

THE JUDGE'S SPEECH:

freedom and duty of a judge to speak out in order to safeguard
the rule of law and judicial independence

*Kostiantyn PILKOV,
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*The Bangalore Principles of Judicial Conduct,
UNODC Commentary § 74:*

A judge should speak ...only...

through his or her reasons for judgments

... in dealing with cases being decided

... in exercising freedom of expression, judges shall always conduct themselves in such a manner as to **preserve the dignity** of their office and the impartiality and independence of the judiciary.

UN Basic Principles on the Independence of the Judiciary (1985)

principle of **moderation** ("Mäßigungsgebot") with respect to conduct outside office: **judges should not mention their office** when they express political opinions in public, except with respect to a legal question (lecture and law review article for instance).

the Venice Commission Report on the Freedom of Expression of Judges (2015) re: Germany

Judges must **REFRAIN** from any
behaviour, action or expression of a
kind effectively to affect confidence
in their impartiality and their
independence.

European Charter on the statute for judges
(1998)

a judge **shall not make public statements,**
comment in the media on pending cases and cast
doubt on judgments that came into force.

The Code of Judicial Ethics of Ukraine(2013)



Foreign judges join Polish lawyers in
the 'March of a Thousand Robes' in
Warsaw, Poland
TIMES Malta, January 2020

Judges join silent rally to
defend Polish justice
Guardian, January 2020



Critique of the state of independence in the judiciary

Kudeshkina v. Russia, appl. No. 29492/05,
ECtHR judgment of 26.02.2009

Views on reforms affecting the judiciary

Baka v. Hungary, appl. No. 20261/12,
ECtHR judgment of 23.06.2016

Freedom of expression of judges transformed into a duty to speak out in defense of the rule of law and judicial independence

Żurek v. Poland, appl. no. 39650/18,
ECtHR judgment of 10.10.2022

The duty to speak up in favor of the restoration of democratic order

López Lone et al. v. Honduras,
IACtHR judgment of 05.10.2015

There are limited circumstances in which a judge may properly speak out about a matter that is politically controversial.

The Bangalore Principles of Judicial Conduct, UNODC Commentary § 74

2002



Judges should be **allowed to participate in certain debates** concerning national judicial policy.

CCJE Opinion No. 3, § 34

2007



The State and **each judge** are responsible for promoting and protecting judicial independence.

CCJE Magna Carta of Judges, § 3

2010



There is now **a collective duty** on the European judiciary to state clearly and cogently its opposition to proposals from government which tend to undermine the independence of individual judges...

ENCJ Sofia Declaration, § vii

2013



... if judicial independence or the ability of the judicial power to exercise its constitutional role are threatened, or attacked, **the judiciary must defend its position fearlessly.**

CCJE Opinion No. 18, § 41

2015



...**each judge** has an ethical and/or legal **duty** to preserve judicial independence and speak out in defence of the rule of law and judicial independence

CCJE Opinion No. 25, § 58

2022



DEMOCRACY

FUNDAMENTAL
RIGHTS

RULE OF LAW

SEPARATION
OF POWERS

JUDICIAL INDEPENDENCE

internal and external

Thank you!

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Supreme Court, Ukraine