which is also equidistant to political power. Also, the freedom of expression of a judge and/or a prosecutor is limited by the need to protect the reputation or the rights of other fellow magistrates.

Thus, pursuant to article 17 of the *Code of Ethics for Judges and Prosecutors*, passed by Superior Council of Magistracy by Decision no.328/2005, „*Judges and prosecutors are compelled to refrain from any acts that could affect their dignity in office and society.*”

Article 10 paragraph (1) of Law no.303/2004 on the statutes of judges and prosecutors, as supplemented and amended, states that „*judges and prosecutors cannot publicly express their opinion on pending trials or on cases pending before the prosecutor`s office attached to courts.*”

Also, according to article 18 paragraph (2) of the Code of Ethics „*Judges and prosecutors cannot express their opinion on the professional and moral probity of their colleagues*”.

According to article 73 of Law no.303/2004, as supplemented and amended, „*determination of rights of judges and prosecutors shall be done by taking into account the place and role of the justice in the rule of law, the responsibility and complexity of the positions of judge and prosecutors, the prohibitions and the incompatibilities provided for by the law for these offices and it shall aim at guaranteeing their independence and impartiality*”.

Article 4 of Law no.303/2004, as supplemented and amended, states that „*Judges and prosecutors are compelled that, through their entire activity, to ensure the rule of law, to observe the rights and freedoms of persons and their equality before law and to ensure a non-discriminatory legal treatment for all the participants involved in the legal procedures, irrespective of their capacity and to observe the Code of Ethics for Judges and Prosecutors.*”

Disciplinary offences regulated by article 99 of Law no.303/2004, as supplemented and amended, are correlated to these principles.

Thus, according to article 99 „*The followings shall be disciplinary offences: a) a) deeds affecting the honour, professional probity or the reputation of justice, committed during or outside the exercise of their office duties; (...) c) undignified attitudes towards colleagues, the other personnel of the court or prosecutor office where they work, judicial inspectors, lawyers, experts, witnesses, litigants or representatives of other institutions, while exercising the office duties; d) carrying out public activities having a political nature or expressing their political opinions while exercising the office duties; (...) l) interfering within the activity of another judge or prosecutor*”.

As regards the *freedom of association*, article 40 of the Constitution, regulating the right to association, stipulates by the provisions of paragraph (3) that „*Judges of the Constitutional Court, the advocates of the people, magistrates, active members of the Armed Forces, policemen and other categories of civil servants, established by an organic law, shall not join political parties*”.

Also, Law no.303/2004, as supplemented and amended, states at Chapter II – Incompatibilities and interdictions - **article 9** that:

„ (1) Judges and prosecutors may not be part of political parties or political groups, nor to perform or participate in activities having a political nature.

(2) When exercising their attributions, the judges and prosecutors are obliged to refrain from expressing or showing their political opinions in any manner whatsoever.

(3) Judges and prosecutors are obliged, in the exercise of their duties, to refrain from defamation or expression, in any way, against the other powers of the state - legislative and executive.”

Article 10 paragraph (1) states that „Judges and prosecutors may not express publicly their opinion regarding pending trials or regarding cases on which the prosecutor's office has been notified.”

Also, pursuant to provisions of article 11 of the same law *„judges and prosecutors cannot take part at audio-visual shows on political themes.”*

The same interdictions are provided for by the Code of Ethics for Judges and Prosecutors, in Chapter II – Independence of Justice, as follows:

„ Art. 4 - (1) In exercising their professional duties judges and prosecutors shall not be influenced by political doctrines.

(2) Judges and prosecutors must not militate in favour of other persons' adhering to a political party, must not participate in funds collecting for political parties and cannot allow the use of their prestige or image to such aims.

(3) Judges and prosecutors must not give any support to a candidate to a political public function.”

„Art. 5 - (1) Judges and prosecutors may not use the actions that they carry out in their professional duties for expressing their political beliefs.

(2) Judges and prosecutors may not participate in political meetings.”

Article 6 of the Code of Ethics for Judges and Prosecutors provides the interdiction for judges and prosecutors to participate at audio-visual shows on political themes or at shows that could affect the image of justice.

Still, according to article 76 of Law no.303/2004, as supplemented and amended, *„Judges and prosecutors are free to organise or accede to local, national or international professional organisations, for the protection of their professional interests, as well as to those provided by art.11 paragraph (3), having also the option to be part of the management board of these bodies”.*

Consequently, a magistrate has the freedom of expression, if the expressed opinions are in a theoretical general area, not on pending cases and also if those opinions are not concrete, excessively critical or insulting to persons, civil servants or precise institutions and do not affect the capacity and activity as a magistrate.

The obligation of reserve imposed on magistrates cannot suppress the freedom of thought and expression, still forbids, any critical expressions that could undermine the trust and respect should be inspired upon the litigants by their office.

Magistrates must express their opinions in a prudent, measured manner, because the obligation of impartiality they have to observe must meet the requirements of the public service provided by their office.

2. Please provide information on cases where judges and prosecutors in your country were subject to legal or disciplinary proceedings for an alleged breach of their obligations and duties in the exercise of their fundamental freedoms, both offline and online. Please also provide information on cases where judges or prosecutors have been subject to threats, pressure, interference or reprisal in connection with, or as a result to, the exercise of their fundamental freedoms.

Between 2012 – 2018, 6 disciplinary actions against judges and 4 disciplinary actions against prosecutors were registered by the Sections of Superior Council of Magistracy for disciplinary offences provided for by article 99 letter a) of Law no.303/2004 on the statute of judges and prosecutors, the related deeds being analysed from the perspective of exercising freedom of expression both in online and offline.

3. Please provide information on whether, and to what extent, the exercise of the fundamental freedoms referred to above has been regulated in codes of judicial ethics or professional conduct developed by professional associations of judges and prosecutors in your country. Do these codes expressly include provisions concerning the exercise of these rights through the use of digital technologies?

Not applicable.

4. What kind of restrictions (constitutional, legal or regulatory) can be found in your legal system to the exercise of these freedoms? What is the rationale for these restrictions? Do these restrictions apply both offline and online? And if not, are there particular restrictions on the exercise of these rights through the use of digital technologies?

See the answer for question no.1

5. Please elaborate on the nature of restrictions specifically applicable to the exercise of fundamental freedoms by judges and prosecutors. In particular:

- Are these restrictions dependent on the position and matters over which the particular judge/prosecutor has jurisdiction?
- Should the venue or capacity in which these opinions are given be taken into account (for instance, whether or not they were exercising or could be understood to be exercising their official duties)?
- Should the purpose of such opinions or demonstrations be taken into account?
- To what extent, if at all, is the context – such as democratic crisis, a breakdown of constitutional order or a reform of the judicial system – relevant when evaluating the applicability of these restrictions?

See the answer for question no.1.

6. Please provide information on the scope or interpretation that has been given to these restrictions by national courts, national judicial councils, prosecutorial councils or equivalent independent authorities with general responsibilities for disciplinary proceedings against judges and, where applicable, prosecutors. Please provide specific examples of these instances.

Not applicable.

7. Please provide information on initiatives undertaken by professional associations of judges and, where relevant, prosecutors, to raise their awareness of the risk associated with the exercise of their rights online, particularly on social media.

Not applicable.

International CSM

From: ENCJ Office <office@encj.eu>
Sent: Tuesday, December 4, 2018 5:16 PM
To: Correio Official CSM; Croatia- State Judicial Council; Dace Sulmane; Dimitri Skaltsonis; Dott. ssa Silvia Giorgi; encj; ENCJ; encj@scotcourts.gov.uk; Generic England and Wales; Gerd van den Eede; International CSM; J. Breeuwsma (Rvdr 's-Gravenhage); Javier; Jessie Duval; Judicial Office for Scotland; judicialsupportunit@courts.ie; KAG@gov.mt; Katharine McQuade; mafalda. v. chaveiro; Marianne Gram Nybroe; Monika Kontrauskiene; National Court Administration; NÉMETHOVÁ Patrícia; Országos Bírói Tanács; Pauline Jolivet; Reno Cortis; Rets-kvalitets-udviklingscenter@domstolsstyrelsen.dk; Rosella Perna; S. Koolen (Rvdr 's-Gravenhage); t.padome@at.gov.lv; Viktor Vadász; WARSON Dave; Zlatana Bihar; Γραμματεία Προέδρου Αρείου Πάγου
Cc: SENSI Stefano
Subject: Report of the the Special Rapporteur on the independence of judges and lawyers on freedom of expression for judges and prosecutors - request for inputs Inbox x
Attachments: Letter to civil society (Report FoE + questionnaire).doc; Questionnaire ENG.doc; Questionnaire ES.doc; Questionnaire FR.doc

Dear Members of the ENCJ,

Please find below a message and related documents by the Special Rapporteur on the independence of judges and lawyers on freedom of expression for judges and prosecutors.

Submissions could be sent electronically to Mr. Stefano Sensi (email: ssensi@ohchr.org), copy to SRindependenceJL@ohchr.org, by **15 January 2019**, using the email title: "Submission to the report on the exercise of freedom of expression, association and peaceful assembly by judges and prosecutors". Kindly limit your responses to 5,000 words and attach annexes where necessary. Your response will be published on the webpage of the Special Rapporteur on the independence of judges and lawyers (<https://www.ohchr.org/EN/Issues/Judiciary/Pages/IDPIndex.aspx>).

Kind regards
ENCJ Office

----- Forwarded message -----

From: **SENSI Stefano** <ssensi@ohchr.org>

Date: Mon, 3 Dec 2018 at 16:53

Subject: Report of the the Special Rapporteur on the independence of judges and lawyers on freedom of expression for judges and prosecutors - request for inputs

To: GUAQUETA PARDO Laura <lguaquetapardo@ohchr.org>, SENSI Stefano <ssensi@ohchr.org>

Dear colleagues,

I trust this email finds you well. Please find attached a letter from the Special Rapporteur on the independence of judges and lawyers, Mr. Diego García-Sayán, concerning his new thematic report to the Human Rights Council, which will be devoted to the exercise of the right to freedom of expression, the right to freedom of association, the right to peaceful

assembly and political rights by judges and prosecutors. Please also find attached the questionnaire we have sent to Member States in En, Fr and Sp. You can respond in any of these languages.

I would also be grateful if you could share this request with any organisation that may be in a position to contribute to this report. The request will also be posted on the webpage of the Special Rapporteur (<https://www.ohchr.org/EN/Issues/Judiciary/Pages/IDPIndex.aspx>).

Please do not hesitate to contact me if you need additional information on this request.

Kindest regards,



Stefano Sensi

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