



**Permanent Mission  
of the Republic of Azerbaijan  
to the UN Office and other  
International Organizations**

**GENEVA**

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The Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other International Organizations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights, and has the honour to transmit herewith the enclosed information on the exercise of freedom of expression, association and peaceful assembly by judges and prosecutors, as requested by Mr. Diego García-Sayán, Special Rapporteur on the independence of judges and lawyers.

The Permanent Mission of the Republic of Azerbaijan to the United Nations Office and other International Organizations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Enclosure: 4 pages



Geneva, 21 January 2019

Office of the United Nations  
High Commissioner for Human Rights  
GENEVA

## INFORMATION

regarding the Questionnaire on the rights of expression, association and assembly of judges and prosecutors by the UN Special Rapporteur 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?**

Fundamental human and civil rights and freedoms, including freedom of expression and speech, freedom of assembly and right of association, are enshrined in the Constitution of the Republic of Azerbaijan (Articles 47, 49 and 58 respectively).

The political rights and freedoms of judges are regulated in more detail by the Law "On Courts and Judges" and the Code of Ethical Conduct for Judges. Thus, according to the Law "On Courts and Judges" (Articles 104 and 105) and to Article 126 Part II of the Constitution, judges may not be engaged in political activity and may not be members of political parties. Persons appointed to the judgeship positions must withdraw their membership from a political party or any other political organization before giving oath. Persons appointed to judgeship positions are not allowed to exercise their powers as judges until their membership to a political party or any other political organization is withdrawn. Also, in accordance with the requirements of the Code (Article 22), a judge may not be affiliated with political parties and movements, may not show them support in one way or another, may not participate in mass events of political nature, and may not openly express his/her political views.

According to the Law "On Courts and Judges" (Article 105-1), on the grounds of common interests judges may establish their own public unions by coming together based on principles of voluntariness and equal rights of members. Also, according to the Code (Article 20), a judge may engage in public activity that would not impair the judge's professional work and prejudice the reputation of the judicial power; a judge may establish and become member of judge associations with the purpose of increasing professional training and protecting independence; also according to Article 98 of the Law, judges have the right to join organizations that represent their independence, integrity, and interests.

Since legislation does not prescribe concrete forms of exercising the aforementioned rights of judges, online exercise of the said rights is not excluded.

According to the Law "About Prosecutor's Office" and Code of Ethical Conduct of the employees of Prosecutor's Office, prosecutors enjoy the rights to freedom of expression, assembly and participation in the activity of national and international organizations. At the same time, prosecutors should not be members of any political party or organization, participate in political activities, support any political or other party in any way. Prosecutors should not act within the interests of certain individuals and legal entities, public associations, except the cases stipulated by law, and should not abuse of their official powers. They may not engage in any entrepreneurial, commercial activities.

**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 of the exercise of their fundamental freedoms.**

No disciplinary proceedings have been opened against judges in relation to the abovementioned issues. Also, there were no cases where a judge was subjected to threats, pressure or interference in connection with the exercise of his/her rights and freedoms. Additionally, we inform that according to the Law "On Courts and Judges" (Articles 9 and 100), direct or indirect restricting, influencing, threatening or interfering with court proceedings by anyone is forbidden, and in case of external interference in the work of a judge, he/she shall report in this regard to the Judicial-Legal Council.

According to the Law "About Prosecutor's Office", restrictions by a person for any reason, directly or indirectly, of legitimate activities of prosecutor's office, impact on it, threats, illegal intervention in it, and also disrespect for prosecutor's office is not allowed and entail liability as stipulated by the legislation of the Republic of Azerbaijan. The employees of the prosecutor's office have the rights to proceed to the court in order to ensure protection of their rights and freedoms.

The rules for bringing employees of the prosecution bodies to disciplinary responsibility are established by the Law "On Service in Prosecution bodies".

Bringing the military prosecutors and investigators to disciplinary responsibility regulated by the abovementioned law and the "Disciplinary Charter of the Armed Forces of the Republic of Azerbaijan".

In accordance with the procedure established by law, an employee of the prosecutor's office may appeal against an order of disciplinary measure on him to the relevant superior persecutor or may bring a claim to the court.

**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 rules of conduct in relation to the carrying out of judges' professional activity and the rules of conduct outside professional activity are regulated in detail by the Code of Ethical Conduct of Judges. As mentioned, the norms related to the public and political activity of judges are regulated by the Code's relevant articles.

Moreover, the judge associations that actively participate in the process of legislative reforms in the judicial field, regularly make proposals, and organize training and various public events for judges and court staff have also paid attention to the issues of ethical conduct; at the General Assembly of the "Union of Azerbaijan Court Judges Associations" the "Advisory Group on Issues of Ethical Conduct and Deontology of Judges" was established, on the basis of the "Bangalore Principles of Judicial Conduct" and the requirements for judges in the "Code of Ethical Conduct of Judges".

**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?**

*Regarding concrete restrictions, see Question 1.* Moreover, according to the Code's requirements, a judge's conduct outside professional activity shall not cast a shadow on his/her fairness, objectivity and impartiality; a judge shall refrain from any conduct that could discredit his/her independence or impartiality.

**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?**

As mentioned above, according to the Code of Ethical Conduct of Judges, a judge's conduct both within his/her professional activity and outside of it, shall not cast any doubts over his/her impartiality. No exceptions have been envisaged by the legislation in this regard.

**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.**

No concrete case has arisen regarding this issue. In cases where judges face ethical dilemmas, they may appeal to the "Advisory Group on Issues of Ethical Conduct and Deontology of Judges".

**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 "Union of Azerbaijan Court Judges Associations" organizes various trainings on ethical conduct of judges, including on the activity in social networks and on the use of online media; also, regarding this issue, the capacity of the "Advisory Group on Issues of Ethical Conduct and Deontology of Judges" is constantly increasing.