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United Nations Human Rights  
Mr Stefano Sensi

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Email title: Submissions to the report on the exercise of freedom of expression, association and peaceful assembly by judges and prosecutors

Concerns: **Submissions to the report on national judicial councils**

Dear Mr Stefano Sensi,

We received inquiry regarding to freedom of expression, association and peaceful assembly by judges.

Please find the Slovenian response to your Questionnaire as follows.

Kind regards.

Alenka Klemenčič  
District Court Judge  
Seconded to the Judicial Council of the Republic of Slovenia

## Answers to the Questionnaire

- 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?**

The principles of compatibility and incompatibility impacts on several fundamental rights and freedoms of judges, as it is at odds with (partly limiting) the right to freedom of expression (paragraph 1 of Article 39 of the Constitution) and the right to freedom of association with others (paragraph 2 of Article 42 of the Constitution).

A judge is obliged to keep to himself everything he learns about the parties and their de jure and de facto relations in the course of performing judicial service and to safeguard the confidentiality of all information to which the public does not have access. A judge may not publicly express himself in advance regarding the de jure and de facto matters that are the subject of a case on which a final decision has not yet been passed or a case in which any extraordinary legal remedies have been lodged (Article 38 of the Judicial Service Act, hereinafter referred to as JSA).<sup>1</sup>

Judicial office is not compatible with office in other state authorities, in local self-government authorities or in bodies of political parties (Article 133 of the Constitution). The office of a judge is incompatible with offices in other state authorities (such as the office of President of the Republic, the office of Prime Minister, the office of deputy and the office of member of the Government), in local self-government authorities, and in bodies of political parties (Article 133 of the Constitution); judges may not perform lawyers' or notaries public's transactions, undertake any commercial or other profit-making activities or managerial transactions, or be members of the boards of directors or supervisory boards of any company or other legal person involved in profit-making activities (Article 41 of the Judicial Service Act, hereinafter referred to as JSA); and judges may not accept any employment or work that might obstruct them in performing their judicial service or that might be in conflict with the reputation of judicial service or encourage the impression that they are not impartial in performing judicial service (paragraph 1 of Article 42 of the JSA). However, they are allowed to perform pedagogical, scientific, journalistic, research or other similar activities within the legal profession where this does not hinder the performance of their judicial service and other work that is not explicitly prohibited (Article 42 and 43 of the JSA).<sup>2</sup>

### Public expression of opinion on the part of judges

It is a judge's duty to exercise restraint when publicly expressing an opinion, thereby ensuring that individuals can trust the judiciary without worrying that the judge's opinion might influence the conduct of proceedings. In considering the appropriateness of a judge's public expression of opinion outside the court, account should be taken of the fact that judges, like all other individuals, have the basic human right to freedom of speech and expression, which may be subject to only such restrictions as are necessary in a democratic society.<sup>3</sup>

In assessing to what extent the judiciary (judges) may participate in public debate (on the basis of the constitutional right to freedom of expression, assembly and association), it is recommended to take into account two considerations: first whether, from the point of view of a reasonable observer, a judge's expression of opinion/participation is likely to undermine the appearance of impartiality

<sup>1</sup> Code of Judicial Ethic: [http://www.sodni-svet.si/images/stories/Kodeks\\_sodniske\\_etike\\_komentar\\_ang\\_sept\\_2017.pdf](http://www.sodni-svet.si/images/stories/Kodeks_sodniske_etike_komentar_ang_sept_2017.pdf), page 11.

<sup>2</sup> Code of Judicial Ethic: [http://www.sodni-svet.si/images/stories/Kodeks\\_sodniske\\_etike\\_komentar\\_ang\\_sept\\_2017.pdf](http://www.sodni-svet.si/images/stories/Kodeks_sodniske_etike_komentar_ang_sept_2017.pdf), page 11-12.

<sup>3</sup> Code of Judicial Ethic: [http://www.sodni-svet.si/images/stories/Kodeks\\_sodniske\\_etike\\_komentar\\_ang\\_sept\\_2017.pdf](http://www.sodni-svet.si/images/stories/Kodeks_sodniske_etike_komentar_ang_sept_2017.pdf), page 28-29.

and second whether such conduct on his part is likely to leave him open to political attacks or be inconsistent with the dignity of the judiciary. In expression of public opinion judge's should be careful and exercise restraint so as not to give any impression that they are lobbying for a particular solution or indicate what their decision in a particular case would be if it were to be heard in their courtroom. They should also be aware that their opinions, commentaries and proposals may be viewed by the public as representing the views of the entire judiciary.<sup>4</sup>

#### Association and peaceful assembly on the part of judges

A judge may participate in activities, associations and relations outside the court, but in so doing, he should be aware that everything – from his acquaintances and economic interests, through his statements, which he may himself see as harmless, to his membership of particular organisations – may undermine the appearance of impartiality and independence and his reputation. In seeking the limits of what is considered acceptable behaviour from a judge, one should always take into account the expectations of a reasonable, average and informed individual regarding a judge's conduct.<sup>5</sup>

#### The political activity of judges

While the Constitution prohibits judges from holding office in bodies of political parties, it does not prohibit them from being members thereof (Article 133 in connection with Article 42 of the Constitution). A judge may stand as a candidate for certain political offices, such as the office of President of the Republic, the office of deputy of the National Assembly, the office of Prime Minister, and the office of member of the Government. A judge may be appointed as minister, state-secretary, President or Deputy President of the Commission for the Prevention of Corruption, or member of the European Commission. In the event of his being elected or appointed to such office, a judge will have his judicial office and all rights and duties deriving from judicial service suspended (Article 40 of the JSA). Judges may also fully exercise their right to vote (Article 7 of the National Assembly Elections Act, Article 2 of the National Council Act, Article 10 of the Election of Slovenian Members to the European Parliament Act, Article 5 of the Local Elections Act and Article 2 of the Election of the President of the Republic Act).<sup>6</sup>

Judges should exercise a certain restraint with regard to political developments. It is from this point of view that the principle of incompatibility should be understood and interpreted in relation to a judge's political restraint. His political restraint would not be adequately enforced if a judge contributed financially to or acted in support of a political party or an independent candidate for political office, if he publicly supported or criticised a candidate of a political party or an independent candidate, if he took part in political gatherings or meetings, or if he participated in the consultative bodies of a political party. A judge should also exercise restraint in participating in public political debate. In order to maintain public confidence in the judicial system, judges should not expose themselves to political attacks.<sup>7</sup>

**These provisions don't expressly cover the exercise of the fundamental freedoms referred to above on line.**

## **2. 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**

<sup>4</sup> Code of Judicial Ethic: [http://www.sodni-svet.si/images/stories/Kodeks\\_sodniske\\_etike\\_komentar\\_ang\\_sept\\_2017.pdf](http://www.sodni-svet.si/images/stories/Kodeks_sodniske_etike_komentar_ang_sept_2017.pdf), page 30.

<sup>5</sup> Code of Judicial Ethic: [http://www.sodni-svet.si/images/stories/Kodeks\\_sodniske\\_etike\\_komentar\\_ang\\_sept\\_2017.pdf](http://www.sodni-svet.si/images/stories/Kodeks_sodniske_etike_komentar_ang_sept_2017.pdf), page 28.

<sup>6</sup> Code of Judicial Ethic: [http://www.sodni-svet.si/images/stories/Kodeks\\_sodniske\\_etike\\_komentar\\_ang\\_sept\\_2017.pdf](http://www.sodni-svet.si/images/stories/Kodeks_sodniske_etike_komentar_ang_sept_2017.pdf), page 42-43.

<sup>7</sup> Code of Judicial Ethic: [http://www.sodni-svet.si/images/stories/Kodeks\\_sodniske\\_etike\\_komentar\\_ang\\_sept\\_2017.pdf](http://www.sodni-svet.si/images/stories/Kodeks_sodniske_etike_komentar_ang_sept_2017.pdf), page 43.

**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?**

The Code of Judicial Ethics (which was adopted by the Judicial Council on June 2015; hereinafter referred to as Code) establishes rules of professional and private conduct of judges with a view to protecting their independence, impartiality and honesty and the good reputation of the judicial service. Judges are obliged to comply with the Code both in the performance of judicial office and outside of it (Article 52 of the Judicial Council Act, hereinafter referred to as JCA).<sup>8</sup> The fundamental freedoms referred to above has been regulated in the Code in principles III. Impartiality, VI. Compatibility and VII. Incompatibility (see answer No.1).

The Ethics and integrity commission (hereinafter referred to as commission) adopts guidelines, general opinions and recommendations regarding the conduct of judges in the performance of judicial duties and in their private lives.

The Guidelines for judges regarding the public expression of opinion

A judge should exercise restraint when publicly expressing an opinion.<sup>9</sup> He should select the forum in which he is to present his views with care and be aware of the type of medium via which or the event at which he is expressing his opinion, regardless of the manner of its expression. He should express himself in a calm and not a strident manner. If a judge discusses a legal topic, he might give the impression that he has formed an opinion about a particular outstanding issue or that he favours a particular group of parties. When expressing an opinion on issues pertaining to the field in which he performs judicial office, he should exercise restraint so as not to give the impression that he has already taken a view on a matter that might be heard in a court of law. In order to maintain (the appearance of) impartiality, a judge should refrain from making (public or private) value judgements regarding sub judice cases that are being heard by himself or his colleagues. A judge should always be cautious about expressing an opinion when faced by public criticism or attacks on his decisions.<sup>10</sup>

General opinions for judges regarding public expression of opinion and private conduct of judges

- a) Public opinion of a judge adopted at session held on 6. 12. 2017 regarding a judge's writing the article in the magazine (Dnevnik – Objektiv): The commission stands, that judge's opinion expressed in the article referred to the law and judiciary was not in contradiction with the principles of the Code.
- b) Public opinion of a judge adopted at session held on 29. 11. 2016 regarding a judge's interviews in the magazine (Dnevnik – Objektiv and Delo – Sobotna priloga): The commission stands, that judge's interviews in which he presented his own opinion on the field of the human rights were not in contradiction with the principles of the Code.
- c) Public opinion of a judge adopted at session held on 2. 2. 2016 regarding a private opinion of the judge referred to his friend in sub judice was not in contradiction with the principles of the Code, because the judge wasn't in jurisdiction of the case. Nevertheless it was recommended to act restraint when expressing his opinion.

<sup>8</sup> The Code of Judicial Ethitc: [http://www.sodni-svet.si/images/stories/Kodeks\\_sodniske\\_etike\\_komentar\\_ang\\_sept\\_2017.pdf](http://www.sodni-svet.si/images/stories/Kodeks_sodniske_etike_komentar_ang_sept_2017.pdf), page 6-7.

<sup>9</sup> The Judicial Council took this view at its 19th session held on 27 June 2013 regarding a judge writing a column for Pravna praksa magazine and at its 51st session held on 9 April 2015 regarding a judge expressing an opinion via social networking sites.

<sup>10</sup> The Code of Judicial Ethitc: [http://www.sodni-svet.si/images/stories/Kodeks\\_sodniske\\_etike\\_komentar\\_ang\\_sept\\_2017.pdf](http://www.sodni-svet.si/images/stories/Kodeks_sodniske_etike_komentar_ang_sept_2017.pdf), page 30-31.

**3. 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?**

For restrictions see answers No 1 and 2.

The rationale for these restrictions is establishing rules of professional and private conduct of judges with a view to protecting their independence, impartiality and honesty and the good reputation of the judicial service.

These **restrictions apply only offline** without using digital technologies.

**4. 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?**

The restrictions apply judges at all levels of the judiciary regardless of the subjects or matters over which the judge 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)?**

The quality of impartiality and the reputation of the judiciary can become undermined if a judge publicly expresses an opinion about himself, his colleagues, judicial decisions, the judiciary as an institution or controversial political topics, if he publicly supports a particular political party or political candidate, and so forth.<sup>11</sup> The professional conduct of judges requires no comments on how another judge has conducted particular proceedings, assessed facts or taken evidence.<sup>12</sup>

- **Should the purpose of such opinions or demonstrations be taken into account?**

Judges are obliged to comply with the Code of Judicial Ethics both in the performance of judicial office and outside of it (Article 52 of the JCA).<sup>13</sup>

- **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?**

When the fundamental values of society (democracy, judicial integrity and independence, human rights, etc.) are at stake, a judge's restraint from a judge's public expression of opinion may and should give way to his duty to express his disagreement.<sup>14</sup> The Slovenian Association of Judges

<sup>11</sup> The Code of Judicial Ethic: [http://www.sodni-svet.si/images/stories/Kodeks\\_sodniske\\_etike\\_komentar\\_ang\\_sept\\_2017.pdf](http://www.sodni-svet.si/images/stories/Kodeks_sodniske_etike_komentar_ang_sept_2017.pdf), page 28.

<sup>12</sup> The Code of Judicial Ethic: [http://www.sodni-svet.si/images/stories/Kodeks\\_sodniske\\_etike\\_komentar\\_ang\\_sept\\_2017.pdf](http://www.sodni-svet.si/images/stories/Kodeks_sodniske_etike_komentar_ang_sept_2017.pdf), page 49.

<sup>13</sup> The Code of Judicial Ethic: [http://www.sodni-svet.si/images/stories/Kodeks\\_sodniske\\_etike\\_komentar\\_ang\\_sept\\_2017.pdf](http://www.sodni-svet.si/images/stories/Kodeks_sodniske_etike_komentar_ang_sept_2017.pdf), page 6-7.

<sup>14</sup> The Code of Judicial Ethic: [http://www.sodni-svet.si/images/stories/Kodeks\\_sodniske\\_etike\\_komentar\\_ang\\_sept\\_2017.pdf](http://www.sodni-svet.si/images/stories/Kodeks_sodniske_etike_komentar_ang_sept_2017.pdf), page 30.

(hereinafter referred to as SAJ) and the Judicial Council have the authority to make a public statement in such matters.

**1. 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.**

The statements of the Judicial Council:

a) The use of the social networks: At its 51st session held on 9. 4. 2015 the Judicial Council took the view that a judge should exercise restraint with regard to use the social networks for protecting reputation and impartiality of the judicial office.

b) Public support of a political party or an independent candidate for political office: At its 40th session held on 21. 9. 2006 the Judicial Council took the view that: Public support of a political party or an independent candidate for political office is not in accordance with the Code of judicial ethics.

c) Political activity: At its 72nd session held on 20. 3. 2008, the Judicial Council took the view that a judge may not act in support of a political party and that this also applies during his suspension from his duties as a judge.

d) Political gatherings or meetings and participation in the consultative bodies of a political party: At its 36th session held on 18. 4. 2013, the Judicial Council took the view that public confidence in the impartiality and independence of the judiciary might be undermined if a judge took part in political gatherings or meetings, or if he participated in the consultative bodies of a political party (the view was upheld by the Administrative Court in case III U 207/2013).

e) Public expression an opinion: At its 19th session held on 27. 6. 2013, the Judicial Council took the view that a judge should exercise restraint when publicly expressing an opinion (regarding a judge writing a column for Pravna praksa magazine).

**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.**

Disciplinary proceeding against a district court judge:

In 2015 disciplinary court, specialized for judges (which has been established at the Supreme Court and was in function till November 2017, when this jurisdiction was transferred to the disciplinary court at The Judicial Council of the Republic of Slovenia as a special body in its structure) at the first instance decided to reduce the salary of the judge for one year by 20%. The first instance court found the disciplinary defendant guilty of a disciplinary offence, because on his twitter profile (where he presented himself expressly as a judge) he made several comments about the actual political events and social actions, in which he made disrespectful, offensive and insulting remarks about individuals, public and state institutions and authorities.

The disciplinary court ruled:

This specific case was not an example of a serious criticism, to which every judge is entitled to, but quite the contrary, the statements were objectively insulting, populist and demeaning, expressing scorn and deminish towards some representatives of political and state life and institutions. In some cases the statements turned into personal disqualification of the individuals.

The rules of behaviour, which restrict the freedom of expression, are more strict for a judge than for the ordinary private man. Judges should always bear in mind to preserve the reputation of the judicial function and not to evoke doubts in their impartiality with their statements.

The disciplinary defendant lodged an appeal against the cited decision, but before the appellate disciplinary court decided, he waived his judicial function and become an attorney (an advocat) and hence the proceedings were stopped, because they could only be conducted against the judge, which he wasn't any more.

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

The aims and tasks of the Slovenian Association of Judges:

- strengthening and protecting the independence and sovereignty of judges in the exercise of the judicial function;
- protecting the reputation, professional and other interests of its members;
- commitment to respecting the values of law and achieving a higher level of democratic legal culture;
- provision of all-round professional training;
- developing collegial and friendly relations among colleagues;
- cooperating with other organisations of judges and lawyers at home and abroad;
- membership of such organisations at home and abroad.<sup>15</sup>

The Slovenian Association of Judges adopted public opinions regarding the fundamental freedoms referred to above that refers to the use of the social networks<sup>16</sup> and public expression of opinion.<sup>17</sup>

Kind regards.

Alenka Klemenčič  
District Court Judge  
Seconded to the Judicial Council of the Republic of Slovenia

<sup>15</sup> [http://www.sodnisko-drustvo.si/SODNISKO\\_DRUSTVO,,english.htm](http://www.sodnisko-drustvo.si/SODNISKO_DRUSTVO,,english.htm)

<sup>16</sup>At its session held on 12. 5. 2015 the Slovenian Association of Judges took the view that a judge can have a profile on the social network but he should exercise restraint to protect the independence of judiciary office.

<sup>17</sup>At its session held on 20. 5. 2010 the Slovenian Association of Judges took the view regarding the public expression of opinion which recommends exercising restraint.