



CCJE (2012) 6

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**

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)

Yes. The Finnish Union of Judges has, in May 2012, adopted a document including 15 paragraphs entitled Judge's Ethical Principles.

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

Yes. The Finnish Bar Association has, on 15 January 2009, adopted a Code of Ethics for Lawyers which replaced the old Code from 1972. Compared to the Judges' Code, the Lawyers' Code is quite comprehensive. It consists of 12 Chapters and 17 printed pages.

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

No, there are no such joint codes, rules or regulations.

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?

No, there is no such project going on or planned.

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

Chapter 8 of the Lawyers' Code deals with the relations between lawyers and authorities. Otherwise there exist no such rules or regulations and for the time being there is no intention to establish such instruments.

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

- judges ?
- Independence, impartiality and rule of law and fundamental rights
- lawyers?
- Loyalty towards the client, independence and keeping himself unchallengeable.

B. Training of judges and lawyers

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

- for judges ?

There is no "Richterakademie" or any corresponding institution in Finland. After the LL.M. university degree, future judges are given in service training, in most cases as a referendary in a Court of appeal. After having served in different positions in District courts and in Courts of appeal (maybe 10 years time), a young lawyer can be appointed to a permanent judge's position.

As there is no Council of Judiciary in Finland, the Ministry of Justice has the responsibility for updating and further training of judges. Questions relating to new legislation and to court management are dealt with in this training. Also young persons who do not yet have a position of a permanent judge can take part in this training. However, this participation is not obligatory.

See also below nr. 11.

- for lawyers?

The Finnish Bar Association arranges Bar examination for those LL.M. degree holders who wish to start a career as a lawyer. Bar examination consists of a written examination and two courses both taking two days. The first course is concentrated on ethical and practical questions of the profession, while the second one deals with skills needed in practical proceedings. Four years' working experience is needed before admission to the Bar, and two years of these four have to be served in a law office.

The Finnish Bar Association also arranges updating and further training for lawyers. The focus of this training is on different questions of substantive law and new legislation.

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

- for judges?
See above nr 7.
- for lawyers?
See above nr. 7.

9. What is the duration of the initial training:

- for judges?
See above nr. 7.
- for lawyers?
See above nr. 7.

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?

Issues related to professional ethics are dealt with in the professional training for lawyers and, to some extent, in the training of judges. The relations between judges and lawyers or their co-operation are not tackled in the training.

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

Some Courts of appeal have arranged such courses in co-operation with the local Bar association and with the local university units.

If yes:

- what is their content and duration?

The subject of these joint courses has been different aspects of Court of appeal proceedings and new substantive legislation. Courses have often been short, taking 2 or 3 days, but also one year joined training programs have been carried out.

- are they mandatory for judges and lawyers?
No, they have not been mandatory.
- how are these courses funded?

At least some courses have been supported by the Ministry of Justice. The participants may have paid fees.

If not, are they planned or discussed?

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.

No, there exist no such instruments.

13. If not, how are they planned?

Neither have they been planned.

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

Normal methods of communication, such as telephone and e-mail, are used also for this purpose. The way of handling and time-table, especially in complicated cases, is nowadays planned in co-operation with the judge, the prosecutor and the lawyer. Preliminary sessions are arranged for this purpose.

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

Discussions during the official preparatory meetings and during other preparation of the case are the most important method (see above).

As far as peaceful settlement of the case is concerned, there are new regulations included in the Code of procedure in 2011. The settlement proceedings can take place at Court led by the judge, or outside the Court led by a trained specialist. In a civil case the judge has the obligation to explain to the parties the possibilities of a peaceful settlement.

16. If yes, is such agreement compulsory?

If no agreement is reached concerning the time table or other procedural questions, the judge makes the necessary decisions.

17. Do they negotiate certain phases of the procedure?

If necessary, they can negotiate.

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?

Of course, any claim, demand, argument or evidence has to be presented and pleaded within the time-limits set by the Code of proceedings. Also an individual judge may set time-limits when he or she deems it necessary to get the proceedings go on smoothly. In criminal cases the parties have a larger room to make their decisions on this respect compared to civil cases.

Such cases where a judge would have misused this power are encountered only very seldom.

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?

This kind of problems have not been encountered in practice.

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?

In my opinion, legislation is not the decisive factor in this matter. What is important, is the personal attitude and willingness to co-operation on the both sides of table.

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.?

All these subjective factors are highly important, see above nr. 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?

Although there is no organized or structured co-operation, the working relations are good and, in general, both civil and criminal proceedings can be carried out smoothly.

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 cases (e.g. those ending in the peaceful settlement in civil claims).

See above under #15. Nowadays the Finnish Code of proceedings includes rules regarding the peaceful settlement of cases led by the judge, and this settlement is carried out in co-operation with the lawyer.

In cases concerning custody of children there has been a pilot project in certain District courts, where also a psychologist and/or a social worker take part in the proceedings trying to facilitate a peaceful settlement.

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

To some extent lawyers have been appointed to judges, but the number of such appointments *per annum* is quite low. There are hardly any cases where a judge would have left his office to become a lawyer, but sometimes a retired judge has started a career as a lawyer.

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

This kind of system of deputy judges is not in use in Finland.

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?

No, there have not been such reflections.

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

Trial by newspaper was earlier strictly forbidden by the lawyers' ethical rules but nowadays lawyers are even encouraged to an objective discussion of this kind. Judges hardly ever take part in the discussion.