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COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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 NORWAY

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 Norwegian Association of Judges adopted Ethical Principles for Norwegian judges on October 1, 2010. These principles are also adopted by the judges in the Land Consolidation Courts and by the Norwegian Courts Administration.

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

   Yes, there are Codes of conduct for Norwegian lawyers adopted by The Norwegian Bar Association.

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

   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?

   No.

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

   No.

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

Ethical Principles for Norwegian judges state some basic requirements for judges; Judges should conduct themselves in conformity with the law, the legal system and norms for proper conduct among judges, and in such a way that it promotes public confidence in the courts. Core values are:

- *Independence:* A judge should exercise his/her adjudicative role with independence, without an extraneous judicial influence from public or private interests.
- *Impartiality:* A judge should exercise his/her adjudicatory role with impartiality, both *in facto* and by appearance, and in such a way that the impartiality of the judge cannot be reasonably questioned.
- *Integrity:* Judges should behave in a way that does not threaten the public confidence in the courts and judiciary.
- *Equality:* Judges should pay attention to the principle of equal treatment of parties and other actors before the courts.
- *Proper conduct:* Judges should remain objective and conduct themselves in a dignified and correct manner with everyone that they relate to in the exercise of their adjudicative role.
- *Regarding lawyers:* Judges should respect the role of the lawyers. A lawyer should not be identified with his or her client

- lawyers?

For lawyers core principles are basically in line with the standards for European lawyers adopted by the CCBE:
- Independence
- Confidentiality
- Avoidance of conflicts of interest
- The dignity of the legal profession
- Loyalty to the client
- Regarding judges: show due respect and courtesy towards the court while defending the interests of the client honorably and fearlessly.

B. Training of judges and lawyers

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

For judges: Training is organized by the Norwegian Courts Administration.

For lawyers: Training is provided by Center for Continuing Legal Education (Juristenes Utdanningssenter), a non-profit independent association founded by the Norwegian Bar Association and the Norwegian Association of Lawyers.

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

For judges:
The recruitment of judges in Norway has been based on the principle that the judiciary should reflect a broad professional legal background and a varied background of experience. Therefore, Norwegian judges are not recruited to an internal career in the courts as soon as they qualify. The judges recruited are experienced jurists, and the initial training is limited to a course with the duration of five weeks, giving an introduction to the court system and the role of the judge, case management, ethics for judges, relations between judges and the society (media), and also some updating on procedural and substantive law.

Continuous training is concentrated on updating on procedural and substantive law.

For lawyers:
To be qualified as a lawyer, participation in a course concerning relevant issues to a lawyer is mandatory. A candidate can participate after obtaining a law degree. The course is organized by the Center for Continuing Legal Education, and comprises topics related to organizational and economical aspects of advocacy, client relationship, ethics etc. The course consists of two mandatory sessions.

Lawyers must use an average of two days per year on continuous training. The requirement is 80 hours during a period of five years, of these at least five hours must focus on lawyers' ethics.

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

See answer to question 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?

Yes, cf. answer to 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?

Judges can participate in training courses arranged by the Center for Continuing Legal Education together with lawyers and other legal professionals. Due to the fact that judges have their own training courses, judges rarely participate in training with other legal professionals. Some courts have arranged joint seminars with the regional Bar Association.

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.

Pursuant to the Norwegian Dispute Act, which entered into force at 1 January 2008, the court shall at an early stage summon the parties/lawyers to discuss a plan for the further proceedings, including setting time limits and making necessary decisions. These include:

- whether judicial mediation or mediation at a court hearing should be pursued,
- whether the case should be dealt with pursuant to special provisions,
- whether court hearings shall be held during the preparation of the case and whether the case may be decided by a judgment following such court hearing,
- whether written submissions shall be made as part of the basis for the judgment,
- review of the presentation of evidence, including whether access to evidence, production of evidence or judicial inspection of a site is being requested, whether evidence shall be secured and whether an expert should be appointed,
- whether final written submissions shall be made,
- setting the date of the main hearing, which date shall fall within 6 months of the submission of the writ of summons, unless special circumstances otherwise require,
- whether expert or regular lay judges shall be appointed,
- other issues of importance to the preparation of the case.

These discussions take place as a court hearing, which may be held in the form of a long-distance meeting. The court may request the parties to submit their remarks in writing or obtain the required clarification by other methods, if necessary to progress the case or if it is evident that discussions at a court hearing are not required.

We don't have the same instrument available for criminal cases, but in cases involving a lengthy main hearing, such a preparatory meeting with the defense lawyer and public prosecutor in the pre-trial stage is not unusual.

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?

The communication between the judge and the lawyers after the preparatory meeting, cf. answer to question 12, is mainly in writing.

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

The Norwegian Dispute Act outlines two alternatives for judges' mediation; *(1) (ordinary) mediation*, which may be seen as a consequence of the judges' obligation, at each stage of the proceedings, to be aware of the possibility of having the legal dispute resolved amicably in full or in part through mediation, and *(2) judicial mediation*, which

requires a formal decision by the court to be initiated, and where the mediation process is regulated in more detail by legislation.

Mediation (ordinary mediation) takes place by the court, at a court hearing or through other contact with the parties, attempting to provide a basis for an amicable settlement. During mediation the court shall not hold separate meetings with each party, nor receive information which cannot be communicated to all parties involved. The court shall not present proposals for a solution, offer advice or express points of view which may weaken the impartiality of the court.

Judicial mediation takes place separate from court hearings. The judge determines the procedure in consultation with the parties. Meetings with the parties may be held jointly or separately. The parties shall during judicial mediation be present themselves or be represented by counsel. The judge shall act in an impartial manner and promote an amicable settlement. The judge may present proposals for resolving the matter. The judge determines whether, as well as the extent to, if any, presentation of evidence shall take place during judicial mediation. Presentation of evidence cannot take place without the consent of the parties as well as the consent of whoever shall present evidence or provide a statement. The judge shall maintain a record of mediation meetings. A party making a settlement offer may demand that it be recorded. The record forms part of the case documents. If a case is not concluded during judicial mediation, the proceedings before the court shall continue. The court shall to the extent possible seek to prevent failed judicial mediation from causing any delay in the progress of the case. A judge who has acted as judicial mediator in the case shall not participate in the further proceedings of such case.

If the parties reach agreement, the settlement may be concluded in the form of an in-court settlement. This is applicable both for mediation and judicial mediation.

In-court settlements are recorded in the court record. The in-court settlement shall be signed by the parties as well as by the members of the court. If the settlement does not include provisions on the allocation of costs, the court shall at the request of the parties determine such allocation at its discretion. The court ensures that the settlement reflects what the parties have agreed in a precise manner, and that the settlement is not contrary to public interest. If the settlement is to be enforceable, the court shall ensure that a time limit for performance is specified.

16. If yes, is such agreement compulsory?

See answer to question 15.

17. Do they negotiate certain phases of the procedure?

See answer to question 15.

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?

No. In general grounds shall be given for judgments and interlocutory orders. The decision shall provide a focused account of the legal controversy which is the subject matter under dispute, the background to the case as well as the legal and factual arguments of the parties to the extent required to explain the ruling. The court shall also describe the assessment of evidence and the application of law upon which the ruling is based.

Small claims procedure is a special and cost-effective track for cases where the amount in dispute does not exceed NOK 125 000, equivalent to approximately 15 000 Euros. The small claims procedure is designed to provide simpler and faster processing than is available for cases subject to ordinary procedure. As a consequence, also the requirements to judgments are simplified, the judgment shall briefly state the subject matter of the case, set out the arguments of the parties and explain the factors to which the court has attached particular weight.

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?

In general both the parties and the lawyers are interested in swift proceedings. Ill-founded requests from lawyers aiming at delaying the proceedings are rare, and the judge can always overrule such requests.

The judge have a legal obligation to actively and systematically manage the preparation of the case to ensure that it is dealt with in a swift, cost effective and sound manner. The judge is also equipped with legal instruments to do so.

In civil cases, cf. the Norwegian Dispute Act, the parties/lawyers shall be entitled to make statements concerning issues of importance to decisions relating to the proceedings of the case. A party/lawyer must raise any objections concerning procedural steps as soon as he or she is able to do so. An objection that is raised at a later time shall be disallowed unless the party/lawyer was unaware of there being a basis for raising the objection. Decisions relating to the proceedings of the case, including whether the case shall be summarily dismissed or quashed, shall be made as early as possible during the preparation of the case. Decisions as to procedural issues during the course of the preparation of the case are normally made on the basis of written proceedings.

In civil cases the parties may only present evidence on factual circumstances which may be of importance to the judgment. The court may refuse presentation of evidence if the party has failed to specify what the evidence is intended to establish or the evidence is not likely to improve the basis for the judgment. Furthermore, there shall be a reasonable degree of proportionality between the importance of the dispute and the scale and scope of the presentation of evidence. If the presentation of evidence as announced goes beyond the principle of proportionality, the court may curtail such presentation of evidence.

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?

Legislation, structures and procedures are important in that respect.

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.?

Subjective factors become less important when the interaction is regulated by legislation and procedures.

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 the relationship between judges and lawyers in Norway is good.

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).

Peaceful settlement is open to all kind of civil cases, see answer to question 15. For child custody cases there is a special procedure involving experts and mediation by a judge, often leading to amicable settlement of disputes.

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

Lawyers can become judges, and vice versa. As described previously, Norwegian judges are recruited among experienced jurists. In 2011 40 % of all judges appointed were advocates. It is very unusual for judges to become lawyer.

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

In Norway deputy judges are appointed for a limited period (two or three years). Lawyers can be appointed as deputy judges, but can not work as a lawyer at the same time.

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.

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

According to the Ethical Principles for Norwegian judges, a judge should respect the media's role in the courts, and should provide the public with information concerning the cases that are dealt with by the courts. Judges never comment on pending cases other then giving objective and factual information on the process. As a general rule judges never comment their own decisions, but in some extraordinary cases this has been done.

Lawyers more frequently comment both pending cases and judgments. Codes of conduct for Norwegian lawyers give some guidelines for such comments.