

HELLENIC REPUBLIC
GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

Neofytou Vamva 6 (3rd floor), GR 106 74 Athens, Greece, Tel: +30 210 7233221-2;
fax: +30 210 7233217; e-mail: info@nchr.gr, website: www.nchr.gr

<p>Decision regarding Freedom of Expression and Freedom to Unionize of Judicial Functionaries</p>
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The Prosecutor of Areios Pagos initiated disciplinary proceedings against the President of the Public Prosecutors' Union of Greece Mr Bagias for the content of his interview in the newspaper "TA NEA" of 3 April 2008. The issue of the appropriateness of disciplinary action and referral to disciplinary proceedings occupied public opinion and was followed by press releases issued, inter alia, by the European Commission, actors from the justice sector, such as unions of judicial functionaries, bar associations, and civil society organisations. The NCHR Plenary debated and adopted a decision on the question of protection of freedom of expression and freedom of association of judicial functionaries.

The Constitution (articles 14 para 1 and 23 para 1), the ECHR (articles 10 and 11) and the ICCPR (articles 19 and 22) provide for the freedom of expression, including freedom of the press, and the freedom to unionize, beneficiaries of which are also the judicial functionaries.

Furthermore, according to article 91 para 5 (b) and (c) of the Code for the Organization of the Courts and the Status of Judicial Functionaries the public expression of an opinion by a judicial functionary does not constitute a disciplinary offence (unless it is intended to undermine the prestige and/or authority of justice) nor the participation and the activities within recognised associations of judges and the expression of opinion and criticism within the framework of syndicalist activity.

It is evident that these provisions protect both the broader right of judicial functionaries to express views for socio-political issues of public concern, such as the dangers posed to civil rights by the operation of surveillance cameras, and the narrower manifestation of the said right i.e. criticizing the way other judges exercise their duties.

As far as representatives of judicial functionaries unions are concerned, criticizing the administrative bodies of Justice, such as the Higher Judicial Council, the Minister of Justice or the Prosecutor of Areios Pagos (who acts as the supervisor of all public prosecutors) constitutes not simply a right but also an obligation on their part. Furthermore, taking into account, on the one hand, that the freedom of judicial functionaries to unionize is highly protected and on the other hand, that the right to go on strike is unavailable to judicial functionaries (article 23 para 2 of the Constitution), it is evident that freedom of expression of their unionist representatives is critical.

Moreover, freedom of expression as provided for by article 10 of the ECHR constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress. As the ECtHR has held freedom of expression is applicable not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb according to the demands of pluralism, tolerance and broadmindedness without which there is no democratic society.

Besides, there is no doubt that courts, as is the case with all other public institutions, are not immune from criticism and scrutiny, irrespective of the need for them to enjoy public confidence. The freedom of expression is also secured to those taking part in the mechanism of justice: they are certainly entitled to comment on the administration of justice in public, but their criticism must not overstep certain bounds. In that connection, account must be taken of the need to strike the right balance between the various interests involved, which include the public's right to receive information about questions arising from judicial decisions, the

requirements of the proper administration of justice and the dignity of the legal profession.

Criticism may be considered excessive and, consequently, be subject to limitations only when the facts upon which it is grounded lack any factual basis, so as to prevent that public confidence in public officials be endangered for no reason. Taking into consideration the aforementioned, the NCHR takes the view that in a democratic society the expression of opinion regarding matters pertaining to the institution of Justice and the debate generated around it contributes to the improvement of the Justice mechanism and does not undermine its prestige.

The unions of judicial functionaries can contribute effectively in such a constructive dialogue. Besides, the protection of freedom of expression is inextricably linked with freedom of association. Moreover, when union representatives express opinions in the framework of political public debate or regarding issues of public interest, the ECtHR has accepted limitations only in exceptional cases. The Court attributes particular significance, when it comes to debates pertaining to issues relevant to the society as a whole, to preserving the citizens' right to express freely their views without the fear of being sanctioned.

In Greece, so far, there has been only one relevant decision of Areios Pagos, in which –concerning the interpretation of article 91 para 5 (b)- the Court held that the expression of opinions pertaining to bills regulating the operation of Justice does not constitute a disciplinary offence. In its *obiter dictum* it held that the right of judicial functionaries to express their views on issues pertaining to the independence of Justice and judicial functionaries is unambiguous.

The Commission, without getting into the particulars of the case, underlines that the Constitution and international human rights instruments protect the general freedom of expression of judicial functionaries. In particular, they protect both the right of representatives of judicial functionaries' unions to express their opinions regarding the

function of Justice, the way its administrative organs exercise their duties, and the right to criticize and to publicize their views regarding civil rights.

The Commission takes the view that the above rights reinforce the guarantees of independence of Justice. Limitations to the freedom of expression need to comply with the principle of proportionality and to be necessary in a democratic society, especially if they are manifested as sanctions. Public criticism of state organs constitutes a guarantee for the rule of law and should be perceived as contributing to the service of Justice and not undermining its prestige.

Athens, 29 May 2008