



Guidelines on Judicial Ethics (Practical Textbook)

Issues of judicial ethics and corrupt conduct can manifest themselves through a wide range of activities and approaches. The case-law reviewed from three countries can be grouped into five general categories according to their content. The categorisation identified below is relative and some of the activities indicated may fall within multiple categories.

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1. The importance of cooperation (acknowledgment of the fault)

1.1. On the duty of a judge to cooperate with the JEC during the examination of the actions of the judge (Opinion of the JEC of 26/11/2021¹ and Decision of the Judicial Disciplinary Committee of 07/01/2022²).

The Chief Justice of the Supreme Court received a complaint from an individual and asked the JEC to examine actions of a judge with regard to the decisions to recuse or not to recuse himself from several civil cases. The JEC asked the judge to provide explanations on those situations. In the first explanation, the judge did not provide information regarding each situation, but merely stated in general terms that his actions were in accordance with the law and ethical norms. The judge also pointed out that the complainant was dissatisfied with the judge's decisions in his cases, and that he was regularly writing various complaints. The JEC decided to invite the judge to its hearing. The judge informed the JEC that he had a doctor's appointment on that date and asked to decide the case in his absence. He provided some additional information regarding one of the situations. The JEC invited the judge to a hearing on another date. The judge repeatedly requested that the matter be considered in his absence and stated that he had already given explanations regarding his actions.

The JEC decided to examine, on its own initiative, the judge's refusal to attend JEC hearings and failure to provide explanations.

¹ Opinions of the JEC are available in Latvian: <https://www.tiesas.lv/tiesnesu-etikas-komisijas-sedes>

² Available in Latvian: <https://www.tiesas.lv/Media/Default/Page/D-1-2022.pdf>

Discussion topics & questions:

Duty to cooperate originates from general legal notions, is well established in procedural laws and applicable to every party to legal proceedings, however, this duty is also applicable to the judges in the course of disciplinary procedure.

In your view:

- a) In the present case, the judge whose activities were under examination seems to have intentionally tried not to appear before the investigating authority and not to cooperate with it. Evidently, such behaviour cannot be considered a legitimate position of defence. Could the lack of cooperation lead to disciplinary liability?
- b) Would you consider such behaviour to be an attempt to obstruct justice? Or an abuse of rights?
- c) What would be an advisable course of action to take for the investigative authority in such a situation?

Formulation of judicial value:

In your opinion, what value of judicial ethics can be inferred from this case?

1.2. On the importance of critical attitude towards one's own behaviour (Decisions of CJED of 26/03/2018 and 04/07/2018).

The Commission dealt with two similar factual situations.

In the first case, a journalist came to the announcement of the judgement. The secretary informed him that she would still ask the judge if she would announce the judgement, as no parties to the case had appeared, only the media representative. A few minutes later, the secretary returned and informed that the judge would not announce the judgement.

In the second case, the applicant complained that, after arriving at the court at the time indicated, the secretary informed him that there was no courtroom available for the announcement of the judgement. A copy of the judgement was offered to the applicant.

In the first case, the judge provided only a brief written explanation to the CJED denying the circumstances set out in the journalist's complaint and refused to attend the hearing, despite that Commission insisted actively on attendance.

In the second case, the judge gave detailed explanations, stating that there were indeed organisational problems at the court. The judge also attended the hearing, gave detailed explanations and expressed regret.

Discussion topics & questions:

Self-criticism is a key feature in judicial practice, which is useful in situations where the procedural rules were not well respected. Though errors do happen, the judge's approach should be to examine and rectify the situation.

In your view:

- a) As it is evident from the two cases, the approach taken by the two judges in defence of their positions during the proceedings was fundamentally different. How were they different and which one was more correct?
- b) Does the acknowledgment of the shortcomings by the second judge, in your view, mitigate his professional responsibility?
- c) Self-criticism is a much more cooperative and constructive way of defending one's case than just blindly looking for your own interest or bluntly defending your case. What are the advantages of this approach for the judge under disciplinary examination? How does sincere behaviour affect the attitude of the disciplinary authority towards the judge under disciplinary examination?

Formulation of judicial value:

In your opinion, what value of judicial ethics can be inferred from this case?

Practical assignment. If someone suggested applying the below solutions (or suggestions) in your daily judicial practice, what would be your course of action? Would this be suitable in your daily work?

- Follow the orders of the disciplinary authority during a disciplinary procedure without any undue delay and fully.
- Present the evidence, documents, testimony and any other data timely.
- Not to give any excuse for appearance before the disciplinary authority.
- A judge under disciplinary examination should act cooperatively, in good faith and with sincere intentions.
- Be aware of the fact that in a case of non-appearance, the disciplinary authority would have a mandate to take a binding decision in absentia.

2. Social networks

2.1. On communication with the media and use of social networks (Decision of the CJED of 27/05/2021³).

A judge was very active with the media and on social networks emphasising her negative attitude towards the judiciary. She stressed that judges perform poorly due to the heavy workload: they do not scrutinise case materials and case-law, write decisions using templates, without stating individual reasoning. The judge also accused the court presidents of nepotism alleging that their decisions on the career or discipline of judges were influenced by the relations they had with particular judges. On her Facebook account, the judge referred to her colleagues as swindlers, selfish, indifferent careerists, claiming that hypocrisy prevailed not only among judges but also in their behaviour towards litigants. Not only the judge tolerated but also “liked” the offensive comments left on her account by other people who called judges “degenerates“, “moral scums”, etc.

³ Accessible on the Internet on the official website of the National Courts Administration: <https://www.teismai.lt/data/public/uploads/2021/05/tekd-sprendimas-i.s..pdf>

Discussion topics & questions:

The fundamental question in the above-described situation is the balance between the judge's right to freedom of expression and the obligations imposed by judicial ethics. It goes without saying that there is no law that would specifically prohibit judges from publicly expressing their views, including on social networks, however this is subject to the requirements of judicial ethics.

In your view:

- a) What were the main or most egregious actions of the judge?
- b) What could have been an alternative way of expressing herself in the situation described in order to avoid a violation of judicial ethics?

Formulation of judicial value:

In your opinion, what value of judicial ethics can be inferred from this case?

2.2. On the legal relevance of the status “Friend” on Facebook (Decision of the CJED of 14/01/2019⁴).

In a criminal case regarding a minor health impairment caused to a person, the judge was accused by the petitioner before the CJED of undue delay in the proceedings, partiality and improper behaviour during the trial. It should be noted that, with respect to the allegations of partiality (there were also additional allegations), the accusation against the judge was based on the circumstance that the judge and the cohabitant of the accused were linked by the status of “friends” on the social network Facebook. This was, *inter alia*, confirmed by the fact-finding statement. According to the petitioner, that fact raised doubts concerning the judge's impartiality in the case.

Discussion topics & questions:

In this example, the focal point of judicial ethics seems to be related to the status “friend” on Facebook, however, this relationship was characterised by two factors. On the one hand, it was not the accused himself who was a “friend” on the social network with the judge hearing the case (it was his partner) and, on the other hand, there was no active communication between the judge and the person in question on Facebook (in fact, the relationship of “friendship” was the only connection). However, the circumstances in judicial practice can be very different.

In your view:

- a) Is the assessment of a disciplinary authority, in general, impacted because of the types of relationships and their proximity to the judge, e.g., if the accused is linked by a “friend” relationship to the judge or if the defendant linked in the same way?
- b) In the same respect, would the situation be different if there had also been clear signs of active communication between the them (chats, birthday wishes, “Likes” of personal photos)?

⁴ Accessible on the Internet on the official website of the National Courts Administration: <https://www.teismai.lt/data/public/uploads/2019/02/tedk-2019-01-14-sprendimas-v.-b.-nuasmenintas-.pdf>

- c) Would the situation be different if the judge made a distinction between his/her personal and professional Facebook profiles?
- d) Should a judge take a clear preventive action to eliminate any likelihood of the issues of ethics (“unfriending” that person, informing the president of the court, etc.)?
- e) Can you think of any other possible solutions to preserve the integrity of the judicial office in such a case?

Formulation of judicial value:

In your opinion, what value of judicial ethics can be inferred from this case?

2.3. On the judge's comments on Facebook (Opinion of the JEC of 14/05/2021⁵).

A judge published pictures on Facebook concerning the creation of a monument to Gunārs Astra, an anti-Soviet dissident. The monument was planned to be erected in front of the court where he had been convicted in Soviet times. The judge asked to share opinions regarding the creation of the monument. In the comments section, the judge stated that Gunārs Astra deserved a monument, but the best monument would be to refrain from stealing public money for various unnecessary projects for a while. The judge also stated that she thought that the monument was not meant to commemorate anyone, but “to polish feathers” and “get access to money”. The judge also wrote: “Elections are coming, the party's coffers need to be filled and they have to show off in front of potential voters in every possible way”. It was clear from the comments, that the judge did not like how the monument was supposed to look like. All posts and comments were public.

The Minister of Justice asked the Judicial Ethics Committee (hereinafter – JEC) to assess the judge's comments.

Discussion topics & questions:

It is certainly the case that the judiciary is one of the three powers in a democratic state, which along with the legislative and executive branches performs its function in the society. Nevertheless, when it comes to judicial ethics, the comments and actions on the part of the judges on political issues do fall within its remit.

In your view:

- a. Why were the actions of the judge questionable from the ethical point of view (terminology employed, lack of tact or sensitivity, etc.).
- b. What could have been the correct and acceptable manner to raise this issue, if any?

Formulation of judicial value:

In your opinion, what value of judicial ethics can be inferred from this case?

Comparative aspect of judicial ethics

Japan

⁵ Opinions of the JEC are available in Latvian: <https://www.tiesas.lv/tiesnesu-etikas-komisijas-sedes>

2.4. Disciplinary Action against a Tweeting Judge (Decision of the Japanese Supreme Court of 17 October 2018⁶).

A Tokyo High Court judge uploaded on his personal Twitter account, though he did not mention his profession, a photo taken of himself (“selfie”) in the bathroom wearing only white briefs and apart from that being completely naked; at the same time, he posted a comment under the tweet: “I will be posting more and more photos of my naked body, my body with only white briefs, etc.”. It should be noted that under the Japanese Court Act, judges can be disciplined under a special judicial procedure if they “violate official duties ... or behave disgracefully”. The Secretary of the Tokyo High Court filed a petition stating that such behaviour undermines the dignity of judges and the public trust in the court. The Supreme Court has twice taken disciplinary action against the judge, concluding that he had “undermined the public trust in judges”. The respondent was interviewed by the Commissioner of the Tokyo High Court regarding the posting. In the course of the disciplinary hearing, the accused judge stated that he was deeply remorseful.

Reflexive questions from the comparative point of view:

The above-referred case-law raises issues concerning judicial ethics already touched upon in the Guidelines. From the comparative point of view, in your opinion:

- Is the standard of judicial ethics (the set of rules and requirements that would apply in a similar case) in your jurisdiction different from the above in the circumstances of this particular case?
- How the case described above would have been resolved in your jurisdiction?
- Are you aware of similar cases in your jurisdiction and what can be done to prevent such cases from occurring in the judiciary?

Practical assignment. If someone suggested applying the below solutions (or suggestions) in your daily judicial practice, what would be your course of action? Would this be suitable in your daily work?

- To be mindful of the digital content which existed before becoming a judge and take due account of the standard of socially acceptable content has changed since becoming a judge, thus, the digital content that was previously acceptable may no longer be in line with judicial standards.
- In case of a direct attack or insult on a social network, to refrain from fighting back as this approach would only escalate the conflict. It is advisable to take steps to remedy the situation by respectfully presenting arguments and evidence to support your claims, expressing understanding of the concerns and, if possible, trying to find any common ground.
- To bear in mind that there are many ways to express oneself on social networks, not only by sharing content or posting a comment, but also by liking/disliking a post, offering the status of “friendship” or being a member of a particular group. Judges

⁶ Decision of the Japanese Supreme Court of 17 October, 2018: https://www.courts.go.jp/app/files/hanrei_jp/055/088055_hanrei.pdf

should be particularly careful if, during judicial proceedings, any of the parties to the proceedings is asks for “friendship” on a social network.

- Not to use social media tools to trivialise the concerns of other people or to provide a platform for any kind of public altercation on unsettled issues.

3. Different types of relations

3.1. On the use of a car owned by a lawyer or a law firm (Opinion of the JEC of 09/06/2017⁷).

A judge's partner (they are not married) and the father of her children is a lawyer who has also set up a law firm that employs several lawyers. The judge and her partner have been living together for many years. The judge uses the car belonging to her partner on a daily basis. The judge regularly parks this car in front of the court. In such a situation, a parking permit is placed in a visible place in the car, stating that it has been issued to the judge. Sometimes the judge's partner allows a lawyer employed by his law firm to use the car. Occasionally, the judge also uses a different car belonging to a law firm both as a passenger and as a driver. In most cases, these are joint family trips outside the judge's office hours or transportation of children.

At the request of the Chief Justice of the Supreme Court, the Judicial Ethics Committee (hereinafter – JEC) examined whether such a situation is in accordance with the Code of Judicial Ethics.

Discussion topics & questions:

Even though judges do enjoy the right to private and family life as well as property-related rights, it can be assumed that the exercise of these rights and freedoms has to be reconciled with the fundamental obligations of judicial ethics.

In your view:

- a) Does the shared usage of a car between the judge and her partner who is a lawyer (1) create conditions for the lack of impartiality of the judge, (2) presuppose the lack of impartiality of the judge, (3) lead to the lack of impartiality of the judge?
- b) Could it be fairly reasonably maintained that if the lawyer (partner of the judge in question) were to represent a party in the hearing presided by the judge in question the bounds of the judicial ethics would be trespassed?
- c) What measures could the judge and the lawyer have taken to remedy or at least mitigate the perceived incompatibility of the described situation with judicial ethics?

Formulation of judicial value:

In your opinion, what value of judicial ethics can be inferred from this case?

⁷ Opinions of the JEC are available in Latvian: <https://www.tiesas.lv/tiesnesu-etikas-komisijas-sedes>

3.2. A lawyer working with the spouse of the judge (case-law of the Supreme Court of Lithuania (e3K-3-234-421/2019, 4 July 2019) and the Court of Appeal of Lithuania (e2A-401-1120/2020, 18 June 2020)).

In two different cases, a judge heard a civil case in which one of the parties was represented by a lawyer working in the same law firm as the spouse of the judge. The representative of the opposing party made a request for the removal of the judge. The judge did not withdraw from the proceedings himself, nor did the chairman of the civil division of the court grant the request for removal.

Discussion topics & questions:

Various types of relationships between a judge and those close to him or her – family members, friends, colleagues, former college mates, academic figures and various other acquaintances from different backgrounds – pose a challenge for judicial ethics. At the same time, it should be considered what is the level at which the relationship between a judge and another person is considered close enough to be sufficient for the judge to be disqualified from hearing a case. The question is how to strike a balance between the two.

In your view:

- a) In the present case, it was not the spouse of the judge who was representing the party at court but a lawyer from the same law firm. Do you consider that this connecting factor is sufficient for the recusal of the judge?
- b) If the judge subjected to a review by a higher instance court objected that the judgment declaring the unlawfulness of the composition of the court de facto established a requirement for a judge to know every colleague with whom his spouse worked and that such a duty was disproportionate or even impossible to be met, what would your answer be?
- c) Would the lack of knowledge by the judge that the party in the hearing where he/she was represented by a colleague of his/her spouse be a legitimate counter-argument in your view? What about a mitigating circumstance in terms of judicial ethics?

Formulation of judicial value:

In your opinion, what value of judicial ethics can be inferred from this case?

Comparative aspect of judicial ethics

United States of America

3.3. On the permissibility of issuing a letter of support for the public interest (Opinion of the Judicial Ethics Advisory Committee of the Florida Supreme Court of April 19, 2017⁸).

⁸ Op. of the Judicial Ethics Advisory Committee of the Florida Supreme Court of April 19, 2017: <https://www.jud6.org/LegalCommunity/LegalPractice/opinions/jecopinions/2017/2017-09.html>

The Judicial Ethics Advisory Committee of the Florida Supreme Court (hereinafter – JEAC) was inquired by a judge whether a judge may submit a letter to a municipality supporting the dedication of a certain sports facility in the name of the judge’s deceased former bailiff. The judge’s former bailiff passed away. During his life, he was very active in little league baseball. The former bailiff’s family is petitioning the city to dedicate one of its little league baseball fields in his name. The City Council has suggested the family provide letters of support from the community, and the inquiring judge has been asked to write a letter supporting dedication of the ball field. The inquiring judge has certified that there is no solicitation of monetary contributions or other donations associated with the request to the city and that the judge’s letter will not be used for any of those purposes. It should be pointed out that the Canon 2B of the Code of Judicial Conduct provides that “[a] judge shall not lend the prestige of judicial office to advance the private interests of the judge or others”. However, the commentary to the Canon 2B creates an exception for letters of recommendations. It provides in relevant part that although a judge shall be sensitive to possible abuse of the prestige of office, a judge may, based on the judge’s personal knowledge, serve as a reference or provide a letter of recommendation.

Reflexive questions from the comparative point of view:

The above-referred case-law raises issues concerning judicial ethics already touched upon in the Guidelines. From the comparative point of view, in your opinion:

- Is the standard of judicial ethics in your jurisdiction different from the above in the circumstances of this particular case?
- How the case described above would have been resolved in your jurisdiction?
- Are you aware of similar cases in your jurisdiction and what can be done to prevent such cases from occurring in the judiciary?

Practical assignment. If someone suggested applying the below solutions (or suggestions) in your daily judicial practice, what would be your course of action? Would this be suitable in your daily work?

- To take steps to clearly define the boundaries between the private and public spheres of life in a way that the public can understand.
- Where a close relative of a judge (e.g., a spouse) is also in the legal profession, not to take for hearing any cases where not only the judge’s close relatives but also his/her environment, colleagues or business partners are involved.
- In case of doubt as to the appropriateness of particular relationships or as to whether particular social relationships are sufficiently close or important to warrant recusal from a particular case, to interpret that relationship to one’s disfavour and inform the president of the court or, if possible, request a consultation for guidance from the national judicial ethics institution.
- Not to use any public property or knowledge gained in the exercise of judicial duties, contacts or the special position for the interests of related persons; to be aware of the shadow (including also perceived by the public or the media) of nepotism, favouritism or preferential treatment.

4. Procedural (disciplinary) issues

4.1. Procedural actions / behaviour (Decision of the CJED, 17 December 2021, Court of Honour of Judges (CHJ) decisions 03/07/2020⁹).

In one case, a judge decided to arrest a suspect without the presence of his lawyer, while the prosecutor secured the participation of a state-guaranteed defence counsel.

In the second case, a judge systematically expressed her disagreement with the case-law developed by the higher courts, including decisions in cases in which she was involved as a defendant. After the higher court annulled her ruling and returned the case for rehearing, highlighting the procedural errors, the judge handled the issue in the same way, which was found to be unlawful. When the judge was involved in the case as a defendant, not only did she fail to comply with the statutory obligation to notify the president of the court in order to avoid conflicts of interest (in the situation where a judge receives a case between the parties with one of whom she is involved in litigation), but also failed to withdraw from the newly received case with that specific party. Moreover, after the deputy president of the court raised the issue, the judge alleged in her withdrawal from the case that the actions of the deputy president were illegal, that the pressure had been exerted on her, and that it was likely that there were illegal relations between him and the litigant involved in the case. In addition, the judge continued to actively pursue the case from which she had withdrawn and lodged a complaint with the CJED against the newly appointed judge questioning the procedural decisions taken in that case.

Discussion topics & questions:

Procedural and disciplinary issues are a special subject of judicial ethics. On the one hand, it would not be lawful to impose a disciplinary sanction on a judge for a wrong application of a law or procedural error, but on the other hand, if such instances can be considered to be a gross or manifest violation of law, such actions may give rise to disciplinary liability. In the second case at issue, the judge not only did not show any remorse but seems to have committed the acts in question.

In your view:

- a) Is a judge's individual disagreement with the case-law of higher instance courts a legitimate basis for disregarding that case-law? And if a judge can provide reasonably valid arguments for disagreeing with that case-law?
- b) In the case at issue, the judge accused of misconduct used the defence strategy of attack, that is, the "attack is the best defence" strategy; is this way of presenting one's case in line with the principles of judicial ethics?
- c) In your opinion, judging from the data present in the description of the cases, is there any indication of malice on the part of the judge at any point of the description? Does malicious behaviour have any bearing in terms of judicial discipline?

⁹ Accessible on the Internet on the official website of the National Courts Administration: https://www.teismai.lt/data/public/uploads/2021/12/tedk-sprendimas_1_t-s.docx.pdf, <https://www.teismai.lt/lt/teismu-savivalda/teiseju-garbes-teismas/sprendimai/179/results?sqid=c809487694ace9447e784d45347acbd96ebbd70>

- d) The description of the second case mentions that the judge continued to actively pursue the case from which she had withdrawn. In case this involves the use of tools owned by the court, such as case management programmes or software, would this in your view constitute a violation of judicial ethics?

Formulation of judicial value:

In your opinion, what value of judicial ethics can be inferred from this case?

4.2. On the importance of being particularly careful towards vulnerable people (Decision of the CJED of 28/05/2020¹⁰).

A judge was accused of misconduct and discrimination towards a vulnerable person. The petitioner, who participated in civil proceedings as a third person and whose presence was determined to be necessary by the judge herself, had informed the court at the beginning of the trial that he had a hearing disability. He also asked the court to pronounce the words more loudly or, eventually, write them down so that he could understand the meaning. During the trial, the judge did not take account of the petitioner's disability, did not pay special attention to him, was rude and at one point even questioned his ability to run an enterprise. The petitioner considered such behaviour to be grossly inappropriate and discriminatory.

Possible discussion topics & questions:

It seems beyond discussion that the judiciary does not exist in a vacuum, but is an integral part of society as a whole. The judiciary should respect individuals during court hearings and pay even more attention to vulnerable persons and hear their special needs. In the present context, it should be noted that Article 13 of the Convention on the Rights of Persons with Disabilities states: "States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages".

In your view:

- a) Can the lack of courtesy towards vulnerable parties to legal proceedings, as described in the case at issue, be considered not only as a violation of procedural law by a judge (e.g., filing an appeal for such behaviour before a court of higher instance), but also as a breach of judicial ethics? If yes, under which conditions?
- b) In the present case, do you consider that the judge violated the principles of judicial ethics? If yes, which ones?
- c) How should a judge deal with a vulnerable person during the trial? What would have been your approach?

¹⁰ Accessible on the Internet on the official website of the National Courts Administration (opt for the first selection): <https://www.teismai.lt/lt/teismu-savivalda/teiseju-etikos-ir-drausmes-komisija/sprendimai/184/results?sqid=cefc72e0021fddfd5aeddef27523b019eb8c6c07>

Formulation of judicial value:

In your opinion, what value of judicial ethics can be inferred from this case?

4.3. On the boundary between judicial and non-judicial activities (Decision of the CJED of 29/01/2021¹¹).

A judge was accused of considerable procedural irregularities during civil proceedings regarding the adoption of children, including failure to respect the principle of the priority of the child's best interests, failure to observe the mandatory time limit of 10 days to adopt a procedural decision, and a number of other similar violations of procedural law, since under the applicable rules of civil procedure, such cases in the field of the welfare of children have to be handled under the urgent procedure.

Possible discussion topics & questions:

There is a fine line between judicial and extrajudicial activities of a judge, for instance, the president of a court may act in the judicial capacity when hearing a case and later act in an extra-judicial capacity when dealing with, for example, a contract for the supply of goods or services for the court. Nevertheless, this distinction should not be understood to mean that any of the two realms are exempted from the standards of judicial ethics.

In your view:

- a) Under Lithuanian national legal system, the criteria of “clarity”, “consequentiality” and “permanence” of judicial procedural misconduct are generally invoked to identify instances when the procedural violations committed by a judge give rise to disciplinary liability, is it the case in your jurisdiction?
- b) Do you foresee any danger for judicial independence as a consequence of the application of the above-described doctrine?
- c) Is the seniority of a judge whose judicial activities are under disciplinary examination relevant for the individualisation of the sanction or remedy to be imposed on the judge? Would the legal principle of “Iura novit curia” be applicable in such a case?

Formulation of judicial value:

In your opinion, what value of judicial ethics can be inferred from this case?

4.4. On the judge's obligation to treat parties and witnesses with respect (Opinion of the JEC of 26/11/2021¹²).

¹¹ Accessible on the Internet on the official website of the National Courts Administration (opt for the first selection): <https://www.teismai.lt/lt/teismu-savivalda/teiseju-etikos-ir-drausmes-komisija/sprendimai/184/results?sqid=fda3210cab194d0fb4a10ef6f6edf53e902a5865>

¹² Opinions of the JEC are available in Latvian: <https://www.tiesas.lv/tiesnesu-etikas-komisijas-sedes>

The judge received several requests from the plaintiff, his lawyer and two witnesses to use videoconferencing in a court hearing in order to enable them to go to the court in city A and participate in a hearing from there. They indicated that Covid-19 and the elderly age of the witnesses (almost 80 years old) made it very difficult for them to travel from city A where they lived to the rather distant city B, where the court hearing was planned to take place. The judge decided not to use videoconferencing and summoned all the persons to a hearing in city B. These persons did not appear at the hearing. The judge fined all of them. In the decision imposing a fine on the lawyer, the judge stated that a lawyer, when undertaking to provide legal aid and represent a person before the court, must consider his or her ability to perform his or her professional duties properly. If a lawyer does not have such an ability because of his age or condition of health, he/she is in breach of the rules of ethics for lawyers when he/she undertakes to provide legal aid.

The president of the court asked the JEC to consider the judge's conduct.

Discussion topics & questions:

On the one hand, a judge presiding over the case is autonomous and sovereign, however, on the other hand, under the current understanding of legal practice, the judge should also strive to achieve a consensus of the parties and to reconcile their interests. Accordingly, any procedural decision taken by the judge should strive for substantive justice and for the actual resolution of the case.

In your view:

- a) Is the following situation possible: a judge takes a procedurally legal decision, which is unacceptable from the point of view of social justice, and the judge is subject to a disciplinary measure for this procedural decision?
- b) Do you see any danger for judicial independence, if such an interpretation becomes universally accepted?
- c) If you were the judge adjudicating the case described in this example, would you have taken a procedural decision to hold a remote court hearing or would you have had a regular hearing at the courtroom? What would be the impact of such factors as the age of the parties, distances between the cities, opinions of the parties for your decision?
- d) In the circumstances of this case, do you consider that the decision to have a remote court hearing is more ethical? Why?

Formulation of judicial value:

In your opinion, what value of judicial ethics can be inferred from this case?

4.5. On the judicial conduct allegedly constituting grounds for a disciplinary action for discrimination (JU case № 21-109¹³).

¹³ JU case № 21-109 in Norwegian language: <https://www.domstol.no/globalassets/upload/da/domstol.no/om-domstolene/tilsynsutvalget/avgjorelser/2022/sak-21-109.pdf>

The case concerned the conduct of a judge in a child custody case in a district court. The applicant, who was a party to the proceedings, stated that the judge treated the parties differently in connection with the parties' explanations thereby discriminating against them also consistently interrupted him. The applicant also claimed that the court book contained disparaging references to him and that the judge abused his powers. The Supervisory Committee¹⁴ proceeded to adjudicate the dispute.

Discussion topics & questions:

The present case undoubtedly raises the questions of ethics in communicating with the parties to the proceedings. It would seem appropriate to consider that the judge's actions, such as interruptions, could, on the one hand, be seen as part of the right and duty to preside over the hearing but, on the other hand, raise questions as to the behavioural ethics.

In your view:

- a) According to your understanding of judicial autonomy, should a judge's freedom to conduct a hearing also include the right to interrupt a party?
- b) Can the interruption be justified by the fact that the party to the proceedings was presenting data that was irrelevant to the matter under consideration?
- c) In this case, a peculiar notion of "abuse of power by the judge" is presented as a potential violation supposedly committed by the judge. In your view, should such procedural instances as interruptions of a party to the proceeding be sufficient to state that a judge has actually abused of power or authority?
- d) If you were sitting on the Supervisory Committee, what would have been your decision?

Formulation of judicial value:

In your opinion, what value of judicial ethics can be inferred from this case?

4.6. On the conduct of a judge allegedly subject to disciplinary action for disrespect towards parties to the proceedings (TU-sak 20-090¹⁵).

The case concerned the judge's behaviour in a case on the allocation of parental custody of children. The complainant was a legal representative in the case. The accusations levelled at the judge were that the judge was at times overly active in managing the proceedings, that this was not done in a sufficiently attentive and respectful manner towards all parties.

¹⁴ In Norway the Supervisory Committee for the Judiciary is a disciplinary body which hears and decides on the complaints against judges. The Committee is appointed by the Government and the King (the "King in Council"). The Supervisory Committee is made up of two representatives of the general public, one lawyer, two judges from the ordinary courts of law and one land court judge. When the Supervisory Committee hears complaints concerning a judge of the land appeal court or the land court, a judge from the land courts will replace one of the judges from the ordinary courts of law. The land court judge does not participate in the examination of other complaints. The Committee's Secretariat is placed with the National Courts Administration in Trondheim. In addition to hearing complaints submitted thereto, the Supervisory Committee may take up misconduct at their own initiative. The Committee may make general statements on what is comprised by the concept "appropriate judicial conduct". It has also the character of an ethics council.

¹⁵ JU case № TU-sak 20-090 in Norwegian language:

<https://www.domstol.no/contentassets/41ab12a88ea54932a45269780049ee3e/vedtak-20-090.pdf>

Discussion topics & questions:

Considering the example at issue, it seems that the judge has to strike a balance between being proactive and refraining from disproportionate interference.

In your view:

- a) Could the judge's propensity to take an active role during the hearing potentially lead to a breach of judicial ethics?
- b) Could the opposite be argued, i.e. that passive behaviour or failure to take an active role could lead to a breach of judicial ethics?
- c) Do you agree in principle that a threshold (or a "red line") should exist beyond which the disciplinary authority should take a disciplinary action against a judge for the way in which the proceedings are conducted? Is there such a threshold or a similar concept in your jurisdiction?
- d) Are you aware of any similar case-law in your national jurisdiction?

Formulation of judicial value:

In your opinion, what value of judicial ethics can be inferred from this case?

The comparative aspect of judicial ethics

Canada, the Province of Quebec

4.7. On the recurrent objectionable behaviour during the examinations of criminal cases (Decision of the Judicial Council of Quebec of August 25, 2020¹⁶)

The judge of the Court of Quebec (in French: *Cour du Québec*) was accused by the director of criminal investigations before the Judicial Council of Quebec ("CMQ") (in French: *Conseil de la magistrature du Québec*) of gross judicial misconduct while examining a number of criminal cases. According to the complainant, the judge spoke in an intimidating and scornful tone, was sarcastic and sometimes angry, and in some cases showed disrespect and obvious partiality when hearing cases. The complainant made four separate allegations of the misconduct by the judge. In the first instance, the judge was asked by the public prosecutor to prohibit the disclosure of the identity of a victim of a sexual assault crime. In this particular case, the judge did agree to make the requested decision but also reproached the public prosecutor, in a rather harsh tone, for not having raised this issue earlier.

Reflexive questions from the comparative point of view:

The above-referred case-law raises issues concerning judicial ethics already touched upon in the Guidelines. From the comparative point of view, in your opinion:

- In your jurisdiction, can a gross judicial misconduct while examining a significant number of criminal cases lead to the application of disciplinary measures or is it outside the realm of the judicial ethics?

¹⁶ Decision of the Judicial Council of Quebec of August 25, 2020, № 2020-CMQC-034: https://conseildelamagistrature.qc.ca/roles_audience_conseil_magistrature_du_quebec.php

- How the above-described case would have been resolved in your jurisdiction?
- Are you aware of similar cases in your jurisdiction and what can be done to prevent such cases in the judiciary?

The comparative aspect of judicial ethics

Italy.

4.8. On habitual and repeated procedural violations (Decision of the Superior Judicial Council of Italy of March 27, 2015¹⁷).

A judge at the court of Florence (in Italian: *Tribunale di Firenze*) has been accused before the Superior Judicial Council (in Italian: *La Sezione Disciplinare del Consiglio Superiore della Magistratura*) (“CSM”) of gross procedural violations as he repeatedly, gravely and unjustifiably failed to render judgements in the cases assigned to him. The investigation found that the judge had a very large backlog of cases pending where procedural deadlines had been considerably missed.

Reflexive questions from the comparative point of view:

The above-referred case-law raises issues concerning judicial ethics already touched upon in the Guidelines. From the comparative point of view, in your opinion:

- In your jurisdiction can a huge backlog of pending cases while examining a significant number of criminal cases lead to the application of disciplinary measures or is it outside the realm of the judicial ethics?
- How the above-described case would have been resolved in your jurisdiction?
- Are you aware of similar cases in your jurisdiction and what can be done to prevent such cases from occurring in the judiciary?

Practical assignment. If someone suggested applying the below solutions (or suggestions) in your daily judicial practice, what would be your course of action? Would this be suitable in your daily work?

- Not only procedural laws, but also judicial ethics require that procedural decisions should be reasoned and timely; serious and systematic non-compliance with requirements can lead to disciplinary liability. Strong reasoning of procedural decisions enhances confidence in them.
- Procedural decisions should, to the extent possible, be individual and tailored to the specific needs of the parties.
- Vulnerable parties should be given special attention by the court and arrangements to allow them to effectively participate in the hearing should be put in place.

5. Additional activities (supplementary income, teaching etc.)

5.1. Additional activities – seminars (Decision of the CJED of 12/03/2021).

¹⁷ Decision of the Superior Judicial Council of Italy of March 27, 2015:
https://www.questionegiustizia.it/data/doc/741/sentenza_disciplinare_minuti.pdf

A judge as a lecturer conducted legal training (seminars) on the basis of agreements concluded with private companies specialising in training. He was paid for conducting these seminars. The seminars were open to everyone interested (after registering and paying a fee set by the organisers). The judge also leased the real estate belonging to him, received income from the lease, paid taxes on this income, but did not disclose the lease in his declaration of public and private interests.

Discussion topics & questions:

Similarly like in the case of rights and freedoms relating to the freedom of speech and self-expression, members of the judiciary are entitled to their economic rights, but the very exercise of these rights and freedoms by judges has practical implications in terms of compatibility of these activities with judicial ethics. As far as educational activities of a judge are concerned, it is fairly common for judges, especially of higher instance courts, to partake in the educational or academic activities, which may raise ethical issues.

In your view:

- a) In terms of judicial ethics, do you differentiate between teaching at a public university and giving seminars via a private agency? Which of these situations is more difficult and why?
- b) How does the fact that the remuneration for seminars is received indirectly, i.e. through a private intermediary, affect the overall relationship?
- c) What preventive measures would you recommend to a judge giving seminars through a private agency in order to avoid potential conflict of interests (e.g., reviewing the list of participants in advance to see whether there are parties to the proceedings or their representatives)?
- d) What would be a due course of action for a judge if he/she encounters a litigant or his/her representative during a lecture, seminar or presentation? What if that person asks a question that you know to be related to the case under your examination?

Formulation of judicial value:

In your opinion, what value of judicial ethics can be inferred from this case?

5.2. Participation in flamenco dance performances (Consultation of the CJED of 14/01/2019¹⁸).

A judge asked the Commission whether it was compatible with her judicial status to participate in the dance competitions of flamenco with cash prizes for high places. The events were paid, however, the dancers were not paid for their performances.

Discussion topics & questions:

¹⁸ Accessible on the Internet on the official website of the National Courts Administration: https://www.teismai.lt/data/public/uploads/2019/02/konsultacija_-2019-01-14-.pdf

Hobbies, sports and similar physical activities are a part of personal life, however, that can have influence on the public status of a judge. In the present case, the disciplinary authority decided that such an activity is not in itself contrary to judicial ethics, but must be exercised in an appropriate manner so as not to damage the status and image of the judiciary, however in practice the dividing line can be difficult to draw.

In your view:

- a) Are there lawful activities that would be unacceptable or inappropriate for a judge in private life? If yes, would it be proportionate to simply prohibit judges from engaging in such activities?
- b) In the present case, should the fact that the judge did not receive any remuneration be regarded as important or relevant?
- c) If participation in dance contests is allowed for a judge, what precautions should a judge take to avoid violations of judicial ethics?
- d) Imagine that a judge is faced with an ethically challenging situation in one of the contests, for example: one person from the audience expresses his gratitude to the dancer, says that she is his favourite dancer in the field, and then it turns out that this fan is a defence attorney in one of the pending cases; or a fan of the dancer sends a bouquet of flowers to the judge as a dancer, the judge reads the enclosed card and realises that this person is a convict in the appeal proceedings before her? What corrective measure could the judge take?

Formulation of judicial value:

According to you, which value of judicial ethics could be gleaned from the case under examination?

5.3. Judge as representative in court proceedings (Opinion of the JEC of 17/06/2015¹⁹).

Judges asked the JEC for an opinion on whether a judge can represent his or her spouse in civil proceedings where the spouse was a defendant in the proceedings initiated by the estate's creditors to recover money, and in criminal proceedings where the spouse had the status of a victim.

Discussion topics & questions:

It would seem appropriate to maintain that in the cases as such much prudence is necessary and judicial office must take precedence. In this context, in practice, granting permission may raise legitimate questions of judicial ethics.

In your view:

- a) In the present case, it is not specified whether the court at which the judge wanted to represent his spouse was the same where he worked as a judge. In your view, is this factor relevant in terms of judicial ethics?

¹⁹ Opinions of the JEC are available in Latvian: <https://www.tiesas.lv/tiesnesu-etikas-komisijas-sedes>

- b) What measures could be taken by a judge who represents a close relative at the court in order to avoid a conflict of interest (e.g., in a situation where it turns out that the judge hearing the case is an acquaintance)?
- c) What specific measures would you recommend for the judge in such a situation in order to preserve the confidence in the judge and the image of the judiciary (e.g., not use or demonstrate any special knowledge obtained because of the judicial office)?
- d) In case representation concerns a family member, what is the benchmark of closeness in the relationship, e.g., is a cousin be close enough to be allowed to be represented by a judge on this basis?

Formulation of judicial value:

In your opinion, what value of judicial ethics can be inferred from this case?

5.4. On the attendance of full-time studies during the official working hours of the court (Opinion of the JEC of 16/03/2018²⁰).

The president of the court asked the JEC for an opinion on whether it is permissible for a judge, in parallel with the performance of his/her judicial duties, to study in a non-law-related educational programme at an educational institution and to attend full-time studies during the official working hours of the court.

Discussion topics & questions:

Engaging in educational programmes generally is encouraged amongst judges. This approach seems innovative and proactive on the one hand, but on the other hand it raises questions regarding judicial ethics and related issues, such as the use of public resources.

In your view:

- a) Should there be a different treatment of a judge's request to study a law-related subject and a request to study any other subject?
- b) In view of the fact that judges are considered to be public officials, should considerations such as the rational use of public working time, personal energy, dedication and any other resources be an object of a review?
- c) Should non-performance of judicial duties by a judge due to studies be considered as a more severe violation of judicial ethics than a regular one, e. g, when a judge is not accessible during working hours because of his studies or when he/she has a large backlog of pending cases?
- d) Should there be a statutory limit of working time allowed for attending courses to prevent judges from abusing their rights? If yes, what limit or amount would you suggest?

Formulation of judicial value:

In your opinion, what value of judicial ethics can be inferred from this case?

²⁰ Opinions of the JEC are available in Latvian: <https://www.tiesas.lv/tiesnesu-etikas-komisijas-sedes>

Practical assignment. If someone suggested applying the below solutions (or suggestions) in your daily judicial practice, what would be your course of action? Would this be suitable in your daily work?

- When taking part in additional activities, try to find out more about the context of the event, the participants and, if possible, get a list of participants in advance to lessen the possibility of the conflict of interest; in the case of representation in legal proceedings, find out about the parties and the judge presiding over the case in advance; in the case of events and competitions, find out whether they are free of charge or for a fee.
- Bear in mind Point 50 of Opinion No. 3 of the Consultative Council of European Judges (CCJE) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality, where it is stated that judges should devote most of their working time to their judicial functions, including associated activities – in other words, an ancillary activity must remain “additional”, it has to remain secondary.
- In case of doubt, request a consultation with the competent national authority, if this is possible under national law.
- In case of a conflict of interest, inform the president of the court.
- Refrain from any additional activities, if you consider that such further activities would compromise your judicial status or the judiciary in general.
- Additional activities may not interfere with or obscure the performance of direct judicial functions, nor may additional activities take on entrepreneurial character, i.e. a judge may not act in socio-economic relations as a businessman.
- Additional activities that are related to judicial functions should be given preference (e.g., teaching law) over those that do not fall within this category (e.g., sports).
