



**GENERAL COUNCIL OF THE JUDICIARY**

Working Group for the creation of a  
**Code of Ethics for the Legal Profession**

*Final text agreed at the session held on 16 December 2016*

## **PRINCIPLES OF JUDICIAL ETHICS**

### **PREAMBLE**

These “Principles of Judicial Ethics” aspire to collect the values and rules of conduct shared by the Spanish Judiciary. They aim to serve as a guide in the undertaking of jurisdiction and promote collective dialogue and personal reflection on the challenges faced by those who exercise it within a complex and changing legal and social framework. It is proposed, furthermore, to strengthen public trust in justice by making the behaviour models explicit in accordance with those judges that commit to fulfil their functions.

The adoption of a judicial ethics text comes about in a favourable international context, initiated with the approval of the Bangalore Principles (2001), within the framework of the United Nations, continued with the Opinion of the Consultative Council of European Judges of the Council of Europe on ethics and the responsibility of judges (2002), the Ibero-American Model Code of legal ethics (2006), adopted by the Ibero-American Judicial Summit, to which the General Council of the Judiciary adhered by Plenary Session on 25 February 2016, and the London Declaration on Judicial Ethics (2010), promoted by the European Network of Councils for the Judiciary. Finally, Recommendation R (2010) 12, of 17 November, of the Committee of Ministers of the Council of Europe encourages Member States to approve a Code of Judicial Ethics.

In recent years the large majority of countries in the European Union have subscribed to judicial ethics texts (codes, guides, compilation of principles) of different origins (Higher Councils of the Judiciary, judicial associations, conferences of judges, court presidents, etc.)

In this context, the General Council of the Judiciary set in motion a process aimed at the creation of some “Principles of Judicial Ethics”, which have been redacted by a committee composed of representatives from judicial associations, non-associate members of the judiciary, and a number of experts, with the valuable participation of delegates from each High Court of Justice designated by



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the respective Governing Chambers, always with the objective of reflecting the plurality of opinions that exist in the Judicial Profession.

The disciplinary regime is completely unrelated to judicial ethics. The latter is only conceivable in terms of strict willingness and lack of legal responsibility, as opposed to discipline, which is a group of compulsory regulations whose infringement draws legal consequences. Judicial ethics operate as a positive stimulus as it is aimed at excellence, whereas discipline works on the basis of a negative stimulation, which is the sanction. Therefore, the effectiveness of these “Principles of Judicial Ethics” will arise from the level at which each judge assumes them as their own, and translates them into models of conduct.

If ethics, in general, is a worthy life proposal, judicial ethics is the promise of good justice insofar as it incorporates the qualities necessary to achieve the end assigned to it by the Constitution: the protection of the rights of citizens.

The text presented here covers general principles with which the judiciary is familiar: independence, which marks out a space for the judicial decision exempt from unwanted influences; impartiality, which underlines the role of the judge as a third party removed from the interests in play; and integrity, which demands from those exercising jurisdiction coherence with the previous principles, and with that of respect for human dignity, even in social life, in all those circumstances that put public trust in justice into question.

It also takes in behaviour models relating to justice as the provision of a service, such as courtesy, diligence and transparency. Its level of fulfilment is directly perceived by those who turn to the courts, thus contributing decisively to the formation of public opinion on justice and, for this very reason, they cannot be disregarded as “minor”.

The system comes full circle with a Judicial Ethics Committee whose composition, functioning and procedure guarantee confidentiality in consultations and the merely guiding nature of the opinions it expresses. Duly anonymous, the opinions and reports from the Committee will constitute a highly useful body of doctrine.



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**PART ONE**

*Principles*

**CHAPTER I**

*Independence*

1. Judicial independence is a right for every citizen whose protection and defence form a mandatory part of the professional duty of the judge, and not a personal privilege of their statute.
2. Judges should be of an attitude of mind that, aside from their own ideological convictions and personal feelings, excludes from their decisions any outside interference towards their assessment of the entire evidence gathered, the appearance of the parties in the proceedings, in accordance with the rules of procedure, and their understanding of the legal regulations to be applied.
3. Members of the judiciary must be actively committed towards the good functioning of the judicial system, and promoting an attitude of respect and trust in the Judiciary throughout society, and exercise the jurisdictional function in a manner that is prudent, moderated and respectful to the other powers of the State.
4. It is the duty of judges to demand from the political powers working conditions appropriate for the independent and effective undertaking of their functions, and the resulting provision of human and material resources.
5. Judges have the duty to demand legal improvements that result in a benefit to judicial independence as a guarantee to citizens.
6. Judges, subject to their legal duty to report it, must resist all direct or indirect attempts by third parties removed from the proceedings who are inclined to influence their decisions, whether they originate from the other political powers, pressure groups or public opinion, or even the Judiciary itself, avoiding taking into consideration, upon issuing their rulings, any expectation of approval or rejection from the same.
7. Members of the Judiciary who form part of higher courts must undertake their duties respecting the jurisdictional independence and dignity of those who form part of lower courts.
8. Judges who, as members of the judiciary, carry out public roles, shall undertake their competencies and adopt their decisions objectively and where it so proceeds, and in any event in matters of selection, naming and promotion of members of the Legal Profession, with a clear respect for the principles of merit and capacity.



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9. Judges must behave, and undertake their rights in all activity in which they are recognisable as such, in a way that they do not compromise or prejudice the perception held by society on the independence of the judiciary in a democratic, lawful state.

## **CHAPTER II**

### ***Impartiality***

10. Judicial impartiality is the distancing of judges from appearing parties, to which they must remain at an equal distance, and regarding the object of the proceedings, to which they must refrain from taking an interest.

11. Impartiality also operates internally regarding the judge on whom it demands, before deciding on a case, he or she identify and make efforts to overcome any prejudice or predisposition which could harm the integrity of the decision.

12. Judges cannot maintain any connection whatsoever to the parties, nor can they show favouritism or preferential treatment that puts into question their objectivity, either when directing the proceedings or making decisions.

13. In decision-making, judges must avoid reaching conclusions before the procedural moment that is appropriate for such a purpose, which is immediately prior to the judicial resolution.

14. Impartiality commands a special vigilance in the fulfilment of the principle of equal opportunities regarding the parties and other participants in the proceedings.

15. Judges, in their task of directing oral trials, must endeavour to ensure that an appropriate atmosphere is created for each party and other participants to be able to freely and calmly express their respective versions of the events and their positions on the application of Law. Furthermore, they will employ active listening as a guarantee of more accurate decision-making.

16. Impartiality also imposes the duty to avoid conduct that, within or away from the proceedings, could put them in question or prejudice public trust in justice.

17. Judges must endeavour to ensure the upholding of the appearance of impartiality in coherence with the essential nature that material impartiality has for the exercise of jurisdiction.

18. All members of the Legal Profession must avoid situations of conflicts of interests and, in the event that these occur, they must be revealed with the greatest transparency and without delay, via any of the legally foreseen mechanisms.



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19. In their social lives and in their relationship with the communications media judges may contribute reflections and opinions, but at the same time they must be prudent in order to ensure their appearance of impartiality is not affected by their public statements, and they must show, in any event, discretionary respect for the information that could prejudice the parties or the development of the proceedings.

20. In their relationships with the communications media, judges may carry out a valuable educational function in terms of explaining the law and the way in which fundamental rights operate at the core of the process.

21. When democracy, the State of Law and fundamental freedoms are in danger, the obligation of secrecy is relinquished in favour of the duty to report.

## CHAPTER III

### *Integrity*

22. Integrity demands that judges observe a conduct that reinforces the trust of citizens in the Judicial Administration not just in the exercise of jurisdiction, but in all facets in which they are recognisable as judges, or invoke their condition as such.

23. Judges will avoid both the undertaking of their professional activities outside their function and voluntary participation in reinforcement or substitution plans prejudicing the best jurisdictional performance.

24. In their personal relationships with professionals linked to the Judicial Administration Judges must avoid the risk of projecting an appearance of favouritism.

25. Judges must actively commit to respecting the dignity and equality of all, without discrimination for reasons of sex, race or ethnicity, physical or mental disability, religion or belief, sexual orientation or political conviction, or any other social or personnel circumstance.

26. Judges must undertake their jurisdictional activity with dedication and study the matters entrusted to them in detail and in their own singularity.

27. Judges will always adopt the resolution they believe to be proper and avoid their conviction being altered for reasons of convenience.

28. Judges will not accept any gift, courtesy or consideration that exceeds logical social conventions and, in no event, where it endangers their appearance of impartiality.

29. Judges must be aware that the dignity of the jurisdictional function demands appropriate behaviour.



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30. Judges will not use or lend the prestige of jurisdictional functions to further their personal interests, those of a family member or those of any other person.

31. Judges, as citizens, have the right to freedom of expression, which they will exercise with prudence and moderation with the objective of preserving their independence and appearance of impartiality, and maintain social trust in the judicial system and jurisdictional bodies.

### **CHAPTER IV**

#### ***Courtesy, diligence, transparency***

32. Judges must at all times demonstrate respectful behaviour to all those connected with the proceedings, showing due consideration to their psychological, social and cultural circumstances. Furthermore, they must show a tolerant and respectful attitude towards criticism directed at their decisions.

33. Judges must ensure that the proceedings are carried out in a timely manner and are resolved within a reasonable time period, and ensure that procedural acts are carried out with maximum punctuality.

34. Judges have the right and obligation to receive training and remain up-to-date, and to demand appropriate means of training in order to be able to carry out their functions at optimum professional levels.

35. Judges must assume a positive attitude towards transparency as a normal way of functioning for the Judicial Administration, to which they may rely on the means of institutional communication at their disposal.



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**PART TWO**

***The Judicial Ethics Committee***

**Article 1**

***Duties***

1. The Committee has the following functions:

a) Issue written opinions on consultations relating to specific cases put to them from Court Governing Chambers, Boards of Judges, Judicial Associations and any judge in active service.

The opinions will reflect the position of the Committee members in relation to the matter or question that is the object of the consultation.

b) Promote the dissemination and knowledge of the principles and propositions of judicial ethics contained in this text and in others of a similar or analogous nature.

c) Contribute to the development of the functions attributed to the General Council of the Judiciary in the coordination and collaboration with other judicial ethics committees, in particular with the Ibero-American Judicial Ethics Committee.

d) In exceptional cases, draw up reports on matters or questions of a general interest and which are related to ethical behaviour, in accordance with the principles expected from judges outlined in this text, at the behest of Court Governing Chambers, Boards of Judges or Judicial Associations.

2. The actions of the Committee may not interfere in the exercise of disciplinary power or in the determination of the civil or criminal liability of judges. The activity of the Committee will not serve as a reference or complement in actions designed to resolve civil, criminal or disciplinary liabilities, save where it is to the benefit of the interested party.

**Article 2**

***Composition***



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1. The Committee will be comprised of seven members, to whom, for the carrying out of their function, complete independence will be guaranteed.
2. Six of the members will be integrated from the Legal Profession in a situation of active service. One of them will be a Judge, three Magistrate-Judges and two Supreme Court Magistrate-Judges.
3. The final member will be a person of recognised prestige and accredited trajectory in the academic world of Ethics, Philosophy of Law or Moral Philosophy.

## **Article 3**

### ***Election***

1. The judicial members will be elected by all active members of the judicial profession.
2. The election shall be carried out via personal vote, equal, direct and secret, and must be held three months prior to the termination of the mandate of the Committee.
3. There will be one constituency for the entire national territory.
4. Candidacies must be individual and presented within the month following the official announcement. Those who obtain the highest number of votes will be chosen, respecting the necessary representation of all judicial categories, in accordance with the stipulations of Article 2. Where insufficient candidates have presented themselves in any of the judicial categories, any vacancy will be covered by the candidate who has obtained the most votes, regardless of category.
5. The electoral process will be organised electronically by the General Council of the Judiciary.
6. Those elected as members of the Committee will designate the non-judicial member.

## **Article 4**

### ***Mandate***

1. The Committee members will be designated for a single four-year term.





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2. Half of the judicial members of the Committee will be renewed every two years.
3. The exercise of the functions of the Committee members will be honorary, with no further economic compensation than the reimbursement of expenses occasioned.

### **Article 5**

#### ***Functioning***

1. The Committee presidency will correspond to the member elected by the majority, and the secretariat to the most recent judicial member.
2. The valid constitution of the Committee will require, as a minimum, the presence of five of its members. Notwithstanding, the presence of all members will be necessary when they so agree in view of the entity of the matter or question that must be the object of examination or treatment.
3. Committee reports shall be adopted in accordance with majority rule.

The President will always have a deciding vote in the event of a tie.

4. Opinions must be issued within the two months following the realisation of the consultation.

Reports must be approved within the three months following the date on which their drafting and drawing up have been agreed, respectively.

5. The first Committee formed will be entrusted with the drawing up, in accordance with the stipulations of this text, of its rules of organisation and functioning, which it will adopt by majority vote.

The Committee will apply modifications to rules it considers opportune by majority vote.

6. The General Council of the Judiciary must provide the Committee with the material and human resources required for its correct organisation and effective functioning.

### **Article 6**



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### ***Effects***

1. Committee minutes have no obligatory legal force and are not binding.
2. Matters or questions subject to investigation, trial or disciplinary proceedings may not be the object of consultation.

### **Article 7**

#### ***Public access***

1. The Committee will create an annual report on activities undertaken.
2. Committee minutes will be made public and the General Council of the Judiciary will afford them maximum dissemination, guaranteeing, in any event, the prior disassociation of any references of a personal nature they may contain, in complete respect for the right to honour, privacy and data protection.

#### **TRANSITORY PROVISION**

The announcement of the first election of the Judicial Ethics Committee will be made by the General Council of the Judiciary within the period of three months from the acceptance of this text.

The presidency of the first meeting of the Judicial Ethics Committee will correspond to the Judge or Magistrate-Judge with the longest service in the Legal Profession, and the secretariat, to the most recent.

The first renewal of the Committee will take place two years following its constitution, with the replacement of the Judge, one Magistrate-Judge and one Supreme Court Magistrate-Judge. Those to be replaced will be decided at random in the first meeting

#### **FINAL PROVISION**

These “Principles of Judicial Ethics” may in no event, directly or indirectly, be used for disciplinary ends, save where they are beneficiary to the party subject to the procedure.

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## IV

(Notices)

## NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

## COURT OF JUSTICE OF THE EUROPEAN UNION

**Code of Conduct for Members and former Members of the Court of Justice of the European Union**

(2016/C 483/01)

THE COURT OF JUSTICE OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, in particular Articles 253, 254, 257 and 339 thereof;

Having regard to Articles 2, 4, 6, 8, 18 and 47 of the Statute of the Court of Justice of the European Union, to Articles 4 to 6 of the Rules of Procedure of the Court of Justice and to Articles 5 to 7 of the Rules of Procedure of the General Court;

Whereas it is appropriate to establish a Code of Conduct which defines the obligations arising under the provisions of the Statute and of the Rules of Procedure which are applicable to Members and former Members of the Court of Justice of the European Union;

Hereby adopts the present Code of Conduct:

*Article 1*

**Scope**

This Code of Conduct shall apply to Members and former Members of the Courts or Tribunals that constitute or have constituted the Court of Justice of the European Union.

*Article 2*

**Principles**

1. Members shall devote themselves fully to the performance of their duties.
2. Members shall perform their duties with complete independence, integrity, dignity and impartiality and with loyalty and discretion, in compliance with the rules set out in this Code of Conduct.

*Article 3*

**Independence, integrity and dignity**

1. Members shall perform their duties with complete independence and integrity, without taking account of any personal or national interest. They shall neither seek nor follow any instructions from the institutions, bodies, offices or agencies of the Union, the governments of the Member States or any private or public entities.

2. Members shall not accept gifts of any kind which might call into question their independence.
3. Members shall respect the dignity of their office.
4. Members shall not act or express themselves, through whatever medium, in a manner which adversely affects the public perception of their independence, their integrity or the dignity of their office.

#### *Article 4*

### **Impartiality**

1. Members shall avoid any situation which may give rise to a conflict of personal interest or which may reasonably be perceived as such. They shall not be involved in dealing with a case in which they have any personal interest.
2. Members shall not act or express themselves, through whatever medium, in a manner which adversely affects the public perception of their impartiality.

#### *Article 5*

### **Notification and declaration as to personal interests**

1. Members shall notify the President of the Court or Tribunal of which they are a Member if they are to hear a case in which they have an interest that might give rise to a conflict of interest.
2. On taking up their duties, Members shall submit a declaration of their financial interests, within the meaning of paragraph 3, to the President of the Court or Tribunal of which they are a Member.
3. The declaration shall identify every entity in which the Member has a direct financial interest which, because of its scale, might reasonably be perceived as being capable of giving rise to a conflict of interest if the Member were to hear a case involving that entity. In this declaration, the Member shall identify each entity in which he or she has such a financial interest, which may be in the form of a specific financial holding in its capital, in particular, shares, or any other form of financial interest, for example, bonds or investment certificates. This paragraph does not apply to entities in which the Member owns holdings managed on a discretionary basis by a third party.
4. In the event of changes in the list of entities identified in the declaration within the meaning of paragraph 3, a new declaration shall be submitted at the earliest opportunity and, at the latest, within 2 months after the change in question.
5. The declaration referred to in paragraph 3 shall be submitted using the form set out in the Annex to this Code of Conduct.
6. The objective of the notifications and declarations under paragraphs 1 to 3 is to allow the President of the Court or Tribunal concerned to ascertain whether a Member has a personal interest in the outcome of the dispute in a given case.

#### *Article 6*

### **Loyalty**

1. Members shall comply with their duty of loyalty towards the Institution.
2. Members shall make use of the services of officials and other servants of the Institution, in particular those allocated to their Chambers, in a respectful manner.
3. Members shall manage the material resources of the Institution in a responsible manner.
4. Members shall refrain from making any statement outside the Institution which may harm its reputation.

*Article 7***Discretion**

1. Members shall preserve the secrecy of the deliberations.
2. Members shall comply with their duty to exercise discretion in dealing with judicial and administrative matters.
3. Members shall act and express themselves with the restraint that their office requires.

*Article 8***External activities**

1. Members shall undertake to comply in all circumstances with their obligation to be available so as to devote themselves fully to the performance of their duties.
2. Members may engage in external activities only if they are compatible with their duties arising under Articles 2 to 4, 6 and 7 of this Code of Conduct. Without prejudice to the derogation provided for in the second paragraph of Article 4 of the Statute of the Court of Justice of the European Union, engaging in any professional activity other than that resulting from the performance of their duties shall be incompatible with the duties set out in this Code of Conduct.
3. Members may be authorised to engage in external activities that are closely related to the performance of their duties. In that context:
  - they may be authorised to represent the Institution or the Court or Tribunal of which they are a Member at ceremonies and official events,
  - they may be authorised to participate in activities of European interest that relate, inter alia, to the dissemination of EU law and to dialogue with national and international courts or tribunals. In this respect, Members may be authorised to participate in teaching activities, conferences, seminars or symposia.

Only participation in teaching activities may give rise to remuneration in accordance with the rules of the teaching establishment concerned.

The Members' activities authorised by the Court or Tribunal of which they are a Member shall be published on the Institution's website after the activity has taken place.

4. In addition, Members may be authorised to assume unremunerated duties in foundations or similar bodies in the legal, cultural, artistic, social, sporting or charitable fields and in teaching or research establishments. In that connection, they shall undertake not to engage in any managerial or administrative activities which might compromise their independence or their availability or which might give rise to a conflict of interest. The expression 'foundations or similar bodies' means not-for-profit establishments or associations which carry out activities in the general interest in the fields referred to.
5. Members who wish to take part in an activity covered by paragraphs 3 and 4 shall request prior authorisation from the Court or Tribunal of which they are a Member, by using a specific form.
6. Publications and the resulting copyright royalties shall be allowed without prior authorisation.

*Article 9***Duties of the Members after ceasing to hold office**

1. After ceasing to hold office, Members shall continue to be bound by their duty of integrity, of dignity, of loyalty and of discretion.

2. Members undertake that after ceasing to hold office, they will not become involved
  - in any manner whatsoever in cases which were pending before the Court or Tribunal of which they were a Member when they ceased to hold office,
  - in any manner whatsoever in cases directly and clearly connected with cases, including concluded cases, which they have dealt with as Judge or Advocate General, and
  - for a period of 3 years from the date of their ceasing to hold office, as representatives of parties, in either written or oral pleadings, in cases before the Courts or Tribunals that constitute the Court of Justice of the European Union.
3. In cases other than those referred to in the three indents of paragraph 2, former Members may be involved as agent, counsel, adviser or expert or provide a legal opinion or serve as an arbitrator, provided that they comply with the duties arising under paragraph 1.
4. If in doubt as to the application of this article, a former Member may contact the President of the Court of Justice, who shall take a decision after obtaining the opinion of the Committee provided for in Article 10.

#### *Article 10*

### **Application of the Code**

1. The President of the Court of Justice, assisted by a Consultative Committee, shall be responsible for ensuring the proper application of this Code of Conduct.

The Consultative Committee shall be composed of the three Members of the Court of Justice who have been longest in office and the Vice-President of the Court of Justice if he or she is not one of those Members.

Should a Member or a former Member of the General Court be the person concerned, the President, the Vice-President and another Member of the General Court shall take part in the deliberations of the Committee.

The Committee shall be assisted by the Registrar of the Court of Justice.

2. Without prejudice to the provisions of the Statute of the Court of Justice of the European Union, the Committee may, in an individual case, give its opinion to the Member or the former Member concerned after hearing him or her.

#### *Article 11*

### **Entry into force**

1. This Code of Conduct shall repeal and replace the previous Code of Conduct (OJ C 223, 2007, p. 1). It shall enter into force on 1 January 2017.
2. The declaration of financial interests of the Members in office on the date of entry into force of this Code of Conduct shall be submitted to the President of the Court or Tribunal of which those Members are a Member no later than 1 month after that date.

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## ANNEX

## DECLARATION OF FINANCIAL INTERESTS

**(in accordance with Article 5 of the Code of Conduct)**

SURNAME:

FIRST NAME:

I have a financial interest, within the meaning of Article 5 of the Code of Conduct <sup>(1)</sup>, in the following entities:

I hereby declare that the above information is true and correct.

Date:

Signature:

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<sup>(1)</sup> Please specify, in alphabetical order, the entities in which you have a direct financial interest within the meaning of Article 5(3) of the Code of Conduct.









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# Superior Council of Magistracy ROMANIA

## DEONTOLOGICAL CODE for judges and prosecutors

### Chapter I General provisions

**Art. 1** – The Deontological code for judges and prosecutors establishes the standards for their conduct, according to the honor and dignity of their profession.

**Art. 2** - (1) The respecting of the provisions included in the present deontological code represent a criteria for evaluation of the efficiency of their activity, as well as for the integrity of judges and prosecutors.

(2) The evaluations are accomplished by competent bodies, according to the law.

### Chapter II Independence of justice

**Art. 3** - (1) Judges and prosecutors are bound to protect the independence of justice.

(2) Judges and prosecutors must exercise their profession with objectivity and impartiality, acting only by law, without any attention to exterior pressure and influence of any kind.

(3) Judges and prosecutors may address to the Superior Council of Magistracy for any action that could infringe upon their independence, impartiality or professional reputation.

**Art. 4** - (1) In exercising their professional duties judges and prosecutors shall not be influenced by political doctrines.

(2) Judges and prosecutors must not militate in favor of other persons' adhering to a political party, must not participate in fund collecting for political parties and cannot allow the use of their prestige or image to such aims.

(3) Judges and prosecutors must not give any support to a candidate to a political type public function.

**Art. 5** - (1) Judges and prosecutors may not use the actions that they carry out in their professional duties for expressing their political beliefs.

(2) Judges and prosecutors may not participate in political meetings.

**Art. 6** - (1) Judges and prosecutors may participate to the elaboration of publications, can publish articles, specialized studies, literary or scientific studies and can participate in media transmissions, except those with political subjects or those that can infringe upon the image of justice.

(2) Judges and prosecutors may be members of examination commissions or for elaborating normative acts, internal or international documents.

(3) Judges and prosecutors may be members of civil or academic societies, as well as other private law moral persons without patrimonial purpose.

### Chapter III Promoting the supremacy of law

**Art. 7** – Judges and prosecutors have the duty to promote the supremacy of law, the rule of law and to defend the fundamental rights and liberties of citizens.

**Art. 8** - Magistrates are bound to protect citizens' equality in front of law, to ensure a non-discriminatory juridical treatment, to respect and defend dignity, physical and moral integrity of all persons involved in any quality to judicial procedures.

## **Chapter IV**

### **Impartiality of judges and prosecutors**

**Art. 9** - (1) Judges and prosecutors must be impartial in exercising their duties, being committed to decide objectively, free of any influences.

(2) Judges and prosecutors should abstain from any action and behavior that could infringe upon the trust in their impartiality.

**Art. 10** – In case of incompatibility, judges and prosecutors are bound to restrain themselves, according to law.

**Art. 11** - (1) Judges and prosecutors are allowed to give judicial assistance, according to law provisions, only in their personal cases, of their ancestors, descendants or their legal partner, and for those of the persons under their tutelage or trusteeship. Even in those situations, magistrates are not allowed to use their status to infringe upon the solution pronounced by the court or the public prosecution office and they must avoid giving the impression that they could infringe in any way upon the solution that will be pronounced.

(2) Social and family relations of judges and prosecutors should not affect the solutions adopted by magistrates in exercise of their professional duties.

(3) Judges and prosecutors are forbidden from intercede for solutioning of some claims, to request or accept the solving of personal interest or those of family members or other persons, in other way than the legal way. The interference in the activity of other judges or prosecutors is forbidden.

## **Chapter V**

### **Exercise of professional duties**

**Art. 12** – Judges and prosecutors are bound to fulfill their professional duties with competence and honesty and to respect the administrative obligations mentioned in laws, regulations, and internal orders.

**Art. 13** – Judges and prosecutors must make all efforts to fulfill as fast as possible the cases given to them accordingly to the repartition, with respect to legal terms, and when the law does not provide, they must react within reasonable terms.

**Art. 14** – Judges and prosecutors must impose order and solemnity when solving cases, and they have to adopt a respectable, civilized and impartial attitude towards the litigants, lawyers, witnesses, experts and other persons and to require from those mentioned a proper conduct.

**Art. 15** - (1) Judges and prosecutors must not reveal or use for other purposes than those strictly related to the exercise of profession the information obtained in this respect.

(2) When documents are confidential, as provided by law, magistrates are bound to keep those documents within the court or public prosecutor's office and to allow the study of the materials only within the framework of law and regulation.

**Art. 16** - (1) When exercising leading positions, judges and prosecutors must be concerned towards organizing the activity of the staff and using material means with maximum efficiency, and must show initiative an responsibility. When taking decisions, they must always give priority to court's or public prosecutor office's interests and to good administration of justice.

(2) Magistrates exercising leading position can not use their prerogatives to interfere in the development of the pending trials and the solutioning of cases.



## **Chapter VI**

### **Dignity and honor of the profession of judge or prosecutor**

**Art. 17** – Judges and prosecutors have the duty to restrain from any actions that can compromise their dignity in profession and society.

**Art. 18** - (1) The relations of judges and prosecutors within the collective community where they carry their duties must be fair, based on respect and good faith, regardless of their position.

(2) Judges and prosecutors can not express their opinion regarding moral and professional integrity of any colleagues.

**Art. 19** – Judges and prosecutors can publicly express their opinion in exercising the right to rejoin, If defamatory assertions addressed to them were published in mass media.

**Art. 20** – Judges and prosecutors can not perform actions that, by their nature, financing origin or execution, could, in any way, infringe upon the fulfillment of their professional duties, with impartiality, honesty and within legal terms.

## **Chapter VII**

### **Activities incompatible with the judge or prosecutor position**

**Art. 21** - (1) Judges and prosecutors can not add to this dignity any public or private function, except didactic functions in superior teaching system.

(2) Judges and prosecutors are allowed to participate as trainers in the National Institute of Magistracy and National School of Clerks accordingly to the schedule assigned by those and the management of the courts and prosecutors offices where trainers carry out their activity.

**Art. 22** – Judges and prosecutors are forbidden to participate directly, or by the use of other persons, in pyramidal scheme games, games of fortune or investment systems not assuring transparency of funds as required by the law.

**Art. 23** – Judges and prosecutors are bound to restrain, according to law, from any activity, from any activity related to the act of justice in which there is conflict of interests between theirs and the public interest of achieving the act of justice or protecting society's general interests.



## European Network of Councils for the Judiciary (ENCJ)

### Réseau européen des Conseils de la Justice (RECJ)

#### DECLARATION DE LONDRES SUR LA DEONTOLOGIE DES JUGES

L'Assemblée générale du RECJ, réunie à Londres du 2 au 4 juin 2010 :

Considérant que :

- le RECJ a pour but d'améliorer la coopération entre, et une bonne compréhension mutuelle parmi les Conseils de Justice et les membres des pouvoirs judiciaires des Etats membres (et candidats) de l'Union européenne ;
- le partage en commun de principes et de valeurs au niveau européen renforce la compréhension mutuelle et donc la confiance mutuelle entre les juges dans l'Espace judiciaire européen,

1. Approuve le rapport intitulé « **Déontologie des juges - Principes, Valeurs et Qualités** » en tant que lignes directrices pour la déontologie des magistrats européens
2. Charge le Comité de pilotage et le Bureau exécutif d'assurer la plus large diffusion du contenu du document auprès des Membres et des Observateurs du RECJ ainsi que des membres des pouvoirs judiciaires européens
3. Propose aux Membres et aux Observateurs du RECJ de promouvoir activement le contenu du rapport au niveau national et au niveau européen et fasse rapport à l'Assemblée générale sur leurs activités en la matière y compris tout commentaire qui pourront être reçus.

#### LONDON DECLARATION ON JUDICIAL ETHICS

The General Assembly of ENCJ, meeting in London on 2-4 June 2010 :

Considering that :

- the ENCJ has as its aim the improvement of cooperation between, and good mutual understanding amongst, the Councils for the Judiciary and the members of the judiciary of the EU (candidate) Member States;
- the affirmation of shared principles and values on a European level strengthens mutual understanding and thus mutual confidence between judges in the European Judicial Area;

1. Approves the report entitled "**Judicial Ethics – Principles, Values and Qualities**", as guidelines for the conduct of European judges
2. Requires the Steering Committee and the Executive Board to ensure that the distribution of the content of the report to the ENCJ Members and Observers and to the members of the European Judiciaries is as wide as possible
3. Proposes that ENCJ Members and Observers should promote actively the content of the report on national and the European levels and report back to the General Assembly on their activities in this field with any comments that may have been received.

Judicial Council of Magistracy - Romania

**Practical guide to judicial ethics and deontology**

**for the Romanian magistrates**

Bucharest, 2016

## Foreword

*This Guidebook is a product of the project “Strengthening the capacity of the Romanian judicial system to face new legislative and institutional challenges”<sup>1</sup>, carried out the Romanian Superior Council of Magistrates (SCM), the Romanian Ministry of Justice and the Norwegian Courts Administration (NCA) through the Norwegian Financial Mechanism “Norway Grants” and supported by the Council of Europe (CoE). The project is inspired by the long lasting Romanian judicial reform that after the Romanian access to the EU is monitored by the Cooperation and Verification Mechanism. The project is also inspired by the general internationalization in judicial and legal affairs and is a contribution to strengthen the ties within the European and worldwide “judicial and legal family”.*

*The task of preparing the Guidebook was initiated in early 2016 by the SCM engaging Ion Copoeru, profesor of Ethics at the Babeş-Bolyai University from Cluj-Napoca, to lead a group of international experts: Bert Maan, former President in the court of Zwolle-Lelystad and serving as a judge in the Amsterdam Court of Appeal, having for many years been a consultant for the CoEin for the assessment of judicial reform in a number of members countries; Iver Huitfeldt, former judge in the Borgarting Court of Appeal in Oslo; and Tron Gundersen, judge in Moss District Court.*

*The translation of the Guidebook from English and the lay-out has been carried out by XX and, respectively, YY.*

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<sup>1</sup> Note for the translator: (in Romanian Proiectul “Consolidarea capacității sistemului judiciar din România de a face față noilor provocări legislative și instituționale, Programul RO 24”)

## Introduction

In any society, magistrates have powers that no other governmental officers have. In any society there will be conflicts, which need to be solved in an orderly and peaceful way. This can be done by singling out professional and trustworthy people, judges and prosecutors, who are given the power and responsibility to solve these conflicts. This only functions when these people are seen as an act like independent and impartial functionaries. Secondly, the consequence of being a state governed by the Rule of Law, implying that the state is subject to its own rules, a conflict between state and an individual only can be resolved by a judge who does not need to be afraid of dismissal in case of a decision in favour of the citizen and not of the state.

Judges' exercise of such powers has a profound impact upon those who come before them. In order to have the public's confidence in their decisions and not being accused of being biased or under influence of unprofessional matters when making such decisions, judges have the responsibility to follow the ethical and moral compasses.

Thus, from the nature of judges' power stems the need to regulate judicial conduct in a way that would not allow judges to abuse of their professional competences and thus jeopardize the rule of law. This is essential, since a person's right to a fair trial, established by the Universal Declaration of Human Rights and the European Convention on Human Rights, can be hampered by judicial misconduct.

In modern usage, the term “ethics” denotes the disposition, character, or fundamental values particular to a *specific* person, people, corporation, culture, or movement usually to professional and business practices. In this guidebook, ethics refers to *professional ethics* of the magistrates working in the judiciary. Ethics for magistrates is somewhat different from the ethics of a lawyer, as the ethical challenges of these to professions will differ even if they will have a common

core. The ethics for a medical doctor will differ fundamentally.

The term “morals” in modern usage refers to generally accepted customs of conduct and right living in a society, i.e. common principles for a human being *regardless of professions* relating to the standards of good or bad behaviour, fairness, honesty etc. People might have different value priorities in their personal hierarchy of morals. In practical usage, morals refer to an individual’s, own principles regarding right and wrong and usually regarding personal behaviour. If your own morals would not be compatible with the ethics for the judiciary, the latter will prevail.

Ethics for the judicial professions is not something new but has existed mostly as customary law and has been developed over a long period. It is only the last 20 – 30 years that ethics has been compiled, written down and put in printing. The development took up speed due to the increasing international cooperation especially within the United Nations (UN) and in Europe the Council of Europe (CoE). It is fair to say that the international development with international instruments came first; most of the national ethical codes are developed from around the turn of the century. As the bases are international, this guidebook contains quite many references to international instruments and sources of law even if much of it is not available in Romanian language.

This guide follows the articles of the present Deontological Code for the Romanian judiciary, albeit not all the articles are of such a general nature that separate comments to these be of any added value. *The Deontological Code for judges and prosecutors in Romania* ("the Code") must be seen, read and understood by making reference to the Law on the Status of Judges and Prosecutors (Law no 303/2004 of 28 June 2004) ("LSJP"). Such references are frequently made below in this commentary.

The provisions regarding the ethical conduct of magistrates, both in the national and international regulations, are broad and general, because they derived from the principles of the rule of law (fair trial), the principles of ethics (doing good) and the principles of the administration in a democratic society (responsibility). As any formulation of the norms, they request interpretation. In doing that, the magistrates should keep in mind their sources and purposes.

Romania belongs to the judicial systems where both the judges and the

prosecutors are magistrates and forms the judiciary.

Therefore, both the basic Codes are common for both the professions. Therefore, also the guidebook is common. The ethical challenges of these two professions will differ somewhat, this will be reflected in the guidebook. However, it will be useful – and recommended – that both professions make use of the guidebook as a whole.

In addition, other employees of the judiciary should find inspiration to make use of the guidebook. Working in the “judicial universe”, they are committed to support the judges and prosecutors in upholding the ethical requirements; this goes especially for the court clerks.

Ethical dilemmas vary considerably and are of kind with not only one “correct” solution. So there is no such thing as a rulebook to look up what to do. Thus the Guidebook will not give an answer to all the ethical dilemmas you may face as a magistrate but will be a tool and point out a way of thinking and showing the direction in which to act.

Based on their devotion to the profession, all magistrates are expected to study ethical sources on their own initiative. Be aware that much of what is found on the Internet lacks the date of publishing and may be outdated. In addition, international instruments may be earlier versions with a slightly different name of what is valid at present.

Ethics and deontology are placed in *the culture of the judiciary organisation*. Culture is made by people, and develops over the years; the culture may also show itself in what the citizen observes when being in touch with any judicial body. In other words, the magistrate should learn to notice and understand:

- *what do people expect;*
- *what do people actually see;*
- *what do they experience;*
- *which are the consequences*

Judges and prosecutors are independent and impartial, because they themselves want that, each of them, and society as well essentially wants them, expects from them, to be independent and impartial, which requires from the magistrate to conscientiously act in an ethical way.

*The court organisation*, whenever possible and feasible, needs to show support for the independence and the impartiality of the magistrates. In terms of visibility, this deals, for instance, with the courthouse and the practice therein. One might consider promoting visually ethical behaviour, which deals with measures, conditions and circumstances that are in place to support each magistrate in his or her desire to act impartially and independently. Astfel, în cadrul obligației pe care autoritățile din domeniu judiciar și le-au asumat, anume de a pune la dispoziția judecătorilor resursele financiare necesare, timpul și alte mijloace necesare pentru desfășurarea de activități de formare profesională, a apărut ideea unui sistem integrat de formare profesională, inclusiv în ceea ce privește integritatea și etica profesională a judecătorilor. Pornind de la recomandarea potrivit căreia „<j>udecătorii ar trebui să poată solicita sfaturi în materie de etică unui organism din cadrul sistemului judiciar” (Recomandarea CM/Rec (2010)12 a Comitetului Miniștrilor către statele membre cu privire la judecători: independența, eficiența și responsabilitățile, Capitolul VIII), a fost propusă instituția consilierului de etică. Acesta poate avea un rol semnificativ în ce priveștesatisfacerea cerinței ca „<j>udecătorii (...) să se ghideze în activitatea lor de principii etice de conduită profesională”, care să includă „(...) nu numai îndatoriri care pot fi sancționate prin măsuri disciplinare, ci și îndrumări date judecătorilor cu privire la modul lor de a se comporta”. (Ibidem). Această nouă instituție trebuie să aibă un rol consultativ și de consiliere și să contribuie astfel la a asigura judecătorilor un cadru instituțional compatibil cu valorile lor profesionale: independența, imparțialitatea și integritatea.

Assuming an existing (and developing) awareness of ethical behaviour, each magistrate faced with a problem must ask himself the following two sets of questions:

***- Is there an ethical issue? What exactly is that issue, how to formulate it precisely?***

***- What to do with it? Which are the national and/or international instruments and other relevant sources that might help me?***



According to these two kinds of questions, the discussion of each article of the Code in this guidebook will be structured in two subsections: “How to interpret” and “How to apply” the respective article. Whenever is possible, the second subsection contains examples of matters of concern from an ethical point of view, as well as some guiding for their resolving. The bases for the assessment of an ethical problem are the values of the profession as they are internalised by the magistrate. Also, in few places cases other European countries are used in order to illustrate the ethical challenges and the possible ways of reflecting upon them. Recommended reading, together with some basic ideas that they are defending, can also be found as an annex, at the end of the guidebook.

*As in the matters of interpretation and application of law, the magistrate has the moral duty to inform him- or herself, but in the end, be aware that the responsibility to act ethically is up to each one of you!*

## Chapter I

### General provisions

#### *Art. 1*

*Codul deontologic al judecătorilor și procurorilor stabilește standardele de conduită a acestora, conforme cu onoarea și demnitatea profesiei.*

#### *Art. 2*

*(1) Respectarea normelor cuprinse în prezentul cod deontologic constituie un criteriu pentru evaluarea eficienței calității activității și integrității judecătorilor și procurorilor.*

*(2) Evaluarea se face de către organele competente, potrivit legii.*

### How to interpret these articles

In most countries there is in general a high respect for judges, due to the mere fact of holding the position as a magistrate.

However, the real respect should not come from the position itself, but from the decisions one make, the way one act and how one conduct and perform the trials.

It is highly recognized that magistrates, either judges or prosecutors, should perform their duties in accordance with generally accepted professional standards in the profession. This includes following a code of conduct.

The magistrate should act according to a set of codes of conduct. They represent

normally minimum standards and many of them are internationally recognized. However, the judiciary in each country might have some rules that are based on local culture and traditions.

## Chapter II

### Independence of justice

#### General remarks

According to international standards, judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Judicial independence is not a privilege or prerogative of the individual judge. It is the responsibility imposed on each judge to enable him or her to adjudicate a dispute honestly and impartially without external pressure or influence and without fear of interference from anyone.

For a proper functioning of a state governed by the rule of law, the decision regarding prosecution or non-prosecution of suspect should as much as possible be free from any political influences. This requires an independent position of the prosecutor.

Judicial independence refers to both *the individual* and *institutional independence* required for decision-making. Judicial independence is, therefore, both a state of mind and a set of institutional and operational arrangements.

The concepts of "independence" and "impartiality" are closely related. "Impartiality" refers to a state of mind or attitude. It connotes absence of bias. "Independence" reflects the traditional constitutional value of independence. It connotes a status of relationship to others, e.g. the executive branch of the government.

There are some conditions for independence:

- security of appointment period (tenure);

- financial security (salary);
- institutional security.

LSJP also has provisions on the judges' independence such as art 2 (3):

*"Judges are independent, are subject only to the law and must be impartial .*

There is an obligation, including on institutions, to respect this independence , ref art 2 (4) LSJP :

*"Any person, organization, authority or institution has the duty of respecting the independence of judges."*

and art 75 (1) LSJP :

*"The Superior Council of Magistracy has the right and obligation to protect the judges and prosecutors against any act that is likely to affect their independence or impartiality or give rise to suspicions thereof."*

In case a judge's (or prosecutor) activity and independence is affected he or she may address the issue before the SCM (art 75 (2) LSJP), which, according to art 75 (1) LSJP, has the obligation to assist the judge. The similar provision one may find in the Code, art 3 (3) and of the Law 317 from 2004

*Art 30(1) "Consiliul Superior al Magistraturii are dreptul și obligația de a se sesiza și din oficiu pentru a apăra judecătorii și procurorii împotriva oricărui act care le-ar putea afecta independența sau imparțialitatea ori ar crea suspiciuni cu privire la acestea. De asemenea, Consiliul Superior al Magistraturii apără reputația profesională a judecătorilor și procurorilor.*

*(2) Judecătorul sau procurorul care consideră că independența, imparțialitatea sau reputația profesională îi este afectată în orice mod se poate adresa Consiliului Superior al Magistraturii, care, după caz, poate dispune verificarea aspectelor semnalate, publicarea rezultatelor acesteia, poate sesiza organul competent să decidă asupra măsurilor care se impun sau poate dispune orice altă măsură corespunzătoare, potrivit legii."*<sup>2</sup>

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<sup>2</sup> Legea Nr. 317 republicată din 1 iulie 2004 privind Consiliul Superior al Magistraturii.

The independence of judiciary is underlined in several international instruments and also in national Romanian law.

The UN Basic Principles on the Independence of the Judiciary states:

*1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.*

*6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.*

The CoE European Charter on the statute for judges states in Article 1, General Principles, states that:

*1.1. The statute for judges aims at ensuring the competence, independence and impartiality which every individual legitimately expects from the courts of law and from every judge to whom is entrusted the protection of his or her rights. It excludes every provision and every procedure liable to impair confidence in such competence, such independence and such impartiality. The present Charter is composed hereafter of the provisions which are best able to guarantee the achievement of those objectives. Its provisions aim at raising the level of guarantees in the various European States. They cannot justify modifications in national statutes tending to decrease the level of guarantees already achieved in the countries concerned.*

More generally, the European Convention on Human Rights on the right to a fair trial, Article 6, states:

*“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. (...)”*

In the Romanian context, the Deontological Code for judges and prosecutors, Article 3, states in (1) that

*“Judges and prosecutors are bound to protect the independence of justice”.*

In addition, “Law no. 303/2004 on the by-law of the magistrate profession” states in Article 1 (2) that

*“Judges shall be independent, only subject to the law (and impartial)”*

and in (3) that

*“All persons, organisations, authorities, or institutions shall be bound to observe the judges’ independence”.*

### ***The removal of a judge or a prosecutor***

In case of a question of removal of a judge, this issue is solved in art 2 (1) and (2) of the LSJP. They are in principle irremovable. But according to art 100 LSJP, they may be transferred in case of a disciplinary sanction.

### ***Independence in relation to society in general***

A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate. Complete isolation from society is neither possible nor beneficial. It should not of course be like going into a monastery.

Although a judge would perhaps be more restricted in his/her life than other people, it would be unreasonable to expect him/her to retreat totally from public life. Neither the judge's personal interest nor the public interest will be served if the judge is unduly isolated from the community he or she serves.

*Independence in relation to the particular parties to a dispute which the judge has to adjudicate*

The distribution of cases might be considered as an area of influencing a judge. Systems of random distribution may be set up in a way that excludes any suspicion of a systematic misdistribution or misuse of the system as such. Mind also here that according to art. 99 (o) LSJP, serious or repeated breaches of the provisions on random case distribution will constitute a disciplinary offence.



### **Art. 3**

- (1) *Judecătorii și procurorii sunt obligați să apere independența justiției.*
- (2) *Judecătorii și procurorii trebuie să-și exercite funcția cu obiectivitate și imparțialitate, având ca unic temei legea, fără a da curs presiunilor și influențelor de orice natură.*
- (3) *Judecătorii și procurorii se pot adresa Consiliului Superior al Magistraturii pentru orice faptă de natură să le afecteze independența, imparțialitatea sau reputația profesională.*

#### ***How to interpret this article***

The general meaning of Art. 3 of the Code is that *no one should instruct the magistrate how to perform her or his professional duties when interpreting the law*. The three paragraphs of this article are stating that:

- (a) the individual magistrate is expected and even required to be the first who defends the independence of the judiciary;
- (b) the fundamental professional values of the magistrate are objectivity and impartiality;
- (c) the magistrate could/should activate specific institutional instruments when she or he feels / appreciates that her or his independence is put in danger.

It must be underlined that the independence of the magistrate is related with her or his professional duties when interpreting and applying the law. Of course, the magistrate knows, from her or his judicial training, that her or his interpretation of the law is not arbitrary. Also, it is normal to enquire the general application of law with other judges, but the judge who is asked should not advise how to decide. A chief judge or a senior fellow magistrate, for example, should not instruct another judge how to judge. In case of a junior magistrate *seeking advice* with a senior

fellow, this should normally not establish an ethical issue as long as the advice is given in an objective manner, leaving the option to the junior judge to decide freely.

It goes without saying that no one can instruct a judge how to decide –under circumstances: with the exception of from a higher court decision. This includes also the discretion to the free and independent interpretation of the law. Any *undue influence, i. e.* coming from an external source, will be avoided. Of course, the parties to a trial are entitled to argue in court to influence the judge. That is their obligation. But any pressure or influence from outside the court room, or outside documents presented, particularly when it is not clear that the other party did not receive it and/or did not have the opportunity to comments, a judge should disregard it. The magistrate fulfilling his duties shows and, if necessary, makes explicit that improper influencing is not allowed and has no role in the decisions.

Although the articles assumes the idea of an active protection, he judge is not necessarily a freedom fighter. He or she is just required to fulfil his/her duties in independence and that improper influencing of judges and prosecutors must be ensured under all circumstances. The obligation of the magistrate would be then that, whenever she performs her duties, he/she retains her independent attitude (sometimes requiring courage).

### **How to apply this article**

In practice, several types of cases involving the independence of the judge have been encountered. In the following, we shall discuss them according to the two main objectives of this guidebook, namely to help individual judges to identify the ethical concerns regarding his professional activities and, respectively, to suggest a series of actions susceptible to lead to their solving.

We begin, as in each subsection consecrated to the implementation of an article of the Code, with some illustrations of the matters of concern from an ethical point of view.

The magistrate should pay attention to a series of situations in which Art. 3 of the Code could be useful for their understanding and/or for finding guidance.

- the president of the court / prosecutor's office, or a colleague of court / office asks magistrate to pronounce a certain solution in a case which has been assigned;
- the president of the court decides to remove a case from the designated judges without objective causes or procedural incidents that would justify this measure<sup>3</sup>;
- a friend / acquaintance / relative asks a fellow magistrate to give a certain solution in a case in which a friend / acquaintance / relative have an interest;
- the existence of media campaigns which are debating measures / solutions taken in particular cases / media campaigns that denigrate the magistrate who was invested with the resolution of a case;
- statements of some politicians on the training and/or the moral probity of a judge who is charged with resolving a certain case;
- threats and intimidation by parties / lawyers by submitting criminal complaints or petitions to the Judicial Inspection, if the magistrate does not decide in accordance with their wishes;

Facing these type of situations, the magistrate have to ask her- or himself the following *questions*:

- What are exactly the obligations of the magistrate to ensure and defend the independence of the judiciary?
- What should the magistrate do in concrete when he is subjected to factors of external pressure in his activity?

Art. 3 (a) states clearly that the individual magistrate has an obligation to react to any actions directed against the independence of the justice, which is based on his independence when performing her or his professional duties. Since these actions are not specified, it must be understood that the magistrate has the obligation to react against any action that she or he feels or appreciates as an attempt to

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<sup>3</sup>Sinteza din jurisprudenta Înaltei Curți de Casație și Justiție in materie disciplinară.

restraint his independence. Therefore, he must be *attentive to everything is happening around him* in relation to her or his professional activity.

It is of utmost importance that the magistrate, once she or he concludes that she or he is subjected to pressure of external nature, *do not let them affect her or his impartiality*. By no means should the magistrate be passive, a mere receptor of external influences and pressures. On the contrary, she or he has to manifest herself as an *active full-developed moral person*.

On one side, the magistrate should not let herself influenced by other persons or circumstances. The magistrate has, then, to rely on her or his professional training and expertise in order to get a solution in accordance with her or his own conviction and with the law. The magistrate has to scrutinize her or his feelings and to acknowledge the situations in which his or her judgement is influenced by other persons or by ideas that are coming against the aims of justice.

The magistrate should pay attention and *correctly identify her or his feelings*, especially those which are susceptible to impede on her or his impartiality, like fear, pity, resentment, revenge and so on. This should not be difficult, since every person is in principle able to do that. However, the magistrate might encounter very complex and intricate life situations, in which the melange of the feelings could obscure them or their source. It is, therefore, recommended and in particular situations even required to the magistrate *to simplify and separate –to a certain extent - the personal and the professional aspects of their life*. However, an experienced magistrate will not give up entirely her or his private/personal life. There are circumstances when the magistrate will find herself in a better situation when she or he manages to keep a distance toward aspects of life that could interfere with her professional activity. There are other circumstances when the magistrate will be able to find emotional or spiritual support from the people around her or him. Therefore, she or he has not to neglect her or his social life.

The magistrate will constantly take care to build an articulated and solid self, by the means of the culture, experience, and knowledge. An experienced magistrate will *anticipate on the situation which might affect her or his judgement* and in fact, she or he is required to do that. Also, she or he will build around an environment (friends, family, and collaborators) which will sustain her or him in her or his professional activity and will avoid those persons who might or actually tend to interfere with her activity. For example, if case comes to court, involving a

mother dissatisfied with the quality of the care that her child received in hospital, the judges, who is herself mother of a disabled child, might ask to be discharged from the case.

The magistrate will distil from the previous life experiences, including mistakes or faux-pas, what is relevant for her activity and make of them steps for learning to be a better professional and a better person.

On the other side, the magistrate acts in an environment which is designed to offer her or him sufficient confidence in the judicial authorities that she or he will not be pursued for her or his solutions in judicial matters. In this respect a police officer, prosecutor or functionary at a disciplinary council should put aside any such complaints without any consequence (See the Decisions of the Higher Court concerning the rejection of the appeal of JJ).

In addressing the interference with her or his professional activity, the magistrate will find appropriate and proportional means. However, she or he must be aware that the attempts to limit her or his independence are serious matters, which could impede severely on her or his work. Whenever it is the case, she or he will not hesitate to *ask help and support from CSM*.

When, for example, a judge is in doubt as to the propriety of accepting any gift or hospitality he or she should seek the advice of the head of the appropriate jurisdiction.

One of the most important obligations of the magistrate is to *contribute to the preservation and the enhancement of an institutional framework which is favourable to the respect of her or his independence*. For example, the board and the management of the court do not influence the procedure nor the decisions in concrete disputes before court.

**Art. 4**

*(1) În îndeplinirea atribuțiilor de serviciu judecătorii și procurorii nu trebuie să fie influențați de doctrine politice.*

*(2) Judecătorii și procurorii nu pot milita pentru aderarea altor persoane la o formațiune politică, nu pot participa la colectarea fondurilor pentru formațiunile politice și nu pot permite folosirea prestigiului sau a imaginii lor în astfel de scopuri.*

*(3) Judecătorii și procurorii nu pot să acorde nici un fel de sprijin unui candidat la o funcție publică cu caracter politic.*

**How to interpret this article**

Art. 4 do not formulate a general (moral or juridical) principle, but exemplifies a series of interdictions for the magistrate when she or he “exercises” her or his “professional duties”.

At a first glance, the article is a complete and unequivocal ban of some activities having an explicit activist political character. The sense of this article is not to insulate the magistrate from the exchange of ideas in the society, but firstly to help her or him to interpret the law with objectivity and impartiality. Therefore, Art. 4(a) should be read as making reference to the political doctrines and ideas which might affect the magistrate’s ability in performing the professional duties in accordance with the values of the profession and to the principles of the rule of the law.

Another reason, which is expressly mentioned, is the use of the image of the justice in political fight and controversies. Indeed, a magistrate should always take into account how the general public perceives her or his actions.

If we look at the properly ethical side of this article, the conclusion is that, in any situation which might affect the image of justice and of the magistrate as impartial and independent, she or he should refrain from performing those activities.

### **How to apply this article**

The magistrate will be *aware* of situations as those mentioned below:

- regular meetings (socializing) with politicians; bonds of friendship / relationship with politicians;
- participation of judges in various events (book launches legal issues, wedding / christening / party) organized by politicians;
- in case of an additional function of all nature, he must always be aware that this can always influence his impartiality;

Giving expression to political and religious convictions can harm the independent and impartial image of the judiciary. The need for abstinence involves not participating in public demonstrations which, by associating the judge with a political viewpoint or cause, may diminish his authority as a judge and create in subsequent cases a perception of bias.

Being the third power (next to legislative and executive power) and the power balancing interest in concrete situations, and having in mind the principle of the rule of law (the government is subject to its own rules), it is better that *the magistrates keep distance from politics* in order not to be compromised as a professional. This means, firstly, that the magistrate will ensure herself or himself to maintain a state of mind which will allow her or him to be impartial in fulfilling her or his professional duties. Secondly, the magistrate has to take into account how the general public might interpret her or his actions. The Art.4 insists, in fact, on this side of the issue. Therefore, it is strongly recommended that the magistrate avoids visiting meetings, supporting election campaigns, making public statements or any action of this kind.

Moreover, in case of *a friendship and relationship with any politician*, the magistrate ensures that this person will not in any way use this relationship for political purposes.

It may be so that a magistrate receives invitations for parties, meetings, events, sport events. In such situations the magistrate has to ask himself the question: why

am I invited? Am I invited because I am a judge/prosecutor or because the inviting person is my close friend (from school time, for example)? The answer to this question determines the attitude of the magistrate. But even then, circumstances may be such that the magistrate keeps a certain distance and decides not to accept invitations or gifts.

In general, every person, every magistrate has his own views on social, political and ethical questions. Being charged with impartial judging, that he is aware of his personal views and shows to *distance herself or himself from them when administering justice*.



## **Art. 5**

*(1) Judecătorii și procurorii nu se pot servi de actele pe care le îndeplinesc în exercitarea atribuțiilor de serviciu pentru a-și exprima sau manifesta convingerile politice.*

*(2) Judecătorii și procurorii nu pot participa la reuniuni publice cu caracter politic.*

### **How to interpret this article**

Basically, the interpretation of this article will be similar to that of Art. 4.

Comparing it with the previous one, this article stresses upon the relation of the magistrate with politics, both when she or he is exerting her or his professional duties and in the public sphere. It is a twofold interdiction: on one side, the magistrate cannot express political convictions when performing her or his professional duties, on the other side, she or he cannot take part in public reunions with political character.

Many other European countries do not have such provisions on political issues. Judges in some other countries are free to be members of political parties and participate in activities, although it is not normal to be an active politician. But as a judge, one should be careful.

### **How to apply this article**

There are few examples of ethical concerns which requires the utilisation of this article:

- the use by prosecutors of election signs (pens, calendars, etc.) in

- the line of duty;
- using arguments / counterarguments political statement of reasons in that they emit;
- possible participation of magistrates in public events or of social nature (e.g. street protests), which turns into events with political connotations;
- the possibility of magistrates to express political opinions on social networks.

The same practical recommendations as for Art. 4 are applying here.

Besides, it must be said that judges and prosecutors should have the right to speak on matters related to their working conditions, but maybe association of judges could have be a better "spokesman" of such issues.

A judge should normally be entitled to make, also public, comments on mismanagement of court administration or a similar issue and should normally not to get a reprimand for this. She or he must, again, use this right with caution and in a proportionally with the importance of the facts that are discussed or revealed.

Art 4(2) formulates a strong interdiction and, no matter what the theoretical discussions might lead to, in practice it is strongly recommended to magistrates to observe it.

In certain situations, participation in public protests and demonstrations may well involve substantial risks of the kind already considered and be inconsistent with the dignity of judicial office.

## **Art. 6**

*(1) Judecătorii și procurorii pot participa la elaborarea de publicații, pot elabora articole, studii de specialitate, lucrări literare ori științifice și pot participa la emisiuni audiovizuale, cu excepția celor cu caracter politic ori a celor care ar putea afecta imaginea justiției.*

*(2) Judecătorii și procurorii pot fi membri ai unor comisii de examinare sau de întocmire a proiectelor de acte normative, a unor documente interne ori internaționale.*

*(3) Judecătorii și procurorii pot fi membri ai societăților civile sau academice, precum și ai oricăror persoane juridice de drept privat fără scop patrimonial.*

### **How to interpret this article**

Similar to the previous two articles.

### **How to apply this article**

The first step that the magistrate can do is that of being aware of the implications for her or his work that certain behaviours might have.

- the opportunity to participate TV programs like: Masterchef, Dancing, etc. Voice of Romania;
- the possibility of magistrates to publish literary works in which they are expressed (learned) different political ideologies / religious or literary works that have a strong erotic / adult content;
- being a member of a secret organization, like Masons, Rotary Club etc.
- additional functions, insofar as legally permitted, can be undesirable if

the proper administration of justice and/or the trust in the judiciary may be hurt.

As the social life is today highly complex and the magistrate might find his or herself in unexpected situations, what we can do is only to point to a series of more or less typical situations. Generally, the aspects which are raising concerns are those related to remunerated activities, commercial additional functions, additional functions that are fulfilled outside the official working times

#### *a) Membership in associations and clubs*

One may expect from the judge that he realises himself that the way the public sees him, impacts on the professional image of the judiciary. So, diligence may be observed.

In principle the magistrate is free to become a member if *an association or club*, unless it might raise doubt as to the independent and impartial functioning of the magistrate. In the past doubts have existed about Roman Catholics as the church opposes for instance divorce, but the present opinion is that judges may pronounce divorces whatever the membership of any church. A more complicated issue was, for example, in Italy the appurtenance to the P2 Lodge, having as members politicians involved in very important court cases, and members of the Supreme Court. A magistrate who belongs to an organization of which most members were prosecuted for committing acts of corruption is seriously endangering the image of the judiciary and is weakening the trust of the people that justice is made.

Membership of service clubs like Lions, Rotary is allowed as long as one is open about it. Since there is no ban on this one might think that it is not problematic. But one should be careful with such memberships, because it could affect ones independence (and also impartiality).

Some doubts exist as to Masonic organisations, as it may be so that the oath of obedience might have priority over application of the law properly to any person. The secrecy within such organisations and the loyalty within it, may make this membership especially difficult to combine with a judge's independence and general duties.

Prior to their appointment, many judges have been actively involved in community organisations, particularly, but not exclusively, educational, charitable and religious organizations. While continuing such involvement is not necessarily inappropriate, and may confer a public benefit, care should be taken that it does not compromise judicial independence or put at risk the status or integrity of judicial office. Such activities should not be so onerous or time consuming as to interfere with the judge's performance of his or her duties and the judge's role should not involve active business management.

***b) Publicising legal articles in professional periodicals***

This activity may be possible, albeit that one has to take care that the content of the articles or the view that is taken, will not lead to recusal of the judge or affect the authority of the prosecutor in these types of cases. The criterion in this respect is the way the public will view the magistrate.

***c) The use of Twitter accounts, Facebook accounts and blogs or vlogs***

The magistrate should take here a reticent attitude: you will never know if and when any publication will be used to challenge the impartiality or independent position.

***d) The background and extra judicial activities of the judge (board of the football club, member of a choir, board of a charity foundation, expert for the Council of Europe, trainer at the NIM or international organisations etc. etc.).***

In general, in terms of transparency, the general public and the (potential) parties have the right to know about. Therefore it would be good if any additional function would be open to the public, as is the practice in some other European countries. This can be done by simply report to the president of the court or by asking

SCM.

The magistrate must be aware that serving a private interest that may create an undesirable association with judicial work.

Employees in the judiciary must also realize that additional function may have an impact on the right way to perform their public duties, the impartiality and their independence as well as the trust in the judicial work.

## Conclusions

*Art. 3* of the Code states that the individual magistrate is expected and even required to be the first who defends the independence of the judiciary, sets the standards and the values for performing the professional duties and indicates the institutional means that the magistrate could/should activate when her or his independence is menaced.

On a practical level, the magistrate has to:

- activate the subjective means to counter the undue influence and pressures;
- orient her or his professional activity towards the values of objectivity and impartiality;
- make use of the institutional means necessary to protect the independence of the judiciary.

*Art. 4* expresses the need and the requirement for taking a reserved attitude towards political ideas and organisations. In practice, the magistrate can and should question critically the reasons of her or his participation in political activities, as well as the way in which the general public will interpret her or his actions.

*Art. 5* stresses upon the relation of the magistrate with politics.

The same practical recommendations as for *Art. 4* are applying here.

*Art. 6* continues to exemplify the permissions and the interdictions related to the role and the work of the magistrate.

In all her extra-judicial activities, the magistrate must be aware of the consequences regarding the fulfilment of her professional duties.

In conclusion, all these articles require from the magistrate a sharp distinction between professional sphere, form one side, and private or public sphere, on the other. Her or his behaviour will always be determined by the need to secure the independence of the judiciary.



## **Chapter III**

### **Promoting the Supremacy of Law**

#### **General remarks**

The supremacy of law is a cornerstone in any judicial system and is an overriding injunction in the relevant International Instruments. It is especially crucial when it comes to convictions and acquittals.

A prosecutor has functions that often affect other people's life fundamentally. A fundamental ethics is that a prosecutor should not have any personal "investment" in the outcome of the case. A prosecutor should not count a conviction as a victory and should thus not refrain from an indictment and should not dismiss the case in fear of a "defeat" in the form of an acquittal. The aggrieved citizen has the right to a trial if the evidence based on a fair assessment suffices to guilt. Nor it is appropriate to blame the prosecutor for an acquittal. Actually, acquittals are in the big picture a hallmark of the supremacy of law that the presumption of innocence and fair trial for the accused prevails. It is also unethical to count success by the harshness of the sentence, i.e. on the number of years in prison. The assertion to the court should instead be based on precedence's from earlier cases.

This is underlined in the UN Guidelines on the Role of Prosecutor stating in the chapter Role in criminal proceedings:

*12. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.*

*13. In the performance of their duties, prosecutors shall:*

*(a) Carry out their functions impartially and avoid all political,*

*social, religious, racial, cultural, sexual or any other kind of discrimination;*

*(b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect; (...)*

*14. Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.*

This means that if the prosecutor according to the basic Human Rights presumption of innocence principle and the duty to be objective, should deem the evidence not sufficient to have a conviction, the case should be dismissed. The case should, however, not be dismissed on the fear of “loosing” and having “bad records”! Presenting the evidence during the trial, the prosecutor should keep objectivity and, if before the final arguments deeming the evidence not sufficient, ask for an acquittal. If deciding to maintain the indictment, the time for objectivity has passed.

Also a judge has both in criminal cases and in civil disputes functions that might affect other people’s life fundamentally. The judge should attend the trial with an open mind without any prejudice, listen to the parties and make up his mind, also she confident that acquittals are an integral part of the criminal justice system and should be seen as a confirmation that the system is sound and the presumption of innocence prevails. The judge should not convict based on the fear of corruption suspicions.

These are general principles which one also finds in LSJP art 1:

*"The magistracy is the judicial activity performed by judges for accomplishing justice and by prosecutors for protecting the general interests of society, the rule of law and the rights and freedoms of citizens."*

Apart from the constitutional duties for prosecutors and judge to perform their important functions in such a way that it contributes to the welfare of society and balances the rights and obligations of parties, state organisations included, it also reflects on the way the judge/ prosecutor shows himself as a respectful person

who functions with professional authority while exercising his powerful function. He is aware of the need that the general public have respect of the important judicial office as well as for the person that performs these offices.

Part of this topic deal with impartiality, not only where it deals with ties with parties but also the conduct of the judge/prosecutor during his contacts with those whom she meets professionally: parties, accused, witnesses, experts, interpreters and others. In this respect, it is important to define the role of the judge or prosecutor as an institution serving the society by handling and resolving conflicts in society. The judge, and to a certain extent the prosecutor, shows (that is his “image”) himself to society as the distanced but genuinely interested and capable person to talks with the people involved in such a way that they feel; to be taken serious and respected.

**Art. 7**

*Judecătorii și procurorii au îndatorirea să promoveze supremația legii, statul de drept și să apere drepturile și libertățile fundamentale ale cetățenilor.*

**How to interpret this article**

The article underlines the idea that the supremacy of law (the rule of law) has as a final aim to protect and ensure the right and the freedom of every citizen.

**How to apply this article**

On one hand, the provisions of this article make references to the current, daily professional life of the magistrate. Therefore, there cannot be special illustrations. On the other hand, this article makes us reflect to those situations when the magistrate, especially the judges, have to rule against the state.

## **Art. 8**

*Judecătorii și procurorii sunt obligați să respecte egalitatea cetățenilor în fața legii, asigurându-le un tratament juridic nediscriminatoriu, să respecte și să apere demnitatea, integritatea fizică și morală a tuturor persoanelor care participă, în orice calitate, la procedurile judiciare.*

### **How to interpret this article**

According to the Bangalore values and principles ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

A judge should be familiar with the international and regional instruments that prohibit discrimination against vulnerable groups in the community.

Art. 14 of the International Covenant on Civil and Political Rights guarantees that:

*"All persons are equal before the courts."*

Art 8 of the Code means that one should recognize the right for every individual to a fair trial without any distinction whatsoever as regards race, color, sex, language, religion, or political opinion.

Fair and equal treatment has been regarded as essential attributes of justice.

The judge and to a certain extent the prosecutor, should show during hearings an attitude characterised by neutrality and impartiality. This includes requesting from participants to the hearing that they express themselves in a respectful way towards anyone, present or not. It can happen that as a result of rising tensions or emotions, participants may behave in such a way that others who are present do not feel free to say and argue as they wish. This implies for this situation a denial to a fair hearing. That would in exceptional circumstances allow for excluding temporarily or permanently a person from the hearing, or to conduct the hearing in such a way that each participants can express himself to the court in the absence of the other, and vice versa. This would mean that the non-present

participant after readmission to the hearing is informed about the events and statements during his absence.

Moreover, the attitude of the magistrates, the way a good judge or prosecutor behaves, should be defined as: interested, well prepared, well educated, asking “open” questions, polite, patient, and friendly. He conducts the hearing in a business-like way, attempting to reduce emotions by inviting participants to take a business-like and not being carried away by emotions.

Equal treatment is essential, not only where it concerns minority groups but also in other aspects. If one part takes the floor for 20 minutes, the judge cannot stop the other after having spoken 3 minutes saying that there is not sufficient time left.

In terms of time: the judge should not feel to be in a hurry. If so, tell parties that many cases are waiting after this one, expressing the expectation that the case takes more time and attention than presently available and discuss the continuation of the hearing on a later moment.

Respecting the interests of those seeking justice includes the following. When setting the schedule of the court hearings, prosecutor and judge assess the average time for each case and determine the hours accordingly.

The magistrate can and should adjust her or his behaviour in court so that even the losing party afterwards can say: OK, I lost the case and even if I disagree with the assessment of the evidence and the application of law, the judge let me at least put forward my case in a fair manner.

### **How to apply this article**

We begin with a series of examples of ethical concern for the magistrates the magistrate might encounter in her or his professional activity:

- *situations when one of the participants in the judicial procedures makes discriminatory remarks, such as “gipsy”, “gay”, “poor”, etc.;*

In situations that during hearings or in procedural documents discriminatory remarks are made expressing contempt for minorities of any kind or any other social group, the judge and the prosecutor should uphold the need that we all are defending the dignity of any person in the court.

The judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues without differentiation on any irrelevant ground.

This means that people must be treated with dignity. It is the judge that sets the tone and atmosphere in the courtroom and creates the environment for a fair trial. So, unequal treatment is unacceptable. This means that people must be treated politely and friendly, with dignity and respect and that the judge/prosecutor is entitled to raise her voice and express herself sharply only when the behavior of the defendant/party witness gives cause for it. Sarcastic and derogatory remarks are, however, banned; humor is not absolutely banned, but never at someone's expense.

Also, the judge must prevent that lawyers engage in racist, sexist or other inappropriate conduct.

- *situations when the judge yelled at the complainant;*

All judges are generally expected to remain courteous during court proceedings; however, judges are also expected to maintain firm control of the proceedings and, as necessary, act firmly and authoritatively. The judge should seek to be courteous, patient, tolerant and punctual and should respect the dignity of all. The judge should ensure that no one in court is exposed to any display of bias or prejudice on grounds said in the Bangalore principle entitled “equality” to include but not to be limited to “race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes”.

## **Conclusions**

Art. 7 of the Code underlines the idea that the supremacy of law has the final aim

to defend the right and the freedom of every citizen.

Art. 8 states that the obligation of a judge is to protect citizens' equality before court and to ensure a non-discriminatory judicial treatment.

This chapter underlines the idea that the supremacy of law has the final aim to defend and guarantee the right and the freedom of every citizen and connects it with the obligation of a magistrate to protect citizens' equality in front of law and to ensure a non-discriminatory judicial treatment.

The magistrate can and should adjust her or his behaviour I court in order to ensure a non-discriminatory treatment in the court.



## **Chapter IV**

### **Impartiality of judges and prosecutors**

#### **General remarks**

According to international standards, impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself, but also to the process by which the decision is made.

As has been said, independence and impartiality are closely connected, but still separate and distinct values. Independence is the necessary precondition to impartiality and a pre-requisite for it.

Many would say that impartiality is the fundamental quality required of a judge and the core attribute of the judiciary. Therefore, when performing her duties, the magistrate should have in mind that an overriding obligation of a judicial system is to serve the public and deliver justice in due time. The magistrate should take responsibility for the case, i.e. not using excuses to avoid decision-making, not making any ambiguous interlocutory decision or final judgment facilitating an appeal to avoid responsibility and the likes.

The perception that a magistrate is not impartial may arise in a number of ways, for instance through a perceived conflict of interest, the judge's behaviour on the bench, or his/her associations and activities outside the court.

So, a judge or prosecutor shall perform his or her judicial duties without favour, bias or prejudice.

If a judge or prosecutor appears to create the impression of being partial, the public confidence in the judiciary will diminish, be reduced.

"Bias" or "prejudice" has been defined as a tendency, inclination or predisposition towards one particular side or party or to a particular result. It represents a

predisposition to decide an issue or case in a certain way which does not leave the judicial way totally open to consideration and deliberations.

If the judge is inclined to listen more to the prosecution than the lawyers it could be a signal that he or she is impartial. But not necessarily. But a judge's personal values, philosophy or belief about the law or social matter does not disqualify a judge. A personal opinion is different to bias.

Impartiality is also covered by LSJP art 73, 75 (1), and has a connection to chapter II LSJP on Incompatibilities (e.g. art 5, 8 and 9) Those provisions are intended to secure the impartiality of a judge. The code has also another provision of impartiality in art 20.

The provision of the code as to impartiality should thus be read in connection with provisions of incompatibilities, cf. LSJP chapter II.

Internationally, one of the most serious threats to impartiality is considered to be the colleagues of the magistrates.

The European Consultative Council for Judges (CCJE), opinion 1 (2001) reads:

*64. The fundamental point is that a judge is in the performance of his functions no-one's employees; he or she is holder of a State office. He or she is thus servant of, and answerable only to, the law. It is axiomatic that a judge deciding a case does not act on any order or instruction of a third party inside or outside the judiciary.*

The opinion of the Venice Commission CDL-AD (2010)004 reads:

*Subordination the senior or chief judges or higher instances in the decision-making would be a clear violation to the principle of independence.*

The Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities reads:

*22. The principle of judicial independence means the independence of each individual judge in the exercise of adjudicating functions. In their decision making judges should be independent and impartial and able to act without any restriction, improper influence, pressure, threat or interference, direct or indirect, from any authority, including authorities internal to the judiciary. Hierarchical judicial organisation should not*

*undermine individual independence.*

*23. Superior courts should not address instructions to judges about the way they should decide individual cases, except in preliminary rulings or when deciding on legal remedies according to the law.*

## **Art. 9**

*(1) Judecătorii și procurorii trebuie să fie imparțiali în îndeplinirea atribuțiilor profesionale, fiind obligați să decidă în mod obiectiv, liberi de orice influențe.*

*(2) Judecătorii și procurorii trebuie să se abțină de la orice comportament, act sau manifestare de natură să altereze încrederea în imparțialitatea lor.*

### **How to interpret this article**

Every magistrate has by his person and background ideas and experiences that may influence him as a person. But one may expect from them that they are aware of their own possible prejudices, are able to disregard them during hearings and taking decisions

### **How to apply this article**

A series of illustrations will help us to make light on this topic, which is of utmost importance for both the magistrate and the judiciary. However, they cannot cover the entire complexity of the magistrate work and all the challenges that she or he encounters in her or his professional life.

Concerning (1):

Judges and prosecutors continually must be aware of the question what kind of influence could affect their impartiality, if and to what extent pressures of a domestic nature are present and what one should do to maintain inner balance, to lead to an objective decision.

Concerning (2):

Desirable behaviour in the courtroom, not to shed doubt on impartiality.

- Attending or not attending social meetings (parties / sporting activities, holidays, etc.) with lawyers in general; particularly with lawyers involved in cases that the magistrate has to resolve.
- Possible participation in various events (parties / weddings / christenings) where people may be attending who are parties in some cases belonging to the magistrates caseload. This includes launch of a book on legal issues by a former teacher who now is an attorney in a case that the magistrate has settled.
- No gifts from lawyers and/or parties.
- In case of an additional function (in a charity organisation, sports club or such), the judge will not hear the case when the involvement is such that his impartiality would become an issue under discussion. The same for additional functions during the past three years.

Also, for this magistrate goes that reasoning of the decisions are important for disclosing the way the magistrate has come to his decision, free from personal feelings or background.

There are however personal experiences or in his immediate environment that preclude hearing and resolving a case. The judge, who is the victim of a serious burglary in his house, should for a while not hear such case. The same goes for instance for a prosecutor whose niece was raped or sexually assaulted. Other examples: prejudices (ethnicity, gender, sexual orientation, religion etc.), ideology (political, religious, etc.), previous experience of life, friends, hobbies, compassion, empathy exaggerated, resentment, fear, mistrust, lack of training - judgment based appearances, etc.

Social media deserve special attention. A magistrate should be extremely careful with any publication on the social media. He should limit himself - if he wishes to have a Facebook or Twitter account, or something comparable - to posting data, comments or events not related to judicial work (the magistrate's cases, but also all other affairs dealing with law and justice).

In case the partner or spouse is a lawyer, bailiff or notary public, or renders legal aid otherwise, the judge will not hear cases in which the spouse or partner is

involved.

In case the partner of a prosecutor, the judge will not hear these cases.

In case the employer of the spouse or partner is a party to the procedure, the judge will not hear the case.

The judge takes care that he will not handle cases in which he has been involved in earlier jobs or employment. In case the party is a former client, he will not hear the case.

The judge must be aware of the fact that his earlier involvement in another case can impact on his impartiality. His impartiality can also be questioned when he hears repeatedly cases for one and the same party.

Caution should be exercised when considering whether to accept any gift or hospitality that may be offered. It is necessary in this context to distinguish between accepting gifts and hospitality unrelated to judicial office, for example from family and close friends, and gifts and hospitality which in any way relate, or might appear to relate, to judicial office. In relation to the latter category, judges should be on their guard against any action which could be seen to undermine their impartiality. Judges should be wary, therefore, of accepting any gift or hospitality which might appear to relate in some way to their judicial office and might be construed as an attempt to attract judicial goodwill or favour.

The acceptance of a gift or hospitality of modest value, as a token of appreciation, may be unobjectionable, depending on the circumstances.

The acceptance of invitations to lunches and dinners by legal and other professional and public bodies or officials, where attendance can be reasonably seen as the performance of a public or professional duty, carrying no degree of obligation, is entirely acceptable.

**Art. 10**

*În caz de incompatibilitate, judecătorii și procurorii sunt datori să se abțină, potrivit legii.*

**How to interpret this article**

Incompatibilities concern previous and present function of the magistrate that precludes him from hearing a specific case.

In such a situation, the magistrate must make known to competent authorities (preferably near the working place; for instance the court president, the president of the chamber or the head of the section) that and why because this incompatibility he should refrain from hearing the case.

**How to apply this article**

In such situations, three possible steps are present:

- informal abstention (just the message to a senior – “please allow me to refrain from resolving the case”);
- formal abstention: the written statement by the magistrate that and why he must abstain, followed by a court decision;
- a request aiming at recusal of the magistrate done by parties or their lawyer.

The first step is the most practical and preferable. One must however be transparent. This might mean that in relation with the objective case distribution system and the equality of caseload, the magistrate will get another case in exchange. But this needs to be registered properly in the system; the system should allow for such an exchange, in such a way that manipulation of cases

leading to hearing specific cases by the desired judge is not possible.



## **Art. 11**

*(1) Judecătorilor și procurorilor le este permis să acorde asistență juridică, în condițiile prevăzute de lege, numai în cauzele lor personale, ale ascendenților, descendenților sau soților lor, precum și ale persoanelor puse sub tutela ori curatela acestora. În asemenea situații, nu le este îngăduit să se folosească de calitatea de judecător sau procuror pentru a influența soluția instanței de judecată sau a parchetului ori pentru a crea aparența unei astfel de influențe.*

*(2) Relațiile de familie și sociale ale judecătorilor și procurorilor nu trebuie să influențeze soluțiile pe care le adoptă în exercitarea atribuțiilor de serviciu.*

*(3) Judecătorilor și procurorilor le este interzis să intervină pentru soluționarea unor cereri, să pretindă ori să accepte rezolvarea intereselor personale sau ale membrilor familiei ori ale altor persoane, altfel decât în limita cadrului legal. Imixtiunea în activitatea altor judecători și procurori este interzisă.*

### **How to interpret this article**

This provision has two aspects: openly supplying legal aid to relatives c.s.as a “lawyer” or formal representative. The second sentence speaks for itself, albeit that the mere fact that the court that hears the case can see that the representative of the party is a judge-colleague to a certain extent influences the decision. That leads to the observation that it may be preferable that a judge or prosecutor refrains from these kinds of activities.

The second aspect concerns the opportunity for relatives of the magistrate, to consult him in their legal issues. The article allows them to provide them with opinions; however, in his views and advices he should be careful and manage the expectations, in the sense that the magistrate that actually handles the case, is not discredited. On the other side, in the way to proceed, the magistrate should make an attempt to make the sitting judge to feel free to decide as he deems fit.

This provision seems to be directed to the family and friends of the magistrate, who are not subject to the present legislation. However, it enables to magistrate to clarify that they should not try to influence him on any issue.

Paragraph 2 requires the magistrate to clarify to family and friends that they should not try to move his opinion to one side or another. In fact they should avoid even talking about that case while it is pending. Saying to the magistrate, dealing with an grave criminal case, that the suspect should heavily been punished, it out of order.

### **How to apply this article**

Few illustrations will help us to draft the type of behaviour that is recommended in the domain of reference of this article:

- using his position as a judge or prosecutor in order to get a child placed in a kindergarten/school, outside of existing rules (even inside these rules; he never should use his authority to get things like that done);
- interference by any magistrate for the benefit of family and friends with local or national government offices, police or gendarmerie officers in order to get priority treatment;
- promoting favourable decisions by other judges and prosecutors in his own direct or indirect interests;
- the judge will not act as remunerated legal aid or advisor. The judge may be mediator, arbiter, binding advisor, unless the good functioning to the judiciary may be hurt.
- a judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else.

### **Conclusions**

As the principle of impartiality is the core of the justice system, each magistrate should scrutinize her or his involvement and must be allowed to refrain from handing the case in the most effective and efficient way.

## Chapter V

### Exercise of professional duties

#### General remarks

This chapter V of the Code may be seen in connection with some other (international) values/principles that is not explicitly mentioned in the code, namely integrity and competence/diligence.<sup>4</sup>

Integrity is essential to the proper discharge of the judicial office. The components of integrity are *honesty* and *judicial morality*.<sup>5</sup> Competence and diligence are prerequisites for the due performance of judicial office.

A magistrates' professional competence should be evident in the discharge of his or her duties. It may be diminished by alcohol, drugs or if he or she is mentally or physically injured.

Diligence means to consider soberly, to decide impartially and to act expeditiously. The judicial duties of a judge take precedent over all other activities. And a judge's primary obligation is to the court.

If called upon to undertake a task which takes him or her away from the regular work of the court, this could interfere with the effective functioning of the court and his/her duties. Judges should as a principle not involve in other non-judicial activities outside court during working hours.

There is a heightened risk of excessive attention being devoted to such activities if they involve compensation or pay.

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<sup>4</sup> The LSJP has in art 91(1) a provision similar to art. 13 in the Code.

<sup>5</sup> Ref. also the next chapter on dignity and honor of the profession. ).

A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and making of decisions, but also other tasks relevant to the judicial office or the court's operations.

Professional competence in judicial administration is also necessary. Every judge must manage as well as decide on cases. This involves case management and the prompt disposition and handling of cases. If not, the resulting inefficiency will increase costs and undermine the administration of justice.

There are several cases due to excessive use of time in preparations before main hearing or judgement in disciplinary cases and also in cases before ECtHR.

A judge must take reasonable steps to maintain and enhance the judges' knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available to judges .

Every judge should also take advantage of further training opportunities and must update him/herself on new legislation and jurisprudence.

**Art. 12**

*Judges and prosecutors are obliged to fulfill their professional duties with fairness and competence, comply with administrative duties established by law, regulations and orders.*

**How to interpret this article**

Existing rules in the organisation are also written for magistrates; they have to comply with them. In other words, not only externally but also internally the judge should keep to the existing rules, which has an important impact on the behaviour of the staff in the courts and prosecutors' offices: the magistrate is an example for the staff.

**How to apply this article**

Part of the work of magistrates may be administrative duties, like signing documents and determine dates and schedules. In such a way they fulfil their professional duties to have justice done.

An illustration from the practice of some foreign countries may help us understand how the provisions of this article may be implemented in the Romanian judiciary:

The prosecutor was confronted with a new organisational measure named: "procedure to follow in case of replacement". Being not satisfied with the measures taken, he sends an e-mail ("reply all") to all his colleagues and his superior, bearing as subject "strange approach". It ends with "the management remains blind for the problem that all kinds of administrative duties are placed before the prosecutor and not where they belong, namely the registry. .. Main question is whether is a matter of incompetence or unwillingness. I fear it is both!".

A formal reprimand was confirmed by the High Administrative Appeals court.<sup>6</sup>

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<sup>6</sup> Case law in Netherlands, CRvB 1 May 2014.

**Art. 13**

*Judecătorii și procurorii sunt datorii să depună diligența necesară în vederea îndeplinirii lucrărilor repartizate, cu respectarea termenelor legale, iar în cazul în care legea nu prevede, înăuntrul unor termene rezonabile.*

**How to interpret this article**

Judges and prosecutors should be able to organise their work properly, setting the right priorities in terms of time and importance. They also should see to cases that are urgent by nature, to be dealt with timely and speedily. They should be able to accept the assistance and proposals by their staff, which may have a signalling role.

In some legal systems magistrates has been criticized “to sit in an Ivory Tower” lacking connection “to real life”. In some the criticism has been that she is too closely connected to and favouring her family and friends and her “network” based on an unbuilt interdependence, any “member” feeling obliged at any time to give a helping hand to the others. The magistrate must avoid both those “verges”.

**How to apply this article**

In case the distribution of cases results in an (excessive) case load that the magistrate is not able to handle, he has to report that to the leadership of the organisation.

In case lawyers or other court-users determine problems concerning handling case load by the prosecutors or the courts, the leadership of the court or the chief prosecutor should show himself open to signals and consultation and trying to



find suitable solutions. It will be their role to notify the competent authorities in case of developments leading to excessive case load, both structurally and incidentally.

Another illustrations from the experience of judges from another European country may be a guide for the decisions of Romanian magistrates.

Appointment in 1992 as a judge. Until 1998 working in the Administrative section. Critical remarks were made about the output, questions on decisiveness. Move to the criminal section in order to make a fresh start. Until January 2001 the judge worked in the penal section: limited input in discussions in chambers and frequents absence – to work at home –, insufficient preparation and inadequate know. In 2004 again the judge was reported to be absent very often, colleagues critical about the attitude and increasing backlogs, found not fit to sit as a single judge.

After a period of sick leave of a month the judge was granted an extra period to restore personal life after the decease of the judges' mother. In March 2005 the leadership of the section told her that all this led to an unworkable situation. . A last chance was given. On 14 April 2006 at noon the judge was found by the police at home, neglected and under the influence of alcohol; the house was filthy with a risk of fire. The judge resisted the police and had to be taken to a separated room at the police station. The conclusion was that the court would seek a decision to dismissal, have the events of 14 April 2016 had a more important impact that was anticipated. A trial period in another first instance court with a view to reintegration. This court found the work of the judge below acceptable standards. The Supreme Court decided to dismiss the judge for being unfit for judgeship.<sup>7</sup>

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<sup>7</sup> Supreme Court of Netherlands, 15 December 2009 (dismissal of a judge).

**Art. 14**

*Judecătorii și procurorii trebuie să impună ordine și solemnitate în timpul soluționării cauzelor și să adopte o atitudine demnă și civilizată față de părți, avocați, martori, experți, interpreți ori alte persoane și să le solicite acestora un comportament adecvat.*

**How to interpret this article**

Under article 8 much has been said about the conduct during a hearing, being the hearing one of the fundamental and essential elements in any court procedure. Initial but also continuous education will provide the magistrate with the necessary skills.

If a magistrate honestly finds that he should improve these skills, it is his decision to ask for coaching in this matter. Colleagues are in a position – and have the obligation – to pay attention to the conduct of colleagues, which in particular goes for the president of the court. Signals may come from lawyers and the general public (for instance through complaints procedures) but also from ushers, policemen serving during hearings, and even the media. Sanctioning may not be the first measure to consider, but coaching and training would be advisable in the first place. Disciplinary boards could consider to take decisions in order to improve the skills of any magistrate in the framework of a disciplinary complaint (alternative sanction).

**How to apply this article**

An illustration will give the Romanian magistrates suggestions concerning the implementation of this article:

- the judge yelled at the complainant.

All judges are generally expected to remain courteous during court proceedings. However, judges are also expected to maintain firm control of the proceedings and, as necessary, act firmly and authoritatively.

The judge should seek to be courteous, patient, tolerant and punctual and should respect the dignity of all. The judge should ensure that no one in court is exposed to any display of bias or prejudice on grounds.

## **Art. 15**

*(1) Judecătorii și procurorii au obligația de a nu dezvălui sau folosi pentru alte scopuri decât cele legate direct de exercitarea profesiei informațiile pe care le-au obținut în această calitate.*

*(2) În cazul în care, potrivit legii, lucrările au un caracter confidențial, judecătorii și procurorii sunt obligați să păstreze materialele respective în incinta instanței sau a parchetului și să nu permită consultarea lor decât în cadrul prevăzut de lege și de regulament.*

### **How to interpret this article**

The main attitude should be that all information received by the magistrate in his function is confidential.

This adds to the confidence in the judicial system: problems can be put on the table and the magistrates will create an atmosphere of confidentiality, respecting privacy even in cases that are heard in a public hearing.

### **How to apply this article**

Many cases attract media and public attention, so the publicness of the administration of justice requires an appropriate facilitation of the media.

The general rule may be that the magistrate does not allow an interview about cases that he handles himself. He may provide a media judge/ prosecutor with information but restricted to matters that can or could be observed publicly. Under all circumstances the confidentiality of the deliberations in chambers will be observed.

In many countries nowadays judges and prosecutors are appointed and trained as

magistrates dealing with the media: explaining cases and judgements and giving information about procedural steps. The judicial organization in these countries created supporting organisations like communication offices.

## **Art. 16**

*(1) În exercitarea funcțiilor lor de conducere judecătorii și procurorii trebuie să se preocupe de organizarea activității personalului, să manifeste inițiativă și responsabilitate. În luarea deciziilor ei trebuie să acorde prioritate intereselor instanțelor și parchetelor, precum și bunei administrări a justiției.*

*(2) Judecătorii și procurorii cu funcții de conducere nu pot folosi prerogativele pe care le au pentru a influența desfășurarea proceselor și soluționarea cauzelor.*

### **How to interpret this article**

Each and every judge acts and decides for himself, he is not subject to any sort of subordination where it concerns the judgments and the way to handle a case. As a consequence the leadership of courts abstains from any influence. This implies also that the leadership, the president, will not allow and even discourage any attempt to such influencing by third parties, thus protecting the judge from undue influencing.

### **How to apply this article**

The leadership restricts itself to creating and maintaining the organizational conditions for the magistrates to perform their duties.

Where it concerns the courts, it refrains from any interference in hearing and deciding of cases. Only in specific circumstances, trying to solve backlogs, the leadership may consider taking measures and to redistribution of case load or priority in hearing and resolving cases.

Given the somewhat different position of the prosecutor, the chief prosecutor may influence decisions by prosecutors, but this should be done in a transparent way.

## **Conclusions**

Art. 13 stipulates that the magistrates personally bear responsibility for an expedient administration of justice and shows themselves open to signals from within and outside the judicial system.

Art. 14 emphasizes that the magistrate under all circumstances has to behave in a decent and professional way. Whenever he or she feels to be agitated he has the obligation to correct himself and regain the required patient and interested attitude.

Art 15 states that the main attitude is confidentiality, but under circumstances a controlled media information system may be in place.

## **Chapter VI**

### **Dignity and honor of the profession**

#### **of judge or prosecutor**

#### **General remarks**

The chapter must be seen in connection with art 90 (1) in LSJP which states that

*"Judges and prosecutors shall have the obligation to refrain from any act that is likely to compromise their dignity in their profession and in society."*

Dignity and honor of the profession might, especially seen from an international and comparative point of view, depend on community standards that may vary from place to place and time to time. The test would be how reasonable, fair minded and informed members of the community would consider the conduct and whether this is likely to diminish the community's respect for the judge or the judiciary as a whole.

But a magistrate should realise himself that he is considered as an example, an ideal model by the general public. People might say: "if a magistrate is doing that, it will be good". Therefore he is to ensure that his or her conduct is above reproach and blame in the view of a reasonable observer.

High standards are required in both private life and public life.

If a judge is to condemn publicly what he or she practices privately, the magistrate could be seen as a hypocrite (e.g. in cases of speed driving or tax avoiding). This will inevitably lead to a loss of public confidence in the magistrate and the judiciary more generally.

However, in view of cultural diversity and the constant evolution in moral values, the standards applying to a magistrates' private life cannot be laid down too precisely.





**Art. 17**

*Judecătorii și procurorii sunt datori să se abțină de la orice acte sau fapte de natură să compromită demnitatea lor în funcție și în societate.*

**How to interpret this article**

The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done, but must also be seen to be done.

What does this mean? The personal conduct of a judge affects the judicial system as a whole.

A magistrate must not only be a good one but also be a good person. Views about this may vary in different parts of society.

The public often demands a conduct that is far above that which is demanded of fellow citizens, standards of conduct that are much higher than those demanded of society as a whole. But there are reasons for that even if magistrates could be seen as "just humans". In many countries the trust in judiciary is very low and due to this it is paramount to enhance this trust. So the level of conduct should be above the average citizen.

A magistrate must not only be honest but also appear to be so. It is not enough to state that he or she is a honest person, but it must also be seen in real life and acts that she or he is. It is not enough just to show honesty without really respecting such values in their life. Then he or she will be considered as a hypocrite.

Decency and propriety are (international) values/principles connected to dignity and honor.

**How to apply this article**

The judge has to pay attention to the following situations:

- a magistrate is a member of a musical / dance troupe and its artistic frequently carry out these activities in a city where the local judge / prosecutor;
- the son of a magistrate goes on a trip organized by the school trip is sponsored by a well-known businessman in the city;
- a judge attends a club which was reported in the mass-media that would be held for drug and prostitution;
- strained relations with neighbours (quarrels, insulting words etc);
- discussion of magistrates in different occasions (court / office / parties / social networking etc) on poor training / professional conduct other colleagues;
- violence (verbal / physical) domestic, that are seen / heard by neighbors;
- publication of an article in a professional journal, by which a magistrate criticize a judgment in a case widely publicized;
- a magistrate submits a woman clerk (grefiera) sexual advances;
- participation of a magistrate at various events with the participation of persons belonging to underworld clans;
- drinking in the line of duty;
- magistrate conflict with the police, being stopped in traffic;
- magistrate borrow money from several people, usually lawyers, without them return in time;
- magistrates court arguing hallway / flooring, publicly accessible place.
- a judge should not "flash" wealth or richness in front of actors of court, e.g. when a female judge wears expensive jewellery or a male prosecutor his very expensive watch.

Mind here that the LSJP in art 92 (1) has the following provision :

*"During court sessions , the judges and prosecutors shall wear the outfits that are appropriate for the court in which they work".*

Today, at least in most countries, there is no prohibition to a magistrate visiting pubs or similar venues. In some countries it is very common. But discretion should perhaps be exercised. A judge should consider how such visits are likely to be perceived by a reasonable observer in the community. This could vary whether living in a big city or small community.

## **Art. 18**

*(1) Relațiile judecătorilor și procurorilor în cadrul colectivelor din care fac parte trebuie să fie bazate pe respect și bună-credință, indiferent de vechimea în profesie și de funcția acestora.*

*(2) Judecătorii și procurorii nu își pot exprima părerea cu privire la probitatea profesională și morală a colegilor lor.*

### **How to interpret this article**

This provision concerns the conduct of the magistrate in the judicial organisation in general and the court/office where they are appointed. Their conduct towards their colleagues reflects the way they see their proper role and function as a magistrate. In other words: if they behave incorrectly to colleagues, it casts doubts as to their own attitude towards the profession.

### **How to apply this article**

Conduct during trials, meetings, shows the required respect for a colleague, junior or senior. Maintaining a good spirit among colleagues is each other's responsibility. Being helpful and supportive when necessary brings a lot to the climat in the organization and favour the fulfilment of the magistrate's duties.

Among themselves employees (includes judges and prosecutors) behave open and respectful; they realise being responsible for a professional culture and promote giving and receiving feedback.

What about relations with the legal profession ?

This is a question related to both impartiality and incompatibilities, but also related to dignity, honor and decency.

A judge shall , in his or her personal relations with individual members of the legal

profession who practice regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.

What about social events with lawyers? In most countries it is normal for judges to attend venues organized by practising legal profession and to mix with advocates or prosecutors on a social basis.

Social contact with legal profession is a long-standing tradition in many countries and is normally proper. Judges cannot be expected to cut all ties with the legal profession upon assuming judicial office. Nonetheless, a judge should act on the basis of common sense and exercise caution.

Social relationship with individual lawyers, who regularly appears before a judge could be a problem- especially if this leads to the suspicion that the judge and the lawyer have a close relationship.

**Art. 19**

*Judecătorii și procurorii își pot exprima public opinia privind exercitarea dreptului la replică în cazul în care prin articole de presă sau în emisiuni audiovizuale s-au făcut afirmații defăimătoare la adresa lor.*

**How to interpret this article**

Judges and prosecutors should exercise their freedom to comment in the media, with ‘the greatest circumspection’. A judge should refrain from answering public criticism of a judgment or decision, whether from the bench or otherwise. Judges should not air disagreements over judicial decisions in the press.

Guidance as to how to react when a judge is factually misreported or where the judge is aware, particularly when sentencing in a criminal case, that remarks could be misinterpreted by reporters, is contained in the guidance on dealing with the media available on the judicial intranet.

**How to apply this article**

The magistrate has to be aware of the ethical issues involved in situations in which she or he issues comments in the media about judicial proceedings.

**Art. 20**

*Judecătorii și procurorii nu pot desfășura acțiuni care, prin natura lor sau modul de finanțare ori executare, ar putea, în orice formă, să impiezeze îndeplinirea cu imparțialitate, corectitudine și în termenele legale a obligațiilor profesionale.*

**How to interpret this article**

This can be considered as what sometimes is called an umbrella article, covering all kinds of actions that must be considered contrary to what a good magistrate would do or not do. The article is edited in a rather general way, which requires becoming more clear and specific on the basis of developing case law.

**How to apply this article**

A series of examples and references may help and guide the magistrate who seeks to implement the provisions of this article:

- calling journalists in order to publicise ones investigation activity
- showing favouritism towards some courts-expert witnesses;
- choosing his own family member as an expert witness.

## Conclusions

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

Since the public expects a high standard of conduct from a judge, he or she must, when in doubt, ask the question:

***"How would this look in the eyes of the public?"***

***Whenever in doubt one should always ask oneself this ultimate question!***

As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.

A judge must accept restrictions on his or her activities and should as much as possible live an exemplary life inside and outside office. He or she must behave in public with sensibility and self- control.



## **Chapter VII**

### **Activities incompatible quality of a judge or prosecutor**

#### **General remarks**

#### **Art. 21**

*(1) Judecătorii și procurorii nu pot cumula această calitate cu nici o altă funcție publică sau privată, cu excepția funcțiilor didactice din învățământul superior.*

*(2) Judecătorii și procurorii pot participa ca formatori în cadrul Institutului Național al Magistraturii și Școlii Naționale de Grefieri, potrivit programului stabilit de acestea cu conducerile instanțelor sau parchetelor în care formatorii își desfășoară activitatea.*

#### **How to interpret this article**

Art 21 of the Code has to be read and understood in the context of art 5, 8 and 11 of LSJP. The provisions of LSJP has partly similar contents. They are slightly contradictory to the code and in case of contradiction the Law prevails.

#### **How to apply this article**

In general, additional positions are not permitted for magistrates, unless they concerned the said activities. It does not prevent however, magistrates being

coach of a sports team of their children or a board member of a music choir.

Any function in private companies like boards of supervisors, are a no go area for magistrates. This is different in many other countries, but then they are made public; the judiciari's website contains the information so that parties can see if there are circumstances jeopardising their impartiality

In case of an additional function (in a charity organisation, sports club ort such) the judge will not hear the case when the involvement is such that his impartiality would become an issue under discussion. This includes previous additional functions during the past three years.

In case of an additional function of any nature, the magistrate must always be aware that this can always influence his impartiality.

## **Art. 22**

*Judecătorilor și procurorilor le este interzisă participarea directă ori prin persoane interpuse la jocuri de tip piramidal, jocuri de noroc sau sisteme de investiții pentru care nu este asigurată transparența fondurilor, în condițiile legii.*

### **How to interpret this article**

This article instantiates a very particular case of incompatibility for judges and prosecutors. It underlines, on one side, the need for transparency, on the other side, the fact that the use of interposed persons cannot be accepted.

### **How to apply this article**

Presently or in the recent past, the market has offered ways to spend money/invest in schemes that promise high turnouts and profits. These appeared to be pyramid schemes that were bound to collapse, which they did.

A magistrate should not enter into these kinds of “investments”. They can be recognized by the fact that they are not recognized by the usual controlling authorities, are not registered at stock exchanges and have characteristics in terms of people responsible and the way funds are effectively spent. The magistrate should stay away from these.

However, a publicly accessible casino is allowed, but with proper moderation. There is no reason to forbid betting on horse races or buying tickets in a lottery, as long as these are publicly observable activities. In case this provision would not directly be applied, one has to bear in mind the provision of LSJP art 90 (1) that

*"Judges and prosecutors shall have the obligation to refrain from any act that is likely to compromise their dignity in their profession and in society."*

In other words, discretion should be exercised by engaging in gambling. On this there is this explicit provision. To pay an occasional visit to a casino would in some countries be no problem, but to stand frequently at the betting window at horseraces or slot-machines is not advisable.

### **Art. 23**

*Judecătorii și procurorii sunt datori să se abțină, potrivit legii, de la orice activitate legată de actul de justiție în cazurile care presupun existența unui conflict între interesele lor și interesul public de înfăptuire a justiției sau de apărare a intereselor generale ale societății.*

#### **How to interpret this article**

This provision has almost the similar content as art 17 of the code and as art 90 (1) in LSJP and should be read in the same manner and with the same understanding. There is a quite identical provision in LSJP art 5 (2) although the provision of LSJP has a more elaborated content.

#### **How to apply this article**

An illustration from abroad will help us to grasp the kind of moral reasoning that it is required here:

“In a formal meeting, in the presence of his lawyer, the prosecutor has reported that he had a case file at home, which was not allowed. He wanted to research this file and acted contrary to his obligation, for instance by abusing his powers by asking with competent authorities for registration numbers, phone numbers personals data and picture. In this matter he applied investigation activities beyond the usual channels, regarding a possibly existing bank account in M... with (a considerable amount of money). He had accepted the promise that he would receive 25% as a reward if this bank account could be traced”.<sup>8</sup>

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<sup>8</sup> Law case form Netherlands, High Administrative Appeals Court. 4 November 2010.



### **Final conclusions**

One of the most crucial issues related to ethical and deontological matters is to identify an ethical issue.

Very often one is influenced by "ethical blindness". One may see the ethical issue, but neglect it – often due to the fact that it is so common to neglect it. Then it is difficult to identify the matter as an ethical issue. This is why corruption some times is so difficult to strike down. It is part of the common culture. The challenge is thus to be aware of such blindness so that one can act according to the ethical standards .

It is crucial that ethical issues are being part of everyday life discussion among judges and prosecutors and that there is a common culture for the understanding and awareness for such issues and that they must be discussed among them.

If in doubt of how to act one should always ask oneself these crucial questions :

**Did I fulfilled my duties and obligations as a magistrate?**

**Did I feel inside myself like a moral person?**

**How would this look in the eyes of the public?**





## **Annex I**

### **International sources on judicial ethics and/or deontology for magistrates**

For a comprehensive overview over International Instruments and relevant information for legal professionals, this is highly recommended:

#### ***1. The Bangalore Principles of Judicial Conduct***

The Bangalore Principles of Judicial Conduct have six values –more elaborated in original text – that are well suited for an introduction to the international thinking as for ethical conduct:

*Value 1: INDEPENDENCE with Principle: Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.*

*Value 2: IMPARTIALITY with Principle: Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.*

*Value 3: INTEGRITY with Principle: Integrity is essential to the proper discharge of the judicial office.*

*Value 4: PROPRIETY with Principle: Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.*

*Value 5: EQUALITY with Principle: Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.*

*Value 6: COMPETENCE AND DILIGENCE with Principle: Competence and diligence are prerequisites to the due performance of judicial office.*

## **2.The CoE Recommendation CM/Rec(2010)12**

The CoE Recommendation CM/Rec(2010)12, Chapter VIII – Ethics of judges is an European fundament:

*72. Judges should be guided in their activities by ethical principles of professional conduct. These principles not only include duties that may be sanctioned by disciplinary measures, but offer guidance to judges on how to conduct themselves.*

*73. These principles should be laid down in codes of judicial ethics which should inspire public confidence in judges and the judiciary. Judges should play a leading role in the development of such codes.*

*74. Judges should be able to seek advice on ethics from a body within the judiciary.*

***The following documents can be regarded as authoritative and helpful:***

International Principles on the Independence and Accountability of Judges, Lawyers and Prosecutors, Practitioners Guide No. 1<sup>9</sup>

The International Association of Judicial Independence and World Peace has compiled/edited the Mount Scopus Standards of Judicial Independence of 19 March 2008, revised in 2014, “to contribute to the independence and impartiality of the judiciary, with a view to ensuring the legitimacy and effectiveness of the judicial process”<sup>10</sup>

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<sup>9</sup> (Second edition), Geneva, 2007:<http://www.refworld.org/pdfid/4a7837af2.pdf>

<sup>10</sup> <http://www.jiwp.org/#!mt-scopus-standards/c14de>

***UN Sources:***

Basic Principles on the Independence of the Judiciary (endorsed by General Assembly of United Nations Sources, resolutions 40/32 and 40/146, 1985)

Procedures for the Effective Implementation of the Basic Principles on the Independence of the Judiciary (ECOSOC resolution 1989/60)

Basic Principles on the Independence of the Judiciary in Romanian language  
Guidelines on the Role of Prosecutors (welcomed by General Assembly resolution 45/166, 1990)

The Bangalore Principles of Judicial Conduct (Judicial Group on Strengthening Judicial Integrity, 2002)<sup>11</sup>

Commentary to the Bangalore Principles (Judicial Group on Strengthening Judicial Integrity, 2002)

Measures for the effective implementation of the Bangalore Principles of Judicial Conduct (Judicial Group on Strengthening Judicial Integrity, 2010)

A Guide to the Status and Role of Prosecutors (UN Office on Drugs and Crime & International Association of Prosecutors, 2014)

***European Sources***

Judges' Charter in Europe (European Association of Judges, 1997)

European Charter on the statute for judges and Explanatory Memorandum (Council of Europe, 1998)

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<sup>11</sup> The Bangalore Principles of Judicial Conduct in Romanian language:<https://crisidanilet.files.wordpress.com/2009/11/standarde-bangalore-20-12-2009.pdf>

Recommendation on the role of public prosecution in the criminal justice system (Council of Europe, 2000)

Recommendation CM/Rec(2010)12 to member states on judges: independence, efficiency and responsibilities (Council of Europe, 2010) adopted on 17 November 2010 and Explanatory Memorandum .<sup>12</sup>

Consultative Council of European Judges, Magna Carta of Judges<sup>13</sup>

European Network of Councils for the Judiciary, Judicial Ethics: Principles, Values and Qualities<sup>14</sup>

Venice Commission Report On the Independence of the Judicial System. Part I: The Independence of Judges<sup>15</sup>

Venice Commission Report on European Standards as Regards the Independence of the Judicial System: Part II: The Prosecution Service<sup>16</sup>

European Network of Councils for the Judiciary, Dublin Declaration on Standards for the Recruitment and Appointment of Members of the Judiciary (2012)

Recommendation on the role of public prosecution outside the criminal justice system (Council of Europe, 2012)

### ***Recommended reading on independence***

The Norwegian Judges Association: “The Independence of Judges”, Eleven International Publishing, ISBN 978-94-6236-116-4, the Hague 2014

Constitutional Reform Act 2005<sup>17</sup>

This website contains a short overview of what independence is about and lists

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<sup>12</sup>[http://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec\(2010\)12E\\_%20judges.pdf](http://www.coe.int/t/dghl/standardsetting/cdcj/CDCJ%20Recommendations/CMRec(2010)12E_%20judges.pdf)

<sup>13</sup> CCJE – CCJE(2010)3 final

<sup>14</sup> Report adopted in the 2010 London Declaration on Judicial Ethics.

<sup>15</sup> CDL-AD(2010)004

<sup>16</sup> CDL-AD(2010)040

<sup>17</sup> <http://www.legislation.gov.uk/>

“Selected lectures, articles and books on judicial independence”.<sup>18</sup>

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<sup>18</sup> <http://www.judiciary.gov.uk/about-the-judiciary/the-judiciary-the-government-and-the-constitution/jud-acc-ind/independence/>





European Network of Councils  
for the Judiciary (ENCJ)

Réseau européen des Conseils  
de la Justice (RECJ)

ENCJ WORKING GROUP

# Judicial Ethics Report 2009-2010

GROUPE DE TRAVAIL RECJ

# Déontologie judiciaire Rapport 2009-2010



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<p style="text-align: center;"><b><u>DEONTOLOGIE DES JUGES<sup>1</sup></u></b></p> <p style="text-align: center;"><b><u>PRINCIPES, VALEURS ET QUALITES</u></b></p>	<p style="text-align: center;"><b><u>JUDICIAL ETHICS<sup>2</sup></u></b></p> <p style="text-align: center;"><b><u>PRINCIPLES, VALUES AND QUALITIES</u></b></p>
<p><b><u>INTRODUCTION</u></b></p> <p>L'affirmation de principes de conduite professionnelle des juges renforce la confiance de tous et permet de mieux connaître le rôle du juge dans la société.</p> <p>Traditionnellement, la mission du juge consiste à appliquer la loi ou à régler les conflits par l'application du droit. L'obligation de légalité est une garantie contre l'arbitraire du juge.</p> <p>Néanmoins, dans nos sociétés européennes, le rôle du juge a évolué : il n'est pas cantonné à « être la bouche de la loi » ; il est aussi dans une certaine limite créateur de droit, ce qui implique des responsabilités et des règles déontologiques conformes à cette évolution.</p> <p>Par ailleurs, nos sociétés réclament plus de transparence sur le fonctionnement des institutions publiques</p> <p>Ce sont les attentes de la société envers les juges qui ont conduit la réflexion du Réseau européen des Conseils de la Justice sur la question de la déontologie des juges. Il s'est soucié de rechercher l'équilibre entre indépendance de la justice [qui n'est pas un privilège], transparence des institutions, liberté de presse et droit à l'information du public.</p> <p>La déontologie a été abordée de manière positive afin que soient réaffirmées, à la fois, des valeurs fondatrices communes à la fonction de juger, des principes préventifs, des qualités personnelles et des réponses aux attentes du public.</p>	<p><b><u>INTRODUCTION</u></b></p> <p>The affirmation of principles of professional conduct for judges strengthens public confidence and allows a better understanding of the role of the judge in society.</p> <p>Traditionally, the role of a judge is to apply the law or resolve conflicts by the implementation of the law. The duty to act lawfully guarantees against any arbitrary behaviour on the part of judge.</p> <p>Nevertheless, in our European societies, the judge's role has evolved: it is no longer confined to being "the mouthpiece of the law"; the judge is also, to a certain extent, a creator of law, which requires responsibilities and ethical rules consistent with this evolution.</p> <p>Moreover, our societies are demanding more transparency in the functioning of the public bodies.</p> <p>Society's expectations of judges have caused the European Network of Councils for the Judiciary to reflect on the question of judicial ethics. It is concerned with striking a balance between the independence of justice [to which everyone is entitled], the transparency of institutions, the freedom of the press and the public's right to information.</p> <p>Judicial ethics have been addressed in a positive manner, to emphasize the common, founding values of the judge's work, preventive principles and personal qualities and to response to the public's expectations.</p>

<sup>1</sup> Ces principes déontologiques ont été rédigés conformément à la décision prise par l'assemblée générale du RE CJ deen 2007 à Bruxelles. Ils sont le résultat d'un travail qui a duré deux années.

Le présent document devrait faire l'objet d'une consultation menée auprès de tous les membres et observateurs du RE CJ. Si ces principes sont adoptés ils pourraient faire l'objet d'une consultation des juges (magistrats) de ces mêmes pays ?

<sup>2</sup> These ethical principles have been written according to the decision taken by the ENCJ General Assembly which took place in Brussels in June 2007. They are the result of a two years work.

The ENCJ Members and Observers should be consulted on this document. If these principles are adopted, European judges should be consulted.



Indépendance, intégrité, impartialité, réserve-discrétion, diligence, respect et capacité d'écoute, égalité de traitement, compétence et transparence sont les valeurs communes retenues (Partie I). Le juge présente aussi en sa personne des qualités de courage, de sagesse, de bon sens, d'humanité, d'écoute et avoir conscience que son comportement professionnel, sa vie privée et sa conduite en société ont une influence sur l'image de la justice et la confiance du public (Partie II).

Independence, integrity, impartiality, reserve and discretion, diligence, respect and the ability to listen, equality of treatment, competence and transparency are the common values identified [as essential to the judicial role] (Part I). The judge also demonstrates personal qualities of wisdom, loyalty, a sense of humanity, courage, seriousness and prudence, an ability to work and an ability to listen and to communicate effectively. A judge is aware that his professional behaviour, his private life and his conduct in society have an influence on the image of justice and public confidence (Part II).

## **PARTIE I – LES VALEURS**

## **PART 1 – THE VALUES / MERITS**

Les principes déontologiques suivants ont été définis à partir de la question suivante : **qu'attendent du juge la société et les citoyens ?**

The following principles of ethics have been defined from the following question: **what do society and citizens expect of a judge ?**

### **L'INDEPENDANCE**

### **INDEPENDENCE**

L'indépendance n'est pas un privilège octroyé pour le bénéfice des juges.

Independence is not a privilege granted for the benefit of Judges.

**L'indépendance, c'est le droit reconnu à chaque citoyen dans une société démocratique, de bénéficier d'un pouvoir judiciaire indépendant (et considéré comme tel) des pouvoirs législatif et exécutif, et qui est constituée pour sauvegarder la liberté et les droits des citoyens dans le cadre de l'Etat de droit.**

**Independence is the right of every citizen in a democratic society to benefit from a judiciary which is, (and is seen to be), independent of the legislative and executive branches of government, and which is established to safeguard the freedom and the rights of the citizen under the rule of law.**

Il appartient à chaque juge de respecter et de contribuer à maintenir l'indépendance du pouvoir judiciaire, à la fois dans ses aspects individuels et dans ses aspects institutionnels.

It is up to each judge to respect and to work to maintain the independence of the judiciary, both in its individual aspects and in its institutional aspects.

Cette indépendance le conduit à appliquer le droit, au vu des éléments du dossier particulier, sans céder à la crainte de déplaire ni au désir de plaire à toutes les formes du pouvoir, exécutif, parlementaire, politique, hiérarchique, économique, médiatique ou de l'opinion publique.

This independence leads him to apply the law to the matters which are placed before him in a specific case, without fearing to please or to displease all forms of power, executive, legislative, political, hierarchical, economic, of the media or public opinion.

Le juge se doit également de veiller à rester indépendant y compris à l'égard de ses collègues et de tous groupes de pressions divers.

A judge also takes care to remain independent of his colleagues and all pressure groups

## L'INTEGRITE

## INTEGRITY

**Le juge remplit son rôle avec intégrité, dans l'intérêt de la justice et de la société. Il a ce même devoir d'intégrité dans sa conduite en société et dans sa vie personnelle.**

**The judge fulfils his role with integrity, in the interests of justice and society. He has the same duty of integrity in his public life and in his personal life.**

Un devoir de probité et un devoir de dignité et d'honneur découlent du principe d'intégrité.

Two duties can result from this principle of integrity: the duty of probity and the duty of dignity or honour.

### 2.1 La probité

### 2.1. Probity

La probité conduit le juge à s'interdire non seulement tous les comportements sanctionnés par la loi mais aussi tous les comportements indécents.

Probity leads the judge to refrain from any tactless or indelicate behaviour, and not just behaviour which is contrary to law.

Le juge s'acquitte de ses fonctions judiciaires sans favoritisme.

The judge exercises his judicial functions without favouritism.

Il consacre l'essentiel de son temps de travail à ses activités juridictionnelles.

He dedicates the main part of his working time to his court activities.

Il veille à une bonne utilisation des ressources qui lui sont confiées pour l'administration de la justice sans usage abusif ou inapproprié.

He ensures the correct use of resources conferred upon him for the administration of justice and does not abuse those resources or use them inappropriately.

Il s'abstient de solliciter des interventions indues pour obtenir une mutation, nomination ou promotion personnelle ou d'agir pour faire obtenir un avantage à lui-même ou à d'autres.

He does not seek unwarranted interventions in order to achieve any transfer, appointment or personal promotion, nor act to seek to procure an advantage for himself or for others.

Il s'interdit d'accepter des cadeaux ou avantages pour lui-même ou pour ses proches, à l'occasion de ses fonctions juridictionnelles.

He refuses to accept any gifts or advantages for himself or for those close to him while exercising his functions as judge.

### 2.2. La dignité et l'honneur

### 2.2. Dignity and honour

Le juge exerce ses fonctions en appliquant loyalement les règles de procédure, dans le respect des personnes et dans le cadre de la loi.

The judge exercises his functions by applying loyally the rules of procedure, by showing concern for the dignity of individuals and by acting within the framework of the law.

Courtoisie et probité intellectuelle inspirent ses rapports avec tous les professionnels de la justice, secrétariat, greffe, avocats, avoués, magistrats, justiciables et avec la presse.

Courtesy and intellectual probity govern his relations with all the professionals within the justice system, the secretariat, clerks, advocates and other lawyers, magistrates, the parties involved in cases and the press.

L'honneur impose au juge de veiller, par son exercice professionnel et sa personne, à ne pas mettre en cause son image ni celle de la juridiction et de la justice.

Honour requires to a judge to ensure, through his professional practice and person, that he does not jeopardise the public image of the judge, the court and the justice system.

### **L'IMPARTIALITE**

### **IMPARTIALITY**

L'impartialité et sa perception sont, avec l'indépendance, essentielles pour un procès équitable.

Impartiality and people's perception of impartiality are, with independence, essential to a fair trial.

**L'impartialité du juge représente l'absence de tout préjugé ou d'idées préconçues lorsqu'il rend un jugement, ou dans les procédures préalables à son jugement.**

**The impartiality of the judge represents the absence of any prejudice or preconceived idea when exercising judgment, as well as in the procedures adopted prior to the delivery of the judgment.**

Le juge se doit de prendre conscience de ses éventuels préjugés.<sup>3</sup>

The judge is aware of the possibility of his own prejudices.<sup>4</sup>

Pour garantir l'impartialité, le juge :

To guarantee impartiality, the judge :

- Remplit ses attributions judiciaires sans craintes, sans favoritisme ni préjugés
- Adopte, dans l'exercice de ses fonctions et même en dehors de ses fonctions, une conduite qui soutient la confiance dans l'impartialité des juges et minimise les situations qui pourraient conduire à la récusation
- S'abstient de siéger dans des affaires lorsque :
  - o il ne peut pas juger l'affaire de façon impartiale pour un observateur objectif
  - o il a des relations avec une partie ou s'il a une connaissance à titre personnel des faits, il a représenté, assisté ou a agi contre l'une des parties, ou s'il existe une situation telle que la subjectivité affecterait l'impartialité ;

- Fulfils his judicial duties without fear, favouritism or prejudice;
- Adopts, both in the exercise of his functions and in his personal life, a conduct which sustains confidence in judicial impartiality and minimises the situations which might lead to a recusal ;
- Recuses himself from cases when:
  - o he cannot judge the case in an impartial manner in the eyes of an objective observer ;
  - o he has a connection with one of the parties or has personal knowledge of the facts, has represented, assisted or acted against one of the parties, or there is another situation which, subjectively, would affect his impartiality;
  - o he or a member of his family has an

<sup>3</sup> Il s'agit de l'impartialité tant subjective qu'objective. L'impartialité objective est liée aux fonctions et que l'impartialité subjective est liée à la personnalité de l'individu.

<sup>4</sup> It is a matter of subjective and objective impartiality. Objective impartiality is related to the functions and the subjective impartiality concerns the personality of the individual.

- o lui-même ou un membre de sa famille a des intérêts dans l'issue du procès.

Le juge a une obligation de vigilance afin de prévenir les conflits d'intérêts entre devoirs judiciaires et vie sociale. S'il est source de conflits d'intérêt réel ou potentiel, le juge ne siège pas ou se retire immédiatement de l'affaire, afin d'éviter d'être suspecté d'impartialité.

Le juge veille dans sa vie privée à ne pas remettre en cause auprès du public l'image d'impartialité de sa juridiction.

L'impartialité n'empêche pas le juge de prendre part à la vie sociale afin de mener son activité professionnelle.

Il dispose d'une pleine liberté d'opinion, mais l'impartialité l'oblige à être mesuré dans la manifestation de son opinion, même dans les pays où l'adhésion à un parti politique est autorisée.

En tout cas, cette liberté d'opinion ne peut pas être manifestée dans l'exercice de ses fonctions juridictionnelles.

**LA RESERVE ET LA DISCRETION**

Le juge évite tout comportement de nature à faire croire que ses décisions sont inspirées par des mobiles autres qu'une application juste et raisonnée de la loi. En même temps, le juge est lui-même un citoyen et a droit, à ce titre et en dehors de l'exercice de ses fonctions juridictionnelles à la liberté d'expression reconnue par l'ensemble des conventions internationales de protection des droits de l'Homme.

Le juge met tout en œuvre pour ne pas heurter, dans l'exercice de ses fonctions et dans sa vie privée, la confiance que les justiciables placent en lui.

interest in the outcome of the trial.

A judge has a duty of care to prevent conflicts of interest between his judicial duties and his social life. If he is a source of actual or potential conflicts of interest, the judge does not take on, or withdraws immediately from, the case, to avoid his impartiality being called into question.

A judge ensures that his private life does not affect the public image of the impartiality of his judicial work.

Impartiality does not prevent a judge from taking part in social life in order to carry on his professional activity.

He is entitled to complete freedom of opinion but must be measured in expressing his opinions, even in countries in which a judge is allowed to be a member of a political organisation.

In any event, this freedom of opinion cannot be manifested in the exercise of his judicial duties.

**RESERVE AND DISCRETION**

A judge avoids any conduct likely to promote the belief that his decisions are driven by motives other than the fair and reasoned application of the law. At the same time, a judge is himself a citizen and entitled, as such, outside the exercise of his judicial functions to freedom of expression recognised by all international conventions protecting human rights.

A judge makes every effort not to offend, in exercising his functions and in his private life, the trust that individuals hold in him.

**La réserve et la discrétion du juge comportent un équilibre entre ses droits du citoyen – juge et les contraintes liées à la fonction.**

**The judge's reserve and discretion involve a balance between the rights of the judge as a citizen and the constraints linked to his function.**

## Dans la vie publique

Dans le domaine de la **politique**, le juge, comme tout citoyen, a le droit d'avoir une opinion politique. Il veille simplement, par sa réserve, à ce que le justiciable puisse accorder toute sa confiance à la justice, sans s'inquiéter des opinions du juge.

Le juge fait preuve de la même réserve dans ses rapports avec les **médias**. Il ne peut, au nom de la liberté d'opinion, apparaître comme partial ou acquis à une partie. Face aux critiques ou aux attaques, le juge garde la mesure dans sa défense.

Le juge s'abstient de formuler des commentaires sur ses décisions, même si celles-ci sont désapprouvées par les médias ou la doctrine, ou encore si elles sont réformées. Son mode d'expression est la **motivation de ses décisions**

La réserve ne peut servir d'alibi au juge, s'il évite de s'exprimer sur les dossiers qu'il traite personnellement, il n'en est pas moins, idéalement placé pour expliquer les règles légales et leur application. Le juge a un **rôle pédagogique** à jouer de soutien de la loi, aux côtés des autres institutions chargées de la même mission.

Lorsque la démocratie et les libertés fondamentales sont en péril, la réserve peut céder devant un devoir d'indignation.

## Dans la vie privée

En dehors de l'exercice de ses fonctions, le juge s'abstient de faire valoir sa qualité à l'égard des tiers. Il ne donne pas l'impression de vouloir faire pression ou laisser croire qu'il est propriétaire, à titre personnel, des pouvoirs que la loi lui donne dans le cadre de ses missions judiciaires.

Comme toute personne, le juge a droit au respect de sa vie privée. Son devoir de réserve ne s'oppose pas à ce qu'il mène une vie sociale normale : il lui suffit de s'entourer, avec discernement, de certaines précautions, pour éviter de porter atteinte à la dignité de ses fonctions ou à sa capacité de les exercer.

## In public life

In **politics**, a judge, like any citizen, has the right to have a political opinion. His task, by showing this reserve, is to ensure that individuals can have every confidence in justice, without worrying about the opinions of the judge.

A judge exercises the same reserve in his dealings with the **media**. He cannot, in the name of freedom of expression, appear to be partial or in favour of one party. In facing criticism or attacks, a judge exercises the same caution.

A judge will refrain from commenting on his decisions, even if they are criticised by the media or by academic commentators and even if they are overturned on appeal. The way in which he expresses his opinion is in the **reasoning of his decisions**.

At the same time, the obligation of reserve cannot provide a judge with an excuse for inactivity. While he should not speak on cases with which he deals personally, the judge is nonetheless ideally placed to explain the legal rules and their application. The judge has an **educational role** to play in support of the law, together with other institutions which have the same mission.

When democracy and fundamental freedoms are in peril, a judge's reserve may yield to the duty to speak out.

## In his private life

Apart from carrying out his duties, a judge refrains from asserting his status as a judge in his dealings with third parties. He does not give the impression of wanting to put pressure on third parties or cause them to think that a judge is entitled, on a personal level, to exercise powers that the law vests in him in the course of his judicial activities.

Like any person, a judge has the right to his private life. His duty of reserve does not preclude him from having a normal social life: it is enough if he takes some common sense precautions in order to avoid undermining the dignity of his office or his ability to exercise it.

## **LA DILIGENCE**

La diligence est nécessaire pour obtenir et accroître la confiance du public dans la justice.

## **DILIGENCE**

Diligence is necessary to obtain and increase public confidence in justice.

**Le juge fait preuve de diligence dans le traitement des affaires qui doivent être examinées et jugées en temps utile dans un délai adapté à la question soumise, tout en assurant la qualité de la décision.**

**The judge is diligent in handling cases. That means that they are dealt with and judged within a reasonable period appropriate to the subject matter, while ensuring the quality of the decision.**

La diligence de la procédure judiciaire est influencée outre la législation et les moyens accordés à la justice, par l'attitude et le travail du juge.

The promptness of legal proceedings is influenced not only by legislation and the resources made available to the justice system but also by the attitude and work of the judge.

Il lui revient :

- d'améliorer sa formation pour éviter le retard de la procédure causé par son approche non professionnelle.
- de maintenir pendant toute sa vie le plus haut niveau de compétence professionnelle
- d'utiliser tous les outils juridiques, avec lesquels il se familiarise.

The judge

- improves his training in order to avoid any delay in the proceedings caused by a non-professional approach.
- maintains throughout his life the highest level of professional competence
- uses all the legal tools that he learns.

Dans chaque procédure, il veille à fixer des délais raisonnables aux parties et à lui-même.

In each procedure, he ensures that reasonable deadlines are set for the parties and for himself.

Le juge fait tous les efforts pour être le plus prompt possible et pour rendre ses décisions sans retard.

The judge makes every effort to conduct proceedings efficiently and to make his decisions without delay.

## **LE RESPECT ET L'ÉCOUTE**

La société et ses membres attendent d'être respectés et écoutés par le juge dans l'exercice de ses fonctions.

## **RESPECT AND THE ABILITY TO LISTEN**

Society and its members expect a judge in the exercise of his functions to respect them and hear them.

**Le respect est l'aptitude du juge à avoir de la considération pour la place et la dignité des personnes concernées.**

**Respect may be thought of as the judge's aptitude to show due consideration to people's position and their dignity.**

**L'écoute est l'aptitude du juge à prêter toute l'attention à l'exposé des faits et aux déductions techniques des parties, de leurs défenseurs respectifs.**

**Listening should be viewed as the judge's aptitude to pay attention to the exposition of facts and technical reasoning put forward by the parties and their counsel.**

Le juge agit avec le public, les avocats, les collègues et le personnel administratif, avec dignité, correction et disponibilité.

Dans l'organisation du travail, le juge tient compte avec mesure et attention, des impératifs de tous ceux qui sont concernés par l'affaire.

Il crée à l'audience une atmosphère sereine, en écoutant avec la même attention toutes les parties au procès et leur représentant

Il a un comportement respectueux du personnel administratif et de la sphère d'autonomie des fonctions et des compétences du personnel.

Le juge entretient avec ses collègues des rapports corrects et respectueux dans le souci de leur autonomie et de leur indépendance.

Le juge, individuellement, collégalement ou dans l'exercice de responsabilités de direction, veille à ce que les valeurs de respect et d'écoute soient partagées et respectées par tous.

### **L'ÉGALITE DE TRAITEMENT**

**L'égalité de traitement oblige le juge à accorder à chacun ce à quoi il a droit, tant dans les processus que dans les résultats et en tout cas, en reconnaissant le caractère unique de chaque individu.**

Le juge a de la considération pour toutes les personnes qui comparaissent devant lui et faire en sorte de les traiter également.

Il est conscient des différences objectives existant entre diverses catégories de personnes et fait les efforts pour que chaque partie soit écoutée, entendue et respectée.

Il veille à ce que personne ne puisse dire avoir été ignoré, traité avec condescendance ou méprisé.

Lorsque la Constitution ou les lois nationales ou les règles internationales la prévoit, le juge applique une discrimination positive, dans les autres cas il fait prévaloir l'égalité de traitement.

The judge in his dealings with the public, lawyers, his colleagues and administrative staff behaves in a manner which is dignified, correct and receptive.

In his organisation of work, a judge takes into account and gives care and attention to the requirements of all those affected by the case.

He creates a serene atmosphere in his court, listening with the same attention to all parties at the trial and their representatives.

He conducts himself in a way which is respectful of the administrative staff, and of their autonomous sphere of duty and competence.

He maintains relations with colleagues which are both proper and respectful of their autonomy and independence.

The judge, individually or collectively or in the performance of his managerial duties, ensures that the values of respect and listening are shared and respected by all.

### **EQUALITY OF TREATMENT**

**Equality of treatment requires the judge to give everyone that to which he is entitled, both in the process and in the result of any case, through recognising the uniqueness of each individual.**

The judge has consideration for all persons who appear before him and makes sure to treat them equally.

He is aware of the objective differences between different categories of people and works to ensure that each party is heard, understood and respected.

He ensures that nobody can say that he has been ignored, or patronised, or despised.

When the Constitution, national laws or international rules provide for it, a judge may apply positive discrimination; in other cases he ensures that equality of treatment prevails.

## LA COMPETENCE

**La société est en droit d'avoir un juge compétent doté de grandes capacités professionnelles.**

Le juge s'adapte rapidement aux faits nouveaux.

Le juge a une approche méthodique de son travail. Il tient compte des particularités de chaque cas, y compris nouveaux et inconnus et les traite dans un temps approprié.

Le juge fait également preuve de persuasion, là où cela s'avère opportun, pour résoudre les conflits.

Le juge fait partie d'une communauté de travail dans laquelle il est en capacité de travailler en équipe avec les collègues et les collaborateurs.

## LA TRANSPARENCE

**L'information sur le fonctionnement de la justice et la présence du public, aux activités judiciaires autorisées, contribuent à son acceptation sociale. L'égal accès des personnes impliquées, en demande ou en défense, aux procédures civiles et pénales favorise cette transparence et renforce la confiance du public.**

Le juge veille à l'information du public sur le fonctionnement de la justice.

Il assure la transparence par la publicité des audiences et la motivation de ses décisions tout en préservant la confidentialité due au respect de la vie privée ou à la nécessité de l'ordre public.

Il maintient un équilibre entre la nécessaire transparence et le refus du voyeurisme ou de l'exhibitionnisme pour que la justice ne soit pas transformée en spectacle.

Dans les relations avec les médias, il fait prévaloir l'information institutionnelle. L'information sur les cas particuliers ne peut être donnée que dans le cadre juridique.

## COMPETENCE

**Society is entitled to a competent judge with a broad professional ability.**

The judge adapts quickly to new developments.

A judge has a methodical approach to his work. He takes into account the particularities of each case, including new and unknown aspects and manages the case within an appropriate time.

A judge also uses persuasiveness, where it is appropriate, to resolve conflicts.

A judge is part of a working community; He is able to work in teams with colleagues and staff members.

## TRANSPARENCY

**Information on the functioning of justice and the presence of the public at judicial proceedings contribute to their social acceptance. Equal access of individuals involved in claims or defence to civil and criminal proceedings promotes transparency and enhances public confidence.**

The judge sees to it that the public are given information on the functioning of justice.

He ensures transparency through public hearings and by giving reasons for his decisions while maintaining the confidentiality required to respect privacy or because of the need for public order.

He maintains a careful balance between the need for transparency and the prohibition of voyeurism or exhibitionism so as to ensure that justice does not become a spectacle.

In media relations, institutional information must prevail. Information on individual cases can be given only within the legal framework.



Dans sa vie privée et en société, par une vigilance renforcée pour éviter tous les conflits d'intérêts, il assure la transparence sur son impartialité.

In his private life and in society, the judge is always vigilant to avoid any conflict of interest. By doing so, he ensures transparency regarding his impartiality.

## **PARTIE II : Les qualités ou les vertus du juge.**

*La complexité de l'acte de juger, au delà des singularités déterminées par l'histoire de chaque pays, fait que plusieurs qualités ou vertus doivent être combinées pour que justice soit rendue.*

*La confiance en la justice n'est pas seulement garantie par un juge indépendant, impartial, intègre, compétent et diligent.*

*Le juge doit remplir sa mission avec sagesse, loyauté, humanité, courage, sérieux, prudence et en ayant des capacités d'écoute, de communication et de travail.*

*Ces exigences ne sont pas spécifiques au juge mais elles sont essentielles pour réserver à chacun le droit au juge.*

### **LA SAGESSE**

Par sa connaissance des réalités, du droit, et par son comportement raisonnable, juste et prudent, le juge fait preuve de sagesse.

Ce comportement sage le conduit à écarter l'outrance et l'extravagance dans l'exercice de ses fonctions sans pour autant montrer timidité ou paralysie qui le conduiraient au conformisme. Il fait preuve de créativité dans l'application du droit afin de régler les cas qui lui sont soumis y compris ceux qui ne sont pas réglés par la loi. Les lois n'évoluant pas au même rythme que la société, il lui revient de faire preuve de sagesse dans l'utilisation des techniques d'interprétation..

Cette vertu lui impose calme et prudence face aux conflits qui lui sont soumis, en se montrant capable de discernement et de distance par rapport aux parties et aux faits qu'il est amené à juger.

## **PART II : The qualities or virtues of a judge**

*The complexity of the act of judging, beyond the singularities determined by the history of each country, means that many virtues or qualities must be combined so that justice can be done.*

*Confidence in justice is not only guaranteed by an independent, impartial, honest, competent and diligent judge.*

*A judge should perform his role with wisdom, loyalty, humanity, courage, seriousness and prudence, while having the capacity to listen, communicate and work.*

*These requirements are not specific to the judge but they are essential to guarantee the right of everyone to have a judge.*

### **WISDOM**

Through his knowledge of the realities and of the law, and by his reasonable, fair and prudent behaviour, a judge shows his wisdom.

By behaving in this way, he removes excess and extravagance in the exercise of his functions while at the same time not showing signs of timidity or paralysis that would lead to conformity. He is creative in applying the law to determine cases, including those which are not settled by existing law. Since law does not evolve at the same pace as society does, he shows wisdom in using techniques of interpretation.

This virtue enables him to be calm and prudent when dealing with disputes, and allows him to discern and distance himself from the parties and the facts that he judges.

## **LA LOYAUTE**

Le juge est loyal.

La loyauté, avec l'indépendance, signifie que lorsque le juge prête serment, quel qu'en soit la formule, cette promesse symbolique l'engage envers l'état de droit.

En Europe, cet engagement s'entend par rapport à la Constitution de chaque pays, aux institutions démocratiques, aux droits fondamentaux, à la loi et à la procédure, enfin aux règles d'organisation du système judiciaire.

Le juge répond loyalement à une double exigence, ne pas outrepasser les pouvoirs qui lui sont confiés et les exercer.

Cette loyauté ne peut être exigée du juge lorsque la démocratie et les libertés fondamentales sont en péril.

Dans les pays qui reconnaissent aux juges la liberté d'adhésion à des partis politiques ou permettent d'être candidat aux élections, les règles nationale d'incompatibilités peuvent encadrer l'expression politique ou la candidature, pour préserver à tous l'accès à un juge indépendant et impartial.

## **L'HUMANITE**

Le sens de l'humanité du juge se manifeste par le respect des personnes et de leur dignité dans toutes les circonstances de sa vie professionnelle et privée

Sa conduite est basée sur le respect de la personne humaine en considérant l'ensemble de leurs caractéristiques, physique, culturelle, intellectuelle, sociale, ainsi que la race et le genre de la personne.

Le juge fait preuve de respect dans ses rapports envers les justiciables mais aussi envers ceux qui composent son environnement professionnel, avocats, personnels administratifs etc.

Cette humanité qui recouvre aussi une sensibilité aux situations qui lui sont soumises lui permet de prendre en compte la dimension humaine de ses décisions. Il lui revient dans son

## **LOYALTY**

A judge is loyal.

This loyalty, together with independence, means that when the judge takes an oath, whatever its formula, this symbolic promise of loyalty binds him to the rule of law in the State.

In Europe, this commitment involves loyalty to the Constitution of each country, to its democratic institutions, to fundamental rights, to law and to procedure, and finally to the rules of the organisation of the judicial system.

A judge loyally meets two requirements: not to exceed the powers entrusted in him and to exercise them.

This loyalty cannot be demanded of a judge when democracy and fundamental freedoms are in peril.

In countries which allow a judge to be a member of a political party or to be a candidate in political elections, national rules on incompatibilities can regulate political expression and candidature in order to ensure that everyone has access to an independent and impartial judge.

## **HUMANITY**

A judge's sense of humanity is manifested by his respect for persons and their dignity in all circumstances of his professional and private life.

His conduct is based on respect for human beings having regard to the totality of their characteristics whether physical, cultural, intellectual, or social, as well as the race and gender of the person.

A judge shows respect in dealing not only with the people whom he judges but also with those who are part of his working environment such as lawyers, administrative staff etc.

This humanity, which encompasses a sensitivity to situations he faces, enables him to take into account the human dimension in his decisions. In his assessment of facts and decisions he finds a

appréciation des faits et dans sa prise de décision de trouver la mesure entre empathie, compassion, bienveillance, rigueur et sévérité afin que son application du droit soit perçue comme légitime et juste.

### **LE COURAGE**

Le juge se montre courageux pour exercer la fonction de juger et répondre à ceux qui cherchent à obtenir justice.

Ce courage combiné à l'indépendance, peut aussi signifier pour le juge impopularité et solitude.

L'évolution de la société contemporaine fait que le courage du juge, physique ou moral, est nécessaire pour :

- mener certaines procédures,
- faire face aux pressions diverses, politiques, sociales, de l'opinion publique, des médias et du corporatisme,
- répondre aux défis de la société nouvelle.

Cette vertu tout comme les autres qualités, s'exercent de manière raisonnable.

### **LE SERIEUX ET LA PRUDENCE**

L'essence du sérieux et de la prudence du juge consiste en un comportement approprié.

Le sérieux oblige à se comporter de manière respectueuse durant les procédures judiciaires, avec courtoisie, sans solennité démesurée, sans humour inapproprié. Pour autant, le maintien du sérieux et la pratique de la prudence ne dispense pas de l'humanité qui régit les relations de toute communauté.

Le juge prudent combine sa connaissance du droit et celle des circonstances particulières de l'affaire, de manière raisonnée, tout en conservant un sens pratique commun.

La prudence guide le juge tant dans sa vie professionnelle que privée pour maintenir la confiance du public dans le système judiciaire et les tribunaux.

measure between empathy, compassion, kindness, discipline and severity, so that his application of law is perceived as legitimate and fair.

### **COURAGE**

A judge shows courage in order to execute his duties as a judge and to respond to those seeking justice.

This courage combined with independence can also lead to unpopularity and loneliness.

The evolution of contemporary society means that the judge must show courage, both physical and moral:

- in order to conduct certain procedures,
- to cope with various pressures, political, social, and of public opinion, as well as from the media and vested interests.
- to meet the challenges of modern society.

This virtue, like all other qualities, is exercised in a reasonable manner.

### **SERIOUSNESS AND PRUDENCE**

The essence of the seriousness and prudence of a judge consists in his behaving appropriately.

Seriousness requires behaving respectfully during legal proceedings, being courteous, without excessive solemnity, and without inappropriate humour. However, maintaining a professional practice of prudence does not exempt from the practice of humanity which governs the relationships of any community.

A prudent judge combines his knowledge of the law and of the particular circumstances of the case in a reasoned way while maintaining his practical common sense.

Prudence guides the judge in both his professional and private lives in order to maintain public confidence in the judiciary and the courts.

## **LE TRAVAIL**

La fonction judiciaire implique un travail soutenu et un effort intellectuel continu.

La capacité de travail du juge et sa détermination à utiliser cette capacité sont nécessaires pour développer ses compétences judiciaires, et garantir le travail de qualité attendu par le justiciable.

Ainsi, le juge organise son travail avec efficacité. Il fait preuve d'auto-discipline en sachant gérer le stress et la frustration, il est attentif aux opinions de ses collègues, il est soucieux du travail en équipe.

Enfin, un juge en charge de l'administration du tribunal développe ses compétences de gestion.

## **L'ECOUTE ET LA COMMUNICATION**

Le juge doit une écoute attentive aux parties à tous les stades de la procédure.

L'écoute suppose l'absence d'a priori et de préjugé. Cette qualité suppose non seulement une réelle disponibilité d'esprit mais aussi une capacité à se remettre en cause. L'écoute reste neutre, distante mais sans condescendance ni mépris, humaine mais sans compassion.

L'écoute et l'attention aux autres ne sont pas des qualités innées, elles se travaillent et font partie de la formation du juge.

Le juge est capable de communiquer avec les autres. Il s'exprime avec mesure, respect, de manière non discriminatoire et sereine. Il s'abstient d'utiliser des expressions ambiguës, irrespectueuses, condescendantes, ironiques, vexatoires ou blessantes.

Une bonne communication est aussi présente dans le jugement (écrit ou oral). Le juge veille à rendre des décisions intelligibles. Il motive sa décision de telle façon que toutes les personnes concernées puissent comprendre la logique sur laquelle il se fonde.

## **WORK**

Judicial office involves sustained hard work and persistent intellectual effort.

The judge's capacity for work and his determination to use this capacity are needed both to develop his judicial skills and to maintain the high quality of work that a litigant is entitled to expect from him.

Thus a judge organises his work efficiently. He demonstrates self discipline in coping with stress and frustration. If he works in team, he pays attention to the views of his colleagues and cultivates the skills of teamwork.

Finally, a judge involved in the management of the court develops his management skills.

## **LISTENING AND COMMUNICATION**

The judge is expected to listen carefully to the parties at all stages of the proceedings.

Listening implies absence of bias and of prejudice. This quality implies not only real open-mindedness and receptiveness but also the ability to call into question oneself. This listening remains neutral, distant but without being condescending or scornful, humane but dispassionate.

Listening skills and attention to others are not innate qualities; they are something which can be worked on and which are part of the training of judges.

A judge ensures that he is able to communicate with others. He expresses himself in a measured way, with respect, in a non-discriminatory manner and with serenity. He refrains from using expressions which are ambiguous, disrespectful, condescending, ironic, humiliating or hurtful.

Good communication is also present in his judgments (written or oral). A judge ensures that his judgments are intelligible. He gives reasons for his decision so that everyone involved can understand the logic on which the judge based his decision.



**RESOLUTION OF THE NATIONAL COUNCIL OF THE JUDICIARY**

**Of 19 February 2003**

**ON THE COLLECTION OF PRINCIPLES OF JUDGES' PROFESSIONAL ETHICS**

resolving upon a collection of principles  
of judges' professional ethics

Pursuant to art. 2.1.8 of the National Council of the Judiciary Act dated 17 July 2001 (Dziennik Ustaw [Journal of Laws] no. 100, item 1082), the National Council of the Judiciary shall resolve upon a collection of principles of judges' professional ethics attached to the resolution.

*Attachment to Resolution no. 25/2017  
of the National Council of the Judiciary  
dated 13 January 2017*

## **Chapter 1**

### **General principles**

#### **§1**

The office of a judge shall entail certain duties and personal restrictions.

#### **§2**

The judge shall always follow the rules of integrity, dignity, honour, sense of duty and shall always apply best practices.

#### **§3**

The judge must not take advantage of his status and prestigious position in his own interest or in the interest of other persons. In particular the judge should not abuse the immunity status granted to him.

#### **§3a**

A judge should avoid all kinds of personal contacts and economic relationships with natural persons, legal entities and other entities, and avoid taking actions in the private, professional and public spheres that could create a conflict of interests and thus have a negative impact on the judge's impartiality and undermine trust in the office of the judge.

#### **§4**

The judge should care for the authority of his office, the good of the court for which he works and the good of the administration of justice and the position of the court authority.

#### **§5**

1. The judge should follow the principles of conduct contained in this Collection of Principles of Judges' Professional Ethics (hereinafter referred to as the Collection).



2. The judge should not behave in a way that could jeopardise the judge's dignity or undermine confidence in his impartiality even if the Collection fails to provide for the same.
3. A judge who breaches ethical principles should immediately repair the effects of such breach or otherwise compensate a person injured by such conduct for the same.
4. The judge should demand impeccable behaviour from other judges and observing the principles of professional ethics and should appropriately react to misconduct.

#### §6

The principles of ethics adopted as part of the Collection shall apply to the trainee judges who have been entrusted with judges' tasks and, in an appropriate manner, to retired judges.

#### §7

The National Council of the Judiciary may change or amend provisions of the Collection and interpret them.

### **Chapter 2**

#### **Principles of service**

#### §8

In all cases assigned to him the judge shall act immediately and shall act in such way as to avoid generating unnecessary costs for the party and the State Treasury.

#### §9

1. The judge must not yield to any influences jeopardising his independence regardless of their source and reason.
2. In the event of circumstances that may jeopardise the independence of that office, the judge shall immediately notify his superior.

#### §10

The judge shall not act in a way that could undermine confidence in his independence and impartiality.

#### §11

1. The judge should explain procedural issues to parties and inform them about reasons of his decision in a way that shall be clear to them.
2. Presenting reasons of his decision the judge should avoid using phrases that go beyond the factual need for an explanation of the court's standpoint that could jeopardise dignity or honour of persons involved in the case or third parties.

#### §12

1. The judge should care for order, proper course and appropriate level of the application of procedures in which he takes part.
2. In contacts with the parties and other persons involved in the proceedings the judge should be dignified, patient, kind and require that these persons behave properly.
3. The judge should appropriately react to improper behaviour of the persons taking part in the proceedings, in particular, if these persons show prejudice in regard of race, sex, denomination, disability, age or social or financial status or due to any other reason.

#### §13

The judge should not voice his opinion in public on proceedings that are pending or are to be pending.

#### §14

1. The judge should perform his duties in the field of court administration in a diligent manner, accounting for the authority of the office of the judge and the good of the administration of justice.
2. Acting as an authority in the judiciary system the judge should care about organisational issues in a way that makes it possible to achieve the best results at work provided that the principle of the judge's independence is observed.

#### §15

The judge may apply for a case to be excluded from trying provided that there are justified reasons. It shall be inadmissible to abuse the institution of the exclusion of the judge.

### **Chapter 3**

#### **Off-duty conduct**

#### §16

In his conduct the judge must not even create the appearances of failure to observe the legal order.

#### §17

1. The judge must avoid personal contact and any other business relations with other entities if they give rise to doubts as to the impartial performance of duties by the judge or jeopardise the prestigious status and undermine confidence in the office of the judge.
2. The judge should act with due care to ensure that members of his family should not act in this way.

#### §18

1. Without giving rise to doubts, the judge should be reliable in regard of his financial issues and meticulously perform any and all related duties.
2. The judge should not perform any financial activities that could give an impression that he takes advantage of his position as a judge.

#### §19

The judge must not accept any benefits that could give an impression that they are an attempt to exert influence on him. The judge should also ensure that the members of his family should not accept such benefits.

#### §20

Based on proposals addressed to judges only, the judge should consider whether they are an attempt to exert influence on him or his professional environment.

#### §21

The judge must not provide legal services.

#### §22

The judge must not be a member of any organisation operating beyond the binding legal order or support it in any way.

§23

The judge should make use of social media in a restrained manner.