



Réseau Euro-Arabe de Formation Judiciaire
Euro-Arab Judicial Training Network
الشبكة الأوروبية العربية للتدريب القضائي



Judicial ethics in Europe and the Arab world: a comparative overview

Naples

Scuola Superiore della Magistratura

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7-8 March 2024

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Introduction

1. - The protection of the rule of law is a growing concern in many European and Arab countries. In recent years, concerted efforts have been made to prevent the deterioration of the rule of law through measures to ensure the proper functioning of national judicial systems.

At the European Union (EU) level, the 2020 Rule of Law Report stated that 'effective judicial systems are essential for the rule of law. Independence, quality and efficiency are the defined parameters of an effective judicial system, irrespective of the model of the national legal system and the tradition in which it is embedded. (...) The independence of national courts is crucial to ensure this judicial protection. (...) Despite reform efforts in several Member States to improve judicial independence, developments in some Member States give cause for concern.

Judges, prosecutors and lawyers occupy a critical and sensitive position in society; the way they behave has a direct impact on public confidence and the administration of justice. Therefore, they have a duty to adopt the highest ethical behaviour.

There are international standards that provide guidance on the ethical conduct and fundamental principles of these professions. Independence, impartiality and integrity are the foundation of the rule of law in a healthy democracy and guarantee the protection of human rights.

2. - Drawing on the international framework and relevant case law, the course aims to deepen knowledge and understanding of professional tools and to develop reflective skills, based on practical examples, to deal with ethical dilemmas in the exercise of professional duties.

3. - The seminar consists of five sessions.

The first is an introductory one, aimed at presenting the objectives of the programme and the relevant resources developed by the Global Network for Judicial Integrity of the United Nations Office on Drugs and Crime (UNODC), namely the International Non-Binding Guidelines on the Use of Social Media by Judges and the Judicial Ethics Training Tools.

The second, third and fourth sessions include working groups on three main topics: Politics and the Judiciary, Use of Social Networks and Relationships with Non-Profit Organisations.

Starting from the Bangalore Principles, insights will be offered from the expert systems to allow participants to compare their own experiences.

The last session will see the presentation of the Dutch School of the Judiciary's training project on behavioural ethics and conclusions.

The results of the seminar will be published.

Programme

7 March 2024

I session

Judicial ethics

9:00-9:15 - Introduction and presentation of the results of the survey

Gianluca Grasso, SSM Board of Directors - Domenico Airoma, Public Prosecutor of Avellino

9:15-9:45 - Relevant resources developed by the Global Judicial Integrity Network of UNODC

Tatiana Veress, Coordinator of the Global Judicial Integrity Network of UNODC

II session

Politics and the Judiciary

9:45-12:15 - Division of participants into 4 working groups coordinated by a European expert and an Arab expert

1. Politics and judges

1.1. Which positions of political assignment can and cannot be held by a judge (differentiating between those of a technical nature with no public exposure and those actively political with a significant danger of influencing the image of impartiality).

1.2. May a judge join a political party and run in national elections?

Groupe 1 *Coordinators:*

Italy: Domenico Airoma, Public Prosecutor of Avellino / Raffaele Sabato, Judge of the European Court of Human Rights-ECHR / Kuwait: Saud Al-Sanea, Judge, Member of the Technical Office of the Kuwait Institute for Judicial and Legal Studies

Groupe 2 *Coordinators:*

Belgium: Raf Van Ransbeeck, Director of the Belgian training institute / Romania: Cristian Daniel, Oana, Administrative judge at the High Court of Cassation and Justice, NIM trainer / Jordan: Nawal Aljawhari, Judge

Groupe 3 *Coordinators:*

Netherlands: Remco van Tooren, *Vice Chairman of the Board of SSR* / Spain: Javier Pereda, *member of the Spanish Judicial Ethics Commission* / United Arab Emirates: Jasim Saif, *Chief of Judicial Inspection Department in the UAE Ministry of Justice*

Groupe 4 Coordinators:

France: Samuel Laine. *ENM* / Italy: Gianluca Grasso, *SSM Board of Directors* / Algeria: Sahel Hamid, *Avocat général à la cour suprême* / Maroc: Younes Ezzahri, *Magistrat docteur en droit membre du conseil supérieur du pouvoir judiciaire*

11:10-11:15 - Break

12:15-13:00 - Plenary report of the groups' work

13:00-14:00 - Lunch break

III session

The use of social networks

14:00-16:15 - Division of participants into 4 working groups coordinated by a European expert and an Arab expert

2. Use of social networks by judges

2.1. Content and behaviour on social media

2.2. Friendships and interactions on social media

Groupe 1 Coordinators:

Italy: Domenico Airoma, *Public Prosecutor of Avellino* / Raffaele Sabato, *Judge of the European Court of Human Rights-ECHR* / Kuwait: Saud Al-Sanea, *Judge, Member of the Technical Office of the Kuwait Institute for Judicial and Legal Studies*

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16:15-17:00 - Plenary report of the groups' work

8 March 2024

IV session

Relations with non-profit organisations

9:00-11:15 Division of participants into 4 working groups coordinated by a European expert and an Arab expert

3. Judge involvement in non-profit organisations

3.1. Possible damage to the image of independence and impartiality

3.2. Particular attention to the participation of judges in organizations dedicated to cultural or educational activities that are only apparently non-profit”

Groupe 1 *Coordinators:*

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11:15-11:30 - Break

11:30-12:15 - Plenary report of the groups' work

V session

New developments and conclusions

12:15-12:45 Presentation of the SSR project on behaviour and its impact on the brain

Remco van Tooren, *Vice Chairman of the Board of SSR*

12:45-13:00 Conclusions

Relevant tools and documents:

[Commentary on the Bangalore Principles of Judicial Conduct](#)

[Non-Binding Guidelines on the Use of Social Media by Judges, developed by the Global Judicial Integrity Network of UNODC](#)

[Discussion Guide: The Use of Social Media by Judges, developed by the Global Judicial Integrity Network of UNODC](#)

[Judicial Ethics Training Tools, developed by the Global Judicial Integrity Network of UNODC](#)

Experts:

Algeria: Sahel Hamid, *Avocat général à la cour suprême*

Belgium: Raf Van Ransbeeck, *Director of the Belgian training institute*

France: Samuel Laine, *ENM*

Italy: Domenico Airoma, *Public Prosecutor of Avellino*

Italy: Gianluca Grasso, *SSM Board of Directors*

Jordan: Nawal Aljawhari, *Judge*

Kuwait: Saud Al-Sanea, *Judge, Member of the Technical Office of the Kuwait Institute for Judicial and Legal Studies*

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Spain: Javier Pereda, *Member of the Spanish Judicial Ethics Commission*

United Arab Emirates: Jasim Saif, *Chief of Judicial Inspection Department in the UAE Ministry of Justice*

ECHR: Raffaele Sabato, *Judge of the European Court of Human Rights*

UNODC: Tatiana Veress, *Coordinator of the Global Judicial Integrity Network of UNODC*

1. Politics and judges

1.1. Which positions of political assignment can and cannot be held by a judge (differentiating between those of a technical nature with no public exposure and those actively political with a significant danger of influencing the image of impartiality).

1.2. May a judge join a political party and run in national elections?

Case study

May a judge take part in a political party's electoral campaign?

May a judge publicly declare his or her approval or disapproval of political positions?

Rules of reference

Bangalore Principles of Judicial Conduct:

Principle: Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Application 1.3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.

Application 1.6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

Principle: Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

Application 2.2: A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

Country: Algeria

Le magistrat et ses engagements

Les magistrats, comme tous les citoyens, bénéficient de la liberté de conscience, de la liberté d'opinion, de création intellectuelle, artistique et scientifique, d'expression, d'association et de réunion, consacrées par les articles 34, 51, 52 et 53 de la Constitution.

Toutefois, l'exercice de ces libertés obéit aux conditions prévues par la loi organique portant statut de la magistrature du 6 septembre 2004.

Les engagements du magistrat relèvent, non seulement de l'exercice des libertés fondamentales précitées, mais également, lorsque celui-ci ne souhaite pas que ses engagements soient rendus publics, de la protection de la vie privée dont les magistrats doivent bénéficier.

Il ne peut être fait état dans le dossier du magistrat ni de ses opinions ou activités politiques, syndicales, ni d'éléments relevant strictement de sa vie privée.

L'implication du magistrat dans la vie de la cité constitue une source d'enrichissement des pratiques professionnelles de celui-ci en lui permettant d'avoir une meilleure connaissance du contexte dans lequel il exerce ses fonctions. Pour autant, des précautions doivent être prises afin d'éviter qu'il ne soit porté atteinte au principe d'impartialité auquel le magistrat est soumis.

Les engagements politiques et philosophiques

Conformément au statut de la magistrature, il est interdit aux magistrats d'adhérer à un parti politique et d'exercer une activité politique.

L'exercice de tout mandat électif politique est incompatible avec la fonction de magistrat.

D'une manière générale, le magistrat s'abstient de souscrire à un engagement susceptible de restreindre sa liberté de réflexion et d'analyse.

La pratique du serment, qu'il soit d'allégeance ou de solidarité sélective, ou de vœux d'obéissance, qu'implique l'appartenance à certaines organisations risque d'être incompatible avec les devoirs d'indépendance et d'impartialité du magistrat.

Country: Belgium

Belgian legal framework (non-official translation)¹

Article 293 Belgian Judicial Code (Ger.W./Cod. Jud.)

“Judicial positions are not compatible with holding public office obtained through election, any paid public office or political/administrative office, the position of a notary or bailiff, the profession of a lawyer, military service, or involvement in the clergy. (...)”

Article 300 Belgian Judicial Code (Ger.W./Code Jud.)

“The deputy judges, including the councilors mentioned in Article 207bis, § 1, 1°, 2°, 4°, and 5°, are subject to the same rules of incompatibility as the regular judges, except for the prohibition on practicing law and working as a notary. These specific professions are allowed for deputy judges (...)”.

Article 10,2° Flemish Decree of 22 December 2017 on local government

“The following individuals are not eligible to be members of a municipal council:

(...)

2° Magistrates, deputy magistrates, and registrars serving in courts and tribunals, administrative courts, and the Constitutional Court.

(...)”

Article 229 Flemish Decree of 22 December 2017 on local government

“The following individuals are not eligible to be nominated or appointed as representatives or directors in a municipal externally autonomous agency:

(...)

2° Magistrates, deputy magistrates, and registrars serving in courts and tribunals, administrative courts, and the Constitutional Court.

(...)”

Belgian judicial ethics principles (non-official translation)²

“Right to freedom of association

Magistrates, like any other citizens, have the right to freedom of association. They can be members of associations that serve various purposes, such as political, philosophical, religious, cultural, scientific, artistic, humanitarian, social, or others, and they can actively participate in their activities.

When assessing the impartiality of certain court members, consideration may be given to the perception that a party holds on this matter. However, this belief alone is not the sole determining factor. The key factor is whether there are objective grounds to justify the fear of partisan treatment of the case.

¹ See the database in French: <https://www.ejustice.just.fgov.be/loi/loi.htm>

² See the *Belgian Guide for Judicial Ethics* in French: CONSEIL SUPÉRIEUR DE LA JUSTICE and CONSEIL CONSULTATIF DE LA MAGISTRATURE, *Guide pour les Magistrats – Principes, valeurs et qualités*, 2012, p. 6, see: <https://csj.be/admin/storage/hrj/o0023f.pdf>.

While it is permissible for magistrates to be affiliated with a political party, engaging in active political propaganda compromises the independence and impartiality of both the magistrate and the judiciary.

Aside from legal incompatibilities, magistrates should exercise extreme caution if they decide to take on a board mandate within an association. They should thoroughly evaluate the associated risks in advance.”

Belgian Case Law (non-official translation)

Cass. 15 march 1951, Arr. Verbr. 1951, 401

“By behaving as an active agent of a political party, a Judge (“councilor”) in the Council of State (this is the Supreme Administrative Court) significantly violates the prudence expected of him by his position and the responsibilities of his office. Such conduct undermines trust in his independence and impartiality.

The councilor in the Council of State, who, for approximately two years, has been conducting a series of tutorials aimed at shaping propagandists aligned with the ideology and actions of that political party, is conducting himself as an active agent of the party.”

A brief outline

1. The possibility of holding a political office is excluded. Articles 293 and 300 of the Judicial Code clearly state this, and Article 11, 2° of the Decree of 22 December 2017 on local government explicitly confirms it. Consequently, a political mandate is prohibited at the federal, regional, and local levels. Additionally, Article 229 of the mentioned decree specifies that magistrates (judges and prosecutors) cannot be nominated or appointed as representatives or directors in a municipal autonomous agency either. Therefore, even at the municipal level, a magistrate must resign if they have been elected as a mandatary and intend to assume that position. This restriction is primarily based on the fact that when a magistrate runs for election, it raises doubts among the public regarding their impartiality.

2. A Belgian magistrate is, of course, free to join an association and engage in unpaid activities within that context. As a citizen, the magistrate also has the right to associate and can become a member of a political, philosophical, cultural, scientific, artistic, charitable, social, or religious association, and can actively participate in its activities³. However, in their actions, the magistrate must avoid undermining confidence in their independence and impartiality. Consequently, engaging in "active political propaganda" is considered incompatible with the independence and impartiality of both the magistrate and the judiciary⁴. As a result, even though it occurred several decades ago, the Supreme Court imposed a disciplinary penalty on a magistrate for providing lessons to members of a specific political party, as this behavior was seen as acting as an "active agent" of that party⁵.

3. A special question concerns the presence of magistrates in the cabinets of Ministers as advisors.

In principle, magistrates can be assigned to a "mission" in certain cases. Judges can only carry out assignments in cases specified by law⁶. This rule is also applicable to public prosecutors, but they

³ J. ENGLEBERT, “La liberté d’expression et la liberté d’association”, in *Statut et déontologie du magistrat*, X. DE RIEMAECKER and R. VAN RANSBEECK (eds.), Brussels, la Charte, 2020, 457; CONSEIL SUPÉRIEUR DE LA JUSTICE and CONSEIL CONSULTATIF DE LA MAGISTRATURE, *Guide pour les Magistrats – Principes, valeurs et qualités*, 2012, p. 6 : <https://csj.be/admin/storage/hrj/o0023f.pdf> .

⁴ CONSEIL SUPÉRIEUR DE LA JUSTICE and CONSEIL CONSULTATIF DE LA MAGISTRATURE, *Guide pour les Magistrats – Principes, valeurs et qualités*, 2012, p. 6, see: <https://csj.be/admin/storage/hrj/o0023f.pdf> .

⁵ Cass. 15 maart 1951, Arr. Verbr. 1951, 401

Zie: <https://bib.kuleuven.be/rbib/collectie/archieven/arrcass/1951/3.pdf>

⁶ See Article 323 bis, §1 Belgian Judicial Code.

may also fulfill specific tasks in certain non-jurisdictional government institutions, such as federal government services or policy units (Minister's cabinet) ⁷.

Consequently, only magistrates from the public prosecutor's office, and not judges, can hold a position in a policy unit (cabinet) as an assistant to a minister. This regulation has been subject to criticism. The High Council for Justice expressed concerns about this manner of assignment. The High Council for Justice explicitly opposed the presence of magistrates in policy units other than that of the Minister of Justice. The High Council for Justice was of the opinion that the "Fortis case" demonstrated how personal relationships, friendships, political affiliations, etc., could lead to various interventions outside the scope of the Minister of Justice, thereby compromising the image of independence and impartiality of the magistrates (both the one initiating the contact and the one being contacted) and giving rise to impressions of collusion and influence⁸. This point of view was also shared by GRECO⁹¹⁰, but till today, it has not resulted in any legislative changes, and the political world continues to value the presence of public prosecutors in ministerial cabinets¹¹.

⁷ See also Article 327 and 327bis Belgian Judicial Code.

⁸ CONSEIL SUPÉRIEUR DE LA JUSTICE, *Rapport sur l'enquête particulière relative au fonctionnement de l'ordre judiciaire à l'occasion de l'affaire Fortis*, Approuvé lors de l'Assemblée Générale du 16 décembre 2009 p. 11, see : <https://csj.be/admin/storage/hrj/r0025f.pdf>

⁹ GRECO ("Groupe d'États contre la corruption" or Group of States against Corruption) is a body of the Council of Europe: <https://www.coe.int/en/web/greco>

¹⁰ See the initial GRECO report of the 28th of March 2014 : *Quatrième cycle d'évaluation – Rapport d'évaluation Belgique*, 41, nr. 110 : <https://rm.coe.int/16806c2c3e>

¹¹ In this context, see the defence of the system, including reference to the difference between judges and prosecutors, by the Minister of Economy: *Annales Senat*, 2011-2012, 26 th of January 2012, nr. 5-45, pp. 22-24: <https://www.senate.be/www/webdriver?MItabObj=pdf&MIcolObj=pdf&MInamObj=pdfid&MItypeObj=application/pdf&MIvalObj=83888223> .

Country: Italy

Italian legal framework.

Disciplinary code

Art. 3, comma 1, lett. h, d. Lgs. 109/2006:

Disciplinary offences outside the exercise of the Judge's duties:

[...]

h) systematic and continuous registration or participation in political parties or involvement in the activities of entities operating in the economic or financial sector that may affect the performance of the duties or otherwise compromise the image of the magistrate.

Art. 15-18 Law nr 71/2022

Ar. 15 Eligibility of members of the judiciary

1. (...) *magistrates shall not be eligible for the office of Member of the European Parliament for Italy, Senator or Member or President of the Regional Council, Regional Councillor (...) if they serve, or have done so, in the three years preceding the date of acceptance of the application, in courts or tribunals with jurisdiction in whole or in part in the region in which the constituency is included. (...)*

Art. 18

Replacement of candidates and non-elected magistrates

1. (...) *magistrates (...) candidates but not elected (...) may not be reassigned to a Court which is wholly or partly responsible for the territory of a region which is part or all of the constituency in which they applied. They may be transferred to a Court in the region in which the district in which they held office at the time of their application falls.*
2. [...]
3. *The re-employment in the role within the meaning of paragraph 1 is ordered with prohibition of the exercise of the functions of judge for the preliminary investigations (...) and with prohibition of assuming positions as chief or deputy chief.*

Italian judicial ethics principles.

Art. 8 Code of ethics

The judge and the prosecutor shall guarantee and defend, outside and inside the judicial order, the independent exercise of his or her functions and maintain an image of impartiality and independence.

[...]

He shall avoid any involvement in party-political or business centres of power that might condition the exercise of his or her functions or otherwise tarnish his or her image. [...]"

Italian case law

Constitutional Court, decision nr. 197/2018

"(...) the Constitution, art. 98, third paragraph, leaves to the law the power to balance the freedom to associate in parties, protected by art. 49 cost., with the need to ensure the independence of judges. And if this power is used, as has happened, the balancing must be conducted according to a precise objective, that is to prevent the conditionings to the judicial activity that could derive from the stable bond that the magistrates would contract by joining a party or participating significantly in its activity. This is the meaning of the right to establish by law restrictions on the right of judges to join political parties.

The Constitution thus shows its unfavourable attitude to activities or behaviour likely to create stable links between magistrates and political subjects and manifest links with public opinion, thereby compromising independence and impartiality, including the appearance of the latter: substance and appearance of principles placed at the base of the trust that must be enjoyed by the judicial order in a democratic society".

Supreme Court, decision nr. 8906/2020

"(...) the right of magistrates to participate in the political life of society is incompressible; and it is pure illusion to imagine their indifference to values, such as their cultural neutrality. It is necessary, however, to distinguish the 'politics of ideas' -which, as such, does not conflict with the duty of impartiality of the magistrate and is therefore allowed to it, even with the necessary balance and the due moderation - from 'party politics', the struggle between opposing groups, to which the magistrate, due to the particular constitutional position of the judicial order to which he belongs, must refrain from participating, to safeguard that 'public image of impartiality' which is coessential to the exercise of the judicial function entrusted to him".

Country: Netherlands

In general:

The Dutch Constitution, the Judicial Organization Acts (Wrra and Wet RO) provide only limited rules regarding judicial independence and impartiality. As a result, soft law rules in the Netherlands serve as an important supplementary source for safeguarding the judicial system. The Council for the Judiciary, the Presidents' Meeting, and the Dutch Association of Judges (NVvR) have established various codes that offer guidance to individual judges and court administrations in interpreting and applying judicial independence and impartiality. The main codes of conduct for Dutch judges are:

1. Code of Conduct for the Judiciary (in Dutch: *de Gedragscode Rechterlijke Macht 2013*): This code of conduct is established by the Council for the Judiciary and serves as the overarching code for all judges in the Netherlands. It provides guidelines regarding independence, impartiality, integrity, confidentiality, and other aspects of judicial office.
2. Guidelines on Impartiality and Side Activities (in Dutch: *Leidraad onpartijdigheid en nevenfuncties in de Rechtspraak, januari 2014*): These guidelines, also issued by the Council for the Judiciary, offer guidance on engaging in side activities by judges. They include rules and criteria to assess whether a particular side activity is compatible with their judicial function and the required independence and impartiality.
3. Guidelines on Conflict of Interest (in Dutch: *de NVVR Rechterscode 2011*): This set of guidelines, once again established by the Council for the Judiciary, provides directions on preventing and addressing conflicts of interest within the judiciary. It contains rules and recommendations to ensure that judges do not have personal or financial interests that could influence their impartiality and independence.

These codes primarily emphasize vigilance concerning side activities, political and religious expressions, and unwanted mixing of work and private life, including the influence of past employment. The codes predominantly consist of general normative descriptions of core values such as independence, impartiality, and integrity, providing few concrete statements about what behavior is or is not acceptable (such as membership in a representative body or engaging in legal advisory work). Much has been left to the judge's own judgment and decision-making.

Latest developments:

In addition, a bill is currently pending before the House of Representatives in which an amendment to the RO and WRR Act is proposed. The most important proposals are a legal ban on the simultaneous exercise of the office of judge with membership of the Senate or House of Representatives and of the European Parliament. Until now, this was (only) a recommendation (guidance for additional positions), but it will now become a statutory regulation. Another new element is that there will be an obligation for judges to declare financial interests (to the functional authority: read the President of the court). There can be a (financial) conflict of interest if a judge e.g. owns shares and has access to price-sensitive information by virtue of his position.

1. Politics and judges:

1.1- Which positions of political assignment can and cannot be held by a judge (differentiating between those of a technical nature with no public exposure and those actively political with a significant danger of influencing the image of impartiality)

In general, judges in the Netherlands are discouraged to hold certain political positions, particularly those with executive or legislative authority. As stated above, the judiciary itself provides guidelines and regulations to ensure judges uphold these principles. While there is no exhaustive list of positions from which judges should refrain themselves, here are some examples of positions that judges are generally discouraged from occupying:

- Members of Parliament national or regional.
- Government Ministers: Judges should refrain from serving as government ministers or holding executive positions in the government.
- Political Party Leadership: Judges are usually expected to refrain from leadership positions within political parties.
- Public Advocacy: Judges are generally discouraged from engaging in public advocacy or publicly endorsing political causes.
- Mayors: Judges are generally discouraged to become mayors of municipalities.

It is worth noting that judges can engage in academic and legal research, publish scholarly articles, and participate in legal conferences or seminars without compromising their impartiality, as long as it does not involve active engagement in political advocacy or partisan activities.

See also the latest developments described above. There is a bill pending prohibiting the simultaneous exercise of the office of judge with membership of the Senate or House of Representatives and the European Parliament.

1.2- Using an example, may a judge join a political party and run in national elections?

The Code of Conduct for Judges in the Netherlands provides guidelines for judges' behavior and states that judges should avoid activities that may compromise their impartiality, including active political engagement. While the code does not explicitly prohibit judges from joining political parties or running for political office, it is generally understood that judges should refrain from such activities.

Practical example:

When it comes to examples, you can raise the question whether a judge may have been a member of parliament before being appointed. On Dutch TV a judge in training was seen in a news show talking to a leader of a political party about his advisory role within the party. Should that be possible?

Country: Romania

Setting the scene

As a general rule, in the Romanian judicial system, the office of judge is incompatible with any other public or private office. The exception to this general incompatibility is the exercise of teaching functions in higher education.

At the same time, the interdictions on the political involvement of judges are strict. They are detailed at the hard law level (the Romanian Constitution and the law on the state of the judge) and the soft law level (the Code of Ethics or Judicial Councils' Opinions), as seen in the legislative and soft law extracts below.

From these texts, there are three situations in which these prohibitions may manifest themselves in the case of judges:

- i. Judges may not belong to political parties or political associations;
- ii. Judges may not engage in/or participate in political activities;
- iii. In performing their duties, judges shall refrain from expressing or manifesting their political beliefs in any manner whatsoever.

However, judges can participate in preparing publications, articles, specialist studies, literary, artistic, and scientific works and may participate in audiovisual broadcasts. The notable exception the legislator has made to these activities is that they may not be political.

It is also recognized that judges may express their opinion on public policies or legislative initiatives in the field of justice or other areas of public interest. Still, these must not be political.

1.1. Which positions of political assignment can and cannot be held by a judge (differentiating between those of a technical nature with no public exposure and those actively political with a significant danger of influencing the image of impartiality)?

With the provision in the legislation of general incompatibilities and prohibitions mentioned above, the legislator wanted to establish and maintain a neutral and impartial status for judges. This status is directly related to the principle of their independence and the separation of powers in the state (Decision no. 45/2018 of the Constitutional Court of Romania, judgment on constitutional review of amendments to the law on the status of judges and prosecutors, paragraph 168).

The same Constitutional Court specifies that creating such a statute for judges is aimed at maintaining the necessary fairness towards the activity of the legislative and executive powers. From this point of view, elected or appointed offices of public dignity have a pronounced political or administrative component, which has no connection with the activity the judge exercises.

If before the Constitutional Court's decision, no. 45/2018 judges were considered to be compatible to occupy positions in the executive power of appointed public dignity (secretary of state, undersecretary of state, even in ministries other than those of the Ministry of Justice, prefects - which is an administrative function, representative of the Romanian Government in the territory, etc.), after the issuance of this decision the range of occupying such positions has been drastically restricted, as will be shown below.

Among the elected positions of public dignity that cannot be held by sitting judges, listed as such by the Constitutional Court in Decision No 45/2018, are those of:

- President of Romania;

- Deputies and Senators;
- Elected positions in public institutions/authorities (mayor, local councilors).

Among the appointed positions of public dignity that cannot be held by sitting judges, listed as such by the Constitutional Court in decision no. 45/2018, are those of:

- Government (with all its structure, i.e., Prime Minister, Deputy Prime Minister, Minister, Minister Delegate, Secretary of State, Undersecretary of State);
- Other public institutions, such as the Romanian Academy, the Legislative Council, the People's Advocate, the Court of Accounts, the General Secretariat of the Government, the Presidential Administration, the Prefect's Institution, the National Office for Preventing and Combating Money Laundering, etc.

Incompatibility of judges in holding elected or appointed public office also applies to executive or managerial public office, distinct from public dignity, in the executive or legislative authorities, except the Ministry of Justice or its subordinate units, since the latter are directly linked to the public service of the administration of justice (Constitutional Court Decision No 45/2018, paragraph 170).

Last but not least, a judge can't hold both the primary post of judge and a post in an EU institution or international organization if, about the latter post, the relevant international act expressly makes access to the post in question conditional on being a judge (Constitutional Court Decision No 45/2018, paragraph 172).

The explanation given by the Constitutional Court regarding the general incompatibility and interdictions on the political activity of the judge is related to the fact that the essence of the judge's activity of interpreting the law is not allowed to carry out activities specific to that of legislating or organizing and implementing the law through administrative acts, the latter being specific to the legislative and executive powers respectively (Decision No 45/2018, paragraph 168).

May a judge join a political party and run in national elections.

Romanian legislation is unambiguous in this direction: it is forbidden for a judge to be a member of a political party or political association and to participate in electoral elections as a candidate when he is a judge.

Romanian legal framework

Romanian Constitution

Art. 125 – (,,)

(2) The appointment proposals, as well as the promotion, transfer of, and sanctions against judges shall only be within the competence of the Superior Council of Magistracy, under the terms of its organic law.

(3) The office of a judge shall be incompatible with any other public or private office, except for academic activities.

Art. 134 - (2) The Superior Council of Magistracy shall perform the role of a court of law, by means of its sections, as regards the disciplinary liability of judges and public prosecutors, based on the procedures set up by its organic law.

Romanian law on status of judges and prosecutors no. 303/2022:

Art. 187 - (1) Judges, prosecutors, and persons working in the legal profession equivalent to them may hold office in the institutions of the European Union or international organizations if the international act governing the conditions of their employment expressly makes access to that office conditional upon their being a magistrate.

(2) Where a judge, prosecutor or other specialist legal staff treated as judges, prosecutors or persons treated as such opt to hold one of the posts referred to in paragraph 1, they shall be entitled to have the post provided for in paragraph 1. (1), and the appropriate section of the Superior Council of Magistracy or the head of the institution determines that an international act expressly conditions the holding of that position to the quality of magistrate, he/she shall be relieved of his/her position, by resignation, with the reservation of the position upon request.

Art. 227 - (1) The office of judge, prosecutor, assistant magistrate, and legal specialist staff assimilated to judges and prosecutors is incompatible with any other public or private office, except teaching posts in higher education, as defined by the legislation in force, and teaching posts at the National Institute of Magistrates and the National School of Clerks.

Art. 232 - Judges, prosecutors, assistant judges, and legal staff assimilated to them may not belong to political parties or political groups, nor may they carry out or participate in activities of a political nature. They must refrain from expressing or manifesting their political convictions in any way in exercising their duties.

Art. 234 - (1) Judges, prosecutors, assistant judges, and legal staff assimilated to them may participate in the elaboration of publications, may elaborate articles, specialized studies, literary, artistic, or scientific works, may participate in audiovisual broadcasts, except those of a political nature, and may express their opinion on public policies or legislative initiatives in the field of justice or other fields of public interest, without political character.

Article 271 - Disciplinary offenses:

...

c) carrying out activities of a political nature or expressing political beliefs in public or the course of duty;

...

Deontological Code for judges and prosecutors (soft law):

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 favor of other persons' adhering to a political party, must not participate in fund 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 type 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.

Art. 6 – (1) Judges and prosecutors may participate to the elaboration of publications, can publish articles, specialized studies, literary or scientific studies and can participate in media transmissions, except those with political subjects or those that can infringe upon the image of justice.

Case study

The Superior Council of Magistracy`s (the Section for Judges as a disciplinary court) Judgment no. 7J of 11 June 2014

` (...) since, during the period of secondment, the status of judge and prosecutor is maintained, it follows that the seconded magistrate has all the rights, obligations, and prohibitions that the professional status imposes.

The law does not derogate from the status of judges and prosecutors in the case of secondment, where they are seconded and subsequently appointed to a public dignity or public office to exercise executive powers. Accordingly, if the law does not provide exceptions to the rights enjoyed by judges and prosecutors on secondment to positions of public dignity, it cannot be held that they are not also subject to the obligations associated with those rights (...).

In conclusion, (...) given that the exceptions are of strict interpretation, the SCM holds that the regime of incompatibilities and prohibitions is also fully applicable to judges and prosecutors on secondment, even if they do not exercise the specific duties of a judge or prosecutor during their secondment.`.

The Superior Council of Magistracy`s (the Section for Judges as a disciplinary court) Judgment no. 7J of 25 May 2022

` (...) Section (...) considers that any public presence of magistrates in the structure of entities that make politics, that promote political concepts, that get involved in parliamentary mechanisms, trying to influence their decisions in matters that, in any case, have nothing to do with the activity of the judiciary (e.g., the appointment or maintenance of a prime minister, how a governing coalition should be constituted, etc.) is incompatible with the status of magistrate.`.

High Court of Cassation and Justice, Judgment no. 27 of 13 December 2017

` (...) the imperative of respect for the independence and impartiality of justice by all actors justifies giving an extended meaning to that concept, which is an objective of the prohibition laid down in Article 125(2) of the EC Treaty. (3) of the Constitution.

It must, therefore, be held that, in the context of the activities that may be classified as 'functions', within the meaning of that term, account must also be taken of the tasks, duties, powers, roles, missions, synonyms by which the word 'function' is defined in terminological terms.`.

The Superior Council of Magistracy`s (the Section for Judges) Judgment no. 1/J of 8 February 2017

"Incompatibility is the unconditional prohibition imposed on a dignitary or public official to exercise certain functions or qualities concurrently with the dignity or public office due to an absolute presumption of conflict of interest arising from the simultaneous holding of both.

In a general sense, a judge's incompatibility consists in the impossibility of him or her to perform, at the same time, other functions or services, and in a restricted sense, about a given trial, incompatibility is the situation expressly provided for by law when a judge cannot take part in the trial of that trial."

Constitutional Court, Judgment no. 45 of (paragraph 170)

"(...) Their appointment or secondment to positions of public dignity, whatever they may be called, cannot be accepted in the light of the requirements of the Constitution since it inevitably results in a change in the kind of work they perform, which justifies the rights and obligations attached to their status.

Moreover, the entire status of the judge/prosecutor axiomatically focuses on their constitutional role, as defined in Articles 124 and 125, respectively, Articles 131 and 132 of the Constitution.

However, by assuming, through various mechanisms [appointment/detachment], a role other than that of dispensing justice and/or defending the general interests of society, the rule of law, and the rights and freedoms of citizens, they directly infringe on the one hand, the principle of the independence of the judge, the principle of the separation of powers in the State and the provisions relating to the role and incompatibilities of the judge [Article 1 (4), Article 124 and Article 125(3) of the Constitution] and, on the other hand, the constitutional provisions relating to the role and incompatibilities of the prosecutor (Articles 131 and 132 of the Constitution).`.

Superior Council of Magistracy`s Opinion no. 20823/8 April 2020

`The role of the expression of views by the Superior Council of Magistracy on the issue of incompatibilities is to provide judges and prosecutors with guidance and support in understanding issues concerning their status.

As a result, the analysis by the Superior Council of the Magistracy of the situations in which the question of incompatibility arises is aimed at capturing all the elements that might be involved in the exercise of another public or private function, which, in the light of Article 125(2) and Art. 132 par. (2) of the Romanian Constitution, republished could give rise to a situation of incompatibility.`.

Superior Council of Magistracy's Opinion no. 698 of 22 June 2015

`(...) any activity that implies a commission, a mandate from another person to perform specific duties, even if unpaid, generally falls within the concept of a public or private office, the legislator intends to prevent magistrates from carrying out activities that could be detrimental to their image or how they perform their duties, as well as to prevent conflicts of interest from arising.`.

Country: Spain

Spanish legal framework.

Judiciary law 6/1985.

Art. 389 judiciary law (LOPJ 6/85).

Any position of popular election or political designation of the State, Autonomous Communities, Provinces, and other local entities and bodies dependent on any of them is incompatible with the position of judge.

Art. 395 judiciary law (LOPJ 6/85).

Judges or magistrates may not be members of political parties or unions, nor may they be employed by them, and they may not direct congratulations or disapproval to powers, authorities, public officials, or official corporations for their actions.

Art. 351 judiciary law (LOPJ 6/85).

The judges will be declared in a situation of “*special services*” when they are appointed to a political position or of trust position. When they return to the judiciary, they must refrain from hearing any matter in which political parties or groups are a part of the proceeding.

Spanish judicial ethics principles.

1. Judicial independence is a right of every citizen whose preservation and defense is an indisputable component of the judge's professional duty, not a personal privilege granted by statute.

9. The judge must behave and exercise their rights in any activity in which he or she is identifiable as judge in such a way that he or she does not compromise or undermine society's perception of the independence of the judiciary in a democratic State.

16. Impartiality also imposes the obligation to refrain from acting in ways that could undermine public trust in justice, whether inside or outside the process.

Opinion, Spanish Ethics Commission, May 8, 2021.

1.- Neither the prohibition on returning to the judiciary after holding political office, nor the so-called “cooling off periods” are planned in our system.

2.- The judge or magistrate who has dedicated himself to a political activity must continue strengthening society's trust in the administration of justice.

3.- Because the judge who occupies political posts is still a judge, he must avoid damaging public trust in the administration of justice, especially when he returns to the jurisdiction.

4.- Risk factors include higher media or public exposure, active involvement in demonstrations, party events, or media coverage. Technical or strictly legal charges imply a lower probability of contravention of the preceding standards.

Opinion of the Ethics Commission, April 26, 2022..-

Judges must avoid making citizens assume that justice is politicized by their actions in the media and social media, damaging trust in the judicial system.

Spanish case law

Constitutional Court Order (*auto*) February 16, 1998, 26/1988.

The Law of this Court does not prohibit Constitutional Magistrates from belonging to parties, but only from assuming leadership positions inside the parties.

Order of the Constitutional Court dated September 17, 2013.

(note: It even allows constitutional court magistrates to be members of political parties as long as they do not conduct leadership positions).

Affiliation to political parties is an expression of the right to association guaranteed by Article 22 of our Constitution. The Constitution, in article 127.1 CE (and the judiciary law –LOPJ-, in article 395), forbids Judges, Magistrates, and Prosecutors from belonging to political parties and unions while they are active, despite the fact that the law must define the system and modalities of professional association.

The Constitution, on the other hand, does not prohibit the Magistrates of the Constitutional Court from belonging to political parties or unions; rather, it is only incompatible with the performance of *leadership positions* in a political party or union and employment in their service.

Supreme Court Decision, February 20, 2019

(considers that being on electoral lists without being elected is not a cause of incompatibility).

Being on a political party's list in municipal elections, even though he was not elected to a political position, is not a reason of incompatibility. Being on a list is not the same as being a member of a political party or working for one, both of which are prohibited by LOPJ section 395.

Finally, a brief conclusion.

A judge on active duty in Spain is not allowed to engage in politics or make any political conclusions. In this sense, there is a clear ban.

However, a judge, on the other hand, can obtain the status of "special services" (continuing in "active service") and serve in the government, parliament, or join a political party, run in national elections and be elected to political office.

He can return to the judiciary and operate immediately following the conclusion of his politic employment without any "freezing period".

The Judicial Ethics Commission has warned that judges who hold positions in politics, under a special services regime, with public exposure or participate in demonstrations or rallies, might undermine citizens' perceptions of independence and impartiality. The service of positions of political designation but of a technical character, without public exposure, has less impact, if any, on the perception of independence and impartiality.

Constitutional Court magistrates who are not part of the judiciary, however, can be members of political parties.

Country: United Arab Emirates

The Vision of the United Arab Emirates

The United Arab Emirates (UAE) staunchly upholds the imperative of achieving justice, preserving rights and equality, and extending the rule of law. A particular emphasis has been placed on judges, recognized as the custodians entrusted with realizing these elevated principles that resonate with our moral values and international commitments. A pivotal commitment has been made to establish a charter outlining the principles of judicial conduct, with the aim of safeguarding the integrity of the judicial System and upholding the ethical standards of judges.

In alignment with this commitment, His Excellency the Minister of Justice issued Ministerial Resolution No. (192) of 2017 on 23/02/2017, specifically addressing the document outlining principles of judicial conduct. Subsequently, acknowledging the significance of the matter, the Supreme Judicial Council made a decision to revisit the document. This involved the formation of a committee tasked with this responsivity, and the draft was presented to the Council for approval.

Judges and Politics

A member of the judicial authority shall not express an opinion that may raise doubts about their impartiality or suggest an affiliation with a particular sectarian trend. They must not engage in political, sporting, religious, or sectarian activities or work, nor express opinions on any of

The aforementioned matters. Additionally, they are not permitted to run for legislative, municipal, or sports council elections, or to appear in any media outlet expressing opinions on issues related to these areas.

2. Use of social networks by judges

2.1. Content and behaviour on social media

2.2. Friendships and interactions on social media

Case study.

May a judge express his opinion on social media?

May a judge have friendships and interactions on social media?

May a judge maintain an active social media account that identifies him (or her) as a judge?

May a judge use pseudonyms on social media?

May a judge maintain an active social media account using a pseudonym?

Rules of reference

Bangalore Principles of Judicial Conduct:

Independence

Principle: Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Application 1.3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.

Application 1.6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

Impartiality

Principle: Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

Application 2.2: A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

Application 2.4. A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process, nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.

Propriety

Principle: Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

Application 4.1. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

Application 4.2. As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In

particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.

Non-binding Guidelines on the Use of Social Media by Judges (UNODC 2019)

12. Judges may use their real names and disclose their judicial status on social media, provided that doing so is not against applicable ethical standards and existing rules.

13. During the development of the present guidelines, contrasting views have been shared with regard to the use of pseudonyms by judges on social media and no consensus has been reached on this issue. As such, the present guidelines neither recommend nor forbid the use of pseudonyms. However, it can be said that, in their behaviour on social media, judges must comply with all ethical standards related to their profession. Pseudonyms should never be used to enable unethical behaviour on social media. Additionally, the use of a pseudonym offers no guarantee that the real name or judicial status will not become known. Existing principles relating to the dignity of the courts, judicial impartiality and fairness apply equally to communications on social media.

16. Judges should avoid expressing views or sharing personal information online that can potentially undermine judicial independence, integrity, propriety, impartiality, the right to fair trial or public confidence in the judiciary. The same principle applies to judges regardless of whether or not they disclose their real names or judicial status on social media platforms.

17. Judges should not engage in exchanges over social media sites or messaging services with parties, their representatives or the general public about cases before or likely to come before them for decision.

18. Judges should be circumspect in tone and language and be professional and prudent in respect of all interactions on all social media platforms. It may be helpful to consider in respect of each item of social media content (such as posts, comments on posts, status updates, photographs, etc.) what its impact on judicial dignity might be if disclosed to the general public. The same caution applies when reacting to social media content uploaded by others.

23. A judge may use social media platforms to follow topics of interest. It may be worth following a diverse range of topics and commentators to avoid creating their own “echo chambers”. However, a judge should be wary of following or liking particular advocacy groups, campaigns, or commentators where association with them could damage public confidence in the judge’s impartiality or the impartiality of the judiciary in general.

Country: Algeria

Le magistrat et ses engagements

Les magistrats, comme tous les citoyens, bénéficient de la liberté de conscience, de la liberté d'opinion, de création intellectuelle, artistique et scientifique, d'expression, d'association et de réunion, consacrées par les articles 34, 51, 52 et 53 de la Constitution.

Toutefois, l'exercice de ces libertés obéit aux conditions prévues par la loi organique portant statut de la magistrature du 6 septembre 2004.

Les engagements du magistrat relèvent, non seulement de l'exercice des libertés fondamentales précitées, mais également, lorsque celui-ci ne souhaite pas que ses engagements soient rendus publics, de la protection de la vie privée dont les magistrats doivent bénéficier.

Il ne peut être fait état dans le dossier du magistrat ni de ses opinions ou activités politiques, syndicales, ni d'éléments relevant strictement de sa vie privée.

L'implication du magistrat dans la vie de la cité constitue une source d'enrichissement des pratiques professionnelles de celui-ci en lui permettant d'avoir une meilleure connaissance du contexte dans lequel il exerce ses fonctions. Pour autant, des précautions doivent être prises afin d'éviter qu'il ne soit porté atteinte au principe d'impartialité auquel le magistrat est soumis.

Country: Belgium

Belgian legal framework (non-official translation)¹²

There is no specific rule in the Judicial Code for using social media except in general terms:

Article 828, 1° Belgian Judicial Code (Ger.W./Cod. Jud.):

“Any judge can be challenged for the following reasons:

1° Due to legitimate suspicion; (...)”

UNODC – Non binding Guidelines on use of social media by judges¹³

COUNCIL OF EUROPE - Consultative Council of European Judges (CCJE) Opinion N°. 25 (2022) on freedom of expression of judges¹⁴

“ VIII. Use of social media by judges

1. Freedom of expression of judges offline and online

66. It is widely accepted that the rights that people have offline are equally protected online, in particular freedom of expression. Subject to the following, judges may use social media like any other citizens (note nr. 76:

For the application of Art. 10 of the ECHR to online communication, see ECtHR Delfi AS v. Estonia [GC], 16.6.2015, Appl. no. 64569/09, § 110; Kozan v. Turkey, 1.3.2022, Appl. no. 16695/19).

2. Developing guidelines for social media use of judges

a) Definition of social media

67. The CCJE recalls the general understanding of the notion of social media as forms of electronic communication (such as websites for social networking and microblogging) through which users create online communities to share information, ideas, personal messages, and other content (such as videos). Following the Council of Europe Committee of Ministers' Recommendation CM/Rec(2022)11 on principles for media and

communication governance, the Opinion uses a broad notion of media and qualifies social platforms as digital services that connect participants in multisided markets, set the rules for such interactions and make use of algorithmic systems to collect and analyse data and personalise their services (note nr. 77: See Appendix to Recommendation CM/Rec(2022)11 of the Committee of Ministers on principles for media and communication governance, para 4.)

.

b) Applicability of general rule on judicial restraint

68. International instruments do not contain much guidance on how judges should exercise their freedom of expression online. Common ground, which the CCJE endorses, is that the

¹² See the database in French: <https://www.ejustice.just.fgov.be/loi/loi.htm>

¹³ See the link of this UNODC-document:

https://www.unodc.org/res/ji/import/international_standards/social_media_guidelines/social_media_guidelines_final.pdf

¹⁴ See website Council of Europe: <https://rm.coe.int/opinion-no-25-2022-final/1680a973ef%0A%0A> , especially pages 15 – 18. The relevant passage of this report is reproduced with the understanding that the footnotes were inserted by the author reduced in size in the text itself.

general duty of judicial restraint applies (note 78: See also UNODC Non-Binding Guidelines on the Use of Social Media by Judges, paras 1, 15; Report of the UN Special Rapporteur on the independence of judges and lawyers, 29 April 2019, A/HRC/41/48, paras 78, 81; cf. Recommendation of the Committee of Ministers CM/Rec(2010)12 on Judges: Independence, Efficiency and Responsibilities, para 19.). This means that judges should avoid expressing views or sharing personal information online that can potentially undermine judicial independence and impartiality, the right to fair trial or the dignity of the office and (public confidence in) the authority of the judiciary. For that purpose, judges have to show circumspection in their use of social media (note 79: Cf. CCJE Opinion No. 3 (2002), para 40, with respect to relations with the press). As the UN Special Rapporteur on the independence of judges and lawyers has stated, applying judicial restraint to social media communications does not mean that judges have to retreat from public life happening on social media (note 80: Report of the UN Special Rapporteur on the independence of judges and lawyers, 29 April 2019, A/HRC/41/48, para 79).

69. Subject to some exceptions, private communication should not be subject to restrictions on freedom of expression. Private communication is understood as taking place bilaterally or in a closed group to which access has to be permitted by the judge, including person-to-person messaging services or closed social platform groups.

c) Adapting judicial conduct to the specific challenges of social media communication

70. The use of social media raises new challenges and ethical concerns relating to the propriety of the content posted and the demonstration of bias or interest. Social media features a broad accessibility and transmission, which entails greater scrutiny of the content posted. Social media has a permanent storage capacity, which enhances the risk of profiling. It contains personal communication in written form, which increases the risk of private messages being published without permission, as well as the risk of content being distorted in ensuing communication (note 81: Cf. Report of the UN Special Rapporteur on the independence of judges and lawyers, 29 April 2019, A/HRC/41/48, para 81; cf. ENCJ Report 2018-2019, Chapter II, 2.1.). Communication is fast and pointed, which might induce judges to publish imprudent posts. Actions, such as “liking” or forwarding information presented by others, may appear relatively small and casual, but they qualify as regular expressions of a judge's opinion (note 82: Cf. UNODC Non-Binding Guidelines on the Use of Social Media by Judges, para 6). As opposed to traditional media, a gatekeeper is missing in social media, which allows judges to publish anything that comes to their mind.

71. These specific risks require a judge to exercise special caution in his/her social media communication (note 83: Cf. Report of the UN Special Rapporteur on the independence of judges and lawyers, 29 April 2019,

A/HRC/41/48, para 81). The CCJE notes a significant risk that sharing personal content may adversely impact upon the reputation of a judge or the entire judiciary (note 84: Cf. ENCJ Report 2018-2019, Chapter II, 2.1). It follows that judges should not engage in exchanges over social media sites or messaging services with parties, their representatives or the general public about cases before or likely to come before them for decision (note 85: See also UNODC Non-Binding Guidelines on the Use of Social Media by Judges, para 17). They should be cautious about the risk of misrepresentation of including statements in closed groups. They should be wary of creating a “profile” through their comments that gives the impression of lacking openness and objectivity regarding certain subject matters. The same

holds for social platform groups that they enter or people they follow and comments they “like” or

“retweet”, since the more one-sided these are, the more people might perceive these judges not to be independent and impartial (note 86: Cf. UNODC Non-Binding Guidelines on the Use of Social Media by Judges, para 18). When involved in a discussion on their work as a judge, the protection of the authority and dignity of the office should discourage judges from comments that call into question their propriety in performing their duties.

72. Judges have to make sure that they maintain the authority, integrity, decorum and dignity of their judicial office (note 87: Cf. UNODC Non-Binding Guidelines on the Use of Social Media by Judges, paras 5 and 18). They should be mindful that language, outfit, photos and the disclosure of other personal details might infringe the reputation of the judiciary. Allowing judges to share private details, such as lifestyle or family bears some risks in this regard.

Whether an expression potentially compromises the reputation of the judge or the judiciary should be assessed in the light of the circumstances of the case.

73. Judges should not engage in social media in a manner that can negatively affect the public perception of judicial integrity, e.g. acting as influencers.

74. Judges should consider whether any inappropriate digital content antedating their appointment to the bench might damage the public confidence in their impartiality or undermine the reputation of the judiciary. If so, they should, if possible, remove this content, following the applicable rules of their jurisdiction (note 88: 8 Cf. UNODC Non-Binding Guidelines on the Use of Social Media by Judges, para 21).

d) Suggesting a transparent use of social media (subject to permission)

75. The duty of judicial restraint applies to social media communication, regardless of whether or not judges disclose their identity (note 89: See also UNODC Non-Binding Guidelines on the Use of Social Media by Judges, para 16. Provided

this does not violate applicable ethical standards or existing rules that prohibit an identification of the judge as a member of the judiciary on social media. Cf. paras 12-13). There is no basis to prevent judges from using pseudonyms. However, pseudonyms do not permit unethical behaviour. Furthermore, not mentioning the judicial office or using a pseudonym does not guarantee that the true name or judicial status will not become public. Placing a disclaimer in their social media profiles that all the content or opinions are expressed in their personal capacity does not relieve judges from exercising restraint.

e) Stressing the importance of training for judges in the use of social media

76. The CCJE stresses the importance of training all judges on social media applications and the ethical implications of using them in personal and professional contexts (note 90: See also ENCJ Report 2018-2019, Chapter II, 2.7; ENCJ Report 2011-2012, 6.2.4 ; UNODC Non-Binding Guidelines on the Use of Social Media by Judges, paras 14, 38-40; cf. CCJE Opinion No. 23 (2020), para 18; CCJE Magna Carta, para 18).

77. It should help judges to understand what degree of reticence allows them to protect their security and to fulfil their obligations of maintaining independence and impartiality, the dignity of their office and public confidence in the judiciary. Understanding which social media platforms are in use, how the various social media platforms operate, what type of information it may be appropriate to share on various social media platforms and which potential risks and consequences participation in such platform communication might have, would be an appropriate area for training judges. The training should cover technical aspects

(such as the different privacy settings of different social platforms), aspects of profiling and data protection.

78. The judiciary should provide training to newly appointed judges and to permanent judges on a continuous basis. Associations of judges may contribute to training, exchanging and sharing knowledge and best practices among judges.

Belgian judicial ethics principles (non-official translation)¹⁵

See:

“2. IMPARTIALITY

Principle

Along with independence, objective and subjective impartiality are essential to a fair trial (art. 6, ECHR).

A judge's impartiality means the real and apparent absence of any prejudice or preconceived idea when rendering a judgment, or in the proceedings leading up to the judgment.

Members of the judiciary shall perform their judicial duties without fear, favoritism or prejudice.

Comments

- Abstention/Challenging

Members of the judiciary shall, both in and out of office, conduct themselves in such a way as to foster confidence in the impartiality of the justice system and reduce the risk of situations that could lead to be challenged.

The impartiality of judges requires strict application of the rules on professional incompatibility (arts. 292 to 304 of the Belgian Judicial Code) and challenging (arts. 828 to 842 of the Belgian Judicial Code).

Thus, a judge refrains from sitting on a case when:

- he is unable to judge the case objectively impartial;

- he has close ties with a party or has personal knowledge of the facts, when he has represented, assisted or acted against one of the parties, or when there is a situation such that his impartiality

would be tainted by subjectivity;

- he or she or a member of his or her family has an interest in the in the outcome of the case.

If there is a real or potential conflict of interest, the judge will not sit or immediately withdraws from the case, to avoid being suspected of bias

(...)

- Freedom of expression

¹⁵ See the Belgian Guide for Judicial Ethics in French: CONSEIL SUPÉRIEUR DE LA JUSTICE and CONSEIL CONSULTATIF DE LA MAGISTRATURE, *Guide pour les Magistrats – Principes, valeurs et qualités*, 2012, p. 4, 7, 9, 11, see: <https://csj.be/admin/storage/hrj/o0023f.pdf> .

(...)

Impartiality does not mean that members of the judiciary may not express sympathy or opinion. Members of the judiciary must be aware of any prejudices and preferences they may have and must always ask themselves whether their assessment of the case is free from them.

Members of the judiciary have complete freedom of opinion, but impartiality obliges him to be measured and nuanced in the

opinion, so that the litigant does not have the impression that the magistrate is prejudiced.”

See also:

“3.2. Dignity

Principle

Dignity requires the magistrate to ensure that neither the exercise of their profession nor their personal behavior jeopardizes their image or that of the jurisdiction and the Judiciary.

Comments

• Social Life

The principle of dignity does not imply that magistrates should isolate themselves from the world and society. The magistrate must participate in social life, but ensuring that their conduct, the choice of people they associate with, and their participation in public events do not undermine the citizens' trust in their person and in the Judiciary.

Participation in computerized social networks is a personal choice but requires great caution to avoid challenging the independence, impartiality, and integrity of the magistrate¹⁶.

(...)”

See also:

“4. RESERVE AND DISCRETION

Principle

The reserve and discretion of members of the judiciary imply a balance between their rights as citizens and the constraints of their office.

of their position.

Members of the judiciary shall behave in such a way as to avoid creating the impression that their decisions are inspired by motives other than the fair and reasoned application of the law.

Members of the judiciary shall do everything in their power to avoid causing offence, in the performance of their duties and in their private lives, the trust that litigants place in them and in the judiciary in general.”

Belgian Case Law (non-official translation)

Court of Appeal Mons, 29 July 2021, TBBR 2022, 563, P&B 2021, 254.

The Judge must not only be impartial but also avoid any appearance of bias. By expressing opinions under a pseudonym on Facebook about a case that is still pending before him, the

¹⁶ Underlining by the author.

judge gives rise to the assumption that he is incapable of rendering a decision on that case in an independent and impartial way or raises well-founded doubts in the public opinion about his ability to render a decision in an independent and impartial way. Such actions are sufficiently serious to justify the presumption of legitimate suspicion as defined in Article 828, 1° of the Belgian Judicial Code, justifying a challenge of the Judge."

A brief outline

1. Belgian magistrates (Judges and Public Prosecutors), like any other citizen, can enjoy their civil liberties, including the freedom of expression as laid out in Article 10 of the European Convention on Human Rights and Article 19 of the Belgian Constitution.¹⁷

This means that a magistrate essentially also has the right to utilize social media and can be active on social networks. Although this can be deducted from the '*Belgian Guide for Judicial Ethics*', this Guide stresses immediately that in such a case, a magistrate must exercise particular caution, especially regarding the aspects of professional confidentiality.¹⁸

2. So, the freedom of expression of magistrates is necessarily limited. In order to fulfill the role of a magistrate, they must enjoy the trust of the citizens, and consequently, every magistrate is under the obligation to exercise restraint when the authority and impartiality of the judiciary might be at stake.¹⁹

Magistrates must therefore not provide their opinion on ongoing cases they are handling or that their colleagues are handling. An illustrative case is that in which the Court of Appeal of Mons ruled that a challenge against a judge was justified because this judge had expressed opinions under a pseudonym on Facebook about a case that was pending before him. The Court held that as a result, the judge was no longer capable of rendering a decision on that case in an independent and impartial manner²⁰.

Moreover, certain information, even if accurate, must be disclosed with restraint and discretion. Due to this duty of discretion, a magistrate must also not directly respond to provocations addressed to them in the media. Magistrates thus do not seek a right to reply when their judicial activity is under discussion. However, this does not preclude their right to potentially file a claim for damages or lodge a complaint, for instance with the Press Council, in the event of an attack on their honor by a journalist²¹. Therefore, it seems logical that a magistrate would also not respond to provocations in social media as well for the same reasons.

¹⁷ See J. ENGLEBERT, "La liberté d'expression et la liberté d'association", in X. DE RIEMAECKER and R. VAN RANSBEECK, *Statut et déontologie du Magistrat*, Brussels, la Charte, 2020, 444, nr. 1.

¹⁸ See the *Belgian Guide for Judicial Ethics* in French: CONSEIL SUPÉRIEUR DE LA JUSTICE and CONSEIL CONSULTATIF DE LA MAGISTRATURE, *Guide pour les Magistrats – Principes, valeurs et qualités*, 2012, p. 6, see: <https://csj.be/admin/storage/hrj/o0023f.pdf> ; See also X. DE RIEMAECKER and M.-A. FRANQUINET, "Section 5 FAQ – Foire aux questions", in X. DE RIEMAECKER and R. VAN RANSBEECK, *Statut et déontologie du Magistrat*, Brussels, la Charte, 2020, 493-495.

¹⁹ See ECHR 23 June 2016, *Baka v. Hungary*, § 164, [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-163113%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-163113%22]})

²⁰ Mons 29 juli 2021, *TBBR* 2022, 563, *P&B* 2021, 254.

²¹ J. ENGLEBERT, "La liberté d'expression et la liberté d'association", in X. DE RIEMAECKER and R. VAN RANSBEECK, *Statut et déontologie du Magistrat*, Brussels, la Charte, 2020, 446, nr. 6 ; zie ook ECHR 16 September 1999, *Buscemi v. Italy*, §67, [https://hudoc.echr.coe.int/#{%22fulltext%22:\[%22%22CASE%20OF%20BUSCEMI%20v.%20ITALY%22%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-58304%22\]}](https://hudoc.echr.coe.int/#{%22fulltext%22:[%22%22CASE%20OF%20BUSCEMI%20v.%20ITALY%22%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-58304%22]}) .

3. On the other hand, magistrates are allowed to participate in the public debate and it is accepted to criticize possible errors of social actors or the violation of fundamental democratic values²². Indeed, the *'Belgian Guide for Judicial Ethics'* explicitly states that the principle of dignity does not mean that a magistrate should behave unworldly or isolate himself. When democracy and fundamental freedoms are under threat, the magistrate's restraint even gives way to the right of indignation, and then magistrates are even expected to have the courage to respond to the challenges of modern society as long as this is exercised with reason and prudence²³. Nevertheless, it remains necessary to be particularly careful. For example, the Belgian press reported the case where an investigating judge was challenged in a case in which she was conducting a judicial investigation against a MP for breaches of anti-racism laws among other things. Indeed, the lawyer of this MP had discovered that she had "*in tempore non suspecto*" "liked" Twitter (nowadays "X") messages expressing criticism in which the MP in question and/or his party would be portrayed in a negative light. The investigating judge in question withdrew from the case herself²⁴.

4. Friendships on social networks in private life should also be treated with caution. For example, the Advisory and Investigation Commission of the Belgian High Judicial Council for the Judiciary declared a complaint well-founded in the case where someone had been ordered to pay alimony in the context of a divorce and had subsequently noticed that the judge was listed on Facebook as a "friend" of the other party's lawyer. However, there is also a trend in Belgian legal doctrine which assumes that merely being listed as a "friend" on Facebook is not in itself sufficient to conclude impartiality, but it is not sure yet²⁵. Caution remains necessary.

²² J. ENGLEBERT, "La liberté d'expression et la liberté d'association", in X. DE RIEMAECKER and R. VAN RANSBEECK, *Statut et déontologie du Magistrat*, Brussels, la Charte, 2020, 445, nr. 3.

²³ See the *Belgian Guide for Judicial Ethics* in French: CONSEIL SUPÉRIEUR DE LA JUSTICE and CONSEIL CONSULTATIF DE LA MAGISTRATURE, *Guide pour les Magistrats – Principes, valeurs et qualités*, 2012, p. 9, 12 and 21, see: <https://csj.be/admin/storage/hrj/o0023f.pdf>

²⁴ See : <https://www.vrt.be/vrtnws/nl/2021/03/08/wrakingsverzoek-van-langenhove/>

²⁵ See C. MATRAY, "Les juges, l'amitié et les réseaux sociaux", *JT* 2017, 245. She refers to a statement of the Chief Prosecutor of the Belgian Supreme Court in a disciplinary case and to the judgement of the French Supreme Court of the 5 January 2017 (Cass. Fr. (second Civil Chamber) 5 January 2017, nr. 1, AR nr. C200001, ECLI:FR:CCASS:2017:C200001, https://www.legifrance.gouv.fr/juri/id/JURITEXT000033845885?dateDecision=05%2F01%2F2017&isAdvancedResult=&juridictionJudiciaire=Cour+de+cassation&page=8&pageSize=10&pdSearchArbo=&pdSearchArboId=&query=* &searchField=ALL&searchProximity=&searchType=ALL&sortValue=DATE_DESC&tab_selection=juri&typePaginat ion=DEFAULT). However, according to another point of view the two cases are different. In the French Case the mention of "Friend" on Facebook was not public, while it was public in the case before the Belgian High Council for the Judiciary (X. DE RIEMAECKER and M.-A. FRANQUINET, "Section 5 FAQ – Foire aux questions", in X. DE RIEMAECKER and R. VAN RANSBEECK, *Statut et déontologie du Magistrat*, Brussels, la Charte, 2020, 495).

Country: Italy

Italian legal framework.

Criminal Law, art. 595:

Anyone, when communicating with more people, offends the reputation of others, is punished (...).

Disciplinary code

Art. 1 D. Lgs. 109/2006

Duties of the magistrate

The magistrate shall exercise the functions assigned to him with impartiality, fairness, propriety, diligence, discretion and balance and respect the dignity of the person in the performance of his or her duties.

Art. 4 lett. d D. Lgs. 109/2006

Disciplinary offences resulting from criminal offences:

(...)

d) any fact constituting an offence capable of damaging the image of the magistrate, even if the criminal offence has been extinguished for any cause or the prosecution cannot be initiated or continued.

Art. 2 D. Lgs. 109/2006

Disciplinary offences in the performance of duties

lett. d) habitual or serious misconduct against the parties, their lawyers, witnesses or any person who has relations with the magistrate within the judicial office, or against other magistrates or collaborators; (...).

Italian judicial ethics principles.

Art. 6 Code of ethics

When communicating with the press and other media, the magistrate does not seek publicity for information relating to his office. (...)

Without prejudice to the principle of full freedom of expression of thought, the judge is inspired by criteria of balance, dignity and measure in making statements and interviews with newspapers and other mass media, as well as in any written and in any statement intended for dissemination.

Avoid participating in broadcasts in which it's foreseen that the events of ongoing judicial proceedings will be the subject of representation in stage.

Italian case law

High Judicial Council, decision nr. 127/2017

The Constitutional Court, in its decision n. 100/1981, affirmed that freedom of expression of thought, while being one of the fundamental freedoms protected by Constitution, it is not without limits, provided that these are laid down by law and are based on precepts and constitutional principles, expressly stated or inferable from the Constitution. Thus, it cannot disregard the fact that judges must be impartial and independent and those values must be protected not only with specific reference to the actual exercise of judicial functions but also as a rule of ethics to be observed in all conduct in

order to avoid any reasonable doubt as to their independence and impartiality in the performance of their task.

It follows that rights, even if recognised by the Constitutional Charter, cannot be exercised in such a way as to impair the impartiality or impartiality of the judge.

It is also to be considered that a magistrate must be required to take a higher approach than the ordinary citizen to the issues addressed in a debate that has the potential to reach an indeterminate number of people.

The behaviour of the magistrate can therefore be assessed in terms of the serious misconduct that has been committed, including the violation of the duty of confidentiality, understood as an attitude required of the magistrate in order to avoid, of course, by making one's feelings and opinions perceived, may raise doubts about his independence and impartiality, damaging the consideration that the magistrate must enjoy among the public opinion.

High Judicial Council, decision nr. 20/2018

It's disciplinary relevant the conduct held by the magistrate who in violation of laws and code of ethics placed an offensive message by means of their personal profile of the social network "facebook" against the mayor of the city where he exercises the judicial functions. This behaviour is incorrect and relevant for the purposes of the configurability of the disciplinary offence as it is capable of making the offence perceptible by an indefinite plurality of network users, regardless of the consideration of the perception of the offense that the recipient of the same has had.

Country: Netherlands

In general:

The Dutch Constitution, the Judicial Organization Acts (Wrra and Wet RO) provide only limited rules regarding judicial independence and impartiality. As a result, soft law rules in the Netherlands serve as an important supplementary source for safeguarding the judicial system. The Council for the Judiciary, the Presidents' Meeting, and the Dutch Association of Judges (NVvR) have established various codes that offer guidance to individual judges and court administrations in interpreting and applying judicial independence and impartiality. The main codes of conduct for Dutch judges are:

4. Code of Conduct for the Judiciary (in Dutch: *de Gedragscode Rechtelijke Macht 2013*): This code of conduct is established by the Council for the Judiciary and serves as the overarching code for all judges in the Netherlands. It provides guidelines regarding independence, impartiality, integrity, confidentiality, and other aspects of judicial office.
5. Guidelines on Impartiality and Side Activities (in Dutch: *Leidraad onpartijdigheid en nevenfuncties in de Rechtspraak, januari 2014*): These guidelines, also issued by the Council for the Judiciary, offer guidance on engaging in side activities by judges. They include rules and criteria to assess whether a particular side activity is compatible with their judicial function and the required independence and impartiality.
6. Guidelines on Conflict of Interest (in Dutch: *de NVVR Rechterscode 2011*): This set of guidelines, once again established by the Council for the Judiciary, provides directions on preventing and addressing conflicts of interest within the judiciary. It contains rules and recommendations to ensure that judges do not have personal or financial interests that could influence their impartiality and independence.

These codes primarily emphasize vigilance concerning side activities, political and religious expressions, and unwanted mixing of work and private life, including the influence of past employment. The codes predominantly consist of general normative descriptions of core values such as independence, impartiality, and integrity, providing few concrete statements about what behavior is or is not acceptable (such as membership in a representative body or engaging in legal advisory work). Much has been left to the judge's own judgment and decision-making.

Latest developments:

In addition, a bill is currently pending before the House of Representatives in which an amendment to the RO and WRR Act is proposed. The most important proposals are a legal ban on the simultaneous exercise of the office of judge with membership of the Senate or House of Representatives and of the European Parliament. Until now, this was (only) a recommendation (guidance for additional positions), but it will now become a statutory regulation. Another new element is that there will be an obligation for judges to declare financial interests (to the functional authority: read the President of the court). There can be a (financial) conflict of interest if a judge e.g. owns shares and has access to price-sensitive information by virtue of his position.

2. Use of social networks by judges:

2.1- Dangers (risks) for the judge and the judiciary.

In the Netherlands, there are no specific legal restrictions that prohibit judges from participating on social media platforms like Facebook, Instagram, or Snapchat. However, judges are expected to adhere to certain guidelines and ethical standards to maintain the principles of judicial impartiality and professionalism. These guidelines are set forth by the judiciary to ensure judges' conduct on social media aligns with the requirements of their judicial roles.

Practical example:

In the Netherlands a well-known example is a tweeting judge who, after the election of Wilders (a controversial Dutch politician) as politician of the year, tweeted: "crazy" and got a lot of trouble with it.

2.2- The kind of the activity to be developed (friendships, interactions with politicians, "likes...")

Judges in the Netherlands are generally expected to maintain a degree of professional distance and impartiality in their interactions, including with politicians. While judges are not explicitly prohibited from having friendships or interactions with politicians, they are expected to exercise caution and discretion to uphold the integrity and impartiality of their judicial roles.

Judges may participate in social events or gatherings where politicians are present. However, they should be cautious about the nature of their interactions and avoid situations that could give rise to concerns about impartiality or the appearance of influence.

In cases where a judge has a personal relationship or close association with a politician involved in a legal matter, it is generally expected that the judge discloses this information and, if necessary, recuses themselves from the case to ensure fairness and impartiality.

Overall, judges in the Netherlands are expected to maintain a professional and impartial stance, both in and outside the courtroom. While they are not completely isolated from interactions with politicians, they must exercise discretion and be mindful of the potential impact on their judicial roles and public perception.

Two practical examples:

I. A judge has tried to influence the judges in the MH17 trial by spreading a conspiracy theory among them. The MH17 trial resulted from the downing of a Malaysia Airline Boeing 777 over eastern Ukraine that killed 298 people (17 Jul 2014). The Supreme Court issued a written reprimand to the judge. At the time she worked as a judge at the court in The Hague. Her brother had written a book (under a pseudonym) in which he states that flight MH17 in 2014 was not shot down by a Russian missile at all. The judge handed out her brother's book to judges and prosecutors in the MH17 case. She called the findings from the MH17 investigation "a deliberate and transparent cover-up". In the opinion of the Supreme Court, it has been established that she wanted to influence the judges involved and the course of the MH17 trial. In doing so, she undermined confidence in the authority and impartiality of the judiciary, according to the council. The authority writes in a ruling on the issue that a judge is free to express his or her opinion, but the "influence of those expressions" must be taken into account. Especially if this calls into question the judiciary. It remained with a written reprimand, because the judge realized that she had gone too far and had now been transferred from the criminal department to another department of the court.

II. In 2014 the Supreme Court declared the complaint about a column by an Advocate-General in the Nederlands Juristenblad (legal literature) to be unfounded. The Advocate-General wrote a critical commentary in a legal journal about the Russian oil company Yukos. The column was written in a personal capacity. The complainant is a Russian company that purchased shares in the Dutch subsidiary Yukos Finance B.V. at one of the auctions in the context of the bankruptcy of Yukos Oil. They are involved in several proceedings where the validity of the transfer of ownership of the shares and the validity of the bankruptcy of Yukos Oil are at issue.

The Supreme Court declares the complaint unfounded. In the column, the Advocate-General expresses his opinion on how, in his view, taxation is used as a punitive measure in some countries. He sees the expropriation of the company Yukos in Russia as an example of this. The Supreme Court rules that the Advocate-General did not directly comment on specific legal issues in these pending or

future proceedings in his column. Since he wrote his column as an editor of the Dutch Legal Journal, his contribution was undeniably a personal contribution to the legal-scientific discourse for the readership, and his opinion did not represent that of the office to which he belongs.

Country: Romania

Setting the scene

At the level of Romanian legislation (hard law), there are no special provisions dedicated to the possibility and use of social media by judges.

However, with the explosion of various social media networks, judges in Romania have participated in the global trend of inter-social communication through these networks—at least part of them.

Over time, especially after 2014, questions have arisen in the judicial professional ethics space related to judges' access to these social media networks and, especially, the behavior and posts that a judge can adopt in the virtual public space. But, above all, questions have been raised about the risks posed by the presence of judges in the public area, in concrete situations involving judges: sometimes inappropriate, unprincipled language with `friends` on the networks; positions expressed by some judges concerning certain politicians or public policies (legislative changes concerning the status of the judiciary; health policies, in particular COVID, etc.).

As a result of this development, the general prohibitions and obligations in the hard law (Law 303/2022 on the status of judges and prosecutors) concerning the conduct of judges have also been used in the situation of judges' expression on social media when analyzing and evaluating attitudes, ethical conduct of some judges, including from a disciplinary perspective. Here are the provisions of art. 90 of Law no. 303/2004, which in the new Law, Law no. 303/2022, are found in art. 223 below should be mentioned in particular.

Astfel, limitele libertății de exprimare ale judecătorului au fost analizate în programele de formare în etica profesională a tinerilor magistrați, precum și formarea continuă, dar și în cauzele disciplinare privind unele situații punctuale, din perspectiva interdicției prevăzută de hard law: încălcarea obligației de a se abține de la orice acte sau fapte de natură să compromită demnitatea lor în profesie și în societate.

Regarding the soft law, the Romanian Deontological Code for judges and prosecutors expresses the same prohibition *`to restrain from any actions that can compromise their dignity in profession and society. `*

Dând expresie preocupărilor și situațiilor din ce în ce mai des întâlnite în ultima perioadă, la începutul anului 2020 Consiliul Superior al Magistraturii, în același cadru al soft law, a publicat *Îndrumarul de bune practici privind activitatea judecătorilor și procurorilor în spațiul social media/platformele online*²⁶. Scopul acestui Îndrumar este acela de a *`contura în linii generale recomandări în privința modalității de utilizare a spațiului social media și a platformelor online într-un mod care să conducă la consolidarea/îmbunătățirea imaginii sistemului judiciar`* fiind *`nevoie, se arată în Îndrumar, de un înalt grad de conștientizare din partea judecătorilor și procurorilor în ceea ce privește efectele utilizării individuale a rețelelor sociale asupra imaginii lor personale, dar și felul în care aceasta se reflectă asupra întregului sistem de justiție, întrucât în ochii opiniei publice fiecare judecător și procuror în parte este un emisar al sistemului judiciar.`*

Giving expression to the concerns and situations increasingly encountered lately, in early 2020, the Superior Council of Magistracy, in the same soft law framework, published the Good Practice Guidelines on the work of judges and prosecutors in the social media space/online platforms (here, Guideline). *`The purpose of this Guideline is to outline recommendations on how to use social media space and online platforms in a way that leads to strengthening/improving the image of the*

²⁶ A version in Romanian language [here](#).

judiciary' being 'necessary' the Guideline states, a high degree of awareness on the part of judges and prosecutors of the effects of individual use of social media on their image, but also how this reflects on the justice system as a whole since in the eyes of public opinion each individual judge and prosecutor is an emissary of the judiciary. `

Romanian legal framework

Romanian Constitution

Art. 124 – (2) Justice shall be one, impartial, and equal for all.

(3) Judges shall be independent and subject only to the law.

Art. 134 - (2) The Superior Council of Magistracy shall perform the role of a court of law, by means of its sections, as regards the disciplinary liability of judges and public prosecutors, based on the procedures set up by its organic law.

Romanian law on status of jugdes and prosecutors no. 303/2022:

Art. 223 - (1) Judges and prosecutors have the duty to restrain from any actions that can compromise their dignity in profession and society.

(2) Relațiile judecătorilor și procurorilor la locul de muncă și în societate se bazează pe respect și bună-credință.

Article 271 - Disciplinary offenses:

...

a) violation of provisions on incompatibilities and prohibitions

...

Deontological Code for judges and prosecutors (soft law – 2015):

Art. 9 - (1) Judges and prosecutors must be impartial in exercising their duties, being committed to decide objectively, free of any influences.

(2) Judges and prosecutors should abstain from any action and behavior that could infringe upon the trust in their impartiality.

Art. 17 - Judges and prosecutors have the duty to restrain from any actions that can compromise their dignity in profession and society.

Good Practice Guidelines on the activities of judges and prosecutors on social media and online platforms (soft law – 2020. Here `Guidelines`)

2.1. Content and behavior on social media

‘Judges and prosecutors must be aware that social media posts can influence society's perception of the judiciary and the judiciary. They should bear in mind that messages posted on social media are and remain public, even if they are subject to confidentiality parameters.

They should, therefore, always consider the potential dangers when using social media or social communication platforms.²⁷’

‘The rapid growth of digital social media puts pressure on and poses new challenges to judges and prosecutors both in guaranteeing impartiality and manifesting freedom of expression.²⁸’

‘(...) the activity of judges and prosecutors on social media is subject to specific rigors. The virtue of balance is the ethical standard by which judges and prosecutors must be guided online. This virtue captures the professional identity set by the values of impartiality and objectivity. However, the virtue of balance should be distinct from a lack of reaction or firmness. In specific contexts, a balanced attitude, which allows a distance from current practices, will grasp the importance of values that others begin to ignore:

- ✓ *(...) In dialogue with social media users, it is recommended that judges and prosecutors limit themselves to providing information on the general principles according to which the judicial system operates, the content of normative acts, and the rules for conducting civil or criminal proceedings, with the sole aim of educating the public.*
- ✓ *Judges and prosecutors should use social media so that they do not express an opinion on a case in progress.*
- ✓ *Judges and prosecutors shall not interfere in the work of other judges and prosecutors or judicial institutions nor express negative opinions, directly or indirectly, on social media about their colleagues' professional and moral probity.*
- ✓ *Publishing and disseminating information supporting a political party or election candidate or posting photos on a social network or social media profile that may create a direct and clear link between a judge or prosecutor and a political party is prohibited. Any political initiative or direct or indirect promotion of political party strategies, ideas, or measures that may create such a link is also prohibited.*
- ✓ *Judges and prosecutors are prohibited from supporting, promoting, or liking the pages and posts of activist campaigns or groups if their association with them could undermine the prestige of judges, prosecutors, and the judiciary.*
- ✓ *Photographs and videos showing nudity and personal life episodes with a degree of intimacy that undermine the dignity of the judicial function are prohibited.*
- ✓ *Particular care should be taken with photos from social events, such as parties/cocktails/social gatherings and the like, posted on social media, as they may be publicly exposed to others who may not wish to be.*
- ✓ *Using the status of judge or prosecutor is inappropriate to promote another person's business interests on social media, as well as any action related to a marketing activity.*
- ✓ *Judges and prosecutors may not use social media or media to provide legal advice.*
- ✓ *The duty of confidentiality does not override the freedom of expression of judges and prosecutors.*
- ✓ *Judges and prosecutors must respect the obligation of discretion when exercising their freedom of expression on social media, i.e., to preserve the dignity and prestige of the judicial function and the impartiality and independence of the judiciary.*

²⁷ Guidelines, page 17.

²⁸ Guidelines, page 19.

- ✓ *Judges and prosecutors may use freedom of expression to assess fundamental issues relating to the administration of justice or to promote and protect universally recognized human rights, fundamental freedoms, and the rule of law.*
- ✓ *Judges and prosecutors can use their freedom of expression to evaluate legislative and constitutional reforms professionally and legislation affecting the judiciary, using decent, technical, scientific, and reasoned language.*
- ✓ *In exercising their freedom of expression, judges and prosecutors must formulate their opinions in a balanced manner that does not affect even the appearance of impartiality.*
- ✓ *Judges and prosecutors shall not initiate or engage in debates on social media in which insults, attacks on the person, or any other direct or indirect form of expression likely to undermine personal dignity are used.*
- ✓ *Discriminatory comments and jokes with such references will not be used on social media platforms.*
- ✓ *The language used by judges and prosecutors must be respectful and invite dialogue, not antagonize the parties involved in a debate.*
- ✓ *It is recommended that judges and prosecutors avoid engaging in the online space for causes, including humanitarian ones, in a way that may undermine the prestige of their office and their impartiality.*
- ✓ *Judges and prosecutors should be cautious about expressing outrage to avoid polarization and radicalization fuelled by social media.*
- ✓ *It is recommended that judges and prosecutors refrain from using social media, with multiple daily posts and a quasi-permanent active online presence.*
- ✓ *Judges and prosecutors can react immediately to correctly inform the public if untruthful/derogatory information appears on their personal social media accounts.*
- ✓ *If discriminatory, offensive, threatening, or politically charged comments appear on their posts from other users, judges and prosecutors will moderate discussions and disavow such attitudes, including by deleting them.*
- ✓ *It is recommended that judges and prosecutors anticipate, as far as is reasonable, how their posts may be distorted and misrepresented and take this into account when communicating online.*
- ✓ *It is recommended that messages posted by judges and prosecutors should be explicit, clear, and reasoned, avoiding innuendo.*
- ✓ *It is recommended that institutions representing judges and prosecutors provide regular training on social media risks, professional difficulties, and ethical dilemmas.²⁹.*

2.2. Friendships and interactions on social media

Judges and prosecutors are responsible for the obligations arising from the status of the judicial profession in their interaction with social media users.³⁰.

Judges and prosecutors may accept lawyers on their friends list. Being friends on a social media network with the lawyer who subsequently appears before the judge or prosecutor or with a person who later becomes a party to a case is not a circumstance that calls into question the impartiality with which the judge or prosecutor will decide or investigate that case.

²⁹ Guidelines, pages 24 – 30.

³⁰ Guidelines, page 15.

Judges and prosecutors may accept journalists on their list of friends. Being friends on a social network with a journalist is not a circumstance that can be interpreted as expressing any affiliation of the judge or prosecutor with the policy or views of a newspaper, TV station, news site, press trust, etc.

Being friends on a social network with a politician is not a circumstance that can be interpreted as expressing political affiliation or sympathy for the judge or prosecutor. However, judges and prosecutors should exercise caution when dealing with politicians on social media.

Judges and prosecutors should take extra care to avoid situations where interaction on social media with a politician could be used in political fights and controversies.

Judges and prosecutors are forbidden from accepting witnesses, parties' lawyers, or other parties to a case as `friends`, knowing their status. Issues where social media friendships reflect real-life friendships are dealt with under the procedural rules on incompatibility.

Judges and prosecutors are advised not to add anyone to social media to have more `friends`.

It is recommended that judges and prosecutors do not accept the friendship of those users who may have indications of using fake accounts.

It is recommended that judges and prosecutors periodically evaluate their list of friends and ensure that the interactions and profiles of contacts do not affect the dignity of the office.

Judges and prosecutors are not responsible for posts by family members and close friends on personal social media accounts. However, judges and prosecutors will endeavor to inform their family members and close friends who have social media accounts about the ethical and professional obligations of the judiciary.

The judge and prosecutor will ensure they are the only ones with access to the personal social media account.

If there is false information about the judge or prosecutor, they can react promptly by correctly informing the public on their personal social media account.

Deleting indecent comments or using the `hide` option is recommended.^{31`}

Case study.

May a judge express his opinion on social media?

`Judges and prosecutors can use social media platforms to follow topics of interest.

Judges and prosecutors can participate in and promote social media sporting, cultural, social, and events of historical but not political significance.

Judges and prosecutors can promote their articles and books, scientific events, debates, seminars, and any other academic and cultural resource that is professionally relevant on social media.

Judges and prosecutors can use social media to disseminate information available online and of public interest to help the judiciary orient themselves in their dealings with judicial institutions.^{32`}
(p. 25 points 3 – 6)

May a judge have friendships and interactions on social media?

³¹ Guidelines, pages 31 – 32.

³² Guidelines, page 25, points 3 – 6.

May a judge maintain an active social media account that identifies him (or her) as a judge?

‘Creating a social media account does not contravene the code of ethics of judges and prosecutors in Romania. The use of this account will be made taking into account the obligations deriving from the status of the profession of judge and prosecutor.’³³

The Superior Council of Magistracy’s (the Section for Judges as a disciplinary court) Judgment no. 28J of 13 December 2022

Judge A was disciplinary investigated and sanctioned with a warning for posting two videos on the social media network TikTok in the summer of 2020, reposted on the Instagram network. In the first video, the judge filmed himself cutting the hedge at his residence, shirtless, pretending to fight opponents by copying gestures from violent movies such as The Texas Chain Saw Massacre. In the second image, the judge filmed himself, in his underwear, cleaning the swimming pool at his own home, after which he bathed in the pool.

To the ironic comments and warnings on Instagram made by several of Judge A's followers, drawing the judge's attention to the fact that in this capacity, he must show decency, he responded in an insulting and ironic note to the comments made, telling them, among other things, that they were idiots for not knowing the grammar of the Romanian language, that they would need psychiatric treatment and offered to cut the hedges of these Instagram followers for free.

The SCM did not accept Judge A's defense that these events were in his spare time and related to his private life. On the contrary, SCM pointed out that this did not constitute a cause exonerating it from liability, given that each social media user bears full responsibility for the material and comments posted on his or her account. SCM also noted that TikTok is a public social media application based on short-form video content through which videos of 15 to 60 seconds can be viewed, created, and shared.

Therefore, stated the SCM in its decision, ‘the posting of videos on TikTok and Instagram satisfies the legal requirement of ‘public nature’ since, first, those social networking applications, by their nature, are intended for public/any user access and, second, the content is posted to be made known to the persons accessing them.

Judge A's manifestations in the virtual public space, embodied in the posting of videos on publicly accessible social media, in which he appears using a chainsaw while hacking away at a backyard hedge, images reasonably associated with scenes from a horror film of extreme violence, Texas Chain Saw Massacre, respectively, scantily clad, working on the construction and cleaning of a swimming pool, postings which generated strong public reactions in a context in which the defendant's status as a judge was well known to be contrary to the dignity of his office and likely to undermine the prestige of justice. ‘.

High Court of Cassation and Justice, Judgment no. 54 of 26 March 2018

In 2017, Judge B posted a message on his Facebook page about the nomination of a new Minister of Justice. The judge stated that the new minister needed the qualifications for the position and was incompetent because he graduated from the Faculty of Engineering before graduating from law school. The judge also stated in the same post that the minister's mandate would be specific to the political party he belongs to: the suppression of the fight against corruption, the impunity of politicians from the party he belongs to, as well as the creation of a mechanism of direct

³³ Guidelines, page 25, point 1.

accountability of magistrates, to discourage their misconduct by investigating and convicting politicians from the same party the minister belongs to.

The Supreme Court dismissed the disciplinary action brought against Judge B, holding that 'It should be noted that the names and expressions imputed to Judge B represent, even in the sense of those held by the disciplinary court, value judgments relating to a matter of general interest in society and of particular interest to the judiciary, since they concern the public office of Minister of Justice, and are placed under the protection of freedom of expression within the meaning of Article 10 of the European Convention on Human Rights.'

In addition, the Supreme Court also pointed out that 'it is evident that the defendant judge's statements concern a matter of general interest for the Romanian justice system since they relate to the person appointed to the office of Minister of Justice, in which case no restrictions on freedom of expression would be admissible under Article 10(1) of the Convention. (2) of the Convention.'

High Court of Cassation and Justice, Judgment no. 327 of 18 October 2021

In the context of the COVID-19 pandemic, Judge C created a GUP on Facebook in the spring of 2020 named 'Without Medical Dictatorship.' On this page, Judge C had extensive comments about global conspiracies about the pandemic - claiming that this alleged crisis was triggered by a worldwide occult -the harmful effect of vaccines, the ineffectiveness of protective masks, or the harmful effects of 5G. She also accused the management of the SCM and the court where she works, which have issued strict rules of medical protection at the courts' premises, including those related to the conduct of court sessions, they are part of this conspiracy and that by these rules, which she claims he will not respect, she is seriously violating the right of access to justice and the privacy of litigants.

In one of his posts, regarding the SCM and court leadership concerning the medical measures and rules taken by these institutions, she wrote verbatim that 'Hitler came to power because some Germans were too sure that something like this would not happen and a whole world remained silent and did not realize what was happening until it was too late. Now, something much uglier is happening, and we seem more sedated, numb to judgment, indifferent, and resigned; we have a stain on our brains and are no longer awake; we sleep numbed by television, fear, hopelessness, and lack of perspective. Only madmen have bright perspectives, like Lenin's torturers, Stalin's torturers, Nero's praetorians, today's gender ideologues ...'.

The Supreme Court has held in its judgment that '(...) the ethical duties of a magistrate may influence private life, if the magistrate, by his conduct, even in private life, harms the image or reputation of the judicial institution...'

The Supreme Court also held that although the status of magistrate does not deprive Judge C of the right to free expression, this right must be exercised within the limits of the duty of care imposed on magistrates precisely given their status. Otherwise, 'the fair balance between the individual's fundamental right to respect freedom of expression and the legitimate interest of a democratic state would be violated. However, the duty of reserve of magistrates, the Supreme Court goes on to point out, implies, by its very nature, moderation, restraint, and, in the factual context of the case, care for how the magistrate chooses to express his or her own opinions on matters of particular interest to public opinion.'

SCM's Opinion No. 20738/2021

'(...) the numerous restrictions and conditionalities specific to judges lead to the assessment that an individual approach by a judge to open an account on a social media platform to comment/debate legal issues is to be avoided.

Such an approach could expose the judge to criticism or even polemic approaches from other platform users, which would be generated by their disagreement with the legal opinions expressed by the judge, by the perception that his approach would be motivated by a desire for notoriety (...). Such a risk is undoubtedly amplified by the nature of interaction in the online environment, which is highly informal.`.

Country: Spain

Spanish legal framework.

The judiciary law (LOPJ 6/1985), does not offer any particular rules for using social media, except (in general terms):

Judiciary law (LOPJ 6/1985).

Article 396 judiciary law (LOPJ 6/85).

Judges and Magistrates are forbidden from revealing information that they obtained while performing their duties about natural or legal person awaiting trial.

Spanish judicial ethics principles.

9. The judge must behave and exercise their rights in any activity in which he or she is identifiable as judge in such a way that he or she does not compromise or undermine society's perception of the independence of the judiciary in a democratic State.

16. Impartiality also imposes the obligation to refrain from acting in ways that could undermine public trust in justice, whether inside or outside the process.

17. The judge must maintain the appearance of impartiality because it is required for the exercise of jurisdiction.

19. The judge must exercise prudence in his social life and in his interactions with the media in order to maintain the appearance of impartiality with his public statements.

20. The judge can play an important educational role about explaining the law in his or her interactions with the media.

22. Integrity requires the judge to act in a way that reaffirms citizens' trust in the Administration of Justice, not just in the exercise of jurisdiction, but in all aspects in which he is identifiable as a judge or uses his status as such.

Opinion, Spanish Judicial Ethics Commission, December, 3, 2020

The Spanish Ethics Commission has published various statements about social networks. The most important of which is the Opinion of December 3, 2020. To summarise:

- 1.- Judges, like any other citizen, have the right to free expression.
- 2.- Judges must exercise restraint, discretion, and moderation/prudence.
- 3.- They are not permitted to be disloyal to the administration of justice.
- 4.- Personal opinions are discouraged since they affect impartiality.
- 5.- Judges cannot discuss on social media facing negative users feedback.
- 6.- They should avoid presenting solutions or exposing their own criteria for resolving procedures.
- 7.- They must not attempt to influence or lead the decisions of other courts.

In general terms, the Spanish Judicial Ethics Commission has pointed out in its many interventions that the engagement of judges in social networks represents a positive feature of their pedagogic competence for an important percentage of the population who no longer watch television or listen to the radio.

The judge must exercise extreme caution while selecting his social network relationships, giving "likes" or interacting with politicians.

However, there are some significant risks.

In the other hand, we have to bear in mind that the first is for the administration of justice itself (for the whole judiciary), as the behaviour of some judges on social media may have an impact on their image of impartiality and integrity. Normally, it focuses (with widespread media coverage) on the negative aspects rather than the constructive actions, and the intervention of a judge can affect the entire group.

The second risk is the possibility that the judge may become dependent on the demand for public approval in order to avoid taking unpopular decisions. Social networks operate on the basis of a well-thought-out algorithm, designed to ensure that the user spends as much time as possible connected, and can generate subjects that are depending on public acceptance (popular acclaim) as well as popularity and recognition.

Spanish case law.

Superior Court of Justice of Catalonia order January, 1, 2022 and disciplinary consequence addressed by the Spanish Council for the Judiciary (CGPJ).

The magistrate had an anonymous twitter account, but his name was discovered. He sent critical and occasionally abusive (offensive) remarks to Catalan officials, media, and the Catalan independence movement. It produced the following two outcomes.

1.- Superior Court of Justice of Catalonia (disqualification of the judge from participating in the proceedings before the Court).

The court informed him that he would be unable to hear a proceeding in which one of the journalists he had criticised was involved.

The court specifically claimed in its order as follows:

"...the repeated content and tone of the challenged magistrate's tweets (which go beyond mere criticism or disagreement), with clear disapproval for ideology and the Catalan independence movement, and especially for Mrs. XX, as a highly significant figure within the aforementioned movement."

Furthermore, the Court claims that all of this "can create objectively justified doubts about the impartiality of the magistrate, at least in terms of appearance." For the journalist, this position generates "reasonable doubts about the existence of prejudices in the court's membership towards his person, which shadow the guarantee of impartiality."

2.- The Spanish Council for the Judiciary (CGPJ) (disciplinary case).

For the same reason, the Spanish Council for the Judiciary (CGPJ) opened a disciplinary case, which was finally archived.

2.- Case involving offensive messages directed at groups sent by a judge via Facebook (disciplinary procedure Spanish Council for the Judiciary (CGPJ march, 24, 2023, and prosecutor's office case, march, 3, 2023).

Spanish Council for the Judiciary (CGPJ march, 24, 2023).

The Spanish Council for the Judiciary initiated disciplinary proceedings for a "very serious lack" of "inexcusable ignorance" in the performance of judicial duties or a possible "serious lack" of "lack of consideration for the citizens" (disciplinary sphere) of the judge who directed messages against

XX on Facebook, (XX was previously sentenced by this judge for the crime of child abduction from the child Italian father)

Prosecutor's office case (march, 3, 2023).

The public prosecutor demanded that the judge should be investigated for a "hate crime" (expressing hostility towards groups of people based on their national or ethnic origin, language, colour, religion, sex, age, intellectual or physical handicap, sexual orientation, or other similar factors).

In this terms, the prosecutor's office demanded a investigation about a possible crime for expressions written by the judge on Facebook addressed to magistrates, judges, and prosecutors; those who questioned equality policies and violence against women; those who gathered disapproval for left-wing parties and policies; criticism of unions; and those that are clearly disrespectful to migrants and ethnic groups.

Finally, a brief conclusion.

There is no particular provision in Spanish law in this area.

However, the Spanish Judicial Ethics Commission has issued some statements about this theme.

As a positive aspect, one of the benefits of social networks is their ability to expose information to people who can only learn about it through social media.

The judge must exercise extreme caution while selecting his social network relationships, giving "likes" or interacting with politicians.

However, there are also risks associated with judges' use of social media.

The first is about the possibility of affecting the appearance of impartiality if the judge sends messages criticising certain individuals, politicians, or groups...

In second place, a judge must always act irrespective of popular acclaim or criticism. The use of social media can make the judge dependant on popular acclaim, making very difficult to him, or her, to conduct a case and to make unpopular decisions.

We need to bear in mind that social networks operate in the basis of a well-thought-out algorithm that attempts to increase each individual's connection time and also impulsive emotions. As a result, social media platforms are not a place for peaceful and constructive dialogue.

In practise, anonymity is difficult to maintain because there is an enormous amount of information (open data, open sources information –osint- methods...) and online tools to determine who is hidden behind each profile.

In the bottom line, acting on social media may have ramifications not just in the ethical sphere, but also in the legal (as a basis for recusal) disciplinary spheres (disciplinary proceedings), or even investigation for perpetrating a hate crime.

Country: United Arab Emirates

The Vision of the United Arab Emirates

The United Arab Emirates (UAE) staunchly upholds the imperative of achieving justice, preserving rights and equality, and extending the rule of law. A particular emphasis has been placed on judges, recognized as the custodians entrusted with realizing these elevated principles that resonate with our moral values and international commitments. A pivotal commitment has been made to establish a charter outlining the principles of judicial conduct, with the aim of safeguarding the integrity of the judicial System and upholding the ethical standards of judges.

In alignment with this commitment, His Excellency the Minister of Justice issued Ministerial Resolution No. (192) of 2017 on 23/02/2017, specifically addressing the document outlining principles of judicial conduct. Subsequently, acknowledging the significance of the matter, the Supreme Judicial Council made a decision to revisit the document. This involved the formation of a committee tasked with this responsivity, and the draft was presented to the Council for approval.

Judges and Social Media

A member of the judicial authority shall exercise prudence in interactions with social networking programs on the internet, restricting usage exclusively to family and close acquaintances. Moreover, such a member must not publish content related to their judicial responsibilities, opine

on matters pending before the judiciary and engage in discussions involving judicial, legal, socio-political, or any other subjective viewpoints.

A member of the judicial authority must adhere to all legislation issued regulating the use of social media.

A member of the judicial authority must be responsive for their digital interactions, respecting laws and rules, and must not engage in activities that conflict with moral and human values.

A member of the judicial authority must commit to the optimal use of social media, ensuring that such use does not harm their reputation, the reputation of the party to which they belong, or the reputation of any other party.

A member of the judicial authority shall adhere to the general terms and conditions governing the use of social media, encompassing compliance with intellectual property rights, privacy policies, and the imperative to abstain from engaging in defamation, discrimination, abuse, and threats towards any individual or entity, including the affiliated entity. Additionally, they must consider and adhere to applicable laws.

During official working hours, a member of the judicial authority must not engage in personal activities such as social media and websites, except for those officially appointed or whose job responsibilities necessitate such engagements.

A member of the judicial authority must ensure the appropriateness of information before sharing it via social media, particularly information related to governmental authorities. This entails verifying the availability of information for publication, confirming its accuracy, and ensuring it is not false,

misleading, unproven, or unsupported by approved facts. The verification of the information source is essential.

A member of the judicial authority shall completely refrain from employing methods of irritation, exaggeration, and harsh criticism in their interactions. They must exercise a high level of responsibility and professionalism when participating in social media discussions or engaging with others.

When circulating any topic through social media, a member of the judicial authority shall ensure that the content aligns with the general direction and official position of their government. It must not inflict harm upon the government's reputation, image, or the coherence of its stance before the local, regional, and international community.

A member of the judicial authority must not publish on their personal social media account any official data related to their judicial capacity or entity. This includes their job title, the name of the entity they work for, phone number, official email address, or any other official data. Additionally, they must not use their official email to register or log into social media accounts unless approved in writing by the Federal Judicial Council or as part of an official assignment within the scope of their duties.

A member of the judicial authority must not exploit their position, status, or powers for personal purposes on social media and other platforms.

Members of the judiciary shall not engage in communication with each other through social media on matters pertaining to daily work tasks or the progress of work within their respective entities.

A member of the judicial authority must promote values of solidarity and social sympathy, adopt a positive approach, and refrain from engaging in any actions, practices, or behaviors that violate morals, good conduct, or societal traditions and customs. They must not offend political opinions or religious beliefs of others or incite against them. Furthermore, they shall encourage a culture that embraces diverse opinions to foster intellectual tolerance through their use of social media platforms.

3. Judge involvement in non-profit organizations

3.1. Possible damage to the image of independence and impartiality

3.2. Particular attention to the participation of judges in organizations dedicated to cultural or educational activities that are only apparently non-profit”

Case study.

May a judge have lectures in courses organized by lawyers without getting paid?

May a judge publish articles in a publication that has an ownership with interest in his court?

Is it possible for a judge to teach at a private university?

Rules of reference

Bangalore Principles of Judicial Conduct:

Independence

Principle: independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Application 1.6. A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary, which is fundamental to the maintenance of judicial independence.

Impartiality

Principle: impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

Application 2.2. A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

Application 2.3. A judge shall, as far as is reasonable, so conduct himself or herself as to minimize the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.

Integrity

Principle: integrity is essential to the proper discharge of the judicial office. Application 3.1. A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.

Propriety

Principle: propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

Application 4.1. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

Application 4.9. A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.

Application 4.11. Subject to the proper performance of judicial duties, a judge may:

- (a) Write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
- (d) Engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

Country: Algeria

Le magistrat et ses engagements

Les magistrats, comme tous les citoyens, bénéficient de la liberté de conscience, de la liberté d'opinion, de création intellectuelle, artistique et scientifique, d'expression, d'association et de réunion, consacrées par les articles 34, 51, 52 et 53 de la Constitution.

Toutefois, l'exercice de ces libertés obéit aux conditions prévues par la loi organique portant statut de la magistrature du 6 septembre 2004.

Les engagements du magistrat relèvent, non seulement de l'exercice des libertés fondamentales précitées, mais également, lorsque celui-ci ne souhaite pas que ses engagements soient rendus publics, de la protection de la vie privée dont les magistrats doivent bénéficier.

Il ne peut être fait état dans le dossier du magistrat ni de ses opinions ou activités politiques, syndicales, ni d'éléments relevant strictement de sa vie privée.

L'implication du magistrat dans la vie de la cité constitue une source d'enrichissement des pratiques professionnelles de celui-ci en lui permettant d'avoir une meilleure connaissance du contexte dans lequel il exerce ses fonctions. Pour autant, des précautions doivent être prises afin d'éviter qu'il ne soit porté atteinte au principe d'impartialité auquel le magistrat est soumis.

Les engagements associatifs

En vertu du statut, le magistrat qui adhère à une association doit en faire la déclaration au ministre de la justice.

La connaissance du contexte socio-économique du ressort dans lequel le magistrat exerce ses fonctions est un élément de la qualité de l'action et des décisions de celui-ci. Néanmoins, l'implication des magistrats dans la vie des associations en lien avec l'institution judiciaire peut, dans certaines circonstances, porter atteinte à l'obligation d'impartialité à laquelle les magistrats sont soumis.

La pratique de la récusation volontaire peut permettre de résoudre les situations de conflits d'intérêts ou d'atteinte à l'impartialité qui pourraient résulter des engagements associatifs du magistrat.

Elle peut néanmoins être insuffisante dans l'hypothèse où le magistrat exerce des fonctions de dirigeant au sein d'une association, en particulier lorsqu'il est conduit à représenter celle-ci et à s'exprimer publiquement en son nom, et que cette association œuvre dans le champ couvert par les fonctions et le service précis confiés au magistrat. À titre préventif, il devra évoquer cette situation avec son chef de juridiction afin qu'une réponse soit apportée à la question de la compatibilité des fonctions juridictionnelles exercées et de l'engagement associatif.

L'engagement syndical

Le droit syndical est reconnu aux magistrats dans les limites des dispositions prévues au statut de la magistrature.

Toutefois, dans l'exercice de leurs droits syndicaux les magistrats doivent toujours se conduire de manière à préserver la dignité de leur charge et l'impartialité et l'indépendance de la magistrature.

Dès lors, l'engagement syndical d'un magistrat ne saurait en soi être incompatible avec les devoirs de son état, en particulier avec l'obligation d'impartialité à laquelle il est tenu.

Il appartiendra néanmoins au magistrat, membre d'une organisation syndicale, de s'abstenir de siéger dans une affaire dans laquelle celle-ci serait partie afin de prévenir un risque de conflit d'intérêts.

Si les statuts des organisations syndicales prévoient communément qu'elles ont vocation à défendre les intérêts moraux et matériels de leurs membres, elles se donnent également pour objectif de défendre l'indépendance de la justice, ce qui les conduit à intervenir dans le débat public ou politique, par exemple à l'occasion d'affaires politico-médiatiques ou de faits divers ayant donné lieu à traitement judiciaire.

Au titre du manquement à l'obligation de réserve, toute critique de nature à porter atteinte à la confiance et au respect que la fonction de magistrat doit inspirer aux justiciables est susceptible d'être sanctionnée par les organes disciplinaires. Pour autant, la dénonciation par une organisation syndicale de dysfonctionnements judiciaires, doit être envisagée au regard de l'atténuation du devoir de réserve dont bénéficient les magistrats lorsqu'ils s'expriment à titre syndical, sous réserve que les propos tenus ne soient ni dénigrants ni injurieux.

Les prises de position d'une organisation syndicale ne sauraient servir de fondement à la mise en cause de l'impartialité d'un magistrat au seul motif qu'il est membre de cette organisation syndicale.

Country: Belgium

Belgian legal framework (non-official translation)³⁴

Article 293 Belgian Judicial Code (Ger.W./Cod. Jud.)

“Judicial positions are not compatible with holding public office obtained through election, any paid public office or political/administrative office, the position of a notary or bailiff, the profession of a lawyer, military service, or involvement in the clergy. (...)”

Artikel 294 Belgian Judicial Code (Ger.W./Cod. Jud.)

“The rule set forth in Article 293 can be deviated from, with authorization from the King, upon the recommendation of the Minister of Justice, in the case of holding the position of professor or teacher, lecturer, assistant in an educational institution, or member of an examination committee.

Likewise, the rule specified in the first paragraph of Article 293 can be deviated from, with authorization from the King, upon the recommendation of the Minister of Justice, in the case of participation in a commission, council, advisory committee, or, based on a special assignment, in the management or supervision of a public institution, provided that the number of paid assignments or positions remains limited to two, and the total remuneration does not exceed one-tenth of the annual gross salary of the principal office in the judicial order.

With authorization from the King, and through a decree supported by reasons, taken on unanimous advice of the judicial authority, deviations from the limitations imposed in the second paragraph concerning the number of paid assignments or positions and the amount of remuneration can be made.”

Artikel 295 Belgian Judicial Code (Ger.W./Cod. Jud.)

“No member of a court, tribunal, public prosecutor's office, or registry can be appointed or designated to the positions or offices specified in Article 294 without the advice of the chief of the corps or the magistrate who is their hierarchical superior.”

Belgian judicial ethics principles (non-official translation)³⁵

“Right to freedom of association

Magistrates, like any other citizens, have the right to freedom of association. They can be members of associations that serve various purposes, such as political, philosophical, religious, cultural, scientific, artistic, humanitarian, social, or others, and they can actively participate in their activities.

When assessing the impartiality of certain court members, consideration may be given to the perception that a party holds on this matter. However, this belief alone is not the sole determining factor. The key factor is whether there are objective grounds to justify the fear of partisan treatment of the case.

³⁴ See the database in French: <https://www.ejustice.just.fgov.be/loi/loi.htm>

³⁵ See the *Belgian Guide for Judicial Ethics* in French: CONSEIL SUPÉRIEUR DE LA JUSTICE and CONSEIL CONSULTATIF DE LA MAGISTRATURE, *Guide pour les Magistrats – Principes, valeurs et qualités*, 2012, p. 6, see: <https://csj.be/admin/storage/hrj/o0023f.pdf>.

While it is permissible for magistrates to be affiliated with a political party, engaging in active political propaganda compromises the independence and impartiality of both the magistrate and the judiciary.

Aside from legal incompatibilities, magistrates should exercise extreme caution if they decide to take on a board mandate within an association. They should thoroughly evaluate the associated risks in advance.”

European Case Law

ECHR 19 October 2021, *Miroslava Todorova v. Bulgaria*, nr. 40072/13

([https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%2240072/13%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-212376%22\]}\).](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%2240072/13%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-212376%22]})

“A Bulgarian judge served as the President of the Bulgarian Judges' Association. In her capacity as the association's president, she publicly criticized the reforms of the Bulgarian judicial system, expressing her disapproval of statements from the executive branch that attacked judges and measures taken by the Bulgarian Supreme Judicial Council (CSM). Following these public statements, the CSM initiated a disciplinary procedure against the judge, accusing her of alleged delays in handling court cases, resulting in a reduction of her salary. Subsequently, she faced three additional disciplinary procedures, which ultimately led the CSM to decide to dismiss her from her position.

The judge challenged these decisions before the Bulgarian Supreme Administrative Court (SAC). The SAC annulled the dismissal and asked the CSM for a new assessment. In response, the CSM ordered the judge's demotion for a period of two years, a sanction that the SAC eventually reduced to one year.

The Bulgarian judge appealed this decision to the European Court of Human Rights (ECHR). She primarily argued a violation of her right to a fair trial due to the partiality of the SAC, as well as a violation of her right to freedom of expression by being punished for her opinions.

The ECHR condemned Bulgaria for disproportionately restricting the right to freedom of expression through the sanctions imposed on the Bulgarian judge. Member states have only a very limited margin to limit freedom of expression on matters of public interest, such as statements about the functioning of justice or the need to maintain its independence.”

Belgian Case Law (non-official translation)

Cass. 15 October 2010, C.10.0580.N, ECLI:BE:CASS:2010:ARR.20101015.2, www.juportal.be ;

see also: [https://e-](https://e-justice.europa.eu/430/EN/european_case_law_identifier_ecli_search_engine?init=true)

[justice.europa.eu/430/EN/european_case_law_identifier_ecli_search_engine?init=true](https://e-justice.europa.eu/430/EN/european_case_law_identifier_ecli_search_engine?init=true)

“The adoption of a specific position by a judge on a legal issue through scientific publications or as part of the activities within the editorial board of a legal review does not necessarily render the judge unsuitable to hear a dispute where that legal point is at stake. This is also not the case when the judge expresses disapproval or approval of a particular point of view, provided that it is done with the moderation and nuance that should always characterize the conduct of a magistrate.

Publishing a scientific contribution on a legal issue cannot be considered as the judge writing about a specific dispute.”

Cass. 8 May 2021, P.120730.N, ECLI:BE:CASS:2012:ARR.20120508.5, www.juportal.be ; see

also: [https://e-](https://e-justice.europa.eu/430/EN/european_case_law_identifier_ecli_search_engine?init=true)

[justice.europa.eu/430/EN/european_case_law_identifier_ecli_search_engine?init=true](https://e-justice.europa.eu/430/EN/european_case_law_identifier_ecli_search_engine?init=true)

“The fact that some members of the Court, in their official capacity, may or may not be present in judicial robe during the celebrations of the national holiday or the feast of the monarchy, which take place in a building of the Catholic worship and presided over by the archbishop, does not objectively create an appearance that these members of the Court would no longer be impartial and independent in the applicant's case.

Similarly, the fact that some magistrates of the Court may be associated with KU Leuven, of which the Archbishop is the Grand Chancellor, as a professor, lecturer, or instructor, does not create an appearance in the eyes of the applicant and the public opinion that these members would no longer be impartial and independent in their decision-making.

The personal beliefs of a magistrate alone do not create an appearance of bias. The fact that a magistrate may or may not be a member of a philosophical or religious association and participates in the activities of that association does not give rise to a reasonable suspicion of bias.”

Cass. 15 June 2021, P.21.0145.N, ECLI:BE:CASS:2021:ARR.20210615.2N.11, www.juportal.be ; see also: https://e-justice.europa.eu/430/EN/european_case_law_identifier_ecli_search_engine?init=true

“The judge is presumed to be impartial, independent, and unbiased until proven otherwise; in assessing whether there are legitimate reasons to doubt the impartiality of a member of a judicial body, consideration may be given to the conviction expressed by a party on this point; however, that conviction does not constitute an exclusive criterion; what matters is whether the fear of a biased treatment of the case is objectively justified.

The mere personal beliefs of a magistrate do not create an appearance of bias; the mere fact that a magistrate may or may not be a member of a philosophical or religious association and participates in the activities of that association does not constitute a legitimate reason to doubt the impartiality and independence of that magistrate.”

A brief outline

1. The ability or inability to engage in secondary activities is a doctrine that, in Belgium, largely falls under the chapter "Incompatibilities" in the Judicial Code (Articles 292 and following of the Judicial Code). Article 293 of the Judicial Code expressly states that the offices of the judicial order are incompatible with the exercise of a publicly elected office, any paid public function or public office of a political or administrative nature, the office of notary or bailiff, the profession of lawyer, the military profession, and the clergy³⁶. This prohibition stems from the separation of powers, as established in the Constitution and from the fundamental right of the litigant to have disputes settled by an independent and impartial judge³⁷. Through this provision, the legislator aims to prevent the executive branch from securing the loyalty of the judge by offering them a reward³⁸.

2. On the rule that paid ancillary activities are not allowed, there are only a few exceptions. With authorization from the King and upon recommendation of the Minister of Justice, exceptions are allowed for the exercise of a position as a professor or teacher, lecturer, assistant in an educational institution, or member of an examination committee³⁹. This also applies when participating in a commission, council, advisory committee, or, by virtue of a special assignment, in the management

³⁶ Similar incompatibilities apply to both the judges of the Constitutional Court and the Council of State's state councilors (see Article 44 of the Special Law of January 6, 1989, on the Constitutional Court, and Article 107 of the Coordinated Laws on the Council of State).

³⁷ J. FLO, “Conflits d'intérêts: incompatibilités et récusation”, in *Statut et déontologie du Magistrat*, X. DE RIEMAECKER and R. VAN RANSBEECK (eds.), Brussels, la Charte, 2020, 459.

³⁸ A. ALEN and K. MUYLLE, *Handboek van het Belgische Staatsrecht*, Mechelen, Kluwer, 2011, 632, nr. 561.

³⁹ Article 294, first paragraph Belgian Judicial Code.

or supervision of a public institution, provided that the number of paid assignments or positions remains limited to two and the total remuneration does not exceed one-tenth of the annual gross salary of the main position in the judicial order⁴⁰.

While authorization from the King and approval from the chief of Court or the Public Prosecutors Office⁴¹ are necessary for the aforementioned ancillary activities, magistrates are allowed to write scientific articles and contributions without having to seek any permission⁴². The Belgian Supreme Court ('Cour de Cassation/Hof van Cassatie') has clearly stated in the context of a recusation procedure that when a judge takes a certain position on a legal issue in a scientific publication or in the context of editing a legal journal, it does not necessarily render the judge unfit to adjudicate a dispute in which that legal issue is at stake. The Belgian Supreme Court further clarified that this is not the case when the judge expresses disapproval or approval of a certain point of view, provided that this is done with the moderation and nuance that should always characterize the actions of a magistrate⁴³. This ruling is also referred to in the '*Belgian Guide for Judicial Ethics*'.⁴⁴

Of course, it is up to a magistrate to assess whether he should recuse himself if there might be doubts about his impartiality. This was recently illustrated in a case that received a lot of media attention in Flanders. During a student initiation organized by a student club active at a certain university, one of the students died while undergoing the initiation ritual. One of the judges who had to preside over the criminal case against the members of the club had an affiliation with this university. Even though the university was not a party to the case at that time, one of the lawyers raised the issue of a lack of impartiality. The judge decided to recuse themselves from the case, despite the fact that Belgian legal doctrine normally holds that there is no prohibition for a magistrate to teach at a university, regardless of its (ideological) orientation⁴⁵.

3. Regarding the aforementioned legally permitted ancillary functions, the '*Belgian Guide for Judicial Ethics*' adds a brief note that a magistrate must always ensure that his impartiality and independence are not compromised by the exercise of these ancillary functions⁴⁶.

4. While paid ancillary activities are clearly the exception, a Belgian judge is, of course, free to become a member of an association and engage in unpaid activities in that context. As a citizen, the magistrate also enjoys the right to association and may, therefore, become a member of a political, philosophical, cultural, scientific, artistic, charitable, social, or religious association, and may also participate in the activities of such an association⁴⁷. However, the magistrate must avoid any actions that could undermine the trust in their independence and impartiality in their conduct.

⁴⁰ Artikel 294, second paragraph Belgian Judicial Code. It should be noted that the limitations set out in this article may be deviated from after a unanimous opinion of the judicial authorities and with the authorization of the King (Article 294, third paragraph Belgian Judicial Code).

⁴¹ Article 295 Belgian Judicial Code.

⁴² J. FLO, "Conflits d'intérêts: incompatibilités et récusation", in *Statut et déontologie du Magistrat*, X. DE RIEMAECKER and R. VAN RANSBEECK (eds.), Brussels, la Charte, 2020, 469. This author does point out that a magistrate in these publications also remains bound by professional secrecy, duty of discretion and duty of restraint.

⁴³ Cass. 15 October 2010, C.10.0580.N, ECLI:BE:CASS:2010:ARR.20101015.2, www.jurportal.be.

⁴⁴ See the *Belgian Guide for Judicial Ethics* in French: CONSEIL SUPÉRIEUR DE LA JUSTICE and CONSEIL CONSULTATIF DE LA MAGISTRATURE, *Guide pour les Magistrats – Principes, valeurs et qualités*, 2012, p. 7, see: <https://csj.be/admin/storage/hrj/o0023f.pdf>.

⁴⁵ Cass. 8 May 2021, P.120730.N, ECLI:BE:CASS:2012:ARR.20120508.5, www.juportal.be; J. ENGLEBERT, "La liberté d'expression et la liberté d'association", in *Statut et déontologie du magistrat*, X. DE RIEMAECKER and R. VAN RANSBEECK (eds.), Brussels, la Charte, 2020, 457.

⁴⁶ CONSEIL SUPÉRIEUR DE LA JUSTICE and CONSEIL CONSULTATIF DE LA MAGISTRATURE, *Guide pour les Magistrats – Principes, valeurs et qualités*, 2012, p. 6, see: <https://csj.be/admin/storage/hrj/o0023f.pdf>.

⁴⁷ J. ENGLEBERT, "La liberté d'expression et la liberté d'association", in *Statut et déontologie du magistrat*, X. DE RIEMAECKER and R. VAN RANSBEECK (eds.), Brussels, la Charte, 2020, 457; CONSEIL SUPÉRIEUR DE LA

Nevertheless, the right to association also comes with further limitations. Legal scholars have pointed out the risk of the magistrate being identified with a group that has a questionable reputation⁴⁸. Therefore, it would be problematic if a magistrate becomes a member of an association that opposes the Belgian State or its institutions, or if he is joining a sect⁴⁹. However, the mere worldview of a magistrate, according to the Belgian Supreme Court, does not create an appearance of bias. As a result, the fact that a magistrate is a member of a philosophical association and participates in the activities of that association is not sufficient grounds to cast doubt on their independence and impartiality⁵⁰.

Furthermore, the '*Belgian Guide for Judicial Ethics*' warns that a magistrate must be very cautious if he decide to take up a management position in an association and should assess the risks beforehand⁵¹. Risks are generally not associated with, for example, being a member of a parent committee at a school or holding an unpaid mandate as a syndic of a small apartment building. The situation becomes more complex when the individual magistrate could be civilly liable as the president of the parents' association or as the syndic of the co-ownership. The same applies to management positions in non-profit organizations (associations). Since 1st of January 2018, the bankruptcy regulations have been extended to cover all enterprises⁵², including associations. If bankruptcy is declared, the liability of directors may be at risk in case of mismanagement. However, personal liability of a director does not apply in the context of small associations.

Membership in a service club, on the other hand, is not subject to incompatibility rules. However, the magistrate should consider the objectives of the club and its public image when making such affiliations⁵³.

In this context, it is essential to keep in mind that under Belgian law, following the jurisprudence of the European Court of Human Rights on Article 6, § 1 of the European Convention on Human Rights, a judge is presumed to be impartial, independent, and unbiased until proven otherwise. When assessing whether there are legitimate reasons to doubt the impartiality of a judge, consideration can be given to the conviction expressed by a party to the proceedings. However, this conviction alone is not a decisive criterion. What matters is whether the fear of a biased treatment of the case is objectively justified⁵⁴. It is this evaluation that is expected from the magistrate themselves before becoming a member of a specific association and/or taking on certain responsibilities within it. By conducting this assessment, the magistrate ensures that their actions do not raise doubts about their independence and impartiality in their role as a judge.

5. The question then arises whether membership and engagement in magistrates' associations are also subject to any restrictions. In any case, it is generally accepted that the freedom of expression of a magistrates' association is greater than that of an individual magistrate because such associations

JUSTICE et CONSEIL CONSULTATIF DE LA MAGISTRATURE, *Guide pour les Magistrats – Principes, valeurs et qualités*, 2012, p. 6 : <https://csj.be/admin/storage/hrj/o0023f.pdf>.

⁴⁸ X. DE RIEMAECKER and M.-A. FRANQUINET, "FAQ – Foire aux questions", in *Statut et déontologie du Magistrat*, X. DE RIEMAECKER and R. VAN RANSBEECK (eds.), Brussels, la Charte, 2020, 495.

⁴⁹ J. ENGLEBERT, "La liberté d'expression et la liberté d'association", in *Statut et déontologie du magistrat*, X. DE RIEMAECKER and R. VAN RANSBEECK (eds.), Brussels, la Charte, 2020, 457.

⁵⁰ See the aforementioned judgement of the Belgian Supreme Court : Cass. 8 May 2021, P.120730.N, ECLI:BE:CASS:2012:ARR.20120508.5, www.juportal.be.

⁵¹ CONSEIL SUPÉRIEUR DE LA JUSTICE and CONSEIL CONSULTATIF DE LA MAGISTRATURE, *Guide pour les Magistrats – Principes, valeurs et qualités*, 2012, p. 6 : <https://csj.be/admin/storage/hrj/o0023f.pdf>.

⁵² Law of the 11th of August 2017 introducing Book XX "Insolvency of Enterprises" into the Code of Economic Law, and inserting the definitions specific to Book XX and the enforcement provisions specific to Book XX into Book I of the Code of Economic Law, published in the Official Gazette on the 11th of September 2017.

⁵³ X. DE RIEMAECKER and M.-A. FRANQUINET, "FAQ – Foire aux questions", in *Statut et déontologie du Magistrat*, X. DE RIEMAECKER and R. VAN RANSBEECK (eds.), Brussels, la Charte, 2020, 496.

⁵⁴ Cass. 15 June 2021, P.21.0145.N, ECLI:BE:CASS:2021:ARR.20210615.2N.11, www.juportal.be.

defend general interests rather than private ones. Criticism of legislation by a magistrates' association is undoubtedly accepted, but magistrates speaking on behalf of such an association should ensure that their actions do not undermine the judicial institution. Magistrates are allowed to criticize a law, but they should not call for boycotting a law⁵⁵.

In this context, it is interesting to refer to a judgement of the European Court of Human Rights in a case involving a Bulgarian judge who, in her capacity as the president of a magistrates' association, had repeatedly publicly criticized the reform of the Bulgarian judicial system. Disciplinary proceedings were initiated against her, based on the fact that she had delays in handling the cases assigned to her, leading to a deduction in her salary. After three other disciplinary cases, her dismissal was decided. The Court condemned Bulgaria for a disproportionate restriction of the right to freedom of expression. The Court considered that a state has only a very limited margin to restrict freedom of expression when it comes to matters of public interest, such as statements about the functioning of the judiciary or the need to maintain the independence of the judiciary⁵⁶.

⁵⁵ X. DE RIEMAECKER and M.-A. FRANQUINET, ““ FAQ – Foire aux questions”, in *Statut et déontologie du Magistrat*, X. DE RIEMAECKER and R. VAN RANSBEECK (eds.), Brussels, la Charte, 2020, 498. In this context, the aforementioned authors even refer to Article 237 of the Belgian Criminal Code, which states that criminal sanctions are possible if judges interfere in the exercise of legislative power either by obstructing or suspending the execution of one or more laws, or by deliberating on whether those laws will be executed.

⁵⁶ ECHR 19 October 2021, *Miroslava Todorova v. Bulgaria*, nr. 40072/13 ([https://hudoc.echr.coe.int/eng#{%22fulltext%22:\[%2240072/13%22\],%22documentcollectionid%22:\[%22GRANDCHAMBER%22,%22CHAMBER%22\],%22itemid%22:\[%22001-212376%22\]}}](https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%2240072/13%22],%22documentcollectionid%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-212376%22]}})).

Country: Italy

Italian legal framework

Art. 1 and 8 code of ethics

"Art. 1. Fundamental values and principles.

In social life the judge and the prosecutor shall conduct himself or herself with dignity, fairness and sensitivity to the public interest.

In the performance of his or her duties, in the exercise of self-governing activities and in all professional conduct, the judge and the prosecutor shall be guided by the values of personal disinterestedness, independence, including internal independence, and impartiality. [...]"

"Article 8 - The judge and the prosecutor's independence.

The judge and the prosecutor shall guarantee and defend, outside and inside the judicial order, the independent exercise of his or her functions and maintain an image of impartiality and independence.

[...]

He shall avoid any involvement in party-political or business centres of power that might condition the exercise of his or her functions or otherwise tarnish his or her image. [...]"

Art. 3 disciplinary code (d.lgs. 109/2006)

"Disciplinary offences outside the exercise of duties

1. The following shall constitute disciplinary offences outside the exercise of duties

(a) the use of the office of judge for the purpose of gaining unfair advantage for oneself or others;

b) [...];

(c) the assumption of extra-judicial duties without the prescribed authorisation of the High Judicial Council;

d) the performance of activities incompatible with the judicial function referred to in Article 16(1) of Royal Decree No. 12 of 30 January 1941, as amended, or of activities such as to be concretely prejudicial to the performance of the duties governed by Article 1".

Art. 16 Judiciary Law (Royal Decree 142/1941)

"Incompatibility of functions.

Judges may not assume public or private employment or offices, with the exception of those of senator, national councillor or free administrator of public charities.

Nor may they engage in any industry or trade or any liberal profession".

Italian case law

CSM, Disciplinary Section, nr. 57/2020

"(...) 'intellectual profession' is an open notion, qualified by the presence of two requirements (professionalism, understood as the continuity of its exercise, and intellectuality, understood as the expression of the provision to third parties of services of a technical-intellectual nature), and is identifiable even where registration in special registers or lists is not imposed on those wishing to exercise it".

Supreme Court, no. 27493/2013

"It is not necessary that the activity in question be carried out in the form of an undertaking, that is to say, that it has reproduced in complexity an entrepreneurial structure. It is, in fact, sufficient that it was carried out in a continuous and professional manner. This is because the performance by the judge and prosecutor, on a continuous basis and with an economic return, of a second professional activity compromises the primacy of the judge and prosecutor's function of service to the citizens, and ends up affecting the public interest in the regular performance of the judicial function".

Constitutional Court, No. 224/1999

"(...) for judges and prosecutors, the assumption of tasks and the carrying out of activities unrelated to those of the office entrusted to them are factors likely (...) to affect their independence and impartiality in the abstract (...): both in that there may be interference between their own tasks and other activities carried out, and in that the very attribution, or the possibility of attribution, of the task, by its very nature and the advantages that may derive from it, may result in indirect conditioning of the judge and prosecutor."

Country: Netherlands

In general:

The Dutch Constitution, the Judicial Organization Acts (Wrra and Wet RO) provide only limited rules regarding judicial independence and impartiality. As a result, soft law rules in the Netherlands serve as an important supplementary source for safeguarding the judicial system. The Council for the Judiciary, the Presidents' Meeting, and the Dutch Association of Judges (NVvR) have established various codes that offer guidance to individual judges and court administrations in interpreting and applying judicial independence and impartiality. The main codes of conduct for Dutch judges are:

7. Code of Conduct for the Judiciary (in Dutch: *de Gedragscode Rechterlijke Macht 2013*): This code of conduct is established by the Council for the Judiciary and serves as the overarching code for all judges in the Netherlands. It provides guidelines regarding independence, impartiality, integrity, confidentiality, and other aspects of judicial office.
8. Guidelines on Impartiality and Side Activities (in Dutch: *Leidraad onpartijdigheid en nevenfuncties in de Rechtspraak, januari 2014*): These guidelines, also issued by the Council for the Judiciary, offer guidance on engaging in side activities by judges. They include rules and criteria to assess whether a particular side activity is compatible with their judicial function and the required independence and impartiality.
9. Guidelines on Conflict of Interest (in Dutch: *de NVVR Rechterscode 2011*): This set of guidelines, once again established by the Council for the Judiciary, provides directions on preventing and addressing conflicts of interest within the judiciary. It contains rules and recommendations to ensure that judges do not have personal or financial interests that could influence their impartiality and independence.

These codes primarily emphasize vigilance concerning side activities, political and religious expressions, and unwanted mixing of work and private life, including the influence of past employment. The codes predominantly consist of general normative descriptions of core values such as independence, impartiality, and integrity, providing few concrete statements about what behavior is or is not acceptable (such as membership in a representative body or engaging in legal advisory work). Much has been left to the judge's own judgment and decision-making.

Latest developments:

In addition, a bill is currently pending before the House of Representatives in which an amendment to the RO and WRR Act is proposed. The most important proposals are a legal ban on the simultaneous exercise of the office of judge with membership of the Senate or House of Representatives and of the European Parliament. Until now, this was (only) a recommendation (guidance for additional positions), but it will now become a statutory regulation. Another new element is that there will be an obligation for judges to declare financial interests (to the functional authority: read the President of the court). There can be a (financial) conflict of interest if a judge e.g. owns shares and has access to price-sensitive information by virtue of his position.

3. Judge involvement in non-profit organizations:

3.1- Considerations due to possible damage to the image of independence and impartiality.

In the Netherlands, judges are generally allowed to be involved in or participate in non-profit organizations. However, there are certain limitations and guidelines that judges must adhere to. Here are some key considerations:

- **Impartiality and Conflict of Interest:** Judges should avoid any involvement in non-profit organizations that could create a conflict of interest or compromise their impartiality in their judicial duties. They should not engage in activities that may give rise to doubts about their ability to make unbiased decisions.
- **Political Activities:** Judges should refrain from participating in non-profit organizations that have a strong political nature or affiliation. This includes organizations that are closely aligned with specific political parties, promote partisan agendas, or engage in lobbying or advocacy work on contentious political issues.
- **Public Perception:** Judges must be mindful of how their involvement in non-profit organizations might be perceived by the public. They should avoid activities that could undermine public confidence in the judiciary.
- **Disclosure and Recusal:** If a judge is involved in a non-profit organization that is connected to a legal case before them, it is generally expected that they disclose this information and, if necessary, recuse themselves from the case to ensure fairness and avoid conflicts of interest.

3.2 – Particular attention to the participation of judges to organizations dedicated to cultural or educational activities that are only apparently non-profit.

No, in the Netherlands there are no specific provisions that establish rules or guidelines regarding the participation of judges in organizations that focus on cultural or educational activities that only appear to be non-profit. In this regard the same general guidelines as mentioned above apply.

Country: Romania

Setting the scene

According to the Law on the Status of Judges and Prosecutors (Law No. 303/2022), they may join professional organizations to defend their professional rights and interests.

They may also be members of scientific or academic societies and any private non-profit legal persons and may even sit on their governing bodies.

As will be shown below, in the series of recommendations issued by the Superior Council of the Magistracy (here the SCM), which also has a preventive role through these recommendations, which it gives either ex officio or at the specific request of judges and prosecutors, it has on several occasions made specific recommendations on the possibility of judges belonging to non-profit organizations. The recommendations were based on the general incompatibility provided for in Article 227(2) of the Law on the Status of Judges and Prosecutors: *"The position of judge or prosecutor (...) is incompatible with any other public or private position, except for teaching positions in higher education (...)".*

These recommendations concern the organization or membership of a judge in professional associations with various objects of activity: member of a sports club; member and/or president of a homeowners' association; member of a church board; member of a Masonic society; member of a Rotary club.

In the case of disciplinary offenses concerning non-profit associations whose activities include political support activities, the SCM has defined in its rulings the limits of the professional interdictions that a judge may assume within an association. The key in which the SCM has indicated these limits is given, on the one hand, by the general incompatibility - the position of judge is incompatible with any other public or private position - and, on the other hand, by the specific interdictions of judges and prosecutors about political activity, i.e., those laid down in Article 232 of the Statute Law: judges and prosecutors may not carry out or participate in activities of a political nature.

In any case, the analysis of these recommendations and disciplinary actions reveals some elements that outline the possible membership or involvement of a judge in a non-profit association:

- According to the law, judges and prosecutors are allowed to be members of scientific or academic societies, as well as of any private, non-profit legal person;
- The intention of the legislator was not to restrict the right of association of judges but to prevent them from carrying out activities that could harm the image of justice or how the judge exercises his or her duties, independence, and impartiality specific to the office of judge;
- Judges, when assessing the appropriateness of membership of a non-profit association, must be careful to avoid conflicts of interest;
- Membership of the management committee of a non-profit association may raise issues of incompatibility for the judge in relation to the exercise of the latter function when such management committees are constituted as deliberative bodies for administrative, cultural, social-philanthropic, economic, and legal matters of the non-profit association.

Romanian legal framework

Romanian Constitution

Art. 124 – (2) Justice shall be one, impartial, and equal for all.

(3) Judges shall be independent and subject only to the law.

Art. 134 - (2) The Superior Council of Magistracy shall perform the role of a court of law, by means of its sections, as regards the disciplinary liability of judges and public prosecutors, based on the procedures set up by its organic law.

Romanian law on status of jugdes and prosecutors no. 303/2022:

Art. 206 - Judges and prosecutors shall be free to organize or join local, national, or international professional organizations to defend their professional rights and interests. They may be members of scientific or academic societies and any private non-profit-making legal persons and may sit on their governing bodies.

Art. 223 - (1) Judges and prosecutors have the duty to restrain from any actions that can compromise their dignity in profession and society.

(2) The relations of judges and prosecutors in the workplace and society are based on respect and good faith.

Art. 227 - (1) The office of judge, prosecutor, assistant magistrate, and legal specialist staff assimilated to judges and prosecutors is incompatible with any other public or private office, except teaching posts in higher education, as defined by the legislation in force, and teaching posts at the National Institute of Magistrates and the National School of Clerks.

Article 271 - Disciplinary offenses:

...

a) Violation of legal provisions on incompatibilities and interdictions;

...

Deontological Code for judges and prosecutors (soft law – 2015):

Art. 9 - (1) Judges and prosecutors must be impartial in exercising their duties, being committed to decide objectively, free of any influences.

(2) Judges and prosecutors should abstain from any action and behavior that could infringe upon the trust in their impartiality.

Art. 17 - Judges and prosecutors have the duty to restrain from any actions that can compromise their dignity in profession and society.

Case study

The Superior Council of Magistracy`s (the Section for Judges as a disciplinary court) Judgment no. 7J of 25 May 2022

`(...) it is not even acceptable for the magistrate to be part of a non-patrimonial, cultural, or, for example, charitable association, but at the same time to have public positions of a political nature, of which the magistrate is aware, to promote them or to accept their association with the high dignity he holds in the constitutional architecture. Such a simulated mechanism of political activity is impermissible and makes the act of a magistrate who simulates compliance with specific duties unacceptably serious.

Superior Council of Magistracy's Opinion No. 20823/8 April 2020

`The role of the expression of views by the Superior Council of Magistracy on the issue of incompatibilities is to provide judges and prosecutors with guidance and support in understanding issues concerning their status.

As a result, the analysis by the Superior Council of the Magistracy of the situations in which the question of incompatibility arises is aimed at capturing all the elements that might be involved in the exercise of another public or private function, which, in the light of Article 125(2) and Art. 132 par. (2) of the Romanian Constitution could give rise to a situation of incompatibility.`.

Superior Council of Magistracy's Opinion no. 698 of 22 June 2015

`(...) any activity that implies a commission, a mandate from another person to perform specific duties, even if unpaid, generally falls within the concept of a public or private office, the legislator intends to prevent magistrates from carrying out activities that could be detrimental to their image or how they perform their duties, as well as to prevent conflicts of interest from arising.`.

The Decision of Plenary of SCM No. 886/2013

Article 1 - The possibility for judges and prosecutors to be members of non-profit associations does not contravene the legal rules governing incompatibilities and prohibitions, provided the organizations in question are legally registered (...).

Art. 2 - A magistrate may not belong to secret associations prohibited by Art. 40 para. (4) of the Constitution of Romania, republished. Suppose a legally registered association with a purpose function as a secret association with objectives other than the declared one. In that case, this fact must be proven in each case and cannot be presumed.

Art. 3 - Judges and prosecutors must complete the membership in associations, foundations, or other non-governmental organizations, including Masonic ones, in the declaration of interests provided by Romanian legal provisions.

At. 4 - There is, de plano, no incompatibility for judges and prosecutors to be members of a Masonic association.

SCM's Opinion No. 20823/8 April 2020

`(...) a magistrate may be a Rotary club member only to the extent that this membership does not entail obligations incompatible with the status of judges and prosecutors.

In this case, the magistrate must mention this status in the declaration of interests.`.

SCM's Opinion No. 32994/26 March 2012

`(...) the exercise of the specific duties of a member of the board of directors of a non-profit association differs substantially from the activities carried out as a member of the same association, the board of directors having duties determined by the very act governing the organization and functioning of associations and foundations. In this sense, in carrying out the mandate entrusted to a person - a member of the board of directors - he is exercising a function as delegated to him in the light of the organization's statutory regulations.

Consequently, the exercise of the function of a member of the board of directors of such an association is incompatible with the activity of the position of a judge or prosecutor.⁵⁷

SCM's Opinion No. 4792/2 April 2012

There is no incompatibility between the position of judge or prosecutor and the member of a sports club and his participation in training sessions organized by the club or the sports federation to which the club belongs, provided that these activities are not reimbursed, do not prejudice the image or how the judge exercises his duties, the independence, and impartiality specific to the position of judge and do not imply the existence of a conflict of interest.

SCM's Opinion No. 6295/18 June 2015

There is an incompatibility between the office of magistrate and membership of the governing committee of a diocese of the Orthodox Church, given that according to the legal provisions, the office of magistrate is incompatible with any other public or private office (...).

This conclusion is all the more evident given that, according to the same legal provisions, a magistrate is prohibited from being a member of an economic interest group.

Under these circumstances, it is evident that the magistrate, once elected member of the governing committee of a church whose status is recognized by the Romanian State which, according to the Statute for the organization and functioning of the Church, is a deliberative body for all administrative, cultural, social-philanthropic, economic and patrimonial matters of the diocese, becomes a member of an economic interest group, a status categorically forbidden to judges and prosecutors.

SCM's Opinion No. 11527/ 2015

A judge or prosecutor may be a member of the Union of Visual Arts of Romania, with the obligation, however, to exercise this quality to respect the obligations and prohibitions imposed by the statute of the profession and to refrain from any act contrary to these obligations.

SCM's Opinion No. 13192/6 September 2018

The judge's office is incompatible with that of the president of the owners' association.

⁵⁷ The legal provisions were amended by Law No 303/2022 on the status of judges and prosecutors, in the sense that with the adoption of this latter law, judges and prosecutors may be part of the governing bodies of the non-profit association they organize or join (see the text of Article 206 of Law No 303/2022 mentioned above).

Country: Spain

Spanish legal framework.

Judiciary Law (LOPJ 6/1985).

Article 389.

The roles of Judge and Magistrate are incompatible:

5.- With any work, position, or paid profession, with the exception of teaching, legal research, and literary, artistic, scientific, and technological publications.

8.- With the execution of any commercial activity, both by itself or by another

Spanish judicial ethics principles.

Impartiality.

16. Impartiality imposes the duty to avoid behaviours that, whether inside or outside the process, could erode public trust in justice.

17. The judge shall maintain the appearance of impartiality in accordance with the essential character of material impartiality in the exercise of jurisdiction.

Integrity.

22. Integrity demands the judge to behave himself in such a way that he can be recognised as a judge and reaffirms citizens' trust in the administration of justice.

23. The judge will ensure that professional activities unrelated to his job do not jeopardise the best judicial performance.

24. The judge must avoid the appearance of favouritism in his personal connections with professionals associated with the Administration of Justice.

30. The judge will not utilise or lend the prestige of judicial responsibilities to advance her personal interests, the interests of a member of her family, or the interests of anyone else.

Opinion, Spanish Ethics Commission, March,9, 2023.

1.- When joining a lawyers' association, the judge must exercise extreme caution and constraint because there is a real and logical risk of harming the public's view of their impartiality.

4.- The Ethics Commission discourages a judge from joining to a lawyers' association that acts in court because it harms the public's perception of the impartiality of justice.

Opinion, Spanish Ethics Commission, December, 3rd, 2018

1.- A judge's attendance and involvement in a lawyer-organized debate may, on occasion, affect the appearance of impartiality.

2.- It is required to evaluate the following factors: the relationship between the lawyers who organise the course and the topics of the activity, if these lawyers generally have court cases, the judge, who the other participants are, the number of attendees, and the professional origin of the speakers and attendance.

Opinion, Spanish Ethics Commission, February, 12th, 2019

1.- Participation of the judge in training or divulgation initiatives relating to their knowledge may, in some situations, jeopardise the appearance of impartiality. The nature of the organising entity, the

place of the course, the number and identity of the speakers, the audience, and the amount of remuneration are some of the aspects to consider.

Opinion, Spanish Ethics Commission, April, 8th, 2019

- i) Judges' media and legal journal appearances are congruent with the instructional function of explaining the law.
- ii) Judges' perceptions of remuneration for creating publications does not affect the Principles of Judicial Ethics.

Spanish case law

Supreme Court Decision, March, 4th, 2014; july, 19th, 2013.

"... Article 389 incompatibilities must include jobs or positions in Public Administrations and entities dependent on them, even if they do not refer to professional or commercial activities."

"The judiciary's incompatibility regime responds to the substantial purpose of preserving its independence, avoiding the risk that they may engage in activities that give citizens the impression that their independence has been harmed." Carrying out a permanent job paid by the City Council taints the impression of impartiality and undermines trust in the administration of justice."

Initiatives authorised by the Spanish Council for the Judiciary (CGPJ).

The following initiatives have been officially authorised by the Spanish Council for the Judiciary (CGPJ).

- Agreement 11th nov 11: as a security guard course instructor.
- Agreement 15th nov 11, 4th feb 16: as a professor at the college of law
- Agreement 7th feb 12: as a municipal police instructor.
- Agreement Agreement 23rd nov 17: as a speaker in a book editorial forum.
- Agreement 3rd oct 19: as a commercial dubbing actor.

Finally, a brief conclusion.

The Spanish judicial legislation (LOPJ 6/1985) declares unequivocally that the office of judge is incompatible with any other job, position, or paid profession, with the exception of legal education or study, literary, artistic, scientific, and technological production and invention, and publications.

However, within these situations (teaching and literary or scientific publishing) have been authorised a wide range of paid jobs: university professor, professor in police courses, professor in law schools, publications of all kinds...even acting in commercials.

The spanish ethics commission has warned that if only in the appearance non-profit activities are carried out, there may be risks to the judge's impartiality.

To determine the level of risk, multiple factors must be weighed: who organises the course or who organises the publication, amount of remuneration perceived, connection of the participants with their court, number of attendees...

In the bottom line, the Spanish judicial ethics principles expressly indicate that it is the judge's obligation of avoiding behaviors that, whether inside or outside the process, could erode public trust in justice. The judge also shall maintain the appearance of impartiality in accordance with the essential character of material impartiality in the exercise of jurisdiction. Finally, the judge will ensure that professional activities unrelated to his job do not jeopardise the best judicial performance and he

or she will not utilise or lend the prestige of judicial responsibilities to advance her personal interests, the interests of a member of her family, or the interests of anyone else.

Country: United Arab Emirates

The Vision of the United Arab Emirates

The United Arab Emirates (UAE) staunchly upholds the imperative of achieving justice, preserving rights and equality, and extending the rule of law. A particular emphasis has been placed on judges, recognized as the custodians entrusted with realizing these elevated principles that resonate with our moral values and international commitments. A pivotal commitment has been made to establish a charter outlining the principles of judicial conduct, with the aim of safeguarding the integrity of the judicial System and upholding the ethical standards of judges.

In alignment with this commitment, His Excellency the Minister of Justice issued Ministerial Resolution No. (192) of 2017 on 23/02/2017, specifically addressing the document outlining principles of judicial conduct. Subsequently, acknowledging the significance of the matter, the Supreme Judicial Council made a decision to revisit the document. This involved the formation of a committee tasked with this responsibility, and the draft was presented to the Council for approval.

Judges and Associations

Members of the judicial authority shall not create, establish, organize, or manage any association, body, organization, or branch thereof, whether inside or outside the country. They must not join or participate in any of these entities or cooperate with them in any capacity.