



**PERMANENT MISSION OF MONTENEGRO TO THE UNITED NATIONS AND
OTHER INTERNATIONAL ORGANIZATIONS IN GENEVA**

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The Permanent Mission of Montenegro 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 with reference to the letter of Mr. Diego Garcia-Sayan, Special Rapporteur on the independence of judges and lawyers, dated 27 November 2018, has the honor to enclose the responses to the questionnaire by the Special Rapporteur.

The Permanent Mission of Montenegro 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.

Geneva, 31 January 2019

Office of the United Nations High Commissioner for Human Rights
Geneva



1.

Montenegro answers to the questionnaire of the Special Rapporteur on the independence of judges and lawyers, Mr. Diego Garcia-Sayan

Question

- 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?**

Response

The Constitution of Montenegro states that everyone shall have the right to freedom of expression by speech, writing, picture or in some other manner and that this right may be limited only by the right of others to dignity, reputation, and honor and if it threatens public morality or the security of Montenegro. (Article 47). Furthermore, the same act guarantees The freedom of peaceful assembly, without approval, with prior notification of the competent authority (Article 52). The Constitution also guarantees The freedom of political, trade union and other association and action, without approval, by the registration with the competent authority. (Article 53). As these provisions apply to all citizens of Montenegro, the rights deriving from them are also exercised by Montenegrin judges, with the restriction that judges can not practice other public functions or be members of political parties.

In accordance with the relevant legal regulations, information about the work of the court can be given by the president of the court and by a person authorized for public relations. Providing information about the work of a court by a person who is not the president of the court or a person authorized for that type of work, is conditioned with the special authorization of the president of the court. Information that may influence the conduct of court proceedings cannot be made available for the public. This implies that the given and published information must not jeopardize the secrecy of the proceedings with excluded public, the rights of the participants in the proceedings, or harm the independence and impartiality of the court, since these principles as a civilization values are established in the interests of the participant in the court proceedings. Furthermore, judges cannot expose confidential information that they have learned by dealing with the cases, by performing the judicial office, or by publicly expressing an opinion on a case that has not become final.

The freedom of association is also provided for by Article 9 of the Code of Ethics of Judges, according to which judges have the right to associate professionally in order to protect and promote the judicial profession, represent their interests, and protect the independence and position of the judiciary.

Related to the last-mentioned, as a way for improving judicial ethics, the Commission for the Code of Ethics of Judges and the Commission for the Code of Ethics of Public Prosecutors have, along with the expert support of the European Union and the Council of Europe, adopted guidelines on the issues of participation of judges and state prosecutors in political activities from the aspect of the principles of independence and impartiality, the permitted activities to which judges/state prosecutors can practice beside the judicial/prosecutorial function and the

issue of the allowed limit of the use of accounts on social networks from the aspect of professional ethics of judges and public prosecutors.

Question

- 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.**

Response

There is no record of such cases.

Question

- 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?**

Response

As it is already stated, Article 9 of the Code of Ethics of Judges defines the freedom of association. Besides that, the same act states that a judge will not take part in public debates of a political nature, except in the matters which are directly related to the work of the courts, the independence of the judiciary or the basic aspects of the providing of justice. The judge has obligation to refrain from giving any information to the media and interested parties on specific cases if he is not authorized to do so. (Article 9, paragraphs 4 and 6)

The rules of conduct of judges on social networks are described with the guidelines on the issue of the allowed limit for the use of accounts on social networks from the aspect of professional ethics of judges and public prosecutors, which is described within the answer to the next question.

Question

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?

Response

Besides the general limitations – judges make decisions respecting Constitution, the Law and the ratified international treaties, unable to perform other public functions or be members of political parties - the elaboration of these restrictions is described in the mentioned guidelines.

Guidelines on the issue of the participation of Judges and State Prosecutors in political activities from the aspects of the principles of the independence and the impartiality, judges do not renounce their right to freedom of expression, association and assembly, which are enjoyed by other members of the society, nor leave their political beliefs nor lose their interest in political issues. However, some restrictions are necessary to maintain public confidence in the impartiality and the independence of the judicial system. For these reasons, the judge and the state prosecutor must not accept membership in political organizations, as well as participation in any political activity or political party activities, whether public or private, primarily related to election campaigns, demonstrations, fundraising or other initiatives of a similar nature. A judge, as a citizen, can exercise his political rights, such as the right to vote. Yet, it is stated that the judge should abstain from any comment of a political nature during the performance of his duties.

Regarding guidelines on permitted activities that judges can practice beside judicial functions, judges should avoid all activities that draw a possibility that they may endanger its functions and preservation of the public confidence in the judicial system. Judges are allowed to perform activities in the scientific, educational or artistic sphere, as well as to perform activities protected by copyright.

By the guidelines on the issue on permissible limits of the use of accounts on the social networks from the aspect of professional ethics is defined that during the creation of a personal accounts on social media, it is necessary that judges take into account the setting options and to make the contents on their accounts available only to persons to whom they personally provide access. A judge should not present any attitudes on social networks that might cast doubt on his impartiality. When using social media, a judge should avoid recourse to the function he performs and to express itself in the comments on the social media in a clear and precise way and so avoid the risk that the public can understand its statement as official statements of the judicial system. The judge should be aware of the risk posed by the use of social media, and that with one move can, not only violate the rules of professional ethics, as well to endanger all its achievements in its profession.

Questions

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?**

Response

All possible restrictions apply to all judges equally.

Question

- **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)?**

Response

Judges have an obligation to comply with constitutional, legal and ethical norms both in the practice of their profession and outside the court.

Question

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

Response

Only in the case of determining whether the opinion is given as a professional or personal.

Question

- **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?**

Response

Judges are obliged to make decisions respecting the Constitution and the law and follow the rights and restrictions regardless of political, social and reform processes.

Question

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.**

Response

There are no specific examples of this kind.

Questions

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.

Response

The President of the Association of Judges of Montenegro is a member of the Commission for the Code of Ethics of Judges, which has adopted the mentioned Guidelines on the issue of the permissible limit of using accounts on social networks from the aspect of professional ethics of judges and state prosecutors. In addition, the Association of Judges of Montenegro a few years ago has implemented the project Improving cooperation between of Judiciary and Media in Montenegro and the topic of benefit and risk of using social networks was discussed within it.