**Response to the questionnaire on the exercise of freedom of expression, association and peaceful assembly by judges and prosecutors**

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?**

In the Republic of Armenia judges and prosecutors have constitutional rights, such as freedom of expression of opinion, freedom of associations, right to establish a political party and join a political party; in particular the Constitution with the amendments introduced on 6 December 2015 provides:

Article 42. ***Freedom of Expression of Opinion***

1. Everyone shall have the right to freely express his or her opinion. This right shall include freedom to hold own opinion, as well as to seek, receive and disseminate information and ideas through any media, without the interference of state or local self-government bodies and regardless of state frontiers.

1. The freedom of the press, radio, television and other means of information shall be guaranteed. The State shall guarantee the activities of independent public television and radio offering diversity of informational, educational, cultural and entertainment programmes.
2. Freedom of expression of opinion may be restricted only by law, for the purpose of state security, protecting public order, health and morals or the honour and good reputation of others and other basic rights and freedoms thereof.

Article 44**. *Freedom of Assembly***

1. Everyone shall have the right to freely participate and organize peaceful, unarmed assemblies.
2. Outdoor assemblies shall be held in the cases prescribed by law on the basis of notification given within a reasonable time period. Notification shall not be required for holding spontaneous assemblies.

3.The law may prescribe restrictions on the exercise of the right to freedom of assembly for judges, prosecutors, investigators, as well as servicemen of the armed forces, national security, the police and other militarized bodies.

4. The conditions and procedure for the exercise and protection of the freedom of assembly shall be prescribed by law.
5. *The right to freedom of assembly may be restricted only by law, for the purpose of state security, preventing crimes, protecting public order, health and morals or protecting the basic rights and freedoms of others.*

Article 45. ***Freedom of Associations***

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of labour interests. No one may be compelled to join any private association.

2. The procedure for the establishment and operation of associations shall be prescribed by law.

3. *The freedom of associations may be restricted only by law, for the purpose of state security, protecting public order, health and morals or the basic rights and freedoms of others.*

4. The activities of associations may be suspended or prohibited only upon court decision, in the cases and under the procedure prescribed by law.

Article 46. **Right to Establish a Political Party and Join a Political Party**

1. Every citizen shall have the right to establish a political party together with other citizens and the right to join any political party. No one may be compelled to join any political party.

2. *Judges, prosecutors and investigators may not be members of a political party. The law may prescribe restrictions on the right to establish a political party and the right to join any political party for servicemen of the armed forces, national security, the police and other militarized bodies.*

Besides the Constitution, the legislation of the Republic of Armenia gives other regulations limiting these constitutional rights for prosecutors and judges; in particular: **Paragraph 1 of Article 8 of the RA Law on Freedom of assemblies** provides that members of the Constitutional Court and judges, as well as those serving in the Armed Forces, the Police, National Security, Prosecutor's Office, must demonstrate political neutrality and restraint when assembling.

**According to the Paragraph 2 of the same Article**, the persons referred to in paragraph 1 of this Article shall not have the right to arrange such gatherings which may cast doubt on their political neutrality.

**According to** **Article 4 of the Judicial Code** a judge may not be a member or a founder of any party or otherwise engage in political activities. In all circumstances, a judge must exercise political restraint and neutrality. A judge may participate in elections of State and local self-government bodies only as an elector. A judge may not participate in an election campaign, hold a position in a political party, deliver speeches on behalf of a political party, or publicly express an opinion for or against a candidate. Professional discussions or conclusions on draft regulatory legal acts, discussions and statements on regular functioning of the judiciary, including public ones, shall not be considered as a breach of the principle of apolitical stance.

The judicial code does not expressly include provisions related to exercising these rights through digital technologies, but it can be inferred so. Since it is accepted, that rules of judicial conduct are to be applied no matter judge is acting online

The relevant provisions of the Law of the Republic of Armenia ‘‘On the Prosecutorial Service’’ (adopted on 17 November 2017, in force from 9 April 2018) provide as follows:

Article49*.* ***Restrictions and incompatibility requirements applicable to a prosecutor***

1. A prosecutor may not hold any position not related to his or her status in other state or local self-government bodies, any position in commercial organisations, or engage in entrepreneurial activities or perform any other paid work, except for academic, educational and creative work.

2. A prosecutor may not work jointly with a person with whom he or she has a close kinship or in-law relationship (parent, spouse, child, brother, sister, spouse’s parent, spouse’s child, spouse’s brother and spouse’s sister), where their service in office is related to immediate subordination to one another.

3. A prosecutor shall not have the right to be a participator of an economic entity or a depositor of a limited partnership, where in addition to participating in the general meeting of the company in question the prosecutor is also engaged in the fulfilment of other instructive or managerial functions within the organization.

4. A prosecutor shall not have the right to:

(1) be a representative of third parties, except for the cases when he or she represents his or her family members or persons under his or her guardianship (curatorship);

(2) ***use his or her official position in the interests of political parties***, nongovernmental, including religious, associations, or advocate certain attitude towards them, as well as carry out other political or religious activities in the course of fulfilling his or her official duties;

(3) ***organise or participate in strikes;***

(4) receive royalties for the publications or speeches deriving from the fulfilment of his or her official duties, except for publications or speeches deriving from academic, educational and creative work;

(5) use logistical, financial and communications means, state property and official information for non-official purposes;

(6) receive gifts, money or services from other persons for the fulfilment of official duties, except for the cases provided for by legislation.

5. academic, educational and creative work carried out by the prosecutor must not hinder the fulfilment of his or her duties.

Article 72.***General rules of conduct of prosecutors***

1. A prosecutor shall be obliged:

(4) to demonstrate political restraint and neutrality, refrain from demonstrating any conduct that may leave an impression of being engaged in political activities, as well as not to demonstrate favouritism towards any political party;

(5) not to become a member of professional or non-governmental organisations the activities whereof are associated with discrimination on the grounds of ethnicity, nationality, faith or physical impairments;

Article 73*.* ***Rules of conduct of prosecutors in official relations***

1. In official relations, a prosecutor shall be obliged:

(12) not to use, disclose or otherwise make accessible non-public information that he or she has become aware of in the course of exercising his or her official duties, unless otherwise provided for by law;

Article 74*.* ***Rules of conduct of prosecutors in extra-official relations***

1. In extra-official relations, a prosecutor shall be obliged:

(4) to refrain from undue communications with mass media in respect of a case (…).

**The relevant provisions of the Appendix of the Order of the Prosecutor General of the Republic of Armenia dated 10 April 2018 ''On the adoption of the requirements arising from the rules of conduct of prosecutors and on declaring as repealed the order no. 17 of the RA Prosecutor General dated 30 May 2017'' provide as follows:**

1. *As a general requirement arising from the rules of conduct of the prosecutors, a prosecutor shall be obliged:*

(5) to demonstrate political restraint and neutrality, refrain from demonstrating any conduct that may leave an impression of being engaged in political activities, as well as not to demonstrate favouritism towards any political party;

(6) not to become a member of professional or non-governmental organisations the activities whereof are associated with discrimination on the grounds of ethnicity, nationality, faith or physical impairments;

*4. In extra-official relations a prosecutor shall be obliged:*

(4) to refrain from undue communications with mass media in respect of a case, including under any conditions and in any situation demonstrate self-restraint while **making use of social networks**, avoid from making offensive statements (…).

As it is evident from the abovementioned, the only indication of the digital technologies is Point 4 (4) of the Appendix of the Prosecutor General's Order dated 10 April 2018.

**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.**

In the recent 5 years there has been no cases in the Republic of Armenia where prosecutors were subject to legal or disciplinary proceedings for an alleged breach of their obligations and duties during the exercise of the above mentioned fundamental freedoms.

**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?**

Referred freedoms and their limitations, as well as professional conduct of judges are regulated by Judicial Code of RA.

 According to **Article 7 of the Code**- judges shall have the right to establish associations as prescribed by law. Each judge shall have the right to become a member of said associations.

 The Constitution of the Republic of Armenia stipulates that limitations to the right to peaceful assembly can be stipulated by law for judges. Although, such limitations are not defined in Judicial code, the law on Freedom of Peaceful assemblies prescribes, that judges when realizing this right must demonstrate political restraint and neutrality. Political rights of judges are also regulated in Judicial Code. According to **Article 4 of the Judicial Code** a judge may not be a member or a founder of any party or otherwise engage in political activities. In all circumstances, a judge must exercise political restraint and neutrality. A judge may participate in elections of State and local self-government bodies only as an elector. A judge may not participate in an election campaign, hold a position in a political party, deliver speeches on behalf of a political party, or publicly express an opinion for or against a candidate. Professional discussions or conclusions on draft regulatory legal acts, discussions and statements on regular functioning of the judiciary, including public ones, shall not be considered as a breach of the principle of apolitical stance.

 Other rights and freedoms of judges are not limited, but there are certain rules of professional conduct, which should be followed by judges and violation of which entails disciplinary liability.

The judicial code does not expressly include provisions related to exercising this rights through digital technologies, but it can be inferred so. Since it is accepted, that rules of judicial conduct are to be applied no matter judge is acting online or offline.

Rules of conduct of prosecutors are regulated by **Articles 71-74 of the RA ''Law on Prosecutor's Office''** and by the **Order of the Prosecutor General of the Republic of Armenia dated 10 April 2018 ''On the adoption of the requirements arising from the rules of conduct of prosecutors and on declaring as repealed the order no. 17 of the RA Prosecutor General dated 30 May 2017''**, the relevant provisions of which have already been presented above.

**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?**

There are certain restrictions in regard to realizing these rights. The limitations to political rights are mentioned above. Here are other limitations, which are stipulated as rules of professional conduct.

**When performing any kind of activities and in all the cases, a judge shall be obliged:**

1. to refrain from practicing any conduct undermining the judiciary, as well as decreasing public confidence in the independence and impartiality of the judiciary;
2. not to use or not to allow other people to use his or her reputation in the position of a judge for his or other person’s benefit;
3. to demonstrate political restraint and neutrality;
4. to refrain from interfering in the administration of justice by another judge;
5. to refrain from publicly casting doubt on judicial acts having entered into force, or on the actions, professional and personal qualities of another judge, except as prescribed by law;
6. to refrain from expressing public opinion on any ongoing case examined or anticipated in any court, except for the cases where the judge acts as a party to, or as a legal representative of a party, to proceedings;
7. to refrain from making such announcement or practicing any conduct which endangers or prejudices the independence and impartiality of a court;
8. to refrain from providing professional consultation, including on a *pro boon* basis, except for the cases when he or she provides a *pro bono* consultation to his immediate relatives, or to people under his guardianship or curatorship;
9. not to initiate, authorize, nor to take into account communications with a party to, or the advocate of a party to, proceedings without the participation of the adverse party to, or the advocate of the adverse party to, proceedings (hereinafter referred to as “*ex parch* communications”), to immediately communicate the content of the *ex parch* communications to the party which has not participated in those communications, if such have taken place in circumstances beyond the judge's control.

Exceptions from this rule shall be permitted only in the following cases:

1) when circumstances make *ex parte* communications necessary for organizational purposes, such as reaching agreement on the date and time of the session, or in other cases of organizing proceedings, provided that the communications do not relate to the merits of the case, as a result of such communications one party to proceedings do not gain any procedural or other advantage over another, and provided that a judge immediately communicates the content of such communications to the other party, allowing the latter to respond;

2) where *ex parte* communications by the judge are directly envisaged by law.

Rules of judicial conduct should be followed by judges, and if failed, the Supreme Judicial Council has the authority to make a decision on disciplinary liability. Thus, restrictions described apply both online and offline. No matter the means by which the rules are violated a judge should bare disciplinary liability when not following rule of professional conduct.

Constitutional (based on the Articles 42,44,45,46 of the Constitution), legal (based on Articles 49, 72, 73, 74 of the Law “On the Prosecutor’s Office”) and regulatory (based on the Order of 10 April 2018) restrictions are provided in the answer to the 1st Question.

The rationale of these restrictions is the ensurance of the apoliticism, independence, authority and freedom from extraneous interferences of the prosecutor’s office.

There is not any legislative distinction regarding the question whether these restrictions apply offline or online.

**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?**

No matter what position a judge has, whether he is a judge at first instance court or Supreme, these restrictions apply.

 The restrictions are not dependant on the position and matters over which the particular prosecutor has jurisdiction.

 Some provisins of the Law “On the Prosecutor’s Office” may be relevant. For example, Article 73, ¢ 1 (10) provides that in official relations a prosecutor shall be obliged to show impartiality when performing his or her duties, refrain from displaying bias through his or her words or conduct, discriminating or creating such impression, act so as not to cast undue doubt on his or her impartiality and objectivity, not to be guided by assumptions, emotions, personal sentiments or other extraneous influence, which ***does not hinder the prosecutor from freely expressing his or her opinion on solutions regarding official issues***.

**- 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)?**

Yes, there are general rules of conduct for judges and rules of judicial conduct when acting ex officio.

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

The purpose is not the onlycriteria to be taken into account,when applying the limitations the consequences of such actions are being considered.No matter what the purpose is, if the consequence of such an action isdecreasing public confidence in the independence and impartiality of the judiciary, limitations are applied.

**-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?**

The restrictions are applicable no matter the context.

**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.**

As it was submitted above, in the recent five years there has not been any cases when prosecutors were subjected to disciplinary liability regarding the exercise of the rights mentioned in the questionnaire. Accordingly, no information on the scope or interpretation to these restrictions in the part of prosecutors is available.

**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 Order of the Prosecutor General of 10 April 2018 was properly sent to all the subdivisions of RA prosecutor’s office in order to raise prosecutors’ awareness on their rules of conduct.

Moreover, a special course named “Rules of conduct of prosecutors” is included in the prosecutor’s training programme in the Academy of Justice.

0