

APPENDICE

APPENDICE 1

ASSOCIAZIONE NAZIONALE MAGISTRATI CODICE ETICO

Premessa

Il seguente testo del “codice etico” è stato adottato dal Comitato direttivo centrale dell’Associazione nazionale magistrati, a seguito di un’ampia consultazione degli associati, nel termine prescritto dall’art. 58 bis del decreto legislativo n. 29/93 (introdotto dal decreto legislativo n. 546/93).

L’Anm, pur ritenendo di dubbia costituzionalità tale norma sia sotto il profilo dell’eccesso di delega sia sotto quello della violazione della riserva assoluta di legge in materia di ordinamento giudiziario, ha ritenuto di darvi attuazione considerando comunque opportuna l’individuazione delle regole etiche cui, secondo il comune sentire dei magistrati, deve ispirarsi il loro comportamento.

Si tratta, peraltro, di indicazioni di principio prive di efficacia giuridica, che si collocano su un piano diverso rispetto alla regolamentazione giuridica degli illeciti disciplinari.

L’operata individuazione di norme di comportamento, ispirate all’attuazione dei valori morali fondamentali propri dell’ordinamento della categoria, è inevitabilmente condizionata dall’assetto normativo vigente e dalla ricognizione delle questioni di maggiore rilevanza attuale: per ogni eventuale modifica e aggiornamento delle norme così individuate sarà seguita la medesima procedura, che prevede la sottoposizione di un progetto alla discussione delle sezioni locali dell’Anm e la successiva approvazione da parte del Comitato direttivo centrale.

I. Le regole generali

Art. 1

Valori e principi fondamentali

Nella vita sociale il magistrato si comporta con dignità, correttezza, sensibilità all’interesse pubblico.

Nello svolgimento delle sue funzioni ed in ogni comportamento professionale il magistrato si ispira a valori di disinteresse personale, di indipendenza e di imparzialità.

Art. 2

Rapporti con i cittadini e con gli utenti della giustizia

Nei rapporti con i cittadini e con gli utenti della giustizia il magistrato tiene un comportamento disponibile e rispettoso della personalità e della dignità altrui e respinge ogni pressione, segnalazione o sollecitazione comunque diretta ad influire indebitamente sui tempi e sui modi di amministrazione della giustizia.

Nelle relazioni sociali ed istituzionali il magistrato non utilizza la sua qualifica al fine di trarne vantaggi personali.

Art. 3

Doveri di operosità e di aggiornamento professionale

Il magistrato svolge le sue funzioni con diligenza ed operosità.

Conserva ed accresce il proprio patrimonio professionale impegnandosi nell'aggiornamento e approfondimento delle sue conoscenze nei settori in cui svolge la propria attività.

Art. 4

Modalità di impiego delle risorse dell'amministrazione

Il magistrato cura che i mezzi, le dotazioni e le risorse d'ufficio siano impiegati secondo la loro destinazione istituzionale, evitando ogni forma di spreco o di cattiva utilizzazione, nel perseguimento di obiettivi di efficienza del servizio giudiziario.

Art. 5

Informazioni di ufficio. Divieto di utilizzazione a fini non istituzionali

Il magistrato non utilizza indebitamente le informazioni di cui dispone per ragioni d'ufficio e non fornisce o richiede informazioni confidenziali su processi in corso, né effettua segnalazioni dirette ad influire sullo svolgimento o sull'esito di essi.

Art. 6

Rapporti con la stampa
e con gli altri mezzi di comunicazione di massa

Nei contatti con la stampa e con gli altri mezzi di comunicazione il magistrato non sollecita la pubblicità di notizie attinenti alla propria attività di ufficio.

Quando non è tenuto al segreto o alla riservatezza su informazioni conosciute per ragioni del suo ufficio e ritiene di dover fornire notizie sull'attività giudiziaria, al fine di garantire la corretta informazione dei cittadini e l'esercizio del diritto di cronaca, ovvero di tutelare l'onore e la reputazione dei cittadini, evita la costituzione o l'utilizzazione di canali informativi personali riservati o privilegiati.

Fermo il principio di piena libertà di manifestazione del pensiero, il magistrato si ispira a criteri di equilibrio e misura nel rilasciare dichiarazioni ed interviste ai giornali e agli altri mezzi di comunicazione di massa.

Art. 7

Adesione ad associazioni

Il magistrato non aderisce ad associazioni che richiedono la prestazione di promesse di fedeltà o che non assicurano la piena trasparenza sulla partecipazione degli associati

II. *Indipendenza, imparzialità, correttezza*

Art. 8

L'indipendenza del magistrato

Il magistrato garantisce e difende l'indipendente esercizio delle proprie funzioni e mantiene una immagine di imparzialità e di indipendenza.

Evita qualsiasi coinvolgimento in centri di potere partitici o affaristici che possano condizionare l'esercizio delle sue funzioni o comunque appannarne l'immagine.

Non accetta incarichi né espleta attività che ostacolino il pieno e corretto svolgimento della propria funzione o che per la natura, la fonte e le modalità del conferimento, possano comunque condizionarne l'indipendenza.

Art. 9

L'imparzialità del magistrato

Il magistrato rispetta la dignità di ogni persona, senza discriminazioni e pregiudizi di sesso, di cultura, di ideologia, di razza, di religione.

Nell'esercizio delle funzioni opera per rendere effettivo il valore dell'imparzialità impegnandosi a superare i pregiudizi culturali che possono incidere sulla comprensione e valutazione dei fatti e sull'interpretazione ed applicazione delle norme.

Assicura che nell'esercizio delle funzioni la sua immagine di imparzialità sia sempre pienamente garantita. A tal fine valuta con il massimo rigore la ricorrenza di situazioni di possibile astensione per gravi ragioni di opportunità.

Art. 10

Obblighi di correttezza del magistrato

Il magistrato non si serve del suo ruolo per ottenere benefici o privilegi.

Il magistrato che aspiri a promozioni, a trasferimenti, ad assegnazioni di sede e ad incarichi di ogni natura non si adopera al fine di influire impropriamente sulla relativa decisione, né accetta che altri lo facciano in suo favore.

Il magistrato si astiene da ogni intervento che non corrisponda ad esigenze istituzionali sulle decisioni concernenti promozioni, trasferimenti, assegnazioni di sede e conferimento di incarichi.

Si comporta sempre con educazione e correttezza; mantiene rapporti formali, rispettosi della diversità del ruolo da ciascuno svolto; rispetta e riconosce il ruolo del personale amministrativo e di tutti i collaboratori.

III. *La condotta nell'esercizio delle funzioni*

Art. 11

La condotta nel processo

Nell'esercizio delle sue funzioni, il magistrato, consapevole del servizio da rendere alla collettività, osserva gli orari delle udienze e delle altre attività di ufficio, evitando inutili disagi ai cittadini e ai difensori e fornendo loro ogni chiarimento eventualmente necessario.

Svolge il proprio ruolo con pieno rispetto di quello altrui ed agisce riconoscendo la pari dignità delle funzioni degli altri protagonisti del processo assicurando loro le condizioni per esplicarle al meglio.

Cura di raggiungere, nell'osservanza delle leggi, esiti di giustizia per tutte le parti, agisce con il massimo scrupolo, soprattutto quando sia in questione la libertà e la reputazione delle persone.

Art. 12

La condotta del giudice

Il giudice garantisce alle parti la possibilità di svolgere pienamente il proprio ruolo, anche prendendo in considerazione le loro esigenze pratiche.

Si comporta sempre con riserbo e garantisce la segretezza delle camere di consiglio, nonché l'ordinato e sereno svolgimento dei giudizi. Nell'esercizio delle sue funzioni ascolta le altrui opinioni, in modo da sottoporre a continua verifica le proprie convinzioni e da trarre dalla dialettica occasione di arricchimento professionale e personale.

Nel redigere la motivazione dei provvedimenti collegiali espone fedelmente le ragioni della decisione, elaborate nella camera di consiglio ed esamina adeguatamente i fatti e gli argomenti prospettati dalle parti. Non sollecita né riceve notizie informali nei procedimenti da lui trattati.

Nelle motivazioni dei suoi provvedimenti e nella conduzione dell'udienza evita di pronunciarsi su fatti o persone estranei all'oggetto della causa, di emettere giudizi o valutazioni sulla capacità professionale di altri magistrati o dei difensori, ovvero – quando non siano indispensabili ai fini della decisione – sui soggetti coinvolti nel processo.

Art. 13

La condotta del pubblico ministero

Il pubblico ministero si comporta con imparzialità nello svolgimento del suo ruolo.

Indirizza la sua indagine alla ricerca della verità acquisendo anche gli elementi di prova a favore dell'indagato e non tace al giudice l'esistenza di fatti a vantaggio dell'indagato o dell'imputato.

Evita di esprimere valutazioni sulle persone delle parti e dei testi, che non sia conferenti rispetto alla decisione del giudice e si astiene da critiche o apprezzamenti sulla professionalità del giudice e dei difensori.

Non chiede al giudice anticipazioni sulle sue decisioni, né gli comunica in via informale conoscenze sul processo in corso.

Art. 14

I doveri del dirigenti

Il magistrato dirigenti dell'ufficio giudiziario cura l'organizzazione e l'utilizzo delle risorse personali e materiali disponibili in modo da ottenere

il miglior risultato possibile in vista del servizio pubblico che l'ufficio deve garantire. Assicura la migliore collaborazione con gli altri uffici pubblici nel rispetto delle specifiche competenze di ciascuna istituzione. Garantisce l'indipendenza dei magistrati e la serenità del lavoro di tutti gli addetti all'ufficio assicurando trasparenza ed equanimità nella gestione dell'ufficio e respingendo ogni interferenza esterna.

Cura di essere a conoscenza di ciò che si verifica nell'ambito dell'ufficio, in modo da poterne assumere la responsabilità e spiegarne le ragioni. Esamina le lagnanze provenienti dai cittadini, dagli avvocati e dagli altri uffici giudiziari o amministrativi, vagliandone la fondatezza e assumendo i provvedimenti necessari ad evitare disservizi. Anche a tal fine deve essere disponibile in ufficio.

Vigila sul comportamento dei magistrati e del personale amministrativo intervenendo, nell'esercizio dei suoi poteri, per impedire comportamenti scorretti.

Redige con serenità, completezza e oggettività i pareri e le relazioni sui magistrati dell'ufficio, così lealmente collaborando con coloro cui è messa la vigilanza sui magistrati, con il Consiglio giudiziario e con il Csm.

Sollecita pareri sulle questioni dell'ufficio da parte di tutti i magistrati, del personale amministrativo e, se del caso, degli avvocati. Cura l'attuazione del principio del giudice naturale.

APPENDICE 2

CODE OF JUDICIAL CONDUCT
THE BANGALORE DRAFT

Explanatory Note

At its first meeting held in Vienna in April 2000, the Judicial Group on Strengthening Judicial Integrity recognized the need for a code against which the conduct of judicial officers may be measured. Accordingly, the Judicial Group requested that codes of judicial conduct which had been adopted in some jurisdictions be analyzed, and a report be prepared concerning: (a) the core considerations which recur in such codes; and (b) the optional or additional considerations which occur in some, but not all, such codes and which may or may not be suitable for adoption in particular countries.

In preparing a draft code of judicial conduct in accordance with the directions set out above, reference was made to several existing codes and international instruments including, in particular, the following:

- a) Restatement of Values of Judicial Life adopted by the Chief Justices Conference of India, 1999.
- b) Code of Conduct for the Judges of the Supreme Court of Bangladesh, prescribed by the Supreme Judicial Council in the exercise of power under Article 96(4)(a) of the Constitution of the People's Republic of Bangladesh, May 2000.
- c) The Judges' Code of Ethics of Malaysia, prescribed by the Yang di-Pertuan Agong on the recommendation of the Chief Justice, the President of the Court of Appeal and the Chief Judges of the High Courts, in the exercise of powers conferred by Article 125(3A) of the Federal Constitution of Malaysia, 1994.
- d) The Code of Judicial Conduct of the Philippines, September 1989.
- e) The Canons of Judicial Ethics of the Philippines, proposed by the Philippines Bar Association, approved by the Judges of First Instance of Manila, and adopted for the guidance of and observance by the

- judges under the administrative supervision of the Supreme Court, including municipal judges and city judges.
- (f) Code of Conduct to be observed by Judges of the Supreme Court of the Supreme Court and of the High Courts of Pakistan.
 - (g) Yandina Statement: Principles of Independence of the Judiciary in Solomon Islands, November 2000.
 - (h) Code of Conduct for Judicial Officers of the Federal Republic of Nigeria.
 - (i) Code of Conduct for Judicial Officers of Tanzania, adopted by the Judges and Magistrates Conference, 1984.
 - (j) Code of Conduct for Judicial Officers of Kenya, July 1999.
 - (k) Code of Conduct for Judges, Magistrates and Other Judicial Officers of Uganda, adopted by the Judges of the Supreme Court and the High Court, July 1989.
 - (l) The Judicial (Code of Conduct) Act, enacted by the Parliament of Zambia, December 1999.
 - (m) Guidelines for Judges of South Africa, issued by the Chief Justice, the President of the Constitutional Court, and the Presidents of High Courts, the Labour Appeal Court, and the Land Claims Court, March 2000.
 - (n) The European Charter on the Statute for Judges, Council of Europe, July 1998.
 - (o) Ethical Principles for Judges, drafted with the cooperation of the Canadian Judges Conference and endorsed by the Canadian Judicial Council, 1998.
 - (p) The Code of Judicial Conduct adopted by the House of Delegates of the American Bar Association, August 1972.
 - (q) The Code of Conduct of the Judicial Conference of the United States.
 - (r) The Canons of Judicial Conduct for the Commonwealth of Virginia, adopted and promulgated by the Supreme Court of Virginia, 1998.
 - (s) The Iowa Code of Judicial Conduct.
 - (t) Draft Principles on the Independence of the Judiciary (“Syracusa Principles”), prepared by a committee of experts convened by the International Association of Penal Law, the International Commission of Jurists, and the Centre for the Independence of Judges and Lawyers, 1981.
 - (u) Minimum Standards of Judicial Independence adopted by the International Bar Association, 1982.
 - (v) United Nations Basic Principles on the Independence of the Judiciary, endorsed by the UN General Assembly, 1985.
 - (w) Draft Universal Declaration on the Independence of Justice (“Singhvi Declaration”) prepared by Mr L.V. Singhvi, UN Special Rapporteur

- on the Study on the Independence of the Judiciary, 1989.
- (x) The Beijing Statement of Principles of the Independence of the Judiciary in the Lawasia Region, adopted by the 6th Conference of Chief Justices, August 1997.
 - (y) The Latimer House Guidelines for the Commonwealth on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights to ensure the effective implementation of the Harare Principles, 1998.
 - (z) The Policy Framework for Preventing and Eliminating Corruption and Ensuring the Impartiality of the Judicial System, adopted by the expert group convened by the Centre for the Independence of Judges and Lawyers, February 2000.

At its second meeting held in Bangalore in February 2001, the Judicial Group, proceeding by way of examination of the draft placed before it, identified the core values, formulated the relevant principles, and agreed on the code set out in this document: the Bangalore Draft. The Judicial Group recognized, however, that since the draft Code had been developed by judges drawn principally from common law countries, it was essential that it be scrutinized by judges of other legal traditions to enable it to assume the status of a duly authenticated draft international code of judicial conduct.

In deciding to publish the Bangalore Draft, the Judicial Group agreed that the judicial duty is to conform to any code of conduct which, by law or practice, is already in force in a judge's jurisdiction. The development and existence of an international code does not relieve a judge of his or her duty under municipal law to comply with a code of conduct currently in operation in that judge's jurisdiction. The Bangalore Draft is designed:

- to spread the example of codes of judicial conduct to those jurisdictions which do not yet have them;
- to encourage deliberation amongst judges and others concerning the terms of the code and the improvement of codes of judicial conduct already in force; and
- to develop the broad principles appropriate to an international code of judicial conduct drawing on the best practice and precedents in many jurisdictions of the world.

Preamble

WHEREAS the *Universal Declaration of Human Rights* recognizes as fundamental the principle that everyone is entitled in full equality to a fair

and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge.

WHEREAS the *International Covenant on Civil and Political Rights* guarantees that all persons shall be equal before the courts, and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

WHEREAS the foregoing fundamental principles and rights are also recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions.

WHEREAS the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice.

WHEREAS an independent judiciary is likewise essential if the courts are to fulfil their roles as guardians of the rule of law and thereby to assure good governance.

WHEREAS the real source of judicial power is public acceptance of the moral authority and integrity of the judiciary.

AND WHEREAS consistently with the *United Nations Basic Principles on the Independence of the Judiciary*, it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

The following principles and rules are intended to establish standards for ethical conduct of judges. They are principles and rules of reason to be applied in the light of all relevant circumstances and consistently with the requirements of judicial independence and the law. They are designed to provide guidance to judges and to afford a structure for regulating judicial conduct. They are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.

The values which this Code upholds are:

- Propriety
- Independence
- Integrity
- Impartiality

- Equality
- Competence and Diligence
- Accountability

I

Value

PROPRIETY

Principle

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

Code

- 1.1. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities¹.
- 1.2. 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 office².
- 1.3. A judge shall avoid close personal association with individual members of the legal profession, particularly those who practise in the judge's court, where such association might reasonably give rise to the suspicion or appearance of favouritism or partiality³.
- 1.4. Save in exceptional circumstances or out of necessity, a judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case⁴.
- 1.5. A judge shall avoid the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal

¹ Cfr. Beijing Principles, Philippines, Bangladesh, Pakistan, Solomon Islands, ABA Code.

² Cfr. India, Philippines, Bangladesh.

³ Cfr. India, Bangladesh, Kenya.

⁴ Cfr. India, Bangladesh.

- profession in circumstances that might reasonably give rise to the suspicion or appearance of impropriety on the part of the judge⁵.
- 1.6.10 A judge shall refrain from conduct such as membership of groups or organisations or participation in public discussion which, in the mind of a reasonable, fair-minded and informed person, might undermine confidence in the judge's impartiality with respect to any issue that may come before the courts⁶.
- 1.7. A judge shall, upon appointment, cease all partisan political activity or involvement. A judge shall refrain from conduct that, in the mind of a reasonable fair-minded and informed person, might give rise to the appearance that the judge is engaged in political activity⁷.
- 1.8. A judge shall refrain from:
- 1.8.1. Membership of political parties;
- 1.8.2. Political fund-raising;
- 1.8.3. Attendance at political gatherings and political fund-raising events;
- 1.8.4. Contributing to political parties or campaigns; and
- 1.8.5. Taking part publicly in controversial discussions of a partisan political character⁸.
- 1.9. A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge⁹.
- 1.10. 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, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties¹⁰.
- 1.11. A judge shall not testify voluntarily as a character witness, except that a judge may testify as a witness in a criminal proceeding if the judge or a member of the judge's family is a victim of the offence

⁵ Cfr. India.

⁶ Cfr. Canada, South Africa, European Charter, ABA Code.

⁷ Cfr. Canada, Virginia.

⁸ Cfr. Canada, Virginia, Alaska, India.

⁹ Cfr. Tanzania, Alaska, Texas, Virginia, Washington, Iowa.

¹⁰ Cfr. Tanzania, Virginia, Iowa.

or if the defendant is a member of the judge's family or in like exceptional circumstances¹¹.

- 1.12. Subject to the proper performance of judicial duties, a judge may engage in activities such as:
 - 1.12.1. The judge may write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice and related matters;
 - 1.12.2. The judge may appear at a public hearing before an official body concerned with matters relating to the law, the legal system and the administration of justice or related matters; and
 - 1.12.3. The judge may serve as a member of an official body devoted to the improvement of the law, the legal system, the administration of justice or related matters.
- 1.13. A judge may speak publicly on non-legal subjects and engage in historical, educational, cultural, sporting or like social and recreational activities, if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties in accordance with this Code¹².
- 1.14. A judge may participate in civic and charitable activities that do not reflect adversely on the judge's impartiality or interfere with the performance of judicial duties. A judge should not be involved in fund-raising or membership solicitation¹³.
- 1.15. A judge shall not serve as the executor, administrator, trustee, guardian or other fiduciary, except for the estate, trust or person connected with a member of the judge's family and then only if such service will not interfere with the proper performance of judicial duties¹⁴.
- 1.16. Save for holding and managing appropriate personal or family investments, a judge shall refrain from being engaged in other financial or business dealings as these may interfere with the proper performance of judicial duties or reflect adversely on the judge's impartiality¹⁵.

¹¹ Cfr. Iowa, Alaska.

¹² Cfr. Tanzania, Alaska, Virginia, Texas, Washington, Tanzania, Iowa, Usa.

¹³ Cfr. Iowa.

¹⁴ Cfr. Iowa, Tanzania, Washington, Nigeria, Alaska, Texas, Virginia.

¹⁵ Cfr. Iowa, Nigeria, Alaska, Virginia, Texas, Washington.

- 1.16. Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to the judge's judicial duties¹⁶.
- 1.17. A judge shall not practise law whilst the holder of judicial office¹⁷.
- 1.18. Except as consistent with, or as provided by, constitutional or other law, a judge shall not accept appointment to a government commission, committee or to a position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, the administration of justice or related matters. However, a judge may represent the judge's country or the state on ceremonial occasions or in connection with historical, educational, cultural, sporting or like activities¹⁸.
- 1.19. A judge may form or join associations of judges or participate in other organisations representing the interests of judges to promote professional training and to protect judicial independence¹⁹.
- 1.20. A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.
- 1.21. Subject to law and to any legal requirements of public disclosure, a judge may receive a small token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality²⁰.
- 1.22. A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if such payments do not give the appearance of influencing the judge in the performance of judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:
 - (a) Such compensation and reimbursement shall not exceed a reasonable amount nor shall it exceed what a person

¹⁶ Cfr. Texas, Alaska, Virginia, Iowa.

¹⁷ Cfr. Washington, Virginia, Texas, Iowa, Tanzania, Alaska, Nigeria.

¹⁸ Cfr. Iowa, Washington, Texas.

¹⁹ Cfr. Nigeria, Basic Principles, Singhvi Declaration; Siracusa Principles.

²⁰ Cfr. Iowa, Nigeria, Alaska, Texas, Washington, Virginia, India.

- who is not a judge would receive for the same activities;
and
- (b) Reimbursement shall be limited to the actual cost of travel and accommodation reasonably incurred by the judge and, where appropriate to the occasion, by the judge's family. Any payment in excess of such an amount is compensation²¹.

1.23. A judge shall make such financial disclosures and pay all such taxes as are required by law²².

II

Value

INDEPENDENCE

Principle

An independent judiciary is indispensable to impartial justice under law. A judge should therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Code

- 2.1. A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason²³.
- 2.2. A judge shall reject any attempt to influence his or her decision in any matter before the judge for decision where such attempt arises outside the proper performance of judicial duties²⁴.

²¹ Cfr. Washington, Texas, Alaska, Virginia, Usa, Iowa.

²² Cfr. Alaska, Washington.

²³ Cfr. Basic Principles; Singhvi Declaration; Siracusa Principles.

²⁴ Cfr. Canada.

- 2.3. In performing judicial duties, a judge shall, within the judge's own court, be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently²⁵.
- 2.4. A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary²⁶.
- 2.5. A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence which is fundamental to the maintenance of judicial independence²⁷.

III

Value

INTEGRITY

Principle

Integrity is essential to the proper discharge of the judicial office.

Code

- 3.1. A judge shall ensure that his or her conduct is above reproach in the view of reasonable, fair-minded and informed persons²⁸.
- 3.2. 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 done²⁹.
- 3.3. A judge, in addition to observing personally the standards of this Code, shall encourage and support their observance by others³⁰.

²⁵ Cfr. Singhvi Declaration.

²⁶ Cfr. Canada, Iowa, Texas, Virginia.

²⁷ Cfr. Canada.

²⁸ Cfr. Canada.

²⁹ Cfr. India.

IV

Value

IMPARTIALITY

Principle

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the making of a decision itself but also to the process by which the decision is made.

Code

- 4.1. A judge shall perform his or her judicial duties without favour, bias or prejudice³¹.
- 4.2. A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary³².
- 4.3. A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases³³.
- 4.4. A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue³⁴.
- 4.5. A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which a reasonable, fair-minded and informed person might believe that the judge is unable to decide the matter impartially³⁵.

³⁰ Cfr. Canada.

³¹ Cfr. Washington.

³² Cfr. Canada.

³³ Cfr. Canada.

³⁴ Cfr. Iowa, Texas, Tanzania, Nigeria, Virginia, Alaska, Washington.

³⁵ Cfr. Canada.

- 4.6. A judge shall disqualify himself or herself in any proceedings in which there might be a reasonable perception of a lack of impartiality of the judge including, but not limited to, instances where:
 - 4.6.1. The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
 - 4.6.2. The judge previously served as a lawyer or was a material witness in the matter in controversy;
 - 4.6.3. The judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy³⁶.
- 4.7. A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family³⁷.
- 4.8. A judge who would otherwise be disqualified on the foregoing grounds may, instead of withdrawing from the proceedings, disclose on the record the basis of such disqualification. If, based on such disclosure, the parties, independently of the judge's participation, agree in writing or on the record, that the judge may participate, or continue to participate, in the proceedings, the judge may do so³⁸.
- 4.9. Disqualification of a judge is not required if necessity obliges the judge to decide the matter in controversy including where no other judge may lawfully do so or where, because of urgent circumstances, failure of the judge to participate might lead to a serious miscarriage of justice³⁹. In such cases of necessity, the judge shall still be obliged to disclose to the parties in a timely way any cause of disqualification and ensure that such disclosure is included in the record.
- 4.10. Save for the foregoing, a judge has a duty to perform the functions of the judicial office and litigants do not have a right to choose a judge.

³⁶ Cfr. Tanzania, Alaska, Washington, Iowa, Nigeria, Virginia, Usa, India, Sicacusa Principles.

³⁷ Cfr. Virginia, Tanzania, Alaska, Washington, Iowa, Nigeria.

³⁸ Cfr. Tanzania, Virginia, Washington, Iowa, Nigeria.

³⁹ Cfr. Canada.

V

Value

EQUALITY

Principle

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

Code

- 5.1. A judge shall strive to be aware of, and to understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes (“irrelevant grounds”)⁴⁰.
- 5.2. A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds⁴¹.
- 5.3. A judge shall carry out his or her duties with appropriate consideration for all persons (for example, parties, witnesses, lawyers, court staff and judicial colleagues) without unjust differentiation on any irrelevant ground, immaterial to the proper performance of such duties⁴².
- 5.4. A judge shall not knowingly permit court staff or others subject to the judge’s influence, direction or control to differentiate between persons concerned, in a matter which is before the judge, on any irrelevant ground.
- 5.5. A judge shall require lawyers in proceedings before a court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds. This requirement does not preclude legitimate advocacy where any such grounds are legally relevant to an issue in the proceedings⁴³.

⁴⁰ Cfr. Canada.

⁴¹ Cfr. Alaska, Iowa, Texas, Virginia.

⁴² Cfr. Canada.

⁴³ Cfr. Canada, Alaska, Texas.

- 5.6. A judge shall not be a member of, nor associated with, any society or organisation that practises unjust discrimination on the basis of any irrelevant ground⁴⁴.
- 5.7. Without authority of law and notice to, and consent of, the parties and an opportunity to respond, a judge shall not engage in independent, personal investigation of the facts of a case.
- 5.8. Without authority of law and notice to, and consent of, the parties and an opportunity to respond, a judge shall not, in the absence of the other parties to the proceedings, communicate with any party to proceedings in the judge's court concerning such proceedings⁴⁵.

VI

Value

COMPETENCE AND DILIGENCE

Principle

Competence and diligence are prerequisites to the due performance of judicial office.

Code

- 6.1. The judicial duties of a judge take precedence over all other activities⁴⁶.
- 6.2. A judge shall devote his or her professional activity to judicial duties. Such duties are broadly defined and include not only the performance of judicial duties in court and the making of decisions but other tasks relevant to the court's operations or to the judicial office⁴⁷.
- 6.3. A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties⁴⁸.

⁴⁴ Cfr. Canada, Nigeria, Texas, Virginia, Usa, Iowa.

⁴⁵ Cfr. Tanzania, Nigeria, Alaska, Texas, Virginia.

⁴⁶ Cfr. Iowa, Washington, Virginia, Texas, Alaska.

⁴⁷ Cfr. Canada.

⁴⁸ Cfr. Canada, Alaska, Tanzania.

- 6.4. A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms and, within any applicable limits of constitutional or other law, shall conform to such norms as far as is feasible⁴⁹.
- 6.5. A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness⁵⁰.
- 6.6. A judge shall maintain order and decorum in all proceedings in which the judge is involved. He or she shall be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control⁵¹.
- 6.7. A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties⁵².

VII

Value

IMPLEMENTATION AND ACCOUNTABILITY

Principle

Implementing these principles and ensuring the compliance of judges with them are essential to the effective achievement of the objectives of this Code.

Code

- 7.1. Institutions and procedures for the implementation of this Code shall provide a publicly credible means of considering and determining complaints against judges without eroding the essential principle of judicial independence.

⁴⁹ Cfr. Iowa, Tanzania, Nigeria, Alaska, Washington, Texas, Virginia.

⁵⁰ Cfr. Canada, Alaska, Nigeria.

⁵¹ Cfr. Virginia, Texas, Alaska, Tanzania, Nigeria, Canada, Washington.

⁵² Cfr. Canada.

- 7.2. By the nature of the judicial office judges are not, except in accordance with law, accountable to any organ or entity of the state for their judicial decisions but they are accountable for their conduct to institutions that are established to implement this Code.
- 7.3. The institutions and procedures established to implement this Code shall be transparent so as to strengthen public confidence in the judiciary and thereby to reinforce judicial independence.
- 7.4. Ordinarily, except in serious cases that may warrant removal of the judge from office, proceedings established to implement this Code shall be conducted in confidence.
- 7.5. The implementation of this Code shall take into account the legitimate needs of a judge, by reason of the nature of the judicial office, to be afforded protection from vexatious or unsubstantiated accusations and due process of law in the resolution of complaints against the judge.
- 7.6. The judiciary and any institution established to implement this Code shall promote awareness of these principles and of the provisions of the Code.

VIII

DEFINITIONS

In this Code, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

“*Court staff*” includes the personal staff of the judge including law clerks.

“*Judge*” includes a magistrate, a member of customary or village courts and any person exercising judicial office, however designated.

“*Judge’s family*” includes a judge’s spouse, the judge’s son, daughter, son-in-law or daughter-or-law. it also includes any other close relative or person who is a companion or employee of the judge and who lives in the judge’s household.

“*Judge’s spouse*” includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.

APPENDICE 3

COMMENTS N.1 (2002)
OF THE WORKING PARTY
OF THE CONSULTATIVE COUNCIL
OF EUROPEAN JUDGES (CCJE-GT)
ON “CODE OF JUDICIAL CONDUCT.
THE BANGALORE DRAFT”

1. The Working Party welcomed the opportunity given to it to attend the meeting proposed by the United Nations Commissioner for Human Rights and held in Strasbourg on 18th June 2002 and to comment on the Bangalore draft. It emphasises that it is not authorised to speak for the full Consultative Council of European Judges (which will only meet in plenary session in November 2002). These are therefore no more than comments, which it is hoped may assist in the Bangalore drafting process.

2. The Working Party starts with three general comments:

- i) The title or description “Code” should be avoided, especially in view of its prescriptive and exhaustive connotations in civil law countries. It would be preferable to describe the document as containing “Principles (or “Standards”) of Judicial Conduct”.
- ii) The scheme and order of the present draft are questionable. The fundamental principles are those of independence (although this is primarily a structural matter, to be guaranteed by the constitution or law of the particular society) and impartiality (which the judge must both possess and display in the context of any particular dispute). The principle of equality is linked with that of impartiality – factors such as ethnic origin, gender and disability cannot be disregarded; on the contrary their relevance to the way people behave, both outside and inside the courtroom, needs to be taken into consideration, in order to ensure the fair and impartial adjudication of any dispute. Further, the principles of integrity and propriety appear to have much in common. In these circumstances,

it suggested that a logical scheme would involve taking Independence, Impartiality and then Equality first, in that order, followed by Integrity and Propriety, with Competence and Diligence coming last.

- iii) The section Implementation and Accountability contains propositions which do not really concern judicial conduct, but rather the existence and structure of arrangements for handling complaints against and disciplining judges. The Working Party does not agree with the direct links drawn (in paragraphs 7.1 and 7.3 to 7.6) between the previously stated principles and complaints/discipline. No doubt non-compliance with such principles could in many cases be of considerable relevance to any complaint or disciplinary step. But the wording (especially the repeated references to “the implementation of the code”) suggests that any non-compliance would necessarily justify a complaint or disciplinary step – which is not (or should not be) the case. In the same connection, the Working Party considers that the words “and to a structure for regulating judicial conduct” in the last full paragraph of the Preamble should be deleted.

3. More particular points follow:

- i) *Explanatory note and Preamble:* The Working Party mentions, as a potential further source of encouragement for the Bangalore drafting committee, the Consultative Council of European Judges’ Opinion No. 1 (2001) on “Standards concerning the independence of the judiciary and the irremovability of judges” (especially to paragraphs 10-13 concerning the rationale of judicial independence) and Opinion No. 2 (2001) on “The Funding and Management of Courts with reference to the efficiency of the judiciary and to article 6 of the European Convention on Human Rights”.
- ii) The Working Party expressed reservations about the last two recitals in the Preamble, particularly the philosophical (or sociological) statement made regarding the real source of judicial power. In most civil law countries, there is a much more obvious “real source” – namely a constitution; and too great an emphasis on the ultimate dependence of the judicial power upon general acceptance could in some circumstances even be dangerous. The Working Party would suggest another wording for the penultimate recital, such as:
 - a) “WHEREAS public confidence in the judicial system and in the authority and integrity of the judiciary is of the utmost importance in a modern democratic society.”

- iii) *Independence*: This section is, at first sight, surprisingly weak – although the reason is (no doubt) that pointed out earlier in these comments, namely that independence is primarily a structural matter for the other branches of the state to introduce and ensure. Much of what is included falls in reality under the heading of Impartiality. The Working Party felt, however, that paragraph 2.3 might be misunderstood, especially in civil law countries with a strong tradition of collegiate decision-making. Paragraph 2.5 is in its first eleven words dealing (in an essentially circular way) with Propriety, rather than Independence, and is in the rest simply repeating the sense of part of the Preamble.
- iv) *Impartiality*: The general principle and paragraphs 4.1 to 4.6 appear unexceptionable. The Working Party questioned whether paragraph 4.7 is in appropriate terms, in so far as it suggests a general duty on judges to keep themselves informed, unrelated to any possible risk to their actual or apparent impartiality. Paragraph 4.8 has no counterpart in a number of civil law countries and was regarded as positively inappropriate by some civil law members of the Working Party. Paragraph 4.9 also lacks any equivalent in some civil law systems (and it was thought that situations of emergency or necessity could anyway have been more briefly and generally covered).
- v) *Equality*: Paragraphs 5.2 to 5.8 met with general approval. However, the Working Party would suggest that paragraphs 5.4 and 5.5 should also extend specifically to public prosecutors (because of their special status in civil law countries) and to police.
- vi) *Integrity*: Paragraphs 3.1-3.3 met with general approval.
- vii) *Propriety*: This is unquestionably the most contentious area; there are grouped under its head a whole list of subjects (some of which, it might be said, could equally well appear under the head of Impartiality). The following comments are made:
 - a) Paragraphs 1.1, 1.2, 1.9, 1.10, 1.16 (first)⁵³ (confidential information), 1.20 (gifts, etc), and 1.19 (membership of judges' associations) appear generally acceptable.
 - b) The Working Party questioned the inclusion of paragraph 1.23 – why focus on only one aspect of a judge's general duty to obey

⁵³ The present draft has (no doubt by mistake) two paragraphs numbered 1.16.

the law? If reference is to be made to this subject, it might be made more generally, perhaps in the Explanatory Memorandum, at the end of which the general scope of the proposed draft is also touched on.

- c) Certain of the principles are limited expressly to activities that might reasonably “give rise to a suspicion or appearance of bias” or might “reasonably undermine public confidence in” or “reflect adversely on” the judge’s impartiality (it is not clear why these three different formulations are used and it might be better to use only one of them). The relevant paragraphs are:
 - i) 1.3: close personal relationship with individual lawyers;
 - ii) 1.5: use of judge’s residence by lawyers to receive clients or other lawyers;
 - iii) 1.6: membership of any group or organisation or participation in public discussion;
 - i) 1.14 first sentence: civic and charitable activities;
 - v) 1.16 (first)⁵⁴: financial or business dealings.

As to these paragraphs: the Working Party understands the general aim behind paragraph 1.3, but questions its width and the appropriateness of the direction from which it approaches quite common situations, such as marriage or a close personal relationship with a lawyer. The focus in such a case should not be on prohibiting (or purporting to prohibit) the relationship, but on the judge’s need to withdraw in any case where the other party to the relationship is involved.

The other paragraphs were regarded by the Working Party as in some respects very detailed for a general statement of principles, but open to no particular objection. The approach in the Canadian Judicial Council’s Ethical Principles for Judges is to have general statements followed by a more detailed commentary, and this might have something to commend itself in relation to some of the detailed points in the present draft.

- d) *Political activity – 1.7 (first sentence) and 1.8*: whilst these represent common law principles, civil law countries do not always follow the same approach. In Switzerland, judges are elected on the basis of their party membership. In some other countries, judges have the right to engage in politics, and be elected as members of local councils (even while remaining judges) or of Parliament (their judicial status being in this case suspended). The present position in the Working Party’s view is that there is no general international consensus, that judges should either be free to engage in or should refrain from political participation.

It appears to be for each country to strike its own balance between judges' freedom of opinion and expression on matters of social significance and the requirement of neutrality. But, even though membership of a political party or participation in public debate on the major problems of society may not be prohibited, judges must at least refrain from any political activity liable to compromise their independence or jeopardise the appearance of impartiality.

- e) *1.11 – testifying as a character witness*: A detailed provision not considered by the Working Party.
- f) *1.12 and 1.13 – writing, lecturing, teaching and engaging in public activities relating to (I) the law and (II) non-legal activities, and 1.22 – receipt of compensation and expenses*: There was no real disagreement within the Working Party about any of the points made. But it was questioned whether it was necessary or wise to have a list of (permitted) activities in paragraph 1.13 – could not the wording simply allow judges to “engage in other non-legal activities, if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties in accordance with [these Principles]”?
- g) *1.14 second sentence – fund-raising for civic or charitable organisations*: The Working Party did not consider that the very strict limitations proposed by this paragraph of the draft either were, or should be, generally accepted as an international standard.
- h) *1.21 – miscellaneous gifts*: The Working Party had no particular comment or objection to make.
- i) *1.15 – estate or trust activities*: The Working Party did not agree with this very strict limitation. Why is it necessary?
- j) *1.18 – appointment to government commissions, committees or positions concerned with non-legal matters*: Again, the Working Party did not agree with this as a general international principle. The subject has been discussed in various states, from various viewpoints. The use of judges for non-legal activities can risk compromising the separation of powers, or exposing judges to public criticism in circumstances where politicians do not wish to address a difficult subject themselves, and of course it reduces the number of active judges. However, judicial training and characteristics can have important value in the context of certain

enquiries. Current practice in a number of European countries is to allow judges to undertake such work.

Concern was, however, expressed in the Working Party about the possibility in some European countries of judges spending periods of time in the political cabinets of government ministers, or other posts of a political nature.

- viii) The Working Party suggested that the Bangalore draft could address more specifically the issue of relations with the media. Paragraphs 1.16 (second) 14 and 4.4 go some way, but not very far. The Working Party identified a number of possible aspects of concern. The first was the use of the media (in or out of court) to promote a judge's public image and career, or (to take the other side of the coin) the possibility of concern on the part of a judge as to possible media reaction to a particular decision. For a judge to allow himself or herself to be influenced in either such direction by the media would almost certainly infringe paragraph 2.1 of the Bangalore draft, if not also other paragraphs such as 1.1, 3.1, 3.2, 4.1 and 4.2.

The second aspect is the question of contact out of court with the media. The common law tradition is that judges do not speak to the media about either cases involving themselves or cases involving other judges. The media gain information from those (defined) court records and documents which are open to them, and from the public nature of proceedings in court. In some countries (particularly those where court files are secret), a system exists whereby one particular judge in any court is deputed to inform the media of the actual position relating to any particular case. Apart from the provision of information of this nature, any out of court comment by judges on cases before them or before other judges would seem inappropriate.

A third aspect concerns comment, even in an academic article, on the judge's own or another judge's decision. Comment outside court on a judge's conduct of a particular case or upon evidence or factual rulings in a particular case appears generally unacceptable. Comment on a purely legal point of general interest decided or considered in a particular case would appear to fall on the other (permissible) side of the line.

- ix) *Competence and Diligence*: paragraphs 6.1-6.7 met with general approval. However, it was suggested that reference should be made to the need for appropriate training or continuing education or studies programmes to be available to judges. This could be done,

for example, by adding to paragraph 6.3 a phrase such as: “taking advantage for this purpose of the training and other facilities which should be made available to judges (under judicial control) for this purpose”.

APPENDICE 4

THE BANGALORE PRINCIPLES
OF JUDICIAL CONDUCT (2002)

*(The Bangalore Draft Code of Judicial Conduct 2001
adopted by the Judicial Group on Strengthening Judicial Integrity,
as revised at the Round Table Meeting of Chief Justices
held at the Peace Palace, The Hague, November 25-26, 2002)*

Preamble

WHEREAS the *Universal Declaration of Human Rights* recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge.

WHEREAS the *International Covenant on Civil and Political Rights* guarantees that all persons shall be equal before the courts, and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law.

WHEREAS the foregoing fundamental principles and rights are also recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions.

WHEREAS the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice.

WHEREAS a competent, independent and impartial judiciary is likewise essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law.

WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society.

WHEREAS it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country.

AND WHEREAS the *United Nations Basic Principles on the Independence of the Judiciary* are designed to secure and promote the independence of the judiciary, and are addressed primarily to States.

THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.

Value 1

INDEPENDENCE

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.

Application

- 1.1. A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

- 1.2. 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.
- 1.3. A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.
- 1.4. In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.
- 1.5. A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.
- 1.6. A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

Value 2

IMPARTIALITY

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.

Application

- 2.1. A judge shall perform his or her judicial duties without favour, bias or prejudice.
- 2.2. A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.
- 2.3. A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.

- 2.4. A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.
- 2.5. A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where
- 2.5.1. the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
- 2.5.2. the judge previously served as a lawyer or was a material witness in the matter in controversy; or
- 2.5.3. the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:
- Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

Value 3

INTEGRITY

Principle

Integrity is essential to the proper discharge of the judicial office.

Application

- 3.1. A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.
- 3.2. 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.

Value 4

PROPRIETY

Principle

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

Application

- 4.1. A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
- 4.2. 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.
- 4.3. A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.
- 4.4. A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.
- 4.5. A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.
- 4.6. A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.
- 4.7. A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.
- 4.8. A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.

- 4.9. 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, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.
- 4.10. Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.
- 4.11. Subject to the proper performance of judicial duties, a judge may:
 - 4.11.1. write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
 - 4.11.2. appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;
 - 4.11.3. serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or
 - 4.11.4. engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.
- 4.12. A judge shall not practise law whilst the holder of judicial office.
- 4.13. A judge may form or join associations of judges or participate in other organisations representing the interests of judges.
- 4.14. A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.
- 4.15. A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.
- 4.16. Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to

the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

Value 5

EQUALITY

Principle

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

Application

- 5.1. A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes (“irrelevant grounds”).
- 5.2. A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.
- 5.3. A 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, immaterial to the proper performance of such duties.
- 5.4. A judge shall not knowingly permit court staff or others subject to the judge’s influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.
- 5.5. A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

Value 6

COMPETENCE AND DILIGENCE

Principle

Competence and diligence are prerequisites to the due performance of judicial office.

Application

- 6.1. The judicial duties of a judge take precedence over all other activities.
- 6.2. 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 the making of decisions, but also other tasks relevant to the judicial office or the court's operations.
- 6.3. A judge shall take reasonable steps to maintain and enhance the judge's 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, under judicial control, to judges.
- 6.4. A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.
- 6.5. A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.
- 6.6. A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.
- 6.7. A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

IMPLEMENTATION

By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

DEFINITIONS

In this statement of principles, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

“*Court staff*” includes the personal staff of the judge including law clerks.

“*Judge*” means any person exercising judicial power, however designated.

“*Judge’s family*” includes a judge’s spouse, son, daughter, son-in-law, daughter-in-law, and any other close relative or person who is a companion or employee of the judge and who lives in the judge’s household.

“*Judge’s spouse*” includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.

Explanatory Note

1. At its first meeting held in Vienna in April 2000 on the invitation of the United Nations Centre for International Crime Prevention, and in conjunction with the 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Judicial Group on Strengthening Judicial Integrity (comprising Chief Justice Latifur Rahman of Bangladesh, Chief Justice Bhaskar Rao of Karnataka State in India, Justice Govind Bahadur Shrestha of Nepal, Chief Justice Uwais of Nigeria, Deputy Vice-President Langa of the Constitutional Court of South Africa, Chief Justice Nyalali of Tanzania, and Justice Odoki of Uganda, meeting under the chairmanship of Judge Christopher Weeramantry, Vice-President of the International Court of Justice, with Justice Michael Kirby of the High Court of Australia as rapporteur, and with the participation of Dato’ Param Cumaraswamy, UN Special Rapporteur on the Independence of Judges and Lawyers) recognized the need for a code against which the conduct of judicial

officers may be measured. Accordingly, the Judicial Group requested that codes of judicial conduct which had been adopted in some jurisdictions be analyzed, and a report be prepared by the Co-ordinator of the Judicial Integrity Programme, Dr Nihal Jayawickrama, concerning: (a) the core considerations which recur in such codes; and (b) the optional or additional considerations which occur in some, but not all, such codes and which may or may not be suitable for adoption in particular countries.

2. In preparing a draft code of judicial conduct in accordance with the directions set out above, reference was made to several existing codes and international instruments including, in particular, the following:
 - (a) The Code of Judicial Conduct adopted by the House of Delegates of the American Bar Association, August 1972.
 - (b) Declaration of Principles of Judicial Independence issued by the Chief Justices of the Australian States and Territories, April 1997.
 - (c) Code of Conduct for the Judges of the Supreme Court of Bangladesh, prescribed by the Supreme Judicial Council in the exercise of power under Article 96(4)(a) of the Constitution of the People's Republic of Bangladesh, May 2000.
 - (d) Ethical Principles for Judges, drafted with the cooperation of the Canadian Judges Conference and endorsed by the Canadian Judicial Council, 1998.
 - (e) The European Charter on the Statute for Judges, Council of Europe, July 1998.
 - (f) The Idaho Code of Judicial Conduct 1976.
 - (g) Restatement of Values of Judicial Life adopted by the Chief Justices Conference of India, 1999.
 - (h) The Iowa Code of Judicial Conduct.
 - (i) Code of Conduct for Judicial Officers of Kenya, July 1999.
 - (j) The Judges' Code of Ethics of Malaysia, prescribed by the Yang di-Pertuan Agong on the recommendation of the Chief Justice, the President of the Court of Appeal and the Chief Judges of the High Courts, in the exercise of powers conferred by Article 125(3A) of the Federal Constitution of Malaysia, 1994.
 - (k) The Code of Conduct for Magistrates in Namibia.
 - (l) Rules Governing Judicial Conduct, New York State, Usa.
 - (m) Code of Conduct for Judicial Officers of the Federal Republic of Nigeria.
 - (n) Code of Conduct to be observed by Judges of the Supreme Court and of the High Courts of Pakistan.

- (o) The Code of Judicial Conduct of the Philippines, September 1989.
- (p) The Canons of Judicial Ethics of the Philippines, proposed by the Philippines Bar Association, approved by the Judges of First Instance of Manila, and adopted for the guidance of and observance by the judges under the administrative supervision of the Supreme Court, including municipal judges and city judges.
- (q) Yandina Statement: Principles of Independence of the Judiciary in Solomon Islands, November 2000.
- (r) Guidelines for Judges of South Africa, issued by the Chief Justice, the President of the Constitutional Court, and the Presidents of High Courts, the Labour Appeal Court, and the Land Claims Court, March 2000.
- (s) Code of Conduct for Judicial Officers of Tanzania, adopted by the Judges and Magistrates Conference, 1984.
- (t) The Texas Code of Judicial Conduct
- (u) Code of Conduct for Judges, Magistrates and Other Judicial Officers of Uganda, adopted by the Judges of the Supreme Court and the High Court, July 1989.
- (v) The Code of Conduct of the Judicial Conference of the United States.
- (w) The Canons of Judicial Conduct for the Commonwealth of Virginia, adopted and promulgated by the Supreme Court of Virginia, 1998.
- (x) The Code of Judicial Conduct adopted by the Supreme Court of the State of Washington, Usa, October 1995.
- (y) The Judicial (Code of Conduct) Act, enacted by the Parliament of Zambia, December 1999.
- (z) Draft Principles on the Independence of the Judiciary (“Syracusa Principles”), prepared by a committee of experts convened by the International Association of Penal Law, the International Commission of Jurists, and the Centre for the Independence of Judges and Lawyers, 1981.
- (aa) Minimum Standards of Judicial Independence adopted by the International Bar Association, 1982.
- (bb) United Nations Basic Principles on the Independence of the Judiciary, endorsed by the UN General Assembly, 1985.
- (cc) Draft Universal Declaration on the Independence of Justice (“Singhvi Declaration”) prepared by Mr L.V. Singhvi, UN Special Rapporteur on the Study on the Independence of the Judiciary, 1989.

- (dd) The Beijing Statement of Principles of the Independence of the Judiciary in the Lawasia Region, adopted by the 6th Conference of Chief Justices, August 1997.
- (ee) The Latimer House Guidelines for the Commonwealth on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights to ensure the effective implementation of the Harare Principles, 1998.
- (ff) The Policy Framework for Preventing and Eliminating Corruption and Ensuring the Impartiality of the Judicial System, adopted by the expert group convened by the Centre for the Independence of Judges and Lawyers, February 2000.

At its second meeting held in Bangalore in February 2001, the Judicial Group (comprising Chief Justice Mainur Reza Chowdhury of Bangladesh, Justice Claire L'Heureux Dube of Canada, Chief Justice Reddi of Karnataka State in India, Chief Justice Upadhyay of Nepal, Chief Justice Uwais of Nigeria, Deputy Chief Justice Langa of South Africa, Chief Justice Silva of Sri Lanka, Chief Justice Samatta of Tanzania, and Chief Justice Odoki of Uganda, meeting under the chairmanship of Judge Weeramantry, with Justice Kirby as rapporteur, and with the participation of the UN Special Rapporteur and Justice Bhagwati, Chairman of the UN Human Rights Committee, representing the UN High Commissioner for Human Rights) proceeding by way of examination of the draft placed before it, identified the core values, formulated the relevant principles, and agreed on the Bangalore Draft Code of Judicial Conduct. The Judicial Group recognized, however, that since the Bangalore Draft had been developed by judges drawn principally from common law countries, it was essential that it be scrutinized by judges of other legal traditions to enable it to assume the status of a duly authenticated international code of judicial conduct.

The Bangalore Draft was widely disseminated among judges of both common law and civil law systems and discussed at several judicial conferences. In June 2002, it was reviewed by the Working Party of the Consultative Council of European Judges (CCJE-GT), comprising Vice-President Reissner of the Austrian Association of Judges, Judge Fremr of the High Court in the Czech Republic, President Lacabarats of the Cour d'Appel de Paris in France, Judge Mallmann of the Federal Administrative Court of Germany, Magistrate Sabato of Italy, Judge Virgilijus of the Lithuanian Court of Appeal, Premier Conseiller Wiwinius of the Cour d'Appel of Luxembourg, Juge Conseiller Afonso of the Court of Appeal of Portugal, Justice Ogrizek of the Supreme Court of Slovenia, President Hirschfeldt of the Svea Court of Appeal in Sweden, and Lord Justice Mance of the

United Kingdom. On the initiative of the American Bar Association, the Bangalore Draft was translated into the national languages, and reviewed by judges, of the Central and Eastern European countries; in particular, of Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo, Romania, Serbia and Slovakia.

The Bangalore Draft was revised in the light of the comments received from CCJE-GT and others referred to above; Opinion no.1 (2001) of CCJE on standards concerning the independence of the judiciary; the draft Opinion of CCJE on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality; and by reference to more recent codes of judicial conduct including the Guide to Judicial Conduct published by the Council of Chief Justices of Australia in June 2002, the Model Rules of Conduct for Judges of the Baltic States, the Code of Judicial Ethics for Judges of the People's Republic of China, and the Code of Judicial Ethics of the Macedonian Judges Association.

The revised Bangalore Draft was placed before a Round-Table Meeting of Chief Justices (or their representatives) from the civil law system, held in the Peace Palace in The Hague, Netherlands, in November 2002, with Judge Weeramantry presiding. Those participating were Judge Vladimir de Freitas of the Federal Court of Appeal of Brazil, Chief Justice Iva Brozova of the Supreme Court of the Czech Republic, Chief Justice Mohammad Fathy Naguib of the Supreme Constitutional Court of Egypt, Conseillere Christine Chanet of the Cour de Cassation of France, President Genaro David Gongora Pimentel of the Suprema Corte de Justicia de la Nacion of Mexico, President Mario Mangaze of the Supreme Court of Mozambique, President Pim Haak of the Hoge Raad der Nederlanden, Justice Trond Dolva of the Supreme Court of Norway, and Chief Justice Hilario Davide of the Supreme Court of the Philippines. Also participating in one session were the following Judges of the International Court of Justice: Judge Ranjeva (Madagascar), Judge Herczegh (Hungary), Judge Fleischhauer (Germany), Judge Koroma (Sierra Leone), Judge Higgins (United Kingdom), Judge Rezek (Brazil), Judge Elaraby (Egypt), and Ad-Hoc Judge Frank (Usa). The UN Special Rapporteur was in attendance. The "Bangalore Principles of Judicial Conduct" was the product of this meeting.

APPENDICE 5

L'IMPARTIALITÉ DU JUGE PRINCIPES DIRECTEURS ET RECOMMANDATIONS*

I. PRINCIPES GÉNÉRAUX

1. *Conscient de ce qu'elle fonde la légitimité de son action, le juge fait de l'impartialité un devoir essentiel de sa charge.*

Commentaire

Il s'agit d'un devoir car l'impartialité suppose un effort permanent du juge: tout comme la compétence, qui n'est pas définitivement acquise et qui implique un travail constant de formation continue, l'impartialité n'est pas donnée au juge une fois pour toutes.

De même que l'indépendance, dira-t-on? Sans doute, quoique le problème ne se pose pas exactement dans les mêmes termes pour les deux notions, lesquelles sont à l'évidence complémentaires: l'indépendance, pré-supposée, est un état lié notamment à un statut; elle est au service de l'impartialité mais, à la différence de celle-ci, elle n'est pas une fin en soi.

L'impartialité constitue un devoir *essentiel* du juge puisqu'elle touche à l'essence même de sa fonction: l'acte de juger ne peut tout simplement pas se concevoir sans elle. A tel point qu'on s'est demandé s'il n'eût pas mieux valu parler ici de «premier» devoir du juge? Toutefois, l'atelier a préféré ne pas établir de hiérarchie entre les divers devoirs qui s'imposent au juge.

2. *Le juge s'efforce de faire preuve de la plus grande impartialité dans la conduite de la procédure, la tenue de l'audience et l'élaboration de sa décision. À cet égard, il veille à conserver constamment une entière li-*

* Adottati dai partecipanti al seminario franco-italiano sull'Imparzialità del magistrato, tenutosi a Parigi presso l'*Ecole Nationale de la Magistrature* nel settembre 2002.

berté d'esprit pour élaborer un jugement qui ne résulte que d'une application loyale du droit et d'une égale considération pour l'argumentation de chaque partie.

Commentaire

Faut-il parler d'une obligation de moyen pour le juge («s'efforce de taire preuve») ou, plus radicalement, d'une obligation de résultat (le juge «doit» assurer)? En optant pour «s'efforce», les membres de l'atelier ont entendu souligner que le juge reste un homme, avec ses limites: quel juge, même et peut-être surtout extrêmement scrupuleux, pourrait affirmer qu'il est totalement impartial, qu'il sait toujours faire abstraction de ses opinions, de ses préférences, de ses préjugés? Cependant, peut-être conviendrait-il sur ce point d'approfondir la réflexion à la lumière de la distinction opérée par la Cour européenne des droits de l'homme entre impartialité «objective» (qui renvoie aux garanties statutaires, procédurales, etc. destinées à exclure tout doute légitime sur l'impartialité du juge, quelle que soit l'attitude personnelle de celui-ci) et impartialité «subjective» (qui relève du comportement du magistrat, de son for intérieur). Certains membres de l'atelier ont suggéré que seule la seconde relèverait de l'obligation de moyen, la première constituant une obligation de résultat.

3. *Dans ses relations sociales et professionnelles, y compris dans les relations avec la presse, le juge s'attache à renforcer la confiance du public dans son impartialité personnelle, laquelle rejaillit sur l'institution judiciaire en général. Il fait partager ce souci par ses collègues.*

Commentaire

Le thème de la confiance du public dans l'impartialité du juge soulève de multiples questions.

En premier lieu, celle de l'exemplarité: la confiance dans le juge rejaillit positivement sur l'ensemble du corps tout comme, négativement, la méfiance à l'endroit d'un seul juge se répercute sur l'institution elle-même. Etant précisé que l'impact négatif, en cas d'atteinte à l'impartialité, est inévitablement plus important que l'incidence d'une pratique irréprochable: le juge impartial ne fait que son devoir, tandis que celui qui se montre partial est cause de scandale...

Dans ces conditions, se pose la question de l'attitude à avoir à l'égard d'un collègue dont le comportement pourrait paraître critiquable (v. *infra* § 9 et 10). Si les chefs de juridiction ont sans doute un rôle à jouer dans ce domaine, ce rôle ne saurait être exclusif. La solitude du juge est bien sou-

vent une réalité et la collégialité de l'institution peut aussi être mobilisée: elle pourrait être un lieu de discussion et de débat entre collègues, sur les exigences théoriques et pratiques de la mise en œuvre de l'impartialité dans l'exercice quotidien de la justice.

La question de l'affectation des magistrats dans les chambres et de la répartition des dossiers entre les juges, peut aussi se poser en termes d'impartialité. Les chefs de juridiction ont ici une responsabilité particulière puisque, contrairement à d'autres pays (Espagne, Italie, Portugal, par exemple), dans lesquels le principe du «juge naturel» a valeur constitutionnelle, la France a une approche essentiellement hiérarchique de ces questions.

S'agissant de ses «relations sociales», le juge est, dans le contexte actuel, fréquemment confronté à un dilemme: la fonction de juger a évolué et on attend du magistrat qu'il soit inséré localement, qu'il soit soucieux d'ouverture, de pratiques innovantes, etc., ce qui peut le conduire à des engagements difficiles à concilier avec l'impartialité.

L'atelier n'a pas pu ne pas se pencher sur le problème des relations avec la presse sans toutefois être en mesure de l'approfondir: il aurait fallu en effet traiter ici du secret de l'instruction, de la déontologie en général (tant des juges que des journalistes), de la formation des magistrats à la communication, de la responsabilité des médias, de la défense des magistrats attaqués, etc. Toutes questions déjà largement débattues (mais non résolues...) au sein d'autres instances, notamment les multiples commissions presse/justice instituées au cours des trente dernières années, et qui dépassent de beaucoup le seul problème de l'impartialité (v. aussi *infra* § 11 et 12).

II. EXERCICE DES FONCTIONS

4. *Dans l'exercice de ses fonctions, le juge refuse de céder à toute pression ou sollicitation de quelque nature qu'elle soit, dont le but serait d'influer indûment sur le cours de la justice.*

Commentaire

Sont ici visées aussi bien les pressions publiques (celles des médias notamment) que les pressions privées, les pressions manifestes ou les pressions occultes, les pressions conscientes ou inconscientes.

Mais pourquoi avoir employé le terme «indûment»? Toute pression, par définition, n'est-elle pas inacceptable? La question, au sein de l'atelier, a été controversée... Certains considèrent en effet que, les pressions étant

d'une certaine façon l'expression de la contradiction, il n'est pas étonnant que le juge ait à y faire face, à y résister; dans cette optique, il faudrait distinguer les pressions « admissibles » des autres: ce qui serait gênant, ce serait les pressions « officieuses », à la différence, par exemple, de celles des médias tendant à éviter l'étouffement d'une affaire...

Par ailleurs, ne peut-on admettre que le juge, qui rend la justice au nom du peuple, soit à l'écoute des opinions publiques manifestant une évolution des moeurs? Ainsi, le magistrat peut-il ignorer les articles de presse qui reflètent l'avis d'un grand nombre de personnes sur un sujet général (ex.: la dépénalisation de l'avortement avant le vote de la loi de 1975 ou encore, de nos jours, la nécessité d'une répression accrue de la délinquance routière)? A l'inverse, ne doit-il pas se montrer vigilant pour ne pas se laisser influencer par des articles relatifs à une affaire particulière qui lui est soumise?

Quoi qu'il en soit, tous les membres de l'atelier sont tombés d'accord pour admettre que les magistrats du siège comme du parquet ne sauraient donner suite aux sollicitations « d'indulgence ». De même, les informations transmises officieusement au juge ne peuvent être prises en compte si elles ne sont pas soumises au débat public contradictoire, l'annonce d'un tel débat suffisant d'ailleurs le plus souvent à dissuader les informateurs mal intentionnés. En matière civile, le principe dispositif interdit au juge de retenir des faits qui n'ont pas été apportés par les parties elles-mêmes.

5. *Dans les affaires dont il est saisi, le juge s'interdit toute attitude pouvant donner l'impression d'une collusion avec les avocats et le ministère public.*

Commentaire

Si le juge doit s'interdire toute attitude pouvant donner « l'impression » d'une collusion, c'est parce qu'il est impossible de prouver le for interne. Cependant, à l'évidence, les questions abordées ici vont au-delà de l'apparence pour toucher au respect même de l'équilibre des droits des parties (v. infra, § 6): il importe de toujours se souvenir que la tyrannie de l'apparence risque de conduire au triomphe de l'hypocrisie et donc de nuire à la véritable impartialité.

La question des rapports entre magistrats et avocats est complexe, étant précisé qu'elle ne se présente évidemment pas de la même façon dans une petite ville de province et dans une grande juridiction, ou encore selon que les contacts sont personnels ou institutionnels (bâtonnier/président, par exemple). L'absence de relations (sans doute trop fréquente dans notre

pays...) est à l'évidence fort peu satisfaisante. À l'inverse, des liens étroits voire intimes sont susceptibles de faire difficulté. Sans doute le mode de recrutement des magistrats en France ne favorise-t-il guère les contacts, de sorte qu'il est parfois délicat de trouver la «juste distance» alors que, dans les pays anglo-saxons, ce problème constitue le BA-BA de la déontologie. Quelques situations semblent en tout cas appeler une certaine prudence, le magistrat devant tenir compte de la sensibilité de certains justiciables qui peuvent mal interpréter un mot, un geste, une attitude: inconsciemment et naturellement, au sortir de l'audience, le juge peut se montrer plus amical avec un avocat du barreau de son tribunal qu'il rencontre quotidiennement qu'avec l'avocat adverse d'un barreau extérieur, ce qui risque de produire un effet déplorable chez le client de ce dernier; de même, sans doute est-il peu recommandé au juge de s'afficher au restaurant, en cours de délibéré, avec l'avocat de l'une des parties, même si... chacun paie sa propre addition!

Autant que de ses rapports privilégiés avec tel avocat, le juge doit se méfier d'une éventuelle inimitié à l'égard de tel autre: s'il venait à perdre de vue que le défenseur n'est qu'un porte-parole, le juge, en se heurtant à l'avocat, atteindrait inévitablement le justiciable lui-même, qui n'en peut mais...

La question des rapports entre juges et magistrats du parquet est tout aussi (voire plus) sensible, compte tenu de leur appartenance commune au corps judiciaire. La connivence est un risque réel, en tout cas un soupçon permanent, ce qui doit conduire à une vigilance redoublée. En particulier, au cours des débats, le président doit veiller à ce que son attitude soit irréprochable en termes « d'égalité des armes ». Dans cet esprit, il paraît souhaitable que juges et procureurs évitent d'entrer ensemble dans la salle d'audience (*a fortiori* d'en sortir par la même porte).

6. *Le juge se montre attentif aux moyens et arguments de chacun. Tout en agissant avec autorité et efficacité, il respecte intégralement le principe de la contradiction et les droits de toutes les parties en cause. Il ne sollicite ni n'accepte d'informations officieuses dans les procédures qu'il traite.*

Commentaire

Le principe du contradictoire et de l'égalité des armes doit toujours être rappelé. Étant souligné que le souci de l'impartialité ne doit pas faire perdre de vue l'objectif d'efficacité. Ainsi, sous couvert de respect du contradictoire, le juge ne doit pas accorder de renvois dilatoires. De même,

à l'audience, le président peut être conduit à interrompre (toujours avec tact et courtoisie, bien entendu...) les plaidoiries inutiles et/ou trop longues. Il doit pouvoir orienter les débats notamment dans le cadre des audiences dites «interactives», tout en ayant, dans ce cas, le souci de bien montrer que son opinion n'est pas définitivement arrêtée et qu'il est toujours prêt à se laisser convaincre par les explications des parties (v. infra § 9). La question des «informations officieuses» ne soulève guère de difficulté lorsqu'il est question du rôle traditionnel du juge au stade de l'audience de jugement: il serait évidemment inacceptable que l'avocat ou le ministère public vienne dire au juge « je n'en parlerais pas à l'audience mais sachez que... ». En revanche, cette question mériterait sans doute de plus longs développements lorsqu'il s'agit de certaines fonctions spécialisées (juge des enfants, juge d'instruction, notamment). Mais peut-on toujours parler d'impartialité s'agissant de ces fonctions dans lesquelles, fréquemment, le juge n'est pas en position d'arbitre (si le juge d'instruction, par exemple, doit instruire à charge et à décharge, il n'en est pas moins à la fois enquêteur, accusateur et juge: son travail avec la police ne le conduit-il pas inévitablement à «solliciter des informations officieuses»...)?

7. *Le juge respecte la parole du justiciable, sa personnalité et sa dignité, sans discrimination ni préjugé, notamment de sexe, de culture, de situation sociale, d'idéologie, d'ethnie ou de religion. Il traite ceux qui comparaissent devant lui avec courtoisie, en leur donnant si nécessaire tous éclaircissements utiles.*

Commentaire

Respecter la parole du justiciable ne veut pas dire nécessairement donner crédit à ses allégations. Il s'agit plus simplement mais plus radicalement de permettre à chacun d'exprimer son point de vue car c'est à partir de celui-ci, qui dépend de la position que l'intéressé occupe, de l'histoire qui est la sienne, des projets autour desquels s'organise sa vie, que son comportement prend sens. L'expérience nous le montre bien souvent: la frustration que ressent le justiciable face à une décision de justice provient souvent du sentiment qu'il n'a pas eu un rôle d'acteur dans son procès. En (re)donnant au justiciable un rôle d'acteur, le juge lui permet à la fois de faire valoir son point de vue et de prendre conscience de l'éventuelle légitimité du point de vue de l'autre.

Deux remarques doivent toutefois être formulées à ce sujet:

- l'attitude d'écoute décrite ci-dessus peut trouver sa limite dans certaines formes de «défense de rupture», interdisant tout véritable dé-

bat contradictoire: si la légitimité de la juridiction n'est pas reconnue, la seule réponse possible risque d'être l'expulsion de la salle d'audience; et si de tels comportements venaient à se multiplier, le fonctionnement même de la justice serait sans doute en péril, de même que la démocratie est menacée par le terrorisme. Heureusement, de telles situations restent encore, aujourd'hui, relativement exceptionnelles;

- la répartition des rôles dans la procédure française, notamment le fait que le président doit interroger un prévenu niant les faits, peut parfois être source de difficultés. Le président aura sans doute du mal, alors, à ne pas sortir de son rôle de juge impartial si le procureur reste taiseux et n'occupe pas toute sa place.

Respecter la personnalité et la dignité du justiciable, c'est non seulement s'interdire toute attitude de mépris mais encore s'adresser à l'intéressé en des termes compréhensibles, ce qui implique sans doute de ne pas parler à tous de la même façon. Il conviendrait ici de développer le problème spécifique posé aux assesseurs par un «écart» du président: si, à l'évidence, aucune désapprobation publique n'est alors envisageable, un déficit d'explication ne serait pas davantage satisfaisant (v. supra § 3).

Enfin, il est essentiel que le juge apporte tous les éclaircissements utiles à la compréhension de la procédure et de la décision, l'appareil judiciaire étant, pour la plupart des justiciables, difficile d'accès, abscons et imprévisible. Certains membres de l'atelier ont préconisé, pour jouer ce rôle pédagogique, la présence à l'audience d'un collaborateur du juge, qui serait mieux placé que celui-ci pour répondre aux éventuelles questions.

8. Le juge motive rigoureusement ses décisions d'une façon sincère et complète, après avoir examiné avec la même attention scrupuleuse les faits et arguments avancés par toutes les parties.

Commentaire

L'exigence de motivation est la garantie la plus sûre de l'impartialité: à travers les motifs de la décision, le justiciable doit avoir confirmation que le juge est impartial, qu'il fonde sa décision sur des moyens juridiques corrects et des faits contradictoirement débattus et non sur des préjugés personnels. Il convient de rappeler, en outre, que la réponse aux moyens ne doit pas être confondue avec l'examen des arguments. Sur ce point, toutefois, il convient d'apporter une précision: si la règle juridique et notamment les exigences de la CEDH ne vont pas jusqu'à exiger l'examen de tous les arguments, le juge n'ayant l'obligation de répondre qu'aux

moyens, en fait et en droit (sans en « esquiver » aucun et sans se réfugier dans des exceptions de procédure à seul fin d'éviter d'aborder le fond du litige lorsque celui-ci est compliqué...), en revanche, dans une perspective déontologique, l'examen attentif des arguments reste une nécessité pour se forger une intime conviction en résonance avec les mots de l'autre. Le juge doit se dépandre de son imaginaire, faire silence en lui, pour pouvoir entendre le justiciable.

9. *Dans la conduite des audiences et la motivation de ses décisions, le juge évite de se prononcer sur des personnes ou des faits étrangers à la cause. Il s'interdit, dans tous les cas, de formuler des jugements de valeur ou des appréciations d'ordre moral non indispensables à la décision. Il conserve jusqu'à la clôture des débats une écoute attentive, en évitant tout mouvement d'humeur et toute manifestation pouvant donner l'impression que sa décision est arrêtée.*

Commentaire

La conduite de l'audience pose le problème du dialogue entre le juge et les parties ou leurs conseils. Le devoir d'impartialité ne doit sans doute pas empêcher les audiences « interactives », permettant au juge de recentrer les débats sur les points posant réellement problème, de faire comprendre à une partie qu'il ne saisit pas son raisonnement, de lui indiquer qu'il dispose de suffisamment d'éclaircissements sur telle question et souhaiterait au contraire des observations sur tel autre point, etc. Toute la difficulté pour le juge consiste alors à ne pas donner l'impression que son opinion est déjà faite, que la cause est entendue avant le délibéré. L'exercice est encore plus périlleux lorsque la juridiction est collégiale, l'approche du juge qui prend la parole pouvant être en décalage par rapport à celle des autres membres de la composition. Le président, le conseiller rapporteur, l'assesseur qui pose une question, doivent donc avoir en permanence le souci de l'impartialité, et cela d'autant plus que la répartition des rôles dans la procédure française peut parfois être source de difficultés (v. supra § 7). Une règle de base consiste sans doute à formuler des observations plutôt sous forme d'interrogations que d'affirmations et à systématiquement expliquer que les réflexions du juge ne préjugent en rien mais visent seulement à contribuer à l'instruction de l'affaire.

10. *Dans l'exercice de ses fonctions, et bien sûr en particulier lorsque celles-ci sont collégiales, le juge écoute les avis des autres magistrats, de ma-*

nière à soumettre ses propres convictions à une vérification constante et à obtenir, par la discussion, un enrichissement professionnel et personnel.

Commentaire

Le délibéré est évidemment le temps fort du procès, le moment où l'impartialité se concrétise dans la décision. Aussi est-il regrettable que son déroulement soit aussi peu encadré: la qualité de la prise de décision garantirait sans doute à ce que soient définies des règles introduisant un minimum de rigueur, à l'image de ce qui se pratique devant la Cour de cassation, pour faciliter l'émergence de la contradiction et la libre expression, notamment des magistrats les plus jeunes. Il a été suggéré, au sein de l'atelier, qu'aucune décision ne soit rendue sur le siège mais toujours après un délibéré, même court, en chambre du conseil et cela sans regrouper à l'excès le nombre d'affaires à examiner, de sorte que chacun ait présents à l'esprit tous les détails.

Par ailleurs, l'atelier s'est interrogé sur les problèmes spécifiques auxquels est confronté le juge unique, qui n'a aucun « retour » sur la façon dont il se comporte si ce n'est, de manière tout à fait exceptionnelle, par voie de presse.

Cette situation illustre bien, au-delà du délibéré collégial, la nécessité d'échanges réguliers entre magistrats sur leurs pratiques professionnelles, un peu comme le font les médecins dans le cadre des « groupes Balint »: les magistrats doivent pouvoir, dans le vécu quotidien de l'impartialité, s'entraider et partager d'une certaine manière leur expérience (v. supra § 3).

III. RELATIONS SOCIALES

11. *Dans la vie sociale, en ce compris dans ses relations avec la presse, le juge se comporte avec dignité, en restant attentif à l'intérêt public. Il ne peut jamais se servir des fonctions qu'il occupe dans le but d'obtenir des avantages directs ou indirects.*

Commentaire

Le problème des relations justice/médias devrait évidemment être ici développé: les logiques judiciaire et médiatique restent irrémédiablement étrangères l'une à l'autre et leur télescopage, la confusion des rôles, le fantasme d'une transparence totale, incompatible avec l'idée de procédure, tout cela favorise certains comportements posant problème en matière

d'impartialité (prise de position sur des affaires non jugées, vedettariat des juges, attaques contre leur personne, avec les risques de polémique qui s'ensuivent...). La communication légitime de la justice reste à définir: il faudrait ici préciser la nature des contacts que le juge doit avoir avec la presse dans l'intérêt du service, la façon dont il peut participer au débat public, les écrits qu'il peut s'autoriser, etc. Autant de questions qui n'ont pu être approfondies davantage car elles dépassent de beaucoup notre sujet: il aurait fallu en effet traiter du secret de l'instruction, de la déontologie en général (tant des juges que des journalistes), de la formation des magistrats à la communication, de la responsabilité des médias, de la défense des magistrats attaqués, etc. (v. aussi *supra* § 3).

12. *En tant que citoyen, le juge est libre de ses engagements, sous réserve des incompatibilités légales.*

Commentaire

Au sein de l'atelier, ce qu'il est convenu d'appeler «l'obligation de réserve» a donné lieu à d'abondantes et passionnantes discussions à l'issue desquelles, majoritairement, les participants ont préféré... s'en tenir à la formulation ci-dessus, dont le laconisme nécessite sans doute quelques explications.

L'engagement public du juge soulève un certain nombre d'interrogations. À commencer par celle-ci ; un magistrat peut-il être membre d'un parti politique? La réponse varie selon les pays (radicalement exclue en Angleterre, l'appartenance à un parti est encouragée en Allemagne et systématique en Suisse, tandis qu'en France le sujet n'est guère évoqué). Aussi, convient-il d'approfondir l'analyse: au-delà de la simple adhésion à un parti politique ou un mouvement militant, le juge peut-il, par exemple, accepter des responsabilités le conduisant à des prises de position publiques? Plus généralement, le magistrat ne doit-il pas, selon les termes de son statut, s'abstenir de « toute démonstration de nature politique incompatible avec la réserve que lui imposent ses fonctions », en d'autres termes « toute manifestation laissant supposer un engagement politique ou idéologique susceptible d'orienter ses décisions »? Mais où commence une telle manifestation? Par exemple, est-il satisfaisant que des magistrats soient membres de cabinets ministériels? Est-il acceptable qu'un juge se fasse mettre en disponibilité pour mener campagne électorale, avant de réintégrer la magistrature en cas de défaite?

Autant de situations qui, pour certains membres de l'atelier, mériteraient clarification: ceux-là, estimant que l'on ne peut se contenter d'affir-

mer que tout ce qui n'est pas défendu est permis au juge, auraient voulu aller plus loin qu'un simple rappel des incompatibilités légales.

A l'opposé, d'autres ont fait valoir qu'il était peut-être préférable, pour une meilleure garantie de justice impartiale, que le juge affichât ses convictions politiques, syndicales ou religieuses, plutôt que de les cacher sournoisement. Ainsi resurgit la question du for intérieur, de l'apparence et de l'hypocrisie. Mais, ont fait observer les tenants d'une stricte obligation de réserve, pourquoi faudrait-il associer discrétion et hypocrisie? Pourquoi le juge qui évite d'afficher publiquement ses convictions ne pourrait-il juger impartialement?...

D'autres participants ont tenu à souligner le danger de « légiférer » dans un tel domaine. Ceux-là ont insisté sur l'évolution de la justice au cours des trente dernières années: l'apparition d'une réflexion collective des juges, favorisée par la création d'une Ecole nationale de la magistrature et caractérisée notamment par la naissance du syndicalisme judiciaire, a conduit à une véritable mutation de la justice en France, où l'égalité des citoyens devant la loi a été mieux assurée, les puissants devenant des justiciables comme les autres. Cette transformation est sans doute liée à d'autres facteurs (le contexte international de montée en puissance du droit par exemple) mais, de toute évidence, elle n'a été possible que parce que la liberté du juge n'était pas enfermée dans un carcan réglementaire: les engagements du magistrat lui ont permis d'être davantage en prise avec la réalité sociale. Les tenants de cette thèse considèrent, en conséquence, qu'il vaut mieux accepter le risque de certains débordements, dont le juge devra le cas échéant répondre *a posteriori* devant les instances disciplinaires compétentes, plutôt que réglementer *a priori* au risque d'inhiber le juge, de l'empêcher de jouer pleinement son rôle dans la société.

Certains membres de l'atelier ont à leur tour fait remarquer que, précisément en raison de l'émergence en France d'un véritable «pouvoir judiciaire», les règles du jeu ne pouvaient rester les mêmes: ayant des pouvoirs accrus, le juge a aussi des devoirs plus importants que par le passé.

Sans doute le débat n'est-il pas près d'être clos. Peut-être convient-il, en définitive, d'admettre que la recherche de l'impartialité reste avant tout la poursuite d'un idéal, fondé sur des questions, parfois dérangeantes, plus que sur des réponses?...

13. *Le juge ne doit pas adhérer à un groupement ou une association qui exige de ses membres la soumission à un engagement de fidélité ou de solidarité et/ou qui n'assure pas la pleine transparence sur la participation de ses membres.*

Commentaire

L'atelier s'est ici plus particulièrement penché sur la question de l'appartenance des magistrats à la franc-maçonnerie. Il s'est notamment interrogé à la lumière des expériences étrangères et de la seule décision du Conseil supérieur de la magistrature en la matière. Faut-il, comme en Italie, interdire aux magistrats l'appartenance à la franc-maçonnerie? Peut-on, comme cela avait été tenté (sans succès) en Angleterre, envisager d'obliger les magistrats francs-maçons à faire état publiquement de cette qualité? Doit-on s'en tenir à la position adoptée par le CSM, pour qui «l'appartenance de l'un de ses membres à une obédience maçonnique n'est pas, en elle-même, de nature à faire douter de l'indépendance et de l'impartialité de la juridiction»?

La formulation retenue en définitive montre que, majoritairement, les membres de l'atelier ont estimé que cette position minimaliste leur paraissait insuffisante. Dans cet esprit, l'accent a été mis sur l'incompatibilité entre la mission du juge et un éventuel « engagement de solidarité ou de fidélité » d'une part, entre cette mission et une certaine forme de « clandestinité » d'autre part.

14. *Le juge ne s'engage dans un groupement ou une association où sa qualité de magistrat est ou sera connue qu'en indiquant clairement aux autres membres qu'il ne rendra aucun service relevant de l'exercice de ses fonctions et qu'il sera amené à s'abstenir dans toute procédure intéressant l'un d'entre eux ou le groupe lui-même.*

Commentaire

Inspiré des mêmes préoccupations que le précédent, ce principe vise des situations voisines: est notamment envisagée ici l'appartenance du magistrat à un club auquel on est admis par cooptation (Rotary, Lions...).

IV. ABSTENTION ET RÉCUSATION

15. *Le juge s'applique à éviter les situations qui sont susceptibles de conduire à des causes de récusation.*

Commentaire

La récusation étant, par hypothèse, révélatrice d'une difficulté, il appartient au juge d'anticiper. En conséquence, il doit avoir en permanence

la préoccupation de l'impartialité telle qu'elle est illustrée dans les principes précédents (v. notamment supra § 3, 5, 11 à 14). Pour ce faire, il doit garder présente à l'esprit la mise en garde de la Cour de cassation, selon laquelle «les cas de récusation n'épuisent pas nécessairement l'exigence d'impartialité de l'article 6 de la Convention européenne des droits de l'homme». Il doit donc, si nécessaire, aller au-delà des incompatibilités telles qu'elles sont définies par les textes (Statut de la magistrature, Code de l'organisation judiciaire, Code de procédure pénale, NCPC...), en n'hésitant pas, le cas échéant, à se déporter avant toute demande de récusation.

16. *Le juge s'abstient chaque fois qu'il ne s'estime pas en mesure de juger impartialement et en toute indépendance, à moins que son abstention ne risque d'entraîner un déni de justice. Il communique les raisons de sa décision au responsable de sa formation et à ses membres.*

Commentaire

Si le juge doit se déporter sans attendre une demande de récusation, encore faut-il que l'abstention ne puisse être qualifiée d'abusive et que, sous couvert de scrupules, la décision ne soit guidée par des considérations de confort ou de paresse. A la limite, d'ailleurs, la décision d'abstention risquerait de conduire à un déni de justice, si la cause de récusation invoquée était commune à tous les magistrats d'un tribunal (par exemple en cas de litige impliquant un avocat, connu de tous).

Pour éviter cet écueil, certains membres de l'atelier ont fait valoir qu'il serait préférable qu'un juge, avant de s'abstenir de sa propre initiative, évoque la question avec ses collègues surtout en formation collégiale et que la décision ne soit prise qu'après une discussion voire une décision collégiale (étant cependant observé que l'obligation de communiquer ses raisons aux collègues peut parfois se heurter au respect de la vie privée).

17. *Lorsqu'il existe dans un dossier des éléments connus de lui de nature à déterminer chez une personne raisonnable, sans parti pris et bien informée, des doutes légitimes sur son impartialité, le juge en informe en temps utile les parties, en leur expliquant le cas échéant, pourquoi il estime ne pas devoir s'abstenir.*

Commentaire

Il s'agit, là encore, de prévenir dans toute la mesure du possible les causes de récusation. Ce qui a été indiqué ci-dessus au § 15 s'applique

donc, mutatis mutandis, étant bien sûr supposé, ici comme ailleurs, que l'on a affaire à des personnes «raisonnables, sans parti pris et bien informées» et non à des plaideurs de mauvaise foi.

18. *S'il a été l'objet d'une demande de récusation, le juge veille particulièrement à ne pas concevoir ni manifester un quelconque ressentiment à l'égard de l'auteur de la récusation ou de son avocat*

Commentaire

Le problème des suites d'une demande de récusation est particulièrement délicat: n'est-il pas irréaliste d'exiger du juge qu'il aborde une affaire sans *a priori* si, dès l'ouverture du procès, on l'a soupçonné de partialité? En d'autres termes, la procédure de récusation elle-même ne rend-elle pas partial? C'est précisément le calcul que font certains justiciables ou avocats, usant de la récusation comme d'une arme destinée à écarter certains juges ne leur convenant pas. À cette aune, le seul juge impartial serait celui... qui donne raison.

C'est précisément pour ne pas tomber dans ce piège que le juge impartial doit «veiller particulièrement à ne pas concevoir ni manifester un quelconque ressentiment» et ne pas percevoir une demande de récusation comme une vexation ni un drame personnel...