

Scope of Judicial Freedom of Speech and Public Expression of Opinion by a Judge in a Case Pending Before the Court

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Abstract: In accordance with the Constitution of Georgia, the right of opinion and its free expression are protected. /Constitution of Georgia, article 17/. It also establishes the prerequisites for limiting the right: “Restriction of these rights is permitted only in accordance with the law, to ensure the necessary state or public security or territorial integrity in a democratic society, to protect the rights of others, to prevent the disclosure of confidential information, or to ensure the independence and impartiality of the judiciary.”

The judge has the greatest responsibility in the administration of justice. At any moment, whether it is the performance of official duties or the implementation of other activities, he bears the greatest responsibility. The judge, together with his professional and personal qualities, is an important basis for society's trust in the court and strengthening the judiciary. That is why any of his behavior and actions, publicly expressed opinion or statement directly affects the image and reputation of a judge, since society also generalizes the impression received when observing one particular judge to the entire system.

Keywords: court, judge, legal norms, trial, norms of freedom of speech, mass media, publicity.

The judge, like any other citizen, is guaranteed freedom of speech, but when expressing these rights, the judge is obliged to take into account and protect the high status of the judicial position. Even one case of improper use of this right can cause irreparable damage to the authority of the court.

It is with this idea that numerous documents have been created that establish rules for the ethics of judges and standards adopted by international institutions that deal with the status of judges and their behavior. Accordingly, any representative of society requires a high standard of behavior from a judge.

“The justice system as a whole, and among them every judge in their daily activities, must strengthen the independence and impartiality of the court and ensure its adequate perception by the public.” strike a proper and fair balance between judicial ethics and the judge's freedom of speech.

According to the definition of the European Court, "judicial power" includes three components, under which it "relates to the court as one of the branches of state power, to the judges themselves when they perform their official duties, and most importantly, to the mechanism of justice itself" /Gotsiridze, 2007 /

Judges, unlike politicians and other public servants, have an "obligation of restraint" to react to criticism both publicly and directly to their address. They are obliged to show restraint in the exercise of freedom of speech, so that their statements do not damage the authority of the court and do not cast a shadow on the public's trust in justice. Thus, they have a rather limited «right to reply». When interacting with the media, the judge should avoid expressing his opinion regarding the current or pending case. The judge is obliged to carry out his activities independently, impartially and conscientiously. "Delivering a report on a specific case, regardless of who is the entity receiving the report, is not considered a component of judicial accountability, but is prohibited and considered an infringement of judicial autonomy." /authors' group, 2021/.

A judge shall not use offensive, derogatory words and expressions or discriminatory terminology while exercising freedom of expression. This limitation applies regardless of where the judge makes the statement or what size audience he hears. The place and means of making the statement is not important from the point of view of violation of judicial ethics, but for the purpose of assessing the extent of the violation. Thus, a judge, while enjoying the freedom of expression, should show correctness during the public dissemination of any opinion or statement and should pay attention to the form, means and place of making the statement.

In addition, it is worth noting that a judge enjoying freedom of speech must ethically express his opinion, regardless of the capacity in which he expresses his position, as an individual, an entity endowed with the function of administering justice, a member of an association, union or council, professor, lecturer, scientist or just a citizen of the country. The dignity of the robe obliges the judge to behave with due dignity in the robe or without it, and, using freedom of expression, it is necessary to care for the authority of the court.

On the other hand, the self-expression of a judge requires special protection when it comes to the institutional independence of the court, strengthening the individual role of the judge and systemic challenges to independence.

Thus, in order to protect the authority and impartiality of the judiciary, the freedom of expression of any person who criticizes the judge, as well as the freedom of expression of the judge himself, may be restricted.

The conceptual approach to freedom of speech is as follows: "The European Court of Human Rights attaches vital importance to freedom of speech in a democratic state and considers it as a pillar of democracy, a necessary condition for its progress and the development of each person." /Gotsiridze, 2007/

Freedom of speech has special importance for our country. Для такое общество, проедшего поху опуху толитаризма, сегодня оно больше страется оштутить это большое открытие с всей его уникартые. In connection with this, freedom of speech is even more important in relation to the authority of the court and judges. Despite the existing conditionality, it can be said that the freedom of speech is protected within the limits, beyond which its limitation in the relevant circumstances cannot be considered wrong.

"The law of the European Convention on Human Rights, embodying the common European standard, does not prohibit criticism of the court, but requires moderation so that in specific cases borderline, unfounded criticism or an inappropriate tone of criticism do not bring more harm than good." /Hotsiridze, 2019/

Second factor – lack of culture of enjoyment of freedom. Most of all, this intersects with the culture of using freedom of speech. Most of the public equated it with the absolute protected freedom of freedom, which is a wrong approach and in no way implies the possibility of using or displaying defamation, foul language, foul language or language of hatred. Одному и тому же обществу очень чтобы очень программы и программы и исторические размеры, ображать время ражение очень онного opinion. This is due to the fact that most of them overlook the duties and responsibilities that are inseparable from freedom. Without this, in the end, we see

facts of violence, statements that violate the rights of judges, examples of diminishing their interests.

Many scientists and practicing lawyers say that «freedom of speech has a great potential for violent interference in the interests of others». It is precisely because of this ability that they indicate that mass media are capable of the most flagrant violations of other interests». /Gotsiridze, 2019/

In this regard, the topic of criticism of the judiciary, which can threaten the legitimate interests of protecting the authority of the institution, is noteworthy and problematic, and the topic of coverage of legal topics in terms of impartiality in the media contains certain risks. On the other hand, media are obliged to follow the principle of objectivity and impartiality in order to form a healthy public opinion regarding the judicial system.

It should be noted that «authority of the court» means and inseparable from it the authority of specific judges, since undermining the authority of one specific judge, deservedly or undeservedly, causes immeasurable damage to the entire judicial system. /Gotsiridze, 2019/. In this regard, the approach of the Strasbourg Court is also highlighted. Judges everywhere and always enjoy the strongest protection of authority and prestige. It is desirable that such an approach was observed in our country as well, so that the society learned the line between healthy criticism and insult.

As for the public expression of the judge's opinion on the case before the court, unlike freedom of speech, here we have a completely different situation. According to article 16 of the third chapter of Georgian judicial ethics (relations of the judge with the media and the public): "During relations with the media, the judge shall refrain from expressing his opinion on the case under consideration, whether it is under consideration or has already been considered, if it is not It concerns the organizational or technical side of the consideration of the case».

It is interesting that in articles 10 and 11 the description of the values that protect the impartiality and objectivity of judges is divided, although article 11 of the draft rules of ethics considers it inadmissible for judges to publicly express their opinion on the case under consideration. In court, when in accordance with article 16 of the current rules of ethics, the judge should refrain from expressing his opinion on the case under consideration, in the process of consideration or already considered, if it does not concern organizational or technical aspects of the dispute.

Conclusion:

Thus, the decision made in court cases is a written document, a decision made on behalf of the state, which reflects the opinions and arguments of the court, legal conclusions regarding disputed factual circumstances, which are established on the basis of equality and competition between the parties before the law, based on оценка представленных ими довадов и проведов, Therefore, additional comments, when they do not concern the organizational or technical side of the court proceedings, are inappropriate and do not contribute to the formation of trust in the work of a particular judge or justice in general.

To establish effective communication between the media and the court, it is necessary that the media perceive and consider the court as an independent institution, an independent branch of government, and not just as a place where high-profile trials take place. The media should be focused on reflecting the events taking place in the court and bringing them to the public in an objective and impartial manner, this includes both healthy criticism and the description of positive events or trends. At the same time, it is necessary to take into account the independence of the court and the principle of non-interference in the activities of a judge, and any fact of its violation by the media should be correctly assessed negatively.

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