

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 FROM THE NETHERLANDS

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 Council for the Judiciary drafted in 2010 a Code of Conduct for Judicial Personnel, that applies to all the persons working within the Judiciary (not only judges). The Dutch Association of Magistrates issued in 2011 a more elaborate Guide to Judicial Conduct, that applies only to judges. Moreover, there are two documents that contain deontological rules for more specific issues: the Guidelines on Judicial Impartiality (2004) and the Guidelines on Ancillary Positions (2009). At present, discussions are going on to consider the possibility to integrate these four documents in one text.

These codes are all inspired by the existing international documents, like the UN Basic Principles on the Independence of the Judiciary, the Bangalore Principles of Judicial Conduct, Recommendation CM/Rec (2010) of the Committee of Ministers to Member States on Judges, the ENCJ Working Group Judicial Ethics Report 2009-2010 and the CCJE Magna Carta of Judges.

The oath of the judge also contains deontological rules (integrity, secrecy and impartiality).

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

Yes, The Rules of Conduct for lawyers (1992), issued by the Netherlands Bar Association (*Nederlandse Orde van Advocaten (NOvA)*). In cross-border activities, the Code of Conduct for European Lawyers, issued by the CCBE, applies.

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

No. Each profession has its own codes of conduct.

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, but the two professions share some core deontological principles, like independence, professionalism, the rule of law.

At present, a legislative proposal is submitted to Parliament, that conduces to insert the core values of the legal profession in the Law on Advocates (*Advocatenwet*). These core values (partiality, independence, confidentiality, expertise and integrity) aim to safeguard the proper administration of justice.

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.

There are some legal provisions imposing on judges the duty not to have contacts with parties and lawyers without the presence of the other parties and the duty to respect secrecy (art. 12 and 13 of the Act on the

Judicial Organisation), as well as some legal provisions on Ancillary positions that are not allowed for judges (art. 44 and 45 of the Act on the Statute of Judges). The Codes of Conduct of both professions have of course implications for the relationships between both professions.

One of the elements of the professional oath of lawyers is to have respect for the judicial authorities.

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

According to the Guide to Judicial Conduct, the main principles that govern the ethics of judges are independence, autonomy, expertise and professionalism, and integrity.

For lawyers, the five core values are: partiality, independence, confidentiality, expertise and integrity.

B. Training of judges and lawyers

7. Which are, in your country, the training institutions:
- for judges ?
 - for lawyers?

For judges:

The training for the Judiciary is provided by the Training and Study Centre for the Judiciary (SSR). The SSR falls under the responsibility of and is partly funded by Netherlands Council for the Judiciary. The Council is owner and commissioning authority of the SSR together with the Board of Procurators General.

For lawyers:

The training for new lawyers (with a duration of 3 years) falls under the responsibility of the Netherlands Bar Association (NOvA). The NOvA has outsourced the organisation of the training for a number of years commencing on 1 September 2013 to a commercial party: CPO/Dialogue (a consortium of the post graduate education office of the University of Nijmegen and a private training agency).

Continuous training is organised by educational institutions (e.g. Universities) which are certified by the NOvA.

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

For judges:

The Netherlands Council for the Judiciary is currently in the process of renewing the profile of a judge, the recruitment, and selection procedure of judges and the initial training of judges. The design for the new initial training of judges has been presented to but not yet approved by the Netherlands Council for the Judiciary.

Old system

The last group of trainees under the previous system has started its training in October of 2012. Their initial training consists of the following. The programme is basically the same for all trainee-judges. They start off as a law-clerk in the criminal law section for six months. Subsequently, they work as a law-clerk in the civil section; after that in the administrative law-section. In the third year of their programme every trainee-judge becomes a substitute-prosecutor. After the third year the trainee chooses whether he or she wants to become a judge or a prosecutor. Subsequently, the trainee fulfils a practical training of ten months. The last two years the trainee-judgeworks "outside" the Dutch Judiciary, e.g. in a law firm, in a company, or at the European Court of Human Rights or the Court of Justice EU.

In addition, there was the possibility for legal professionals to become a judge after only one year of training. One needed relevant legal experience for at least six years. However in the new system of training of judges, this possibility will disappear.

New system

In the new system, a candidate is only entitled to become a judge-trainee if he or she has worked for at least two years after his or her university-degree in a relevant legal profession.

After selection, the judge-trainee is assigned to a district court and together with the judge-trainees mentor, an individual training scheme is drafted (ranging from one year and three months up to a maximum of four years, depending on the experience and knowledge). In the initial stage (first three months), the trainee judge will learn to draft verdicts at the court where he is placed and learn about the organisation and skills a judge needs in addition to firm legal knowledge (professionalism, independence, etc.). Also, he will do a short internship at the court of appeal and at the prosecutor's office.

Afterwards, the main stage of the training period begins. The judge-trainee works at the court where he is placed, rotating between at least two fields of law (i.e. criminal, administrative or civil) working under supervision of senior judges who are appointed as trainers. In addition, the judge-trainee performs internships at different institutions (for example at the prosecutor's office, court of appeal, European/international institutions etc.). Every three months, the individual training scheme is evaluated and adjusted if needed. This way, the training is personalised according to the needs of each judge-trainee.

When this new system gets approved by the Council, the first group of new trainees should start its training in October 2013.

Continuous training

Continuous training is provided in all areas of law, and also covers psychological and social capacities. Judges must spend at least 30 hours a year on continuous training.

For lawyers

The curriculum of the professional training consists of skill-based modules and modules covering professional attitude and ethics. Furthermore, one of the following courses must be followed: criminal law, civil law or administrative law. Each course consists of:

- year 1: a minor and major;
- year 2: two substantial optional subjects;
- year 3: a smaller optional subject.

Beside these elements, the student must also follow a minor in another area of law than his chosen area in the first year, and a smaller optional subject of his choice in years 2 and 3.

Continuous training is provided in all areas of law, and also covers psychological and social capacities. Lawyers must spend at least 20 hours a year on continuous training.

9. What is the duration of the initial training:
- for judges ?
 - for lawyers?

See under 8.

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?

For judges:

The subject of integrity will be integrated into the recruitment, selection and training policy, which is to be renewed, as was already mentioned under B.8 and B.9. In the view of the Netherlands Judiciary, moral competencies concern the core values of being a judge and are closely related to his or her person. It entails situational awareness, the capacity to think and act autonomously and authentically, including the related character traits of an independent spirit, moral courage and integrity. They are present under the surface of every performance of a public office and therefore an integral part of all training courses. In addition, the SSR offers courses such as Judicial formation of Opinion and Practical Professional ethics for judges.

For lawyers:

Yes, the topics of professional attitude and ethics are part of the training, see under question 8.

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?

There are no explicit joint training courses for lawyers and judges. However, the training courses provided by the SSR are open to both lawyers and judges, as well as prosecutors, legal staff or other relevant professionals. Both professions do meet though at seminars or events organized by the courts or the Bar. It would probably enhance the understanding between the two professions if joint training would be more frequent.

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.

Yes. See the answer to question 14.

13. If yes, how are they planned?

See under question 14.

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

Judges and lawyers do not communicate in person during the pre-trial proceedings, except during the hearing. All communication with the lawyers is handled by the supporting staff of the courts. In many courts, but not yet in all, there are computerised information systems.

Every area of law (civil, administrative, criminal etc.) has its own regulation on the different types of procedures. These regulations regulate how relevant information of the case at hand should be communicated to the court, as well as between the other relevant parties in the case. This concerns the submitting of documents, evidence and other relevant materials, as well as deadlines for submitting these materials.

In civil and administrative cases, an oral hearing takes place in an early stage of the proceedings. This allows the parties, the lawyers and the judges to discuss the course of proceedings and to consider a settlement or referral to mediation.

In complex criminal cases, a pre-trial hearing takes place to discuss the course of proceedings.

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

This depends highly on the field of law and its specific regulations. In civil cases for example, the parties often come to a (total or partial) settlement of the case. Judges are trained to foster settlements.

16. If yes, is such agreement compulsory?

If the parties agree to that, the agreement is compulsory and can be enforced like a final judgment.

17. Do they negotiate certain phases of the procedure?

See under 14. The course of proceedings is not subject to negotiations in the strict sense of the word, but the parties can put forward their ideas. The decisions about the course of proceedings remain the responsibility of the judge, who is bound by the legal provisions and the applicable procedural regulations.

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?

The legal provisions and procedural regulations contain rules about the way in which claims and requests must be put forward. If they are submitted in the right way and in due time, the judge must consider them. If not, they can be disregarded. In general, the rules are quite flexible, but the parties are supposed to “concentrate” their arguments in the beginning of proceedings. New arguments cannot be put forward in one instance without sufficient justification.

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?

The procedural acts have diminished considerably the possibilities for the parties to delay proceedings without justification. The reasonable time requirements play a central role.

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?

The successful interaction requires in the first place a clear and adequate legal framework on the proceedings. Subjective factors do play a role, but, generally spoken, judges and lawyers in the Netherlands share the culture to arrive at fair settlements and judgments within a reasonable time. The concern for timely and transparent proceedings leads to many pilots to improve the forms and time-frames of proceedings.

21. To what extent does such interaction depend 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.?

See under question 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?

In general, one can say that the relations are constructive and satisfactory, especially in the areas of civil law, commercial law and administrative law. In criminal matters, one can perhaps observe growing tensions between the two professions that lead, e.g., to a growing amount of challenges of judges by lawyers. It is not easy to explain this phenomenon. However, it is clear that it is important to invest in instruments that can enhance a better understanding of judges and lawyers of their respective roles in the judicial system. These roles are distinct, but related. Both professions act in the interests of the parties and of the rule of law. In this respect, common training can play an important role.

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 under 15. Judges and lawyers co-operate actively to arrive at a (total or partial) settlement of a civil or commercial case. These experiences are now expanded to administrative cases and criminal cases. Co-operation takes also place when the parties and the judge discuss the further course of proceedings.

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

Yes, lawyers can become judges and judges can become lawyers. The first occurs more often than the latter.

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

Yes, lawyers can act as deputy judges. An applicant needs to have extensive legal experience. A lawyer may not act as a deputy judge in the court where he is registered as a lawyer. The deputy judges are appointed by Royal Decree and act as a judge on an irregular basis, for which they receive a small fee. They are subject to the same legal provisions and deontological rules as the professional judges. Deputy judges can offer the judiciary their specific legal and social experiences. However, there is growing criticism with regard to the employment of deputy judges, mainly because of the issue of their impartiality.

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?

Not particularly, but there are reflections on the issue of the impartiality of deputy-judges (see under 25). This has led to a stricter policy in the employment of deputy judges.

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

Judges do not comment on pending cases or judgments in the media. Every court has a specially trained media-judge who handles the contact with the media and who provides for objective information on pending cases or judgments. The contact with the media is regulated in a directive (*Persrichtlijn*), applicable to all the courts.

Lawyers do comment in the media on pending cases and judgments. They must respect, in doing so, the deontological rules. There are some, but only few, examples in which disciplinary sanctions have been imposed.