

CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

Questionnaire for the preparation of the CCJE Opinion No. 16

**on the relationship between judges and lawyers
and the concrete means to improve the efficiency and quality of judicial proceedings**

ANSWERS: CROATIA

A. Professional ethics, conduct and responsibility of judges and lawyers

1. Does your country have a Code of Ethics or equivalent for judges? (please specify)

A: *Yes. In Croatia first code of Ethic for Judges has been drafted and delivered by Association of Judges in 1999. After few years amendments to the Law on Courts introduced an obligation to deliver Code of Ethic (CE) which will be common for all judges, not only those who are members of Association. CE has been delivered in 2005 by body composed of presidents of Councils of Judges (body of self-government existing at every court of appeal elected by judges and with a duty to evaluate work of judges)*

2. Does your country have a Code of Ethics or equivalent for lawyers? (please specify)

A: *Yes. CE is delivered by Assembly of the Bar Association and it establishes the principles and rules of conduct that attorneys shall at all times follow in fulfilling their professional responsibilities and in order to preserve the dignity of, and respect for, the legal profession.*

3. Does your country have any joint codes, rules and/or regulations concerning ethics of judges and lawyers? (please specify)

A: *No*

4. Does your country plan to establish codes, rules and/or regulations concerning professional ethics, conduct and responsibility of both judges and lawyers, or to develop the existing ones?

A: *No. Roles, responsibilities and authority between judges and lawyers in Croatia in judicial process are strictly separated so at this time having same CE is not likely to happen.*

5. Does your country have any rules and/or regulations dealing in any manner with the issues of relations between judges and lawyers or is there any intention to establish such instruments in a joint manner for both groups (judges and lawyers)? If yes, please specify

A: *No.*

6. In your opinion, what are the main principles which should govern the ethics of:

- judges ?
- lawyers?

A: *For judges main questions where principles which should govern their ethics should lay are:*

*Legality,
Humanity and Ethic
Independence,
Impartiality,
Equity,
Knowledge and expertise,
Dignity of the profession,
Responsibility,*

*Diligence,
Freedom of Association
Relation to the public and media,
Relations towards other judges and court staff.*

For lawyers main questions where principles which govern their conduct should lay are:

*Relations with their clients,
Appearance in general and in court,
Responsibility,
Humanity,
Dignity,
Legality,
Independence,
Knowledge and diligence,
Confidentiality,
Free legal assistance,
Relations to a client, adverse party, Bar Association, courts and other authorities and other lawyers*

B. Training of judges and lawyers

7. Which are, in your country, the training institutions:

- for judges ?
- for lawyers?

A: *For judges¹ training of judges is primarily organized through Judicial Academy an independent agency funded by the State.*

for lawyers training is organized through Lawyers Academy funded by Bar Association.

As in Croatia some seminars, workshops and similar forms of legal education are organized by consulting and publishing enterprises it is common that judges and lawyers attend such forms of training jointly and so far it has not been an issue in Croatia but of course each group is funding it form their own resources.

8. Which kind of training curricula (initial and continuous training), in brief, do these training institutions have:

- for judges ?
- for lawyers?

A: *Candidates for judges in Croatia are those persons with bar exam and at least with two years of working experience after passing bar exam as court advisors, lawyers etc.*

In that respect training for candidates for judges is organized by Judicial Academy to prepare those candidates for the bench.

Candidates are accepted in such program if they are selected by Council for Judiciary after public announcement for the vacant post.

Training for judges is mainly organized according to the principle: Education for judges by judges” where topics are chosen on yearly basis by Steering Committee of the Academy composed from judges and public prosecutors. Their role is to define needs of judges and to give main frame for programs which will be implemented in for coming year.

Candidates for lowers have initial training before attending bar exam (same for all legal professionals conducted by Ministry of Justice) and after that mainly training is conducted through practical work within lawyer’s office where they work as trainees.

9. What is the duration of the initial training:

- for judges ?
- for lawyers?

¹ Public prosecutors are also part of training organized through Judicial Academy

A: For judges initial training after bar exam lasts two years. Any lawyer after passing bar exam can become attorney at law if he/she is accepted by Bar Association as member of the Bar.

10. Does the initial training include issues related to the professional ethics, conduct and responsibility of judges and lawyers, their relations with each other, as well as their co-operation with a view of fair and efficient conclusion of judicial proceedings?

A: Yes.

11. Are there joint training courses for judges and lawyers?

If yes:

- what is their content and duration?
- are they mandatory for judges and lawyers?
- how are these courses funded?

If not, are they planned or discussed?

A: No. there is no joint trainings and they are not planned in the near future.

C. Efficiency and quality of judicial proceedings

12. Are there any procedural instruments to facilitate the interaction between judges and lawyers during the proceedings? If yes, please specify.

A: Basically lawyers in proceedings before a court act as representatives of the parties. So rules governing rights and position of the parties govern and regulate positions of lawyers.

13. If not, how are they planned?

14. How is the communication between judges and lawyers organised? Is it efficient? Are there computerised information systems to that end?

A: Communication between judges and lawyers could be divided in three aspects.

1. Communication between judge and lawyer in particular case assigned to a judge. That communication is regulated by procedural rules and is not particularly diverse from communication between judge and a party not represented by lawyer.
2. Communication between president of courts representing court and local Bar. Such communication takes place in solving particular problems in organization of work of a court and needs of lawyers with ultimate goal to assist role and duties of judges and lawyers equally
3. Communication between Bar Association and Association of Judges in order to promote same interests and rule of law..

15. Are there possibilities, procedures and mechanisms for judges and lawyers to come to an agreement concerning the judicial resolution of the case?

A: Only in way that peaceful settlement is reached before a court between the parties. Nevertheless it is duty of a judge to try to reach peaceful solution in a case during the trial. if such settlement is reached it is compulsory because it has same strength as judgement.

This procedural provision in civil matters stays beside the system of ADR which can take place before a court or outside the court system.

16. If yes, is such agreement compulsory?

A: YES

17. Do they negotiate certain phases of the procedure?

A: NO

18. Are there any legal instruments (substantive or procedural) which potentially could be used by judges to ignore, to disregard or in any manner to avoid taking into consideration the claims, demands and arguments of lawyers?

A: Judge is “dominus litis” in Croatian procedural system. In that respect any request of the party can be disregarded or rejected but in a judgement court (judge) has to give reasons why he/she did so.

19. Are there any legal instruments (substantive or procedural) which potentially could be used by lawyers to delay the consideration of the case, or to affect in any way its fair and efficient resolution?

A: Objectively speaking any rule or legal provision can be used for purpose of delay if it suites the interests of lawyers or parties they are representing. It is to the judge to use tools he/she has to protect the process from unnecessary and undue delay.

20. To what extent does the successful interaction between judges and lawyers depend on objective factors such as legislation, structures and procedures? Are there any plans to improve them?

A: Successful interaction between judge and lawyers has its reason of existence mainly if it can serve interest of citizens and if such interaction will follow the principles of Article 6. of the ECHR.

Other kinds or models of interaction could be seen by general public as infringement of principle of independent and impartial judge. In that respect any reform should take this in mind, and of course particular circumstances in each country and general opinion of general public which can divert from country to country. In Croatia public and media are very sensitive about these issues and very critical when there are any “to close” relations between members of the Bar and judges on institutional or no institutional level.

21. To what extent does such interaction depends on subjective factors such as the patterns of behaviour of individual judges and lawyers, their understanding of their role and responsibility, and/or their wish to work together in order to improve the procedure, etc.?

A: Pretty much so. Please refer to answer under 20.

22. How would you assess the relationship between judges and lawyers in your country? Are there any plans to take steps to improve the legal culture and to foster co-operation between judges and lawyers?

B: In Croatia even lawyers are organized in the Bar Association and there is only one Bar and none can act as a lawyer if he/she is not member of a Bar lawyers are very individual profession where there is not necessary for them to be involved in activities of Bar Association and its bodies. So regarding cooperation between institutions of judiciary (Courts, Supreme Court, Attorney’s Office, Ministry of justice) in general matters cooperation is traditionally good.

When we speak of individual relationships between judges and lawyers there is not possible to give general remark common to all because there are too many factors which have determinative role on this issue.

D. Role of judges and lawyers in responding to the needs of parties

23. Please give some examples of co-operation between judges and lawyers in specific categories of case (e.g. those ending in the peaceful settlement in civil claims).

A: Please refer to answer under 15.

24. Do you have any possibility in your country for lawyers to become judges, and vice versa? If yes, is it frequent?

A: There is such possibility but it is not very frequent that lawyers apply for vacant post as judges and consequence is that many lawyers do not become judges. It is much more frequent that judges become lawyers.

25. Can lawyers act, in your country, as deputy judges and if so, under what conditions ?

A: NO.

E. Judges, lawyers and media

26. Have there been any reflections in the mass media as regards the relations between judges and lawyers and their co-operation?

A: *Yes but not much on topics regarding institutional relationships but more when there is appearance of undue interactions between judges and lawyers.*

27. To what extent lawyers and judges comment in the media on pending cases and on judgments?

A: *Judges in general do not comment pending cases and judgments. This rule does not appall to speak persons of the courts who have duty to give necessary comments and clarifications to the media about ongoing cases.*

In some extent Association of Judges could also make some cements but only and when there are undue comments given previously by the press, politicians or other members of society which could be seen as influential.

Majority of lawyers also follow the rule not to make comments on pending cases and judgments but especially in criminal cases some lawyers are taking liberty to “cooperate” with the press more closely.

Final remark:

In all our future work we should take close look to our previous opinions especially Opinion No. 3.

Zagreb, January 8th 2013

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