

CODE OF JUDICIAL ETHICS SLOVENIA

PREAMBLE

Endeavouring by fulfilling the mission imposed on judges by the Constitution and Law,

to contribute as successfully as possible to protecting and strengthening constitutionality and legality,

to specifying in more detail the extent and content of their duties in performing the judicial function, and

to assist in moulding the character of judges as high professional, independent, impartial and personally irreproachable holders of judicial authority,

judges are bound to behave according to the principles of the Code of Judicial Ethics,

which the general assembly of the Slovenian Association of Judges adopted on 8 June 2001 in Ljubljana.

I. CODE

The Code of Judicial Ethics is a record of the most important principles by which every judge shall behave.

Commentary

The Code of Judicial Ethics contains professional and personal ethical rules for judges, which are enshrined in the form of principles. These principles are based on the general standpoint that judges, both individually and collectively, must respect the honour and reputation of the judicial service and endeavour to strengthen public confidence in the judiciary. The ethical principles enshrined in the Code must be interpreted and used in accordance with constitutional principles and provisions, laws and relevant case law. The Code is formed in such a way that in all principles it protects the various aspects of judicial independence, impartiality and efficiency, which are crucial for the right of everyone to fair, just and effective legal protection.

The Code defines the activity and behaviour of judges. Its principles are compulsory for all judges, since they determine basic ethical standards. The Code is a record of the most important ethical principles, which means that they are not enumerated exhaustively. Judges therefore do not behave only according to the Code but also according to generally recognised ethical standards.

The Code has not been adopted for the purpose of its principles being used as a basis for enforcing a judge's criminal or civil liability. The enshrined principles would

be abused if parties and their legal representatives were to refer to them in court proceedings in order to gain advantage in such proceedings.

II. INDEPENDENCE

A judge shall maintain and protect his independence and the independence of the judiciary and shall not allow any encroachment that could threaten the independent performance of the judicial function.

Commentary

The Code links judicial ethics with the concept of judicial independence. From the professional point of view, each judge must act in accordance with the position of a holder of state authority and in a manner that is expected of the most responsible citizens. He fulfils his professional mission with carefulness, conscientiousness, commitment and professional attentiveness. At the same time, through irreproachable conduct, which he ensures with controlled behaviour, uprightness and by protecting everyone's personal dignity, he ensures respect for personal ethical rules. A judge's professional and personal reputation is a guarantee of public confidence in an independent judiciary.

A judge must be capable of exercising the judicial function independent of social, economic, political or other external pressures and, at the same time, must also be independent from other judges and members of the judicial and legal administration. The Code therefore stresses that a judge may not allow any encroachment on independence, thus including those that threaten his status or position (status independence).

Within the context of the principle of independence, the Code also specifies the importance of a judge's material or functional independence. This is independence from any kind of direct or indirect instructions, influences, incitements, threats, pressures or interference in the process of a judge's decision making irrespective of from where or for what reasons such impermissible encroachments derive. The procedural nature of relations between higher and lower courts, which can appear in the opinions or instructions of higher courts adopted on the basis of suitable legal means, do not threaten a judge's functional independence under this Code.

The functional independence of the judiciary is restricted by the principles of constitutionality and legality. This means that the judiciary does not determine its own competencies and that judges, in reaching decisions, must respect the valid constitutional and legal provisions and generally recognised legal principles such as the principles of justice and humanity. Compulsory normative boundaries that each judge must respect are thus determined.

The Code also protects the principle of a judge's internal independence in such a way that in the process of reaching a decision, a judge uses legal standards on the basis his own conviction, which means that he interprets law in a manner which respects the prevailing understanding of law, legal tradition and established understandings of legal science. However, the principle of a judge's internal independence may not be understood in such a way that a judge may, by distorted use of law, inappropriately

deal with participants in court proceedings or base decisions which unfairly benefit, harm or give them advantage in proceedings.

III. IMPARTIALITY

A judge shall perform the judicial function impartially and shall not in this allow his judgement to be subject to his inclinations, prejudices or previous convictions, political, economic or other interests, his personal knowledge of disputed facts, public demands or criticisms or other circumstances that could affect his decision in a specific case or that could encourage the appearance of such improper influence.

Commentary

The Code requires a judge's impartiality in exercising the judicial function, which means impartiality from the time of receiving a case for hearing, in conducting the preparations for hearing, and in conducting proceedings to the final judgement. The latter may only be grounded on procedural material collected in the specific case.

A judge must propose his own exclusion in all cases in which his impartiality could reasonably be questioned. The Code does not enumerate circumstances for exclusion exhaustively, since a judge's impartiality is primarily subject to the judge's self-restraint and avoidance of any conflict of interests. Especially with economic interests, not only the judge's but also the interests of persons with whom he lives shall be taken into account.

In addition to actual impartiality, the Code explicitly also protects the appearance of a judge's impartiality, which means that a judge must also take into account how the public will view circumstances that could encourage doubt about his impartiality. A judge shall maintain an impartial appearance by restraint, tolerance, by not taking a position until reaching a decision and by protecting the dignity of every person.

IV. TRAINING

A judge shall constantly ensure his own professional training.

Commentary

A judge's professional training means that a judge is bound constantly to up-date his knowledge. The right to judicial protection, namely, also includes the right of everyone to be judged by a suitably educated judge. Regular education and training is the basis of the judge's professional standard. A judge is therefore obliged to be included in various educational programs, to broaden his legal vision and open-mindedness. This responsibility lasts the entire duration of his service as a judge. From the point of view of the principle of independence, it is sufficient for each judge himself to assess in which forms of education or training he will be included.

A judge's general vision is also necessary for proper judgement, which he ensures by carefully following all relevant fields of social development. The social context of a judge's training removes hidden inclinations or prejudices in relation to religious,

sexual, racial, ethnic and other questions and thus ensures real impartiality of a judge's judgements.

V. COMMITMENT

A judge shall demonstrate commitment to exercising the judicial function.

Commentary

A judge is obliged to fulfil his professional duties zealously and to the extreme limit of his capacities. However, a judge is not unconditionally available to the state, but unconditionally committed to the exercise of the judicial function. He is obliged to be professionally attentive to problems, he must take time suitably to solve cases, he must ensure the preparation for procedural acts, he is obliged to study in detail the legal and material circumstances in cases which are submitted to him for resolution, and at the same time must ensure that proceedings do not drag on unnecessarily and must not allow other participants in a proceeding to delay proceedings. A judge's commitment to exercise of the judicial function is thus a basic condition for the effective solving of court cases.

VI. COMPATIBILITY

A judge shall be included in activities that strengthen the functioning of the judiciary, guarantee legal progress and development and contribute to improving the legal system, provided this does not give rise to doubts about his impartiality in decision-making.

Commentary

Judges are highly qualified lawyers, in a unique position to contribute to strengthening legal security. Within the framework of available time, a judge may independently or through judicial or other legal associations and organisations devoted to legal progress and development, speak, write, teach or in any other way contribute to legal activities, but which may not be intended solely for individuals and groups who are enforcing any interests before the courts.

In carrying out legal activities, a judge may appear in public before bodies of legislative or executive authority. He may also provide an opinion to these bodies in another way, but only in cases that relate to the administration and operation of the judiciary.

Care in inclusion of a judge in legal activities always includes the obligation to give prior notice that this is extra-judicial activity and an awareness that he will not become involved in legal discussion or express prior opinions during court hearings of individual cases and he will not be involved in judicial decision making on them.

VII. INCOMPATIBILITY

A judge shall balance his private or public, paid or unpaid («pro bono») extra-judicial activities in such a way that it does not come into conflict with his professional duties or with the reputation and dignity of the profession of judge.

Commentary

Membership of the judiciary requires a certain restraint by a judge in private and public life. A judge implements the principle of incompatibility of the judicial function in such a way that he does not accept or does not carry out activities that are incompatible with public confidence in the judge's independence and impartiality and (or) which are incompatible with the necessary degree of commitment to a judge's work, which requires reaching decisions with all the necessary care and within a reasonable time limit.

A judge cannot be separated from society, so he can speak, write, teach or lecture also on non-legal themes and be included in cultural, sports and other social activities, if he does not thus threaten the dignity of the judicial function and the exercise of his judicial duties.

Under the same conditions, he can also cooperate in various initiatives of civil society, in humanitarian and charitable institutions, if membership of them is not based on exclusiveness or non-transparency and if their activity is not directed to gainful economic, social, political or other advantage for members of such an initiative or institution.

The principle of incompatibility must be understood and interpreted also in relation to a judge's political restraint. The latter would not be suitably established if a judge contributed financially or appeared on behalf of a political party or independent candidate for a political function or if he publicly supported a candidate of a political party or independent candidate, if he took part in political marches or gatherings, except when exercising his active voting rights by voting or unless he were to resign judicial service in the case of standing as a candidate for a political post.

A judge is also obliged to refrain from any kind of financial or other business activity which could be viewed as an improper influence on impartiality or threaten the independence of the judge's position. A judge must take care of his investments and other financial interests in such a way that he minimises the number of cases in which he would have to exclude himself from a hearing. It would not be in accordance with this principle if a judge or a member of his family or person with whom he lives accepted any kind of gift from a party to proceedings or his authorised representative or other person who could become a party to proceedings which the judge conducted, or if it were given in any kind of connection with performing the judicial service. A judge may only take financial loans from institutions which are registered for such activities and if he obtains them under conditions that apply for persons who are not judges.

VIII. DISCRETION

A judge shall respect the principle of professional confidentiality in relation to personal, business and all other data which has come to his knowledge while performing his function.

Commentary

Protecting the dignity, integrity and privacy of physical persons and legal entities is a central ethical principle of a judge's professional activity. A judge's discretion therefore does not only cover protecting the secrecy and confidentiality of data to which the public do not have access at all. A judge does not collect data which are personal, business or of another nature if they are not relevant to a hearing and judgement, nor does he reveal such data outside the procedure of the hearing. When he must rely on such data for his ruling, a judge is obliged to protect the dignity and privacy of all persons, in a suitably discrete manner, in oral explanation or in written justification of a court ruling.

IX. ATTITUDE

A judge shall establish and maintain a correct and respectful attitude to associates and participants in proceedings.

Commentary

A judge's attitude to associates is based on respect and equality. A judge with correct attitudes contributes to creating an atmosphere which enables successful operation of the court. A judge is obliged to transfer his knowledge and experience to younger associates and trainees.

He is bound to assist a judge's assessor in performing his function.

A judge shall maintain a correct and respectful attitude also to other participants in proceedings (lawyers and other authorised persons, public prosecutors, state defenders and others) and thus ensure professional and rational work. If a participant in proceedings does not respect a judge's warning, a judge shall not enter into polemics and shall avoid personal antagonism and shall behave in accordance with his authorities.

X. REPUTATION

A judge shall protect the reputation of the judiciary by personal example and in all his activities shall avoid inappropriate behaviour.

Commentary

The Code binds a judge suitably to regulate his behaviour in service and outside it, whereby he shall protect the integrity of the judiciary and ensures public confidence in the judiciary. Maintaining the prestige of the judicial service is crucial for maintaining the system of authority in which judicial authority operates independently from the legislative and executive branches of power. A judge may not

therefore allow his family, social or other relations to influence his judgement or his behaviour in a manner which would not be in accordance with the dignity and reputation of the judicial profession. He ensures this accordance by consistent respect for this Code.

Because a judge by personal example takes care of protecting the reputation of the judiciary, he is entitled and bound also to claim this from all other persons with whom he has contact in performing the judicial function.