

FREEDOM OF EXPRESSION OF JUDGES AND THE
INFLUENCE OF SOCIAL MEDIA

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Abstract: *The jurisprudence of the European Court of Human Rights and its recent decision (Żurek v Poland, application no. 39650/19), continues to shape standards for judges' freedom of expression, including standards to protect judges who speak out against detrimental judicial reforms and use of social networks by judges. As new cases emerge and soft law instruments are developed, the topic remains highly relevant and will continue to pose challenges for judges in the years to come. Judges in some EU members States face unprecedented challenges to the rule of law, as evidenced by judicial reforms in countries like Poland and Hungary. The erosion of judicial independence and impartiality in this context underscores the importance of judges' freedom of expression as a safeguard against threats to the rule of law. Raising awareness on this issue should equip judges with legal knowledge and procedural safeguards necessary to navigate the complexities of their professional roles while upholding fundamental principles of judicial independence and integrity. Furthermore, social networks have revolutionised communication in modern society, including judges. While use of social media by judges can enhance transparency and public engagement, it also raises concerns about the appropriateness of their communication, especially regarding impartiality. Judges must navigate the blurred lines between their private and public personas on social media platforms, as their actions and interaction can have implications for their perceived impartiality and judicial integrity. While there are articles devoted to the analysis of the judges' freedom of expression in constitutional crises in this paper authors are providing a comparative analysis of social media usage guidelines for judges and jurisprudence of the European Court of Human Rights to identify a proper balance between exercising the freedom of expression by judges and the limitations posed by interest of judicial independence, impartiality and public trust in judiciary and specific issues relate to the use of social networks.*

Key words: *Freedom of Expression; Judges; Social Media; Independence and Impartiality of Judiciary; Ethics; ECtHR*

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1. INTRODUCTION

Freedom of expression is a fundamental right guaranteed in many democratic societies, ensuring individuals can freely express their thoughts, opinions, and beliefs. Freedom of expression is a fundamental human right, protected under various national constitutions and international human rights treaties, such as the Universal Declaration of Human Rights (Article 19) and the European Convention on Human Rights (Article 10). The European Convention on Human Rights explicitly protects this right in Article 10, paragraph 1, which guarantees individual the freedom to hold opinion and to receive and

share information and ideas without interference from public authorities. However, Article 10, paragraph 2, recognises that this freedom can be restricted under specific conditions to balance competing interests. Any limitations must satisfy three key criteria to align with the Convention's standards: restrictions must have clear legal basis, limitations are only acceptable if they aim to protect one of the purposes explicitly listed in Article 10, paragraph 2 (national security, territorial integrity or public safety, the prevention of disorder or crime, protection of health or morals, protection of the rights or reputations of others), the restrictions must be proportionate to the legitimate aim necessary in a democratic society.

However, when individuals hold position with added social responsibility in democratic societies (Novaković and Perović, 2021), such as judges, this right becomes nuanced due to the unique responsibilities and expectations associated with their roles (Rosales and Vargas, 2022). The public tends to view statements made by judges not merely as personal opinions but as expressions imbued with the gravitas and credibility of judicial authority (Dijkstra, 2017).

Judges, due to their status as arbiters of justice and upholders of the law, occupy a position that demands impartiality, fairness, and respect for the legal system they serve. This necessitates a careful balancing of their personal freedoms with their professional duties and responsibilities (Miliković, 2023). To ensure this required balance between judges' personal freedoms and their professional obligations is maintained, ethical codes and judicial conduct rules typically outline a framework within which judges can exercise their right to expression. These codes generally emphasise the need for discretion, caution judges against making public statements or against engaging in activities that could compromise the appearance of impartiality or integrity of the judiciary (Novaković, 2019).

Throughout most of the 20th century in Europe, it was generally assumed that judges, upon taking office, forfeited their right to freedom of expression, confining their communication exclusively through the reasoning expressed in their judgements (Casarosa, Fajdiga and Morraru, 2025). However, this perception has shifted due to two significant factors: the backsliding of the rule of law and the rapid development of social media. Judicial freedom of expression has gained new importance, particularly in confronting threats to the rule of law that arise across Europe. Additionally, the rise of social media has fundamentally transformed the ways in which opinions are shared, altering not only the tone and style of expression but also vastly expanding reach and accessibility of public communication channels. These changes appear to be challenging the traditional boundaries of acceptable communication of judges.

The rapid proliferation of social media, such as Facebook, Twitter/X, YouTube, and Instagram, as well as online forums and other digital forums, has introduced new dimensions to judicial conduct, requiring careful regulation to preserve the integrity and impartiality of the judiciary (Novaković, 2022). Additional challenges for national legislator are rapid technological changes and the global nature of internet (Psychogiopoulou and Casarosa, 2020).

Social media can significantly influence public perception of the judiciary. Judges' online activities, whether personal or professional, can be scrutinised and interpreted in ways that might affect public confidence in their impartiality. The personal information of judges can be easily accessible on social media, posing risks to their privacy and security. It is crucial to ensure that judges maintain a clear separation between their personal and professional lives. Judges must navigate ethical rules carefully on social media to avoid any appearance of bias, refrain from commenting on

pending cases, and maintain decorum in all online interaction to uphold the dignity of their position.

This paper provides a comparative analysis of social media usage guidelines for judges. These guidelines underscore the delicate balance judges must maintain between engaging in public discourse and upholding the principles of judicial independence and impartiality. By examining the overarching principles and common themes across these jurisdictions, the paper highlights the shared emphasis on caution, privacy, and the avoidance of activities that could compromise public confidence in the judiciary. In the paper, authors elucidate how different jurisdictions address the ethical challenges posed by social media, emphasising the importance of safeguarding the judiciary's integrity while acknowledging judges' roles as members of society. Furthermore, authors analyse the European Court of Human Rights (ECtHR) jurisprudence on the freedom of expression of judges within the boundaries of their professional obligations. The evolving threats to judicial independence and the rule of law have significantly influenced ECtHR case law in this area, which is also analysed in the paper.

The analysis reveals both the convergences and divergences in regulatory approaches and interpretation, providing insights into the evolving landscape of judicial conduct in the digital age. The paper seeks to offer a comprehensive understanding of how freedom of expression and social media can be navigated by judges to maintain the public's trust and confidence in the judicial system.

2. RISKS OF SOCIAL MEDIA

Before delving into the ethical issues that judges face when participating in online social networking, it is crucial to comprehend the unique characteristics and associated risks of social media platforms (Meyer, 2014). These aspects significantly impact the behaviour and perception of judges who use these platforms.

Social platforms are designed for easy access and rapid dissemination of information. Social media platforms enable instant communication with a vast audience. This immediate and extensive reach amplifies the impact of judges' statements, making it easier for potentially controversial comments to spread quickly and widely.

Despite using the strongest privacy settings, information shared on social media may not remain private. For instance, a Facebook user who chooses to keep their friends' identities private cannot control their friends' decisions to make their own friends' lists publicly available. This could inadvertently expose all social networking relationships.

While some users employ pseudonyms to avoid being identified, there is no real guarantee of maintaining anonymity. Advanced data mining techniques and cross-referencing of information can often unmask users.

Social media postings are akin to written documents that remain over time. Once something is posted on social media, it becomes a permanent part of the digital record. Even after deletion, advanced technology can often retrieve, circulate, and share these postings. Anything posted can resurface at any time, potentially affecting the user's reputation and professional standing long after the original post.

The nature of communication on social media is specific and can lead to potential misinterpretations. Social media posts, especially those limited by character counts like tweets, often lack the context and nuance of more in-depth media. This brevity can lead to misinterpretation or oversimplification of a judge's statement.

The informal and casual nature of social media interactions can lead judges to let their guard down, posting content that might be deemed unprofessional or inappropriate for their position. Moreover, judges are at an increased risk of cyberbullying

and harassment on social media due to their high-profile roles. Such interaction can be particularly damaging to their professional standing. By understanding these unique aspects and risks of social media, judges and decision-makers can better navigate the ethical dilemmas associated with their online presence and uphold the integrity and trust placed in the judiciary.

3. FREEDOM OF EXPRESSION ON SOCIAL MEDIA AND JUDICIAL ETHICS

The use of social media by judges presents both opportunities and challenges in modern digital landscape. By adhering to established guidelines and legal frameworks, judges can navigate these complexities while maintaining the integrity and impartiality essential to their roles. The development of clear and practical guidelines, coupled with insights from national and international case law, provides a robust foundation for managing judicial conduct in the age of social media. Many countries have implemented specific guidelines for judges on social media usage, outlining acceptable behaviour and potential consequences for violations. To better understand the complexities surrounding the use of social media by judges, it is essential to analyse both international and national standards on judicial conduct. The analysis will focus on the ethical standards and accountability mechanisms that judges face when engaging with social media platforms.

Moreover, the restraints that judges exercise in their freedom of expression are applicable on their behaviour on social media. Traditionally, the expectation that judges exercise significant restraint in expressing their views or opinions is rooted in principles to safeguard judicial independence and uphold the authority of judiciary (Matić Bošković, 2020). Information discussed or disclosed on social media should adhere to the same confidentiality standards as in traditional setting. Judges must refrain from discussing details of ongoing cases or revealing confidential information related to court proceedings (Seibert-Fohr, 2021). Engaging in discussion or debates about specific case on social media could create the perception of bias, so judges should refrain from commenting on the merits of cases that are pending.

3.1 Use of Social Media by Judges – Ethical Standards

The advent of social media has introduced a range of ethical dilemmas for judges, who must balance their right to freedom of expression with their professional duty to maintain impartiality, integrity, and public confidence in the judiciary.

While the Bangalore Principles of Judicial Conduct¹ and their Commentary² do not explicitly address social media, the values and guidelines they set forth are highly pertinent to modern discussions about judges' online behaviour. The Bangalore Principles of Judicial Conduct offer a broad and adaptable framework that can be applied across different jurisdictions to regulate judicial conduct effectively (Schoeller-Schletter, 2019). Their international applicability ensures that they remain relevant in evolving societal and technological changes, including the use of social media by judges. By adhering to these core values and developing specific national guidelines, jurisdictions can uphold the integrity, impartiality, and independence of the judiciary, thereby maintaining public confidence in the judicial system (Matić Bošković and Nenadić, 2018).

¹ Judicial Group on Strengthening Judicial Integrity (2002). Bangalore Principles of Judicial Conduct.

² Commentary on Bangalore Principles (2007). Available at: https://www.unodc.org/conig/uploads/documents/publications/Otherpublications/Commentary_on_the_Bangalore_principles_of_Judicial_Conduct.pdf (accessed on 30.04.2025).

The UN Non-Binding Guidelines on the Use of Social Media by Judges³ were developed during an Expert Group Meeting held in 2018 as a response to the growing need for a structured framework addressing the ethical and practical implications of social media use by members of the judiciary. The Non-Binding Guidelines reflect the outcome of these efforts, offering practical and ethical advice tailored to the unique responsibilities of judges in a digital age. Recognising the pervasive role of social media in modern communication and its potential impact on public perceptions of impartiality and judicial integrity, these Guidelines aim to equip judges with practical recommendations for responsible and ethical use of such platforms.

At the regional level, the Council of Europe's CCJE Opinion No. 25 from 2022⁴ on the freedom of expression of judges provides comprehensive advice on various aspects of the use of social media by judges. Recognising the importance of a judge's role in upholding the rule of law and democracy, the Opinion explores the legal and ethical dimensions of a judge's right and duty to speak out. This includes not only their responsibility within their own jurisdiction but also their broader role at the European and international level. The Opinion delves into two primary categories of judicial expression, expression concerning matter of judicial concern and expression on controversial public topics, where judges engage in discussions on broader societal or political issues, which might raise questions about impartiality or judicial restraint.

Furthermore, the Opinion underscores the importance of safeguarding professional confidentiality and maintaining public trust in the judiciary. Judges must be careful about what they share online to ensure they do not disclose confidential information or discuss matters that could lead to breaches of privacy or judicial secrecy (proceedings, internal judicial matters and procedural rights of the parties). To support effective public communication, the Opinion refers to the Council of Europe Recommendation CM/Rec(2010)12⁵ and suggests establishing court spokespersons and communication offices to handle the dissemination of information to the public and media. Furthermore, the Opinion No. 25 recommends developing ethical codes / codes of conduct that offer clear guidance on ethical dilemmas related to social media use. Finally, while recognising that judges have personal lives and social interactions, the Opinion No. 25 emphasises that their online behaviour should not undermine public confidence in their impartiality and integrity. Judges should be cautious about their online associations and interactions, avoiding engagements that could raise doubts about their ability to act impartially. Another Council of Europe body, the European Commission for Democracy through the Law (Venice Commission), published a 2015 Report on "The Freedom of Expression of Judges",⁶ which explores international standards, national laws, practices across Council of Europe member states, and relevant jurisprudence from

³ UNODC, Global Judicial Integrity Network (2019). Non-binding Guidelines on the Use of Social Media by Judges. Available at: https://www.unodc.org/res/jji/import/international_standards/social_media_guidelines/Social_Media_2020.pdf (accessed on 30.04.2025).

⁴ Consultative Council of European Judges (CCJE). Opinion No. 25 (2022) on freedom of expression of judges, CCJE (2022)4.

⁵ Recommendation of the Committee of Ministers CM/Rec(2010)12 on Judges: Independence, Efficiency and Responsibilities, para 19.

⁶ European Commission for Democracy through Law (Venice Commission). Report On the Freedom of Expression of Judges. Opinion no 806/2015, CDL-AD(2015)018, 23 June 2015. Information on more sources relevant for freedom of expression of judges is provided in the report "Judges' and Prosecutors' Freedom of Expression, Association and Peaceful Assembly, UN Special Rapporteur on Independence of Judges and Lawyers, February 2019, available at: <https://www.icj.org/wp-content/uploads/2019/02/Universal-SRIJL-Judges-Advocacy-non-legal-submission-2019-ENG.pdf> (accessed on 30.04.2025).

the European Court of Human Rights. Likewise, the European Network of Councils for the Judiciary, in its 2013 "Sofia Declaration on Judicial Independence and Accountability", emphasised that while judges traditionally avoid political controversies, they bear a collective duty to speak out when the integrity and independence of the judiciary are threatened, particularly in response to governmental actions that undermine judicial independence.⁷

In the UK the Guide to Judicial Conduct⁸ provides detailed advice on the use of social media by judges, emphasising the importance of maintaining judicial integrity and impartiality.⁹ Judges are advised to be vigilant about their personal information online. The guide highlights the risks of 'jigsaw' research, where individuals can piece together information from various sources to build a comprehensive profile of a judge's private life. To mitigate these risks, judges should ensure that their personal life details, such as their home address, are not accessible online. Regularly searching their own names on the internet is recommended to check the availability of personal information. Additionally, judges and their close family members and friends should be cautious about posting personal details on social networking sites like Facebook and Twitter/X. Judges should avoid publishing more personal information than necessary. This precaution is particularly important to minimise the risk of fraud and ensure personal safety. Specific examples include not sharing details of holiday plans or information about family members. Moreover, judges need to be aware that once information is posted online, it becomes challenging to control its dissemination. Therefore, it is crucial to be cautious about the kind of photographs and personal details shared on social media. Photos in casual settings, especially those featuring family members, can be particularly problematic if misused or misinterpreted. Automatic privacy settings on social media platforms should be reviewed and adjusted to enhance security. Ensuring that privacy settings are as stringent as possible can help protect personal information from becoming publicly accessible. The Guide also references the Social Media Guidance for the Judiciary, issued on behalf of the Judicial Executive Board. Judges should not use social media to communicate publicly about their judicial work or related matters unless it has been discussed and approved by their superiors or the Judicial Office. To ensure safety, judges should be alert to the risks that social media use may pose to their safety and that of their family and colleagues. They must also be cautious not to undermine public trust and confidence in the judiciary by expressing, or appearing to endorse, views that could cast doubt on their objectivity. Judges are advised not to use their judicial titles on social media. Disclosing their judicial role on any platform with unrestricted public access is generally deemed inappropriate.

In Spain the Judicial Ethics Committee concluded that judges may join and participate in social networks and are therefore free to express potential political opinions (Mullor, 2023). However, it emphasised that judges must exercise self-discipline when

⁷ European Network of Councils for the Judiciary (2013). Sofia declaration. Available at: https://www.encj.eu/images/stories/pdf/GA/Sofia/encj_sofia_declaration_7_june_2013.pdf (accessed on 30.04.2025).

⁸ Courts and Tribunals Judiciary. Guide to Judicial Conduct, revised July 2023.

⁹ Similarly in USA, the American Bar Association (ABA) issued a formal Opinion on February 21, 2013, outlining the ethical considerations and guidelines for judges using electronic social media. This opinion aims to balance transparency and engagement with the necessity of preserving judicial independence, integrity, and impartiality. The ABA's opinion acknowledges that while electronic social media can provide valuable platforms for judges to share information and interact with the public, it also poses unique challenges that must be navigated carefully. Judges may participate in electronic social media, but their conduct must always align with the Code of Judicial Conduct. A fundamental principle emphasised in the Code of Judicial Conduct is that judges must avoid actions undermining public confidence in the judiciary. See: Cooper (2014).

expressing themselves, given the institutional responsibilities and the potential impact of their statements on public confidence in judiciary.

The Ethical Aspects of the Use of Social Networks – Guide for Judges and Public Prosecutors in Serbia, provides a comprehensive resource aimed at addressing the unique challenges and dilemmas posed by the presence of judges and prosecutors on social networks.¹⁰ Recognising the dual nature of their role as public officials and citizens, the Guide seeks to balance their fundamental rights and freedoms with the ethical obligations inherent to their professional duties. By offering practical solutions and ethical principles, it empowers judges and prosecutors to engage with social networks in a manner that upholds the integrity of their positions while allowing them to participate in the digital age as informed and responsible individuals. Specifically, when judges and prosecutors disclose their judicial roles on private social media accounts, they risk creating conflicts of interest. This risk arises from the possibility that their professional title could be perceived as a tool to gain personal, financial or reputation benefits. Social media users, including those in judicial positions, are not legally required to use their real names. They are free to adopt pseudonyms, thus allowing for a degree of privacy in their online activities. However, the Guide points out that this freedom is not absolute for judges and prosecutors. Ethical principles tied to their judicial functions impose limits on this practice. While the mere use of a pseudonym is not inherently unethical, it becomes a violation of ethical standards if it is used as a shield for inappropriate behaviour or activities. The responsibility to uphold the dignity of the judiciary extends even to anonymised online interactions. Judges and prosecutors who use social media for professional purposes are advised to refrain from sharing private or professional information. The Guide assumes that judicial officers already differentiate their private and official electronic communications and encourages the same principle to be applied to their use of social media. The Guide also highlights the potential challenges posed by online friendships, particularly with lawyers. A visible connection on social media between a judge and a lawyer who represents a party in a case they are adjudicating could lead to the perception of bias or favouritism. While online friendship with lawyers is not inherently problematic, the Guide advises avoiding connections with those who frequently appear before them in court or are involved in ongoing cases. The Guide emphasises the importance of verifying content multiple times before publication and ensuring it aligns with the ethical expectations of their roles. Posts from profiles explicitly linked to a judge or prosecutor are often interpreted as representative of the judiciary's views or their institution's official stance, even when the intention is to express personal opinions. To mitigate misunderstandings, it is recommended that judges and prosecutors clearly state that their views are personal.

A similar approach to the Serbian Guide is adopted by the CEELI Institute Report on Practical Guidelines on the use of Social Media by Judges: Central and Eastern European Context, which focuses on the ethical and professional challenges judges face when engaging with social media.¹¹ The Report provides tailored guidance for judges operating within the unique social, cultural, and legal frameworks of Central and Eastern Europe. Like the Serbian Guide, it balances judges' freedom of expression with their

¹⁰ Council of Europe (2021). The Ethical Aspects of the Use of Social Networks – Guide for Judges and Public Prosecutors. Available at: <https://rm.coe.int/hf9-social-media-guide-judiciary-srp/1680a4f1c7> (accessed on 30.04.2025).

¹¹ CEELI Institute (2019). Report on Practical Guidelines on the use of Social Media by Judges: Central and Eastern European Context. Available at: http://jupiter.hr/content/uploads/2020/01/CEELI-Institute_SoMe_Judges_GuidelinesNov2019-1.pdf (accessed on 30.04.2025).

obligation to maintain judicial independence and impartiality, addressing practical dilemmas and offering clear recommendations.

3.2 Behaviour on Social Media and Judge's Accountability

The behaviour of judges on social media is more scrutinised and exposed than their general conduct due to the unique nature of online platforms. Social media operates in a public, accessible, and instantaneous environment, where even seemingly casual statements or interactions can reach a global audience of millions within moments. This unparalleled visibility significantly heightens the risk of misinterpretation or controversy, as posts, comments, or shared content are often stripped of context and open to scrutiny by diverse and critical audiences, including litigants, colleagues, and the public.

Moreover, the permanence of digital content intensifies this scrutiny. Once published, social media posts leave a lasting digital footprint, even if deleted, which can be retrieved, shared, or used as evidence of alleged misconduct. Unlike in-person interactions or private communications, which are more transient and limited in reach, social media ensures that every action is potentially archived and magnified. Judges are held to exceptionally high standards of impartiality and professionalism to maintain public trust in the judiciary. Any perceived bias, inappropriate humour, or personal opinion expressed on social media can raise questions about their ability to remain fair and neutral in their official capacity. This is particularly problematic because social media blurs the line between personal and professional life, making it challenging to compartmentalise private views from judicial responsibilities.

Consequently, judicial oversight bodies and public opinion closely monitor their online behaviour, often applying stricter scrutiny than would typically be expected in offline contexts.

Oversight bodies and judicial conduct commissions play a vital role in defining appropriate behaviour and upholding accountability within the judiciary. In many jurisdictions, dedicated entities are tasked with monitoring judicial conduct to ensure compliance with ethical standards (Matić Bošković, 2017). Complaints concerning a judge's social media behaviour may prompt formal investigations, with potential consequences for violations of ethical guidelines. Depending on the severity of the misconduct, disciplinary actions can range from formal reprimands to removal from office, reinforcing the importance of maintaining the dignity and impartiality expected of judicial officeholders.

In United Kingdom, failure to adhere to the Guidance from the Judicial Conduct Investigation Office could result in disciplinary action. Similarly, in Bosnia and Herzegovina, the Law on High Judicial and Prosecutorial Council specify that any conduct which constitutes a serious breach of official duty or calls into question public confidence in the impartiality and credibility of judiciary is considered a disciplinary offense (Article 56 Point 23). In Bosnia and Herzegovina, the legal framework clearly prioritises the safeguarding of judicial independence over the unrestricted freedom of expression of judges (Gehring et al. 2021).

In France, High Council for the Judiciary - Conseil supérieur de la magistrature (CSM)¹² has a critical disciplinary function and monitors the conduct of judges and prosecutors, addressing complaints of misconduct and ensuring adherence to ethical standards. The CSM also serves as a forum for reflection on the functioning of the justice

¹² CSM. A welcome message from the presidents. Available at: <http://www.conseil-superieur-magistrature.fr/composition-organization> (accessed on 30.04.2025).

system, contributing to discussions on judicial ethics and the values that should guide the judiciary. Consequently, the CSM issued the Compendium of the Judiciary's Ethical Obligations that includes detail instructions for use of social media by judges.¹³ It is possible to file a disciplinary case against a judge for misuse of social media (Al-Billeh, 2023).

4. ECtHR JURISPRUDENCE ON FREEDOM OF EXPRESSION OF JUDGES

The rule of law backsliding in the EU and the erosion of judicial independence and impartiality in European contexts highlights the critical role of judges' freedom of expression as a safeguard against threats to the rule of law.¹⁴ The issue is particularly evident in cases involving systemic challenges to judicial independence. The European Court of Human Rights jurisprudence underscores how restriction on judges' ability to speak out on matters of public interest, particularly those affecting the judiciary, pose significant risks to the rule of law and democratic governance.

The European Court of Human Rights has addressed numerous cases concerning the delicate balance between judges' freedom of expression and the necessity of maintaining judicial integrity and public confidence in the judiciary. These cases highlight the Court's efforts to delineate the boundaries within which judges can exercise their rights without compromising their roles as impartial arbiters of justice. The ECtHR interpretations provide crucial guidance on how judges can exercise their right to free expression and align with their professional obligations. The ECtHR recognises that while judges, like all citizens, have the right to freedom of expression under Article 10 of the European Convention on Human Rights, this right may be subject to greater restrictions due to the unique role in upholding impartiality and the rule of law.

The ECtHR has established several principles regarding the freedom of expression for judges.

In the landmark case *Baka v. Hungary*¹⁵ the ECtHR considered the dismissal of Mr. Baka, a then president of the Supreme Court of Hungary, following his public criticism of legislative reforms that threatened judicial independence. The Court emphasised the importance of protecting judges' freedom of expression, especially when they are speaking out on matters concerning the functioning of the judiciary in which "*judges have not only right but also duty to express their opinion*" (para 168). The judgement emphasised that silencing judicial voices undermines public confidence in the judiciary and weakens democratic institutions. This case highlighted how political retaliation against judges for expressing dissenting views poses a direct threat to the independence of judiciary.

Specifically, judges have the right to engage in public debate on issues related to the judiciary, the legal system, and public interest, provided it does not undermine their impartiality or the judiciary's integrity. This approach was confirmed in several decisions. In the case of *Żurek v. Poland*¹⁶ the ECtHR addresses the dismissal of a judge who publicly criticised judicial reforms in Poland that centralised control over the judiciary and eroded its independence. The case underscored that judges, as citizens, have the right to engage

¹³ Conseil supérieur de la magistrature. Compendium of the Judiciary's Ethical Obligations. Available at: http://www.conseil-superieur-magistrature.fr/sites/default/files/atoms/files/gb_compendium.pdf (accessed on 30.04.2025).

¹⁴ More on rule of backsliding in Matić Bošković and Kostić (2021).

¹⁵ ECtHR, *Baka v. Hungary*, app. no. 20261/12, 23 June 2016.

¹⁶ ECtHR, *Żurek v. Poland*, app. no. 39650/19, 16 June 2022.

in public debate on matters concerning the law, the administration of justice, and judicial independence (para 227). The Court found that the actions taken against Judge Žurek were indeed a form of retaliation for his public statements (Wojtanowski, 2023). These actions were intended to silence his criticism and thus constituted a violation of his right to freedom of expression. This case sets a standard that judicial officers have the right to participate in public discourse on judicial matters, especially when democracy and rule of law are under threat. The ECtHR refers to the Report of the UN Special Rapporteur on the Independence of judges and lawyers (para 103).¹⁷

Both cases are emblematic of broader issues linked to the rule of law in Hungary and Poland. These countries have faced international scrutiny for reforms that undermine the judiciary's independence by introducing mechanism that enable political influence over judicial appointments and disciplinary procedures. Such measures not only jeopardise individual judges' rights but also erode public confidence in the impartiality and effectiveness of the judicial system. The ECtHR's jurisprudence on these cases reflects its commitment to protecting judicial freedom of expression as a professional responsibility that contributes to the broader public interest.

The ECtHR also recognises the 'chilling effect' that the fear of sanctions can have on judges, which can significantly impede their willingness to engage in public debates (*Baka v. Hungary*, para 167). The 'chilling effect' refers to the suppression or discouragement of legitimate exercise of natural and legal rights by the threat of legal sanctions (Fajdiga and Zagorc, 2023). In the judicial context, this phenomenon occurs when judges refrain from expressing their views on matters related to the judiciary and justice administration due to fear of repercussions, such as disciplinary actions, dismissal, or other punitive measures. This chilling effect is detrimental not only to judges but to society as a whole, as it stifles important discussions on judicial independence and reforms (see *Kudeshkina v. Russia*,¹⁸ para 99-100). The ECtHR also highlighted the "chilling effect" of the measures imposed by Poland in the case of *Tuleya v. Poland*.¹⁹ The Court observed in para 544 that these measures "*must have discouraged not only the applicant but also other judges from participating in public debate on legislative reforms affecting the judiciary, and more broadly, on matters concerning judicial independence.*"

Restrictions on judges' freedom of expression must be justified, necessary, and proportionate in a democratic society. Disciplinary measures should not be excessive or serve as a means to silence legitimate criticism. Criteria 'necessary in a democratic society' was assessed in several cases, including the case of *Baka v. Hungary* (para 168-176).

The ECtHR has established important principles regarding the balance between judges' freedom of expression and their duty to maintain judicial restraint. Judges should exercise their freedom of expression responsibly, avoiding comments that could be perceived as biased or prejudicial, particularly regarding pending cases. This interpretation is highlighted in the case *Wille v. Liechtenstein*.²⁰ Although the ECtHR found a violation of Article 10, it acknowledged that restriction could be justified, if necessary, in a democratic society, particularly to maintain the judiciary's impartiality and independence (para 70). Specifically, the ECtHR recognised right of judges to engage in political debates, but very cautiously (Fajdiga, 2023). In this specific case the Court found that the judge professionally performed his duties, so there was no ground for disciplinary

¹⁷ More on challenges of rule of law backsliding in Matić Bošković and Kostić (2020).

¹⁸ ECtHR, *Kudeshkina v. Russia*, app. no. 29492/05, 26 February 2009.

¹⁹ ECtHR, *Tuleya v. Poland*, app. nos. 21181/19 and 51751/20, 6 July 2023.

²⁰ ECtHR, *Wille v. Liechtenstein*, app. no. 28396/95, 28 October 1999.

measures. Similarly, in the case of *Kudeshkina v. Russia* the ECtHR ruled in favour of Kudeshkina, stating that her dismissal violated Article 10 (Khotynska-Nor and Moskvych, 2021). However, it acknowledged the need for judicial restraint but found that her statements were within the bounds of acceptable public criticism (para 94). In the case of *Harabin v. Slovakia*²¹ the ECtHR highlighted that judges' expressions, particularly on matters of public interest and judicial administration, should not be unduly restricted by disciplinary actions that appear retaliatory.

However, if judges undermine public confidence in the judiciary's impartiality and integrity by their comments and statements there is no violation of Article 10. Over the years, the ECtHR has developed specific criteria that judges must consider to ensure their expressions remain compatible with their judicial role (Elosegui, 2021). Judges must maintain maximum discretion regarding cases they are handling. Public commentary on ongoing cases compromises their image as impartial adjudicators and undermines public confidence in the judiciary.²² Furthermore, judges should avoid publicly criticising the conduct of other judges in relation to pending cases. Such criticism can erode public trust in the judiciary.²³ This was the situation in the case of *Olujic v. Croatia*,²⁴ when judge faced disciplinary proceedings for comments made about his colleagues and other public figures.

The *Danilet v. Romania*²⁵ is a significant test of the limits and protections of judicial expression, especially in the context of social media. The ECtHR's ruling will have far-reaching implications for judges across Europe, clarifying the extent to which they can engage in public discourse and criticism without jeopardising their positions or the integrity of the judiciary (Lemmens, 2024). Danilet claimed that the disciplinary actions against him were unjustified and retaliatory, aimed at silencing criticism of the judicial system and political interference. The issue revolves around whether the restrictions imposed on Danilet's social media activities were necessary and proportionate in a democratic society. The Romanian judicial authorities argued that Danilet's social media activity violated the code of judicial conduct, which demands impartiality, discretion, and maintaining the dignity of the judiciary. However, the ECtHR concluded that there had been a violation of Article 10, since the High Council of the Judiciary and the High Court did not take into consideration that the judge discussed an issue of general interest within a special political context. This means that any restrictions on the judges' freedom of expression need to be particularly well-justified and narrowly interpreted. Moreover, the judge did not attack the reputation or dignity of his colleague, as it was not a value judgement but a statement of fact.

5. CONCLUSION

While freedom of expression is a fundamental right for all individuals, including judges, its exercise by members of the judiciary must be carefully managed to align with their professional obligations and ethical standards. Social media, as a transformative communication platform, necessitates additional caution to mitigate risks to judicial integrity and public confidence. The nature of social media, coupled with virtually limitless and instant reach, exposes judges to broader scrutiny and amplifies the risks of perceived

²¹ ECtHR, *Harabin v. Slovakia*, app. no. 58688/11, 20.11.2012.

²² ECtHR, *Albayrak v. Turkey*, app. no. 38406/97, 31 January 2008.

²³ ECtHR, *Kudeshkina v. Russia*, app. no. 29492/05, 26 February 2009, para 94.

²⁴ ECtHR, *Olujic v. Croatia*, app. no. 22330/05, 5 February 2009.

²⁵ ECtHR, *Danilet v. Romania*, app. no. 16915/21, 20 February 2024.

bias or impropriety. Unlike traditional judicial behaviour, which is typically confined to courtrooms or professional settings, social media posts and interactions are accessible to the public, including litigants and lawyers. This accessibility requires judges to exercise significant caution, as any expression of personal opinions or controversial interactions can quickly undermine their impartiality and the integrity of the judiciary.

Ethical principles such as impartiality, integrity, and independence, as articulated in instruments like the Bangalore Principles of Judicial Conduct, apply universally but face particular challenges in the digital age. Social media, often used in a private capacity, blurs the lines between personal and professional expression, creating a heightened risk of ethical breaches. Furthermore, the permanent and shareable nature of online content means a single misstep can tarnish judge's reputation and erode public trust. Judges must remain acutely aware of their unique societal role and avoid actions that could be misconstrued, especially in the highly visible and largely unregulated domain of social media.

Based on the ECtHR jurisprudence and analysed national and international standards it could be concluded that judges' comments on social networks should balance their right to freedom of expression with the need to maintain judicial independence. Judges have the right to freedom of expression, especially on matters of public interest, including the functioning and reforms of the judiciary. This right can be subject to limitations to maintain judicial independence, impartiality, and public trust in the judiciary. Disciplinary actions against judges for expressing their views must be carefully scrutinised to ensure they do not disproportionately restrict their freedom of expression. Disciplinary measures against judges for their expressions must not serve as a tool to silence legitimate critique or debate, especially on issues concerning judicial independence and the rule of law.

These principles suggest that while judges can participate in public discourse, including via social networks, they must do so in a manner that upholds the dignity and impartiality of their office, hence, the potential sanctions should be primarily applied in cases when those standards or other substantial principles of judicial office are clearly breached.

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