**Information provided by Albania**

**on the independence of judges and lawyers**

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

The freedom of speech, freedom of organization, freedom of peaceful rallies, and political rights of judges and prosecutors are foreseen in Law no. 8471, of the date 21.10.1998, changed version, of the Constitution of the Republic of Albania, but also in laws of other organs like;

The Constitution of the Republic of Albania foresees:

Article 22;

Freedom of expression is guaranteed.

…

Article 46;

Anyone has the right to collectively gather for any legal reason.

…

Article 47;

Freedom of peaceful and unarmed rallies, including the participation in them is guaranteed.

…

Article 137;

The judge has immunity for his spoken opinions and his taken actions on his duty, with the exception of given decisions that are biased or given in accordance to self-profit or mala fide.

**Law no. 96/2016 “On the status of Judges and Prosecutors in the Republic of Albania.”** changed version foresees;

Article 4;

Ethical standards and code of conduct

1. Magistrate takes appropriate measures to protect the dignity of the function, including all actions when the magistrate isn’t acting on official functions.
2. Magistrate takes appropriate measures to defend and strengthen:

a) The dignity and standards of their function.

 b) The reputation of justice bodies and public trust in the judicial and prosecution system.

 c) The status of the magistrate function.

 3. In accordance to this article, Councils publish standards of ethics and rules of conduct.

 4. Each Council appoints the magistrate for ethical counseling, according to the law “On governing bodies of the judicial system”.

Article 10;

**Freedom of organization and expression**

1. Magistrates have the right to form associations or organizations and be a part of them, with the purpose of:
2. Defending their rights and interests;
3. Their professional upgrading.
4. Associations or organizations of magistrates while practicing their activity must not interfere in the competencies of the judicial institutions.

Law no. 115/2016 “On governing bodies of the judicial system.” Foresees:

Article 87

Public stances

The council, with the initiative or request of the judges, can make public declarations in defense of the judges whose human rights are being violated by performing their duties, or performing their legal functions is being threatened or may be threatened as the result of actions or stances of any public or private subject.

Article 91

Approach to justice and public relations

1. The **High Court Council** is **responsible for the progress of the relations of the judiciary with the public**. In this context, the Council performs the following duties:
2. Creates, develops, maintains an **electronic platform in the internet**, whose goal is offering the right information for the judicial approach, including detailed information of the judicial system and special courts, the nature and purpose of judicial procedures, judicial help, average duration of cases, judicial tariffs, alternative means of resolving disputes and other cases of public interest;
3. Enables a respective online space for every court, making it possible for them to publish data regarding the court and their judicial cases.
4. Approves and updates, after consulting with the Court Councils, standard press guidelines.
5. The Council appoints one of its members to perform in duties regarding public relations.
6. The **High Court Council appoints at least one judge responsible for media** per appeal jurisdiction.

In cases where the communication with the public cannot be carried out by the appointed judge, the duty is carried out by the press service of the Council.

1. The School of Magistrates offers trainings for the members of the Council, Judges appointed for media duties, council administration, and judicial civil servants appointed in public relations operations.
2. Public relations services are carried out based on the principles of the right to information approach, taking into consideration the protection of human dignity, privacy and personal data, reputation and the presumption of innocence.

Article 93

Opinions on legislation

1. The High Court Council is responsible for expressing their opinion and to make propositions regarding changes in legislation, that can affect the work of the judiciary and any other case that is under the responsibility of the Council.
2. Specifically, the Council carries out the following tasks:
3. Examines the functioning of the rules of civil, penal, or administrative judicial proceedings;
4. Makes recommendations to change the rules of civil, penal, or administrative court proceedings;
5. Answers to the requests coming from ministers to give their opinion on a bill, or any other case that might affect the judicial system or courts; and
6. Can give an opinion regarding a bill or any other case that might affect the judicial system or courts, addressed to a minister or other bodies.
7. The council proposes to the Minister of Justice the initiative for legal changes regarding any case that is under their responsibility.

Article 185

Public stances

The Council, by initiative or by request of the prosecutors, can make public declarations in defense of special prosecutors whose human rights are being violated by performing their duties, or performing their legal functions is being threatened or may be threatened as the result of actions or stances of any public or private subject.

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

-The Ministry of Justice does not have data regarding the aforementioned.

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

The Code of Judicial Ethics has been approved by the National Judicial Conference on the 05.12.2000, in its plenary session of all first instance, appeals, and high court judges that exercise judicial power in the Republic of Albania. The Code is published in the website of the High Court:

[http://www.gjykataelarte.gov.al/web/kodi\_i\_etikes\_gjyqesore\_1754.pdf\](http://www.gjykataelarte.gov.al/web/kodi_i_etikes_gjyqesore_1754.pdf%5C)

The Code of Prosecutors’ Ethics is approved in the Order No. 141, on the 19.06.2014, of the General Prosecutor “On the approval of the rules of ethics and conduct of prosecutors”. This order can be found published in the following link:

<http://pp.gov.al/web/19_06_14_rregulla_te_etikes_dhe_sjelljes_se_prokuroreve_rsh_qershor_2014_2_827.pdf>

It was foreseen that with the creation of two new judicial institutions -High Judicial Council and High Prosecution Council- the Code of Judicial Ethics and the Code of Prosecutors’ Ethics would be approved, and supervised their implementation.

In the actual Code of Prosecutors’ Ethics is foreseen as follows:

Article 10

Integrity and correctness

…

1. The prosecutors shall not frequent venues or bars, and shall not use or post data on social media (such as Facebook, twitter, Instagram, etc.), that are unfit for their status and can possibly damage their image as prosecutors.

...”

Meanwhile the Code of Judicial Ethics does not state explicit predictions as seen above.

Law No. 115/2016 “On governing bodies of the judicial system” foresees:

Article 83

Judicial Ethics

1. The High Judicial Council is responsible for approval of the judicial ethical standards and the judicial code of conduct, also the supervision of the implementation of such rules. In particular, the Council carries out the following duties:
2. Publicly announces the judicial ethical standards and code of conduct.
3. Revises these rules, and when needed amends them.
4. Analyzes the implementation of these ethical rules and then publicly publishes the results.
5. The Council appoints a Counselor for Ethics from the entirety of the judges that meet the criteria to be a member of the High Court, and that has enough experience on ethical cases. The Counselor for Ethics serves for a 5 year mandate, with the possibility of one reappointment.

…”

Article 182

Prosecutors’ Ethics

1. The High Prosecution Council is responsible for approval of the prosecutors’ ethical standards and the prosecutors’ code of conduct, also the supervision of the implementation of such rules. In particular, the Council carries out the following duties:
2. Publicly announces the prosecutors’ ethical standards and code of conduct.
3. Revises the rules, and when needed amends them.
4. Analyzes the implementation of these ethical rules and then publicly publishes the results.
5. The Council appoints a Counselor for Ethics from the entirety of the prosecutors that meet the criteria to be a member of the General Prosecutor Office, and that has enough experience on ethical cases. The Counselor for Ethics serves for a 5 year mandate, with the possibility of one reappointment.

…”

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

The Albanian legislation does not foresee legal obstacles for magistrates’ possibility of expression and membership as long as they don’t conflict the principles and incompatibility rules that are linked with the functions of judges and prosecutors according to the legal definition of the law on the status of the magistrate. While the **participation of the magistrate in forums or political memberships are explicitly forbidden**, as foreseen in article 6 of the law No. 96/2016.

The Albanian legislation does not explicitly foresee obstacles in practicing these rights through technological devices.

Regarding the above mentioned limited freedoms, they are inevitably linked to maintaining a stable stance and figure for the magistrate. The discrediting of the position and the figure of the magistrate while practicing their duties is a serious ethical violation and as a result can lead to disciplinary measures.

The referred legal provisions are related to violations of the norms and code of conduct and ethics.

The Constitution of the Republic of Albania foresees:

Article 17

1. The limitation of the rights and freedoms provided for in this Constitution may be established only by law for a public interest or for the protection of the rights of others. A limitation shall be in proportion with the situation that has dictated it.
2. These limitations may not infringe the essence of the rights and freedoms and in no case may exceed the limitations provided for in the European Convention on Human Rights.

Article 128

1. The Constitutional Court judge shall be disciplinarily liable in accordance with the law.
2. The disciplinary procedure against a judge is adjudicated by the Constitutional Court, which decides on dismissal if he or she:
3. Commits serious professional or ethical misconduct which discredit the figure and the position of the judge during the exercise of his or her mandate; or
4. Is convicted with final court decision for commission of a crime.
5. The judge of the Constitutional Court is suspended from its duty upon decision of the Constitutional Court when:
6. against him or her the personal security measure of pre-detention or home arrest is given for commission of a criminal offence;
7. he or she is accused for a serious crime committed with intention; or
8. upon initiation of the disciplinary proceeding in accordance with the law;

Article 140

1. The judge shall be disciplinarily liable in accordance with the law.
2. The judge shall be dismissed upon **decision of the High Judicial Council** when he or she:
3. **commits serious professional or ethical misconduct** which discredit the figure and the position of the judge during the exercise of his or her duties; or
4. is convicted with final court decision for commission of a crime.
5. The judge is suspended from its duty upon decision of the High Judicial Council when:
6. against him or her the personal security measure of pre-detention or home arrest is given for commission of a criminal offence; or
7. he or she is accused for a serious crime committed with intention.
8. upon initiation of the disciplinary proceedings in accordance with the law.
9. Against the dismissal decision, appeal can be filed at the Constitutional Court.

Article 143

**Being a judge shall not be compatible with any other political, state as well as any other compensated professional activity**, except for teaching, academic, scientific activities, or secondment to justice institutions in accordance with the law.

Article 147/c

1. The member of the High Judicial Council shall be disciplinarily liable in accordance with the law.
2. The member shall be dismissed upon decision of the Constitutional Court if he or she:
3. commits serious professional or ethical misconduct;
4. is convicted with final court decision for commission of a crime.
5. The member is suspended from its duty upon decision of the Constitutional Court when:
6. against him or her the personal security measure of pre-detention or home arrest is given for commission of a criminal offence; or
7. he or she is accused for a serious crime committed with intention.
8. upon initiation of the disciplinary proceedings in accordance with the law.

Article 147/e

1. The High Justice Inspector shall be disciplinarily liable in accordance with the law.
2. The High Justice Inspector shall be dismissed upon decision of the Constitutional Court if he or she:
3. commits serious professional or ethical misconduct;
4. is convicted with final court decision for commission of a crime;

Law No. 96/2016 “On the status of judges and prosecutors in the Republic of Albania” amended foresees:

Article 3

Fundamental values

1. A magistrate shall exercise his function in accordance with the Constitution and the law.
2. A magistrate shall exercise the function independently, on the basis of assessment of facts and interpretation of the law, in accordance with his intrinsic conviction, free of any extraneous influences, direct or indirect, from any side or for any reason.
3. A magistrate shall not establish inappropriate connections and shall not be under the influence of the executive or legislative power. The magistrate shall take all the measures in order to be and appear to be free therefrom. The magistrate shall immediately notify the Council and the Chairperson upon identifying any attempt of interference or undue influence on him/her.
4. A magistrate shall perform his or her judicial function in an impartial manner, without bias and without prejudice.
5. The conduct of a magistrate shall, in the course of assuming his/her function or when carrying out extra-office activities, guarantee the preservation and strengthening of the confidence of the public in the justice system, the legal profession and parties who are subject of proceedings. The magistrate shall exercise his/her functions in a fair, accurate, timely reasonable, conscious, cautious, dedicated and systematic manner, with objectivity, self-restraint and maturity.

Article 6

Incompatibilities with the Function of Magistrate

1. The magistrate’s office is incompatible with:
2. The **membership in a political party**, or **participation in a political event** organized by a political party,
3. The **undertaking of any political activity**, regardless whether the activity is undertaken in association with a political party or not, **which could compromise the magistrate’s independence**, give rise to a conflict of interest or otherwise lead to a perception of bias or partiality.
4. The chairperson shall notify the Council in cases when he/she has a reasonable basis to believe that a magistrate of the respective court or prosecution office does not comply with the requirements of this provision.

Article 7

Limitations of Office

1. While exercising the function, the magistrate shall not:
2. Disclose data or information to the public on cases assigned to the magistrate;
3. Disclose opinions given during an investigation or trial session, except where the opinion has been published in the form of a decision;
4. Make public declarations that might lead to a perception that the magistrate is biased or partial in a certain case
5. The provisions of paragraph 1 of this Article do not prohibit a magistrate to assume the responsibility as press magistrate in regard to public relations at courts and prosecution offices.
6. **A magistrate may not take part in a strike action**.
7. A magistrate is prohibited from:
8. Administering, directing, or influencing on any commercial or any profit-making companies, personally or by representation;
9. Actively owning shares or parts of capital in commercial companies in accordance with the legislation in force on the prevention of conflicts of interest;
10. Passively owning shares or parts of capital in commercial companies, if the company is gaining profits or benefits from public contracts in accordance with the legislation in force on the prevention of conflicts of interest;

ç) Passively owning shares or parts of capital in commercial companies in which the magistrate’s activity would be prohibited, because it could compromise the 7 magistrate’s independence, give rise to a conflict of interest or otherwise lead to a perception of bias or partiality;

d) Acting as expert before the domestic courts or arbiter in a commercial arbitration.

 5. The chairperson shall notify the Council in cases when he/she has a reasonable basis to believe that a magistrate of the respective court or prosecution office does not comply with the requirements of this provision.

Article 9

Extra-Office Activity

1. A magistrate may undertake an **extra-office activity** only if these activities:
2. Are consistent with the dignity of exercising the function;
3. Do not lead to a perception of bias or partiality in the performance of the function;
4. Do not conflict with essential office interests, thus not impacting the timing and efficient fulfillment of the functions. In any case, the remunerated extra-office activity, including the preparatory work for carrying out this activity, shall not exceed 200 hours during and beyond the office hours per year;
5. Do not conflict with the purpose wherefore the workload has been reduced;
6. If the remuneration for the extra- office activity includes any kind and form of payment, financial reward or compensation that does not exceed normal commercial terms;
7. Are not incompatible with the performance of magistrates’ function or are not prohibited according to this Law.
8. The magistrate shall, except in the event of scientific publications or training, be prohibited to use the title of magistrate beyond his function, while taking the measures that also third parties do not use his title in these activities
9. **A magistrate may write, publish, lecture, teach on legal issues and participate in activities concerning legal issues, the legal system, and the administration of justice** or related matters, in accordance with the provisions of paragraph 1 of this Article.
10. The magistrate shall, before starting the accomplishment of a remunerated extra-office activity under the provisions of this Article, notify the Council and submit the necessary documentation:
11. Describing the nature and duration of the extra-office activity;
12. Establishing the remuneration rate for these activities;
13. Establishing the workload at the court or prosecution office, the overall workload at the court or prosecution office and the timely delivery of duties in the previous twelve months.
14. The magistrate must obtain the consent of the relevant Council, before accepting an assignment to undertake a remunerated extra-office activity
15. The Council shall decide within three weeks upon receipt of the request and the complete documentation and grant the consent if the proposed activity and any remuneration for its performance satisfy the requirements of paragraph 1 of this Article. If the Council does not express itself by way of a decision within three weeks upon receiving the request and the complete documentation and neither notifies the interested person, or does not make a decision to extend the time period, the request shall be deemed approved, in accordance with the provisions of the Administrative Procedure Code.
16. A magistrate shall notify the chairperson on non-remunerated extra-office activities, which do not fall under the scope of powers of the Council, where the magistrate:
17. Acts as representative of the judicial system or the prosecution service;
18. Makes general public statements about matters that affect the judiciary or the prosecution service;
19. Participates in discussions on questions of law.
20. The chairperson shall report at least annually to the respective Councils on the nature and number of hours on the non-remunerated extra-office activities of magistrates of the respective court or prosecution office.
21. The Councils shall, within January each year, publish on the official website and forward a grounded report in writing to the High Inspectorate for the Declaration and Audit of Assets and Conflict of Interests and the tax administration authorities on the remunerated extra- office activities of magistrates, including the remuneration or reward benefited during the preceding calendar year and the respective market worth. The respective institutions shall co-operate with the Councils for determining the normal commercial rates.
22. The Council shall establish more detailed rules on the extra office activities, based on the principle of equity and proportionality.

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

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

There are no cases in practice of procedures and taken measures of disciplinary nature to any judge or prosecutor that has expressed his freedoms of speech or their memberships in any political party by using electronic devices.

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

There are no cases in practice.

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

The Ministry of Justice does not have data regarding the aforementioned.