



Judges Beyond the Bench: Extrajudicial Activity and Open Justice

ACADEMIC ARTICLES

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ABSTRACT

The paper examines the growing phenomenon of judges' nonjudicial activities and its implications for judicial independence, impartiality, and public trust. While modern conceptions of open justice encourage transparency, civic engagement, and communication between courts and society, such openness also challenges the traditional boundaries of the judicial role. The study explores the tension between the judiciary's participation in public life and the constitutional principles that safeguard impartial adjudication. Drawing on comparative analysis of Poland, Germany, Italy, and France, it identifies diverse regulatory approaches to judges' additional functions, ranging from academic and civic engagement to roles within the legislative or executive branches. The research highlights that, although properly regulated extrajudicial activity may enhance public understanding of the judiciary and promote democratic dialogue, it simultaneously poses risks of conflicts of interest, political exposure, and reduced procedural efficiency.

The paper also addresses contemporary challenges arising from judges' online presence and social media use, which may affect perceptions of neutrality and institutional legitimacy. Ultimately, it argues that maintaining a careful balance between openness and restraint – through clear legal frameworks and ethical standards – is essential to preserving judicial independence and the credibility of justice systems in democratic societies.

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In democratic societies, the judiciary is entrusted not only with the application of the law but also with embodying its legitimacy and fairness. Traditionally, judges were confined to the courtroom. Their functions were strictly adjudicative. However, the reality of contemporary judicial roles extends well beyond this narrow scope. Judges increasingly participate in academic, educational, advisory, and civic activities. Like all citizens, they retain the right to express their views on matters of public concern. The European Court of Human Rights has held that disciplinary sanctions imposed on a judge for public comments on constitutional and judicial matters violated Article 10 of the European Convention on Human Rights. The Court emphasized that the obligation of judicial restraint is not absolute and that judges may participate in public debate without necessarily compromising judicial independence.¹

Understanding the principles underpinning the judicial function is fundamental for clarifying the boundaries between adjudicative duties and nonjudicial activities, particularly with respect to independence, impartiality, and integrity. Impartiality, political neutrality, and the act of adjudication itself constitute the core attributes of judicial activity performed within the official capacity of a judge. Nevertheless, in practice, a considerable “gray area” persists with respect to activities that, although formally nonjudicial, remain closely linked to either the resolution of disputes or the symbolic authority of the judiciary. In such contexts, judges are often invited to participate precisely because of their perceived independence and impartiality.² The judiciary interacts with other branches of government and with participants in broader social dialogue, thereby creating a “strategic context” in which public power is exercised.³

This article argues that while regulatory frameworks governing judges’ additional activities formally emphasize restraint, they are increasingly insufficient in the face of contemporary challenges, particularly political polarization and digital communication environments. The article demonstrates that the real tension is not between openness and restraint, but between open justice and the preservation of judicial legitimacy through independence and impartiality. Finally, it presents a comparative legal analysis of Poland, Germany, Italy, and France – jurisdictions that exemplify diverse regulatory approaches – set against the backdrop of European standards, such as Article 6 of the European Convention on Human Rights and Recommendation CM/Rec(2010)12, as well as other international and national legal instruments.⁴

1 *Danileț v. Romania*, App. No. 16915/21, Eur. Ct. H. R. (Grand Chamber, December 15, 2025).

2 Nuno Garoupa and Tom Ginsburg, “Judicial Roles in Nonjudicial Functions,” *Washington University Global Studies Law Review* 12, no. 4 (2013), 755–82.

3 Lukáš Hamřík, “Actors of Informal Judicial Institutions and Practices,” *German Law Journal* 24, no. 8 (2023): 1522.

4 Council of Europe, Committee of Ministers *Recommendation CM/Rec(2010)12 of the Committee of Ministers to Member States on Judges: Independence, Efficiency and Responsibilities*, November 17, 2010.

OPEN JUSTICE AND PUBLIC TRUST IN THE JUDICIARY: THE FRAGILE ROLE OF JUDGES

The concept of open justice is rooted in Jeremy Bentham's classical dictum that "publicity is the very soul of justice."⁵ Today, open justice encompasses not only public access to courtrooms but also transparency in judicial reasoning and the communicative engagement of courts with society.⁶ In legal doctrine, open justice extends beyond physical access to hearings and includes the methods through which courts communicate and the broad dissemination of judicial activity.⁷ The principle of open justice has been reinforced in the case law of the European Court of Human Rights, where it is recognized as a core element of the right to a fair trial under Article 6(1) of the European Convention on Human Rights.⁸

The realization of open justice contributes to enhancing the institutional legitimacy of the judiciary.⁹ When citizens understand the rationale behind judicial decisions and observe impartiality and consistency in court rulings, public confidence in the justice system is strengthened.¹⁰ Transparency also promotes social oversight and mitigates the risk of arbitrary decision-making.¹¹ It enables citizens, the media, and civil society organizations to monitor court operations, thereby reinforcing legitimacy and trust.¹² Both parties to proceedings and the wider public should be able to comprehend the reasoning underlying judicial decisions.¹³ Moreover, transparency and educational initiatives help clarify legal principles and enhance the public's understanding of judicial practices.

Within this evolving context, nonjudicial activities of judges – such as participation in public discourse, legal education, or expert consultation – may increasingly serve as instruments for implementing the principle of open justice. When subject to appropriate regulation, such engagement can contribute to democratic dialogue and reinforce the judiciary's public legitimacy. Judges' extrajudicial involvement may, on the one hand, foster broader societal understanding of the judicial process and extend the reach of open justice. On the other hand, such engagement also entails risks to fundamental judicial values, including independence, impartiality,

5 Jeremy Bentham, "Draught of a Code for the Organization of the Judicial Establishment in France," in *The Works of Jeremy Bentham*, ed. John Bowring, vol. 4 (William Tait, 1843), 316–17.

6 Neil H. Andrews, "Publicity and Open Justice," in *Andrews on Civil Processes: Court Proceedings* (Intersentia, 2017), 764–80.

7 Jane Johnston, "Courts' New Visibility 2.0," in *The Courts and the Media*, eds. Patrick Keyzer, Jane Johnston, and Mark Pearson (Halstead Press, 2012), 41–54.

8 *Pocius v. Lithuania*, App. No. 35601/04, Eur. Ct. H. R. (Second Section, July 6, 2010); Valentyna Myronenko, Anzhela Kaliniuk, Oksana Rakul, Oksana Onyshko, Andrii Klychov, and Diana Voron, "Transparency and Openness of the Judicial Process as Components of Access to Justice in Civil Cases," *Lex Humana* 16, no. 1 (2023): 358–74.

9 Gerald Postema, "The Soul of Justice: Bentham on Publicity, Law, and the Rule of Law," in *Bentham's Theory of Law and Public Opinion*, ed. Xiaobo Zhai and Michael Quinn, (Cambridge University Press, 2014), 40–41.

10 Tom Hickman, *Public Law after the Human Rights Act* (Hart Publishing, 2010), 203–5.

11 European Commission for the Efficiency of Justice, *Guidelines on the Role of Court Presidents*, CEPEJ(2008)3 (Council of Europe, 2008), 5.

12 ENCJ, *Justice, Society and the Media: Report 2019–2020* (ENCJ, 2020).

13 Kate Malleson, *The New Judiciary: The Effects of Expansion and Activism* (Ashgate Dartmouth, 1999), 134–36.

and immunity from external social, political, or media pressures – values that form the constitutional foundations of judicial authority. In judicial literature, it has been emphasized that careful consideration is required when judges engage in activities outside the courtroom to avoid undermining public confidence in the judiciary.¹⁴

It has been observed that judges must carefully balance the benefits of contributing to public discourse with the necessity of maintaining impartiality and preserving public trust in the courts. The question of whether judges should speak out on matters of public concern has been examined in several contexts, highlighting the risks of perceived bias or compromise of judicial independence.¹⁵ Potential boundaries that should not be crossed in nonjudicial functions have also been identified.¹⁶ It has been noted that judges often refrain from making public comments on legal or political matters for fear of compromising the perceived independence of the judiciary. This phenomenon, referred to as “judicial lockjaw,” is central to the debate over the extent to which judges can engage in extrajudicial activities without undermining public confidence.¹⁷

In recent years, the issue of judges’ extrajudicial activity has gained renewed significance, demanding a more cautious and context-sensitive approach. Contemporary political polarization, coupled with the expanding role of digital communication, has heightened both the visibility of judges and the potential risks associated with their public engagement, thereby reinforcing the argument for greater judicial restraint in circumstances where the boundaries of propriety may become blurred. Contemporary controversies illustrate these concerns. In the United States, reporting on Supreme Court Justice Clarence Thomas’s acceptance of travel, gifts, and other benefits from wealthy conservative donor Harlan Crow – including luxury vacations, private-jet flights, and financial support for family members – has intensified scrutiny of his conduct and raised questions about the appearance of independence and impartiality. Investigations by *ProPublica* and subsequent reporting by outlets such as *The New York Times* and NPR have highlighted that many such benefits were not disclosed on required financial disclosure forms, prompting calls for a binding ethics code for the Supreme Court and renewed public debate on judicial ethics and transparency.¹⁸

Similarly, in the United Kingdom, former Supreme Court Justice Lord Sumption’s public commentary – particularly in *Trials of the State: Law and the Decline of Politics*, based on his 2019 *Reith Lectures* – has sparked debate over the appropriate level of public engagement by judges, even after retirement. In this work, Sumption argues that the expanding role of law and judicial decision-making in political questions may undermine the political process and blur lines between adjudication and political

14 Lord Neuberger, “Where Angels Fear to Tread”, Holdsworth Club 2012 Presidential Address, March 2, 2012.

15 Margaret McMurdo, “Should Judges Speak Out?” (paper presented at the Judicial Conference of Australia, Uluru, April 2001).

16 Lord Justice Moses, “Hitting the Balls out of Court: Are Judges Stepping over the Line?” (Creaney Memorial Lecture, Judiciary of England & Wales, February 26, 2014).

17 Lawrence Dubeck, “Understanding ‘Judicial Lockjaw’: The Debate over Extrajudicial Activity,” *New York University Law Review* 82 (2007): 569–70.

18 Ximena Bustillo, “Report on Justice Thomas’s Travel and Gifts Renews Calls for a Supreme Court Code of Ethics,” NPR, April 6, 2023.

discourse.¹⁹ These examples demonstrate that extrajudicial activity, even when formally permissible, can have significant implications for public confidence in the judiciary, underscoring the need for carefully calibrated standards and continued scholarly attention to this evolving issue.

NONJUDICIAL ACTIVITY OF JUDGES

To conceptualize the evolving landscape of judicial engagement, it is useful to distinguish several categories of nonjudicial functions, arranged according to their proximity to the core adjudicative role. At one end of the spectrum are functions that closely resemble judicial duties in both form and substance, such as activities that draw directly on judicial expertise or are closely integrated with court administration.²⁰ Progressing outward, one finds various forms of civic or social engagement, in which judges act as public intellectuals or participate in the work of civil society organizations. At the opposite end of the continuum lie functions linked to the legislative and executive branches of government, and finally, activities of a commercial or for-profit nature. These latter forms of engagement are most likely to jeopardize judicial integrity and are therefore typically subject to the most stringent regulatory oversight.²¹

Judicial activity beyond adjudication can be analytically categorized into three broad groups, based on the nature of the functions performed and their alignment with judicial, governmental, or civic domains. The following classification reflects a graduated spectrum of such roles.

FUNCTIONS WITHIN THE JUDICIARY

Judges may assume responsibilities that, while extending beyond their traditional adjudicative role, remain integral to the functioning of the judicial branch. These include quasi-adjudicative activities such as acting as private arbitrators, serving in a mediatory capacity on tribunals, or participating in ad hoc restorative justice panels. In addition, members of the judiciary may be engaged in institutional judicial governance through involvement in court administration, judicial councils, or commissions responsible for the selection, promotion, evaluation, or disciplinary supervision of judges.²²

STATE-RELATED FUNCTIONS BEYOND THE JUDICIARY

Another category of judicial engagement includes activities related to the exercise of public authority, particularly within the legislative and executive branches of government. These encompass quasi-judicial public functions, such as adjudicating electoral disputes, interpreting presidential powers, or reviewing the legality of political parties. Judges may also serve in nonjudicial adjudicative capacities – for instance, by

19 Jonathan Sumption, *Trials of the State: Law and the Decline of Politics* (Profile Books, 2019); *The Reith Lectures 2019: Law and the Decline of Politics*, BBC Radio 4, 2019.

20 ENCJ, 2016–2017 Report: *Independence, Accountability and the Quality of the Judiciary* (ENCJ, 2017), 35.

21 Council of Europe, Committee of Ministers, *Recommendation CM/Rec(2010)12*, para. 56; European Commission for Democracy through Law (Venice Commission), *Report on the Independence of the Judicial System, Part I: The Independence of Judges*, CDL-AD(2010)004 (Council of Europe, 2010).

22 ENCJ, *Minimum Standards for the Selection and Appointment of Judges* (ENCJ, 2012).

chairing public inquiries or governmental commissions (as is common in jurisdictions such as the United Kingdom and Australia), acting as special prosecutors, or presiding over impeachment proceedings.²³

Moreover, judges may be involved in quasi-legislative functions, such as participating in legislative drafting committees or overseeing constitutional amendment bodies. Quasi-executive roles may involve leading administrative agencies or being appointed to senior governmental positions. At the furthest end of this spectrum, judges may fully assume governmental authority by holding legislative office or serving in executive capacities, such as ministers or ambassadors.²⁴

ADDITIONAL AND CIVIC ENGAGEMENT ACTIVITIES OF JUDGES

Finally, judges may engage in professional, academic, or civic activities that lie outside the formal structures of the state. These include contributions to legal education and professional training, such as university teaching, scholarly publishing, and participation in judicial or legal associations. Judges may also be involved in community service through nonprofit organizations or be members of civil associations not affiliated with judicial governance.²⁵ Some may even participate in commercial activities, including legal consulting, membership on corporate boards, or involvement in for-profit enterprises – although such engagements frequently raise concerns regarding judicial impartiality and public trust and are generally perceived as unethical.²⁶

From this perspective, judicial engagement in professional associations of judges is generally regarded as permissible and even desirable because it contributes to the development of the judiciary, the exchange of experience, and the protection of judicial independence. At the same time, such activity must remain consistent with the duties of impartiality and restraint, particularly where associations take positions on politically sensitive issues or matters that may later come before the courts. Accordingly, judges participating in such bodies are expected to exercise caution and avoid public statements or actions that could give rise to doubts as to their neutrality or the appearance of bias.

REGULATORY FRAMEWORK OF NONJUDICIAL ACTIVITIES OF JUDGES IN COMPARATIVE PERSPECTIVE

As discussed, the nonjudicial activities of judges encompass “internal” court-related responsibilities and “external” forms of engagement. While such activities may offer important benefits, they also raise significant concerns regarding judicial impartiality, independence, and public trust in the judiciary. Scholarship on this topic reinforces

23 Nuno Garoupa and Tom Ginsburg, *Judicial Reputation: A Comparative Theory* (University of Chicago Press, 2015), 17.

24 Venice Commission, *Report on the Independence of the Judicial System*, paras. 64–67.

25 Council of Europe, Committee of Ministers, *Recommendation CM/Rec(2010)12*, para. 56.

26 Garoupa and Ginsburg, “Judicial Roles in Nonjudicial Functions”, 759–60; International Law Association Study Group on the Practice and Procedure of International Courts and Tribunals, *The Burgh House Principles on the Independence of the International Judiciary* (2004); International Commission of Jurists, *Bologna and Milan Global Code of Judicial Ethics* (2015).

that inappropriate or ill-timed public comments by judges can harm public confidence in the courts and the rule of law and highlights the importance of professional norms that delineate permissible public engagement without undermining impartiality.²⁷

Accordingly, both national legal systems and international instruments have established normative frameworks to delineate the permissible boundaries of judicial conduct beyond adjudication.²⁸ In particular, the right to a fair trial before an independent and impartial tribunal, as enshrined in Article 6 of the European Convention on Human Rights and Article 47 of the Charter of Fundamental Rights of the European Union, provides a foundational standard for assessing the acceptability of judges' extrajudicial involvement.²⁹ These provisions underscore that even perceived encroachments on judicial neutrality may undermine the legitimacy of the judiciary in the eyes of the public. In this context, the Bangalore Principles of Judicial Conduct offer globally recognized ethical benchmarks, particularly stressing the values of independence, impartiality, and integrity in all judicial conduct – on and off the bench.³⁰

At the European level, substantial guidance is provided by the Consultative Council of European Judges and the European Network of Councils for the Judiciary (ENCJ).³¹ These bodies emphasize the importance of adopting clear and enforceable institutional policies governing, *inter alia*, judges' nonjudicial activities and their participation in public discourse. The ENCJ Standards further advocate for transparency and accountability in judicial engagement, urging the creation of robust national frameworks that enable but also supervise such participation.³² Similarly, Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe highlights the need for regulatory mechanisms that prevent conflicts of interest and preserve public confidence in the judiciary, while allowing judges to contribute responsibly to democratic society.³³

Such recommendations aim to safeguard the fundamental values of the judiciary and promote coherence among jurisdictions in balancing transparency with the integrity of judicial office. The following sections present and compare the legal frameworks regulating nonjudicial judicial activity in four national jurisdictions: Poland, Germany,

27 Andrea Chis, "Public Expressions of Judges: Navigating between Freedom & Responsibility," UNODC, 2021.

28 For France, see Conseil supérieur de la magistrature, *Recueil des obligations d'ontologiques des magistrats* (Paris: CSM, 2019); Conseil supérieur de la magistrature, *Rapport d'activité 2023* (Paris: CSM, 2024); For Italy, see Associazione Nazionale Magistrati, *Codice Etico* (ANM, 2010); For Poland, see Constitution of the Republic of Poland, April 2, 1997, art. 178(3).

29 European Convention for the Protection of Human Rights and Fundamental Freedoms, November 4, 1950, ETS No. 5, art. 6; Charter of Fundamental Rights of the European Union, 2012 O.J. C 326/391, art. 47.

30 *The Bangalore Principles of Judicial Conduct*, adopted by the Judicial Group on Strengthening Judicial Integrity, The Hague, November 2002.

31 Consultative Council of European Judges, *Opinion No. 25 on Freedom of Expression of Judge* (Strasbourg: Council of Europe, 2022).

32 ENCJ, *Distillation of ENCJ Guidelines, Recommendations and Minimum Standards 2012–2023* (ENCJ, 2023).

33 Council of Europe, Committee of Ministers, *Recommendation CM/Rec(2010)12*.

POLAND

In Poland, judges are subject to strict limitations on taking on additional employment or engaging in outside activities beyond their core judicial duties. The guiding principle is that any such involvement must not compromise judicial independence or undermine public confidence in a judge's impartiality. Article 178(3) of the Constitution of the Republic of Poland establishes distinct prohibitions, clarifying that judges are precluded from membership in political parties (nonpartisanship), trade unions, and from engaging in any public activity that is incompatible with the principles of judicial independence. The apolitical character of the judiciary constitutes a constitutionally permissible restriction on rights and freedoms ordinarily guaranteed to citizens. This limitation is justified by the overarching constitutional values of judicial independence and impartiality, which are core elements of the right to a fair trial as enshrined in Article 45(1) of the Constitution.

Additionally, Article 86 of the Act of 27 July 2001, Law on the Structure of Common Courts, permits judges to engage in certain external activities – primarily educational, scientific, or cultural in nature – subject to objection by the competent judicial authorities, namely the court presidents.³⁴

While Article 178(3) explicitly prohibits political and trade union involvement, judges may still participate in public life through the exercise of their constitutionally protected freedom of association. Any limitations on this freedom must comply with the principle of proportionality. Judicial associations occupy a distinct position within this constitutional framework, often fulfilling quasi-union functions. Their objectives typically include the protection of judicial independence – both institutional and individual – as well as the defense of professional interests. Nevertheless, the exercise of the freedom of association by judges is constrained by the constitutional principles of independence and impartiality. In cases where pursuing this freedom would conflict with those principles, the judge is obliged to resign from the relevant organization or association.

It follows that judges may engage in public activity only insofar as such engagement does not compromise public confidence in the judiciary's impartial and politically neutral fulfillment of its constitutional role.

GERMANY

In Germany, judges are permitted to engage in extrajudicial activities, but only within a framework of clearly defined restrictions and safeguards outlined in the Judiciary Act (*Deutsches Richtergesetz* – DRiG).³⁵ These provisions are designed to uphold the principles of judicial independence and impartiality, as enshrined in the German

³⁴ Ustawa z dnia 27 lipca 2001 r. – Prawo o ustroju sądów powszechnych (Law on the Structure of Common Courts), Dz.U. 2023, poz. 1094, as amended.

³⁵ *DRiG* [German Judiciary Act], April 19, 1972, *Bundesgesetzblatt I* 1972, 713, last amended by art. 4 of the Act of August 16, 2021, *Bundesgesetzblatt I* 2021, 3582.

Basic Law (*Grundgesetz*) and developed through constitutional jurisprudence and administrative practice.³⁶

Sections 4 and 39–43 of the DRiG constitute the core statutory framework governing such extrajudicial conduct. They regulate incompatibilities with judicial office, standards of professional and private conduct, limits of permissible secondary activities, and the obligation to maintain the secrecy of judicial deliberations.

In general, the DRiG prohibits judges from simultaneously performing functions in the legislative or executive branches, emphasizing the doctrine of separation of powers (Section 4(1) of the DRiG). This principle is interpreted broadly and applies to any nonjudicial role assumed during a judge's term of office, regardless of whether it occurs inside or outside official duties.³⁷ However, Section 4(2) of the DRiG lists specific statutory exceptions, including roles in judicial administration, academic teaching and research, legal education, and chairing conciliation boards in accordance with federal civil service law.

There are also restrictions on performing activities in the private or non-governmental sector; under German secondary employment law (*Nebentätigkeitsrecht*), such engagements may be prohibited where they are capable of impairing official duties or undermining public trust in the judiciary.³⁸ Even activities carried out outside official duties, including those performed abroad or for public bodies, may be subject to disciplinary consequences if undertaken without proper authorization or where they affect service interests, as confirmed in the case law of the Federal Administrative Court.³⁹

Moreover, judges may serve as arbitrators or conciliators only if jointly appointed by the parties or designated by a non-party entity. However, Section 41 prohibits judges from offering legal advice or issuing expert legal opinions for remuneration outside of official duties, with limited exceptions for law professors who hold judicial office, subject to administrative approval.

There is a general duty of judges to maintain public confidence in their independence, encompassing both their official and private conduct, including their political activities. Judicial independence in this context extends not only to impartiality in proceedings but also to broader neutrality and an open mind.⁴⁰ Limitations on judges' constitutional rights – such as freedom of expression or association – are permissible where necessary to preserve the integrity of the judiciary, in line with Article 33(5) of the Basic Law for Germany.⁴¹ Additional activity requires prior authorization by the

36 *Grundgesetz für die Bundesrepublik Deutschland* [Basic Law for the Federal Republic of Germany], May 23, 1949, *Bundesgesetzblatt* I, 1, last amended by art. 1 of the Act of November 22, 2023, *Bundesgesetzblatt* 2023 I no. 328.

37 Johann-Friedrich Staats, “Mit dem Richteramt unvereinbare Mitwirkung an der gesetzgebenden und der vollziehenden Gewalt,” *Deutsche Richterzeitung* (2001): 103–5.

38 Bundesverwaltungsgericht [Federal Administrative Court], judgment of November 24, 2005, 2 C 32.04, ECLI:DE:BVerwG:2005:241105U2C32.04.0.

39 Bundesverwaltungsgericht [Federal Administrative Court], order of August 28, 2018, 2 B 4.18, ECLI:DE:BVerwG:2018:280818B2B4.18.0.

40 Bundesverwaltungsgericht [Federal Administrative Court], judgment of October 17, 1984, BVerwG 2 C 15.83, BVerwGE 78, 216, 220.

41 Bundesverfassungsgericht [Federal Constitutional Court], judgment of June 14, 1983, 2 BvR 602/83, in *Neue Juristische Wochenschrift* (NJW) 1983, 2691; *Gollnisch v. France*, App. No. 48135/08, Eur. Ct. H. R. (decision, June 7, 2011).

highest court administration authority (usually the Ministry of Justice at the federal or state level). Such permission may be granted on a general or case-by-case basis, provided that the activity does not exceed the scale of a secondary occupation and does not pose a risk to the public interest.

German judges may engage in extrajudicial activities only under strict conditions that safeguard judicial independence and impartiality.⁴² Legal frameworks that define judges' activities outline core limitations on roles in other branches of government, permissible secondary activities, and professional conduct, including a continuing duty of confidentiality.⁴³ While limited exceptions exist (e.g., in academia or legal education), participation in activities that compromise structural independence, especially in executive or foreign institutions, is prohibited.

ITALY

In Italy, judges' nonjudicial activities are governed by the *Decreto Legislativo 160/2006* and by ethical rules administered through the *Consiglio Superiore della Magistratura* (CSM). They may participate in academic and cultural events with prior authorization. The Italian model reflects a cautious but structured openness to nonjudicial roles, provided they do not endanger public trust or judicial discipline.

More specifically, these functions are governed by statutory law, particularly by the legislation on the organization of the judiciary (*ordinamento giudiziario*). However, the practical application and enforcement of these rules fall broadly under the authority of the CSM.⁴⁴ For instance, a judge may act as an arbitrator or provide an expert opinion in arbitral proceedings only with prior approval from the CSM. Judges may also serve in management roles within nonprofit institutions but are strictly prohibited from receiving any form of remuneration or compensation for such activities. Additionally, judges are permitted to conduct research and teach at scientific institutions of higher education, public educational institutions, or other officially recognized teaching bodies, and to participate in examination-related duties. Some political functions are explicitly permitted. Judges are allowed to serve as members of the Judicial Council and may also hold seats in the Senate or participate in the National Council.

Despite the formal statutory restrictions, Italian judges have been involved in a variety of nonjudicial and political roles. In practice, the rigid rules set by law have been softened through the permissive interpretation and decisions of the Judicial Council, which regularly authorizes such engagements. Historically, Italian judges and prosecutors have been involved in party politics and have even held office in both the executive and legislative branches.⁴⁵

42 Markus Koschyk, "How Independent are German Judges?" *Deutsche Welle*, August 5, 2017, <https://www.dw.com/en/how-independent-are-german-judges/a-39980017>.

43 Sylvia Steininger, "Talks, Dinners, and Envelopes at Nightfall: The Politicization of Informality at the Bundesverfassungsgericht," *German Law Journal* 24, no. 8 (2023): 1311–14.

44 Giuseppe Di Federico, "Independence and Accountability of the Judiciary in Italy: The Experience of a Former Transitional Country in a Comparative Perspective," in *Judicial Integrity*, ed. András Sajó (Brill, 2004), 182.

45 Garoupa and Ginsburg, "Judicial Roles in Nonjudicial Functions," 776–77.

In the French legal system, the performance of nonjudicial functions by members of the ordinary judiciary is governed by statutory instruments, in particular the *Code de l'organisation judiciaire* and *Ordonnance No. 58-1270 portant loi organique relative au statut de la magistrature*.⁴⁶ The primary responsibility for overseeing compliance with the relevant provisions lies with the Judicial Council (Conseil supérieur de la magistrature, hereinafter CSM).⁴⁷ Additionally, the CSM has developed the Compendium of the Judiciary's Ethical Obligations, a collection of ethical principles for judges.⁴⁸ This document, prepared by the CSM, provides guidelines on judicial professional ethics, including the rules governing the undertaking of additional activities.

Traditionally, French judges have exhibited limited engagement in nonjudicial roles, a phenomenon consistent with the prevailing legal culture, which has long been characterized by a degree of skepticism toward the *noblesse de robe* – the historical judicial elite. Unlike in Germany or Italy, the participation of French judges and prosecutors in extrajudicial functions remains marginal and exceptional. Pursuant to French law, the judicial office is deemed incompatible with the holding of any public function or with the exercise of any other professional or remunerated activity. Nevertheless, the president of the court in which the judge serves may, in exceptional circumstances, grant individual exemptions. These are typically limited to teaching or other activities that do not compromise or otherwise adversely affect judicial independence. Article 8 of the *Ordonnance No. 58-1270* stipulates that only literary, academic, or scientific work may be pursued – subject to prior declaration and authorization. The CSM oversees compliance. Disciplinary sanctions may result from undeclared or inappropriate external engagements.

Members of the judiciary are not ordinary internet users and must exercise particular vigilance in their use of social media, particularly when they express opinions under their own names or in their capacity as members of the judiciary.⁴⁹ The CSM also addressed the question of judicial freedom of expression and the corresponding obligation of restraint, particularly in the context of social media activity and participation in professional associations. While recognizing that judges, as citizens, retain the right to express their views, the Council stressed that such expression must be exercised with a heightened sense of institutional responsibility to avoid impairing public trust in the impartiality and independence of the judiciary.⁵⁰

In recent years, the CSM has expressed concerns about the intensifying political and societal pressure on the independence of the judiciary. In its 2023 Annual Report, the CSM emphasized the imperative of defending the rule of law in the face of increasingly frequent political attacks directed at what is often described as the “government of judges.” Particular attention was drawn to attempts – both overt and subtle – to

46 *Code de l'organisation judiciaire*; *Ordonnance no. 58-1270 du 22 décembre 1958* portant loi organique relative au statut de la magistrature.

47 Nuno Garoupa and Tom Ginsburg, “The Comparative Law and Economics of Judicial Councils,” *Berkeley Journal of International Law* 27, no. 1 (2009): 53–83.

48 Conseil supérieur de la magistrature, *Recueil des obligations d'éthologiques*.

49 Conseil supérieur de la magistrature, *Recueil des obligations d'éthologiques*, 11.

50 Conseil supérieur de la magistrature, “Avis de la formation plénière du 13 décembre 2023,” December 13, 2023.

ADDITIONAL ACTIVITIES OF JUDGES: JUSTIFICATION, RISKS, AND BENEFITS

Against the backdrop of the evolving concept of open justice – which promotes transparency, accessibility, and civic engagement within the judicial sphere – the scope of judicial duties is undergoing a subtle yet significant transformation. In this context, judges' nonjudicial activity should not be viewed merely as peripheral or incidental. Rather, it may serve as a meaningful instrument for enhancing public understanding of judicial functioning and advancing the normative aspirations of open justice.⁵² Educational, advisory, and communicative roles performed by judges can help demystify the justice system and foster a stronger connection between the courts and society.⁵³ Simultaneously, such roles raise fundamental questions concerning the permissible boundaries of judicial office and the continuing imperative to preserve independence, impartiality, and insulation from external influence.⁵⁴

Limitations on judges' engagement in extrajudicial activities serve a dual purpose. On the one hand, they are intended to safeguard a judge's capacity to fully discharge their official responsibilities; on the other, they ensure that litigants can be confident that the judge adjudicating a case is not involved in any external engagements that could impair the efficient or impartial resolution of the dispute. Judges face significant restrictions on their ability to undertake additional employment or assume other professional roles. These constraints are not only designed to ensure the proper exercise of judicial functions but also to uphold broader values: strengthening judicial independence and impartiality, fostering public trust in courts, and preventing the symbolic authority of the judiciary from being appropriated by other institutions.

Within legal scholarship, the prohibition on secondary employment or additional professional activity is considered a material safeguard of judicial independence. Importantly, the mere fact that a judge engages in external work does not automatically imply misconduct or a violation of judicial dignity. However, these limitations are motivated not only by the need to preserve institutional integrity but also by the obligation to protect the dignity of the judicial office, reinforce public confidence in the judiciary, and underscore the public-service nature of the judicial profession. Ultimately, such constraints are intended not only to enable judges to fulfill their duties effectively, but also to enhance the legitimacy and authority of the judiciary as a whole.⁵⁵

51 Conseil supérieur de la magistrature, *Rapport d'activité 2023*, 9.

52 Council of Europe, Committee of Ministers, *Recommendation CM/Rec(2010)12*, para. 25.

53 ENCJ, *Report 2019–2020: Independence and Accountability of the Judiciary* (ENCJ, 2020), 21.

54 ENCJ, *Report 2019–2020: Independence and Accountability of the Judiciary*, 11–13; European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 6.

55 Jan Olszanowski, "Zgoda na dodatkowe zatrudnienie sędziego – element systemu gwarancji niezawisłości?" *Forum Prawnicze* 61, no. 6 (2020): 36–48.

One of the most critical concerns arising from judges' nonjudicial activity is the potential erosion of actual or perceived impartiality. Even when a judge remains objectively neutral, their participation in public discourse or in professional engagements beyond the courtroom may give rise to a perception of bias. This appearance alone can undermine public confidence in the judiciary, which depends not only on de facto independence but also on the perception of neutrality.⁵⁶ Closely related to this is the risk of conflicts of interest. Additional employment or professional involvement may place a judge in circumstances where their extrajudicial role intersects with their judicial responsibilities. This is particularly problematic when the subject matter of a dispute involves the judge's external employer, area of professional expertise, or previous affiliations. The risk is not merely hypothetical; even the appearance of such a conflict may call into question the legitimacy of judicial decisions.⁵⁷

Moreover, involvement in extrajudicial tasks may lead to overburdening and reduce institutional efficiency. Time and cognitive resources spent on secondary engagements inevitably detract from a judge's ability to manage caseloads and participate fully in deliberations. This can result in procedural delays and diminish the overall quality of judicial output.⁵⁸

Another significant concern arises when judges assume politically sensitive roles. Such involvement can blur the boundaries between the judiciary and the legislative and executive branches, threatening the foundational principle of the separation of powers. Judges perceived as politically active risk having their decisions interpreted through a partisan lens, thereby undermining public perceptions of judicial neutrality.⁵⁹

Business activity, although sometimes informed by legal expertise, may undermine the judiciary's collective reputation and institutional integrity. It can compromise impartiality and give rise to serious concerns about conflicts of interest. For these reasons, such activities are expressly prohibited in most legal systems. The dignity of the judicial office may also be impaired by public-facing engagements, including commercial media appearances, advertising, or provocative public commentary. These behaviors may be regarded as incompatible with the decorum traditionally expected of the judiciary and may diminish the authority of the judicial role.⁶⁰

Finally, the digital era – and social media in particular – presents a novel set of challenges. While online platforms can enhance transparency and public engagement, they also expose judges to reputational risks, inadvertent disclosures, and inappropriate interactions with litigants or members of the public. Seemingly innocuous posts may be misinterpreted, exploited, or taken out of context, thus jeopardizing judicial integrity.⁶¹

56 *The Bangalore Principles of Judicial Conduct*, value 2; Jane Johnston, "Three Phases of Courts' Publicity: Reconfiguring Bentham's Open Justice in the Twenty-First Century," *International Journal of Law in Context* 14, no. 4 (2018): 525–38.

57 Enid Campbell and Victoria H. P. Lee, "Extra-Judicial Activities of Judges," in *The Australian Judiciary*, ed. H. P. Lee (Cambridge University Press, 2012), 186–206.

58 Robert B. McKay, "The Judiciary and Nonjudicial Activities," *Law and Contemporary Problems* 35, no. 1 (Winter 1970): 9–36.

59 Venice Commission, *Report on the Independence of the Judicial System*.

60 United Nations Office on Drugs and Crime, *Commentary on the Bangalore Principles of Judicial Conduct* (UNODC, 2007), para. 53.

61 Hon. Julie J. Bernard and Keith R. Fisher, "Some Pitfalls and Perils of Judicial Social Media Use," *Boston Bar Journal* 67, no. 4 (Fall 2023), <https://bostonbar.org/journal/some-pitfalls-and-perils-of-judicial-social-media-use/>.

Judges' personal posts may be perceived as official views or reveal affiliations that compromise their appearance of impartiality. Although judges are not categorically prohibited from using social media, their online presence is subject to strict ethical limitations grounded in the principles of judicial dignity, impartiality, and institutional independence. Impartiality must be preserved both in fact and in appearance. Judges must avoid publishing or endorsing content that signals political alignment, ideological bias, or preferential treatment of particular social groups.⁶² Even subtle expressions of opinion – such as “likes,” shares, or retweets – can erode the perceived neutrality of the judiciary.⁶³ Judicial decorum extends beyond the courtroom: judges are expected to refrain from posting controversial, humorous, or provocative content that may be perceived as incompatible with the solemnity and authority of their office. They must also avoid online interactions that could reasonably be construed as creating a conflict of interest – particularly with litigants, counsel, or entities involved in pending or foreseeable litigation. Any online affiliation that casts doubt on a judge's independence must be avoided.

CONCLUSION

As evidenced by the foregoing analysis, judges' additional activities – whether formal or informal in nature – may generate various risks and affect their core professional responsibilities related to the administration of justice. For these reasons, many legal systems impose restrictions or ethical guidelines on the nonjudicial activities of judges. These limitations serve not only to protect the independence and impartiality of individual judges but also to preserve the legitimacy and credibility of the judiciary.⁶⁴ Judicial engagement in additional activities increases the risk of conflicts of interest. In the literature, the role of informal activities of judges is also considered during the assessment of the judicial administration's functioning.⁶⁵

Moreover, the judiciary's workload in many countries is already stretched. Additional roles may encroach upon the time necessary for adjudication, leading to delays in judgment delivery and compromised case management. This concern is especially prominent in civil law systems where judges maintain extensive procedural responsibilities. Furthermore, political or social activity of judges may undermine the doctrine of separation of powers. Judicial decisions rendered under such circumstances are at risk of being viewed as politically motivated, thus delegitimizing judicial independence.⁶⁶ Even subtle political expressions, such as social media endorsements,

62 Benjamin P. Cooper, “Judges and Social Media: ‘Friends’ with Costs and Benefits,” *The Professional Lawyer* 22, no. 3 (2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2451094.

63 John G. Browning, “Why Can't We Be Friends? Judges' Use of Social Media,” *University of Miami Law Review* 68, no. 2 (2014): 502–3.

64 Council of Europe, Committee of Ministers, *Recommendation CM/Rec(2010)12*; UNODC and Venice Commission, *Use of Social Media by Judges: Discussion Guide for the Expert Group Meeting, 5–7 November 2018, Vienna (UNODC, 2018)*.

65 Simone Benvenuti, “The Italian System of Judicial Governance: An Arena of Confronting Informal Practices and the Push towards Formalization,” *German Law Journal* 24, no. 8 (2023): 1390.

66 Constitution of the Republic of Poland, April 2, 1997, art. 178(3); Ordonnance no. 58–1270 du 22 décembre 1958 portant loi organique relative au statut de la magistrature; *Deutsches Richtergesetz*.

may compromise the judiciary's neutrality. Engagement in commercial activities, participation in controversial media content, or issuing personal statements that conflict with judicial values may erode public trust in the institution of the judiciary.

Judges' additional activities are an inevitable by-product of modern democratic expectations for transparency, education, and engagement. However, the equilibrium between openness and impartiality must be carefully maintained. While well-regulated activities can promote public confidence and contribute to civic education, poor oversight or excessive exposure risks undermining judicial credibility. While social media can enhance transparency and civic engagement, it also presents significant risks to judicial impartiality and public trust. Judges must exercise heightened caution, guided by ethical frameworks that preserve the independence, dignity, and legitimacy of the judiciary. Institutional policies should encourage prudent use, supported by training, monitoring, and clear codes of conduct that align with evolving standards of public communication in the digital age.

While judicial engagement in nonjudicial activities may support values such as transparency and civic education, it must be carefully balanced against the imperatives of independence, impartiality, and public trust. Regulatory frameworks and ethical standards play a crucial role in safeguarding the integrity of the judiciary in an increasingly complex and interconnected world. Ultimately, the credibility of the justice system depends not only on what judges decide, but also on how they conduct themselves beyond the courtroom.

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