

**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 - SLOVENIA**

**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)*

The Constitution of Slovenia establishes core values that apply to judicial proceedings (articles 21 to 31), such as the equal protection of rights, the right to legal remedies or the presumption of innocence. It also contains principles which address the judiciary and judges more directly (articles 125 to 134). These articles pertain to the independence of judges (article 125), the permanence of judicial office (article 129), the election of judges (article 130), as well as the termination and dismissal of judicial office (article 132), incompatibilities (article 133) and the immunity of judges (article 134). The Courts Act (CA) and the Judicial Service Act (JSA) both address the independence and impartiality of judges, e.g. by laying down that judges must always act in such a way so as to safeguard the impartiality and independence of their office and the reputation of the judicial service (article 2 JSA). The JSA also contains provisions on incompatibilities (articles 41 to 43) and a prohibition from accepting gifts (article 39).

A more specific set of aspirational professional and personal rules of conduct is contained in the Code of judicial ethics, which was first adopted by the Slovenian association of judges on 10 October 1972 and was renewed and amended, with the addition of a commentary, in 2001. It contains nine principles, on independence, impartiality, training, commitment, compatibility, incompatibility, discretion, attitude and reputation.

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

The Code of professional conduct for lawyers was adopted by the Lawyers' Assembly of the Bar Association of Slovenia on 7 December 2001. It contains principles on personality, independence, incompatibility, competence, representation, respect, prohibition of advertising, prohibition of disloyalty, competition, substitution, settlement of disputes, attitude to pupils, clients and opposing party, attitude to mass media, confidence and faithfulness and confidentiality.

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

Slovenia does not have any joint codes, rules and/or regulations concerning ethics of judges and lawyers. It should be stressed, however, that the two professions share in common some very important ethical principles, such as independence, rule of law, dignity and competence.

*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*

Such specific rules and/or regulations do not exist. However, that does not mean that the two professions, though distinct, are not interlinked. It should be noted that 5 members (out of 11) of the Judicial Council (the entity

responsible for the appointment and promotion of judges) are elected by the National Assembly on the proposal of the President of the Republic from among university professors of law and lawyers. Furthermore, in disciplinary proceedings against lawyers due to the breach of the legal duties for which it is possible to deny the right to practice the legal profession, the disciplinary senate consists of two judges of the Supreme Court and three lawyers. The President of the Senate is a judge. An appeal against the decision of the disciplinary senate is subject to the decision of the Supreme Court in the senate of five judges.

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

Main ethical principles for judges: independence, impartiality, integrity, competence, diligence, ensuring equality of treatment.

Main ethical principles for lawyers: independence, respect, competence, rule of law, confidentiality, faithfulness, attitude to clients and opposing party

## **B. Training of judges and lawyers**

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

In Slovenia, the training institution for judges and "judicial trainees" (candidates to accede to the lawyer's state exam) is the Judicial Training Centre, which is part of the Ministry of Justice.

The training for lawyers who have passed the lawyer's state exam and become members of the Bar Association is organized by the Bar Association itself.

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

First it is necessary to complete a law degree to become a judge or a lawyer, then, for both professions equally, the initial training (lasting 2 years) is compulsory in order to accede to the lawyer's state exam (the same exam for both professions). The program of the so-called "judicial trainees" is set by the Minister of Justice. Its organisation and execution are taken care of by the Judicial Training Centre. During the judicial traineeship trainee signs an employment contract with one of the four courts of appeal. As an alternative, the trainee can sign an employment contract with another employer and be only appointed to the court to do the obligatory eight months of practice in court. The change in the law introduced the possibility for university graduate lawyers or masters of law to accede to the state lawyer's exam directly without the traineeship provided they pass some obligatory forms of training organised by Judicial Training Centre and have a certain period of working experience after graduation in the legal field (e.g. in a lawyer's office). In both cases the traineeship focuses on theoretical knowledge and fostering practical skills

After the state exam there is a mandatory 3 years training period required to fulfil qualifications for a judge. To qualify as a lawyer 1) 4 years of practical legal experience is required, out of which at least 1 year after the state exam; 2) a candidate has to pass an exam focusing on legislation governing the bar.

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?*

The initial and continuous training for judges includes some components related to the professional ethics and their co-operation with a view of fair and efficient conclusion of judicial proceedings (e.g. such training constitutes a part of education and training on civil and criminal procedure). The exam the lawyers have to pass after the state exam

(see supra under 8) covers, *inter alia*, topics on ethical conduct and responsibility of lawyers and their relations with judges. Notwithstanding this commendable action more needs to be done to raise awareness and provide guidance to judges and lawyers on professional ethics and relations with each other. Often there is a gap between the duties set out by the laws and the way these duties are understood in everyday life and practice.

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?*

As explained under 8, in Slovenia, there is joint training for lawyers and judges prior to the state exam and a uniform state exam for both professions. After the state exam the professional training separates: the Judicial Training Centre organizes initial and continuous training for judges and the Bar is in charge of training for lawyers. Nevertheless, the Judicial Training Centre organizes certain events which are open for lawyers as well. At present, there are no plans to expand this activity of the Judicial Training Centre.

### **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.*

Two procedural instruments should be highlighted in this respect: settlement conference in civil and pre-trial hearing in criminal proceedings.

A settlement conference in civil proceedings follows the receipt of a reply to an action and is held prior to the trial. It is conducted by the judge (the same who conducts the trial) who, by means of his active role according to the principles of case management tries, together with the parties and their lawyers, to achieve a settlement. Furthermore, at the conference the judge discusses openly with parties the factual and legal aspects of the case in order to define uncontested and contested facts and legal issues.

A pre-trial hearing in criminal proceedings was introduced in Slovenian law recently. With a view of facilitating the interaction between judges, parties, lawyers and prosecutors and accelerating the proceedings it is aimed, *inter alia*, at determining uncontested and contested facts and evidence to be heard at trial.

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?*

Judges and lawyers communicate at hearings. Direct communication between them outside courtrooms is not foreseen. The lawyers can find the necessary information (e.g. regarding hearings) during office hours, in person or by phone. In addition, there are computerised information systems offering information on proceedings.

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

At all times during civil proceedings, the parties may conclude settlement concerning the matter in dispute (court settlement). The settlement may involve the whole claim or only a part thereof and it may also contain settling of other questions in dispute between the parties. Moreover, a person who is not a party to the proceedings may also participate in the settlement. All the time during the proceedings, the court should be alert to the possibility of settlement and advise the parties of this possibility, and shall help them settle the matter in dispute.

16. *If yes, is such agreement compulsory?*

The settlement has the legal effect of a final judgment and is enforceable.

17. *Do they negotiate certain phases of the procedure?*

Phases of the procedure cannot be negotiated, but, as mentioned under 12, with a view of facilitating and accelerating civil proceedings the judge at the settlement conference discusses openly with parties the factual and legal aspects of the case in order to define uncontested and contested facts and legal issues. Similarly, the pre-trial hearing in criminal proceedings is aimed at determining uncontested and contested facts and evidence to be heard at trial.

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 Civil procedure act (CPA) proclaims that in court lawyers shall speak the truth and exercise their rights stipulated by the CPA in a fair manner (article 9). However, the obligation to speak the truth is a rather programmatic principle and the only efficient sanction in this case is not to believe a party who is cross-examined. Besides, the CPA determines (article 10) that in the event that parties and lawyers, with intention of harming another person or achieving goals contrary to the good faith and fairness, abuse the rights stipulated by the act, the court may impose on them a fine which may not exceed 1.300 EUR. Another measure of disciplinary nature aimed to achieve a proper administration of justice is a special court tax stipulated in the Court tax act imposed on a party who delays the proceedings (article 33). An abuse of procedural rights can also result in the court's decision not to accept a procedural act or not to decide on merits on a motion of a party who continues an abuse of rights.

As parties in civil procedure should contribute to the quality, concentration and acceleration of litigation the CPA introduced a certain system of preclusions: parties can assert new facts and evidence until the first session of the main hearing. At later hearing sessions parties are allowed to assert new facts and evidence only if at the opening session they were prevented from presenting them by reasons beyond their control (article 286). The provision stating that a judge can set binding time limits for the filing of the submissions for further comments and clarifications (article 286a/1) also contributes to the acceleration of litigation.

According to the criminal procedure code (CPC) the court ensures that proceedings are conducted without unnecessary delay and prevents any abuse of the rights of participants in the proceedings. Furthermore, the CPC determines that in the event that lawyers insult the court or any participant in the proceedings or if their behaviour is obviously intended to protract criminal proceedings the court may impose a fine on the offender (article 79, 140). The lawyer irrespective of the outcome of criminal procedure bears the costs arising from the postponing of an investigative action or of the main trial or failure to file an announced appeal, as well as other expenses incurred through their fault (article 94).

In criminal proceedings, according to the new CPC amendment the defendant (and his defence counsel) is allowed to present evidence only until the end of the pre-trial hearing unless he was prevented from presenting them by reasons beyond his control (article 84b/3-4).

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 latest amendments of the CPA (2008) put the emphasis on strengthening of judges' powers in order to achieve concentration of procedure and at the same time enhance the system of procedural sanctions against parties. Although this resulted in some improvement regarding the excessive duration of civil proceedings it can be assessed that there are still fields for improvement. One of these is a better organization of a preparatory stage of civil litigation.

The latest amendments of the CPC have just entered into force, so it is hard to tell whether they provide for sufficient tools, which would prevent parties and lawyers from dilatory tactics and guarantee efficient justice without undue delays.

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 is a crucial factor for a successful interaction between judges and lawyers. As for plans for reforms, see under 19.

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.?*

It should be stressed that 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 are as important as the procedural rules. While the rules constitute a form and are a prerequisite for a good interaction between judges and lawyers the subjective and social factors and ethical values are the contents of this relationship.

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?*

It can be assessed as satisfactory, but there is still room for improvement. As mentioned under 10 more needs to be done to raise awareness and provide guidance to judges and lawyers on professional ethics and relations with each other. It should be stressed that the two professions share in common some very important ethical principles (see under 3). The relationship, sometimes hampered by conflicts, would be smoother if lawyers and judges had a better understanding of each other's role in the proceedings. While judges tend to forget that lawyers represent their clients lawyers are not always aware of the fact that they hold (at least in Slovenia) a place in the justice system.

#### **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).*

In civil proceedings: determining contested and uncontested facts; fixing the date of a hearing; drafting the settlement between the parties; active case management provided by a judge who, by asking questions or in other appropriate manner, sees that all relevant facts be stated during the hearing and evidence related to the parties' statements be adduced.

In criminal proceedings: determining contested and uncontested facts; fixing the date of a hearing.

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

The possibility, thanks to joint training and uniform state exam for both professions, exists. In the past it was very common for (career) judges to become lawyers because being a lawyer was a better-paid job. Nowadays it is still not unusual, but judges tend to be more careful when changing jobs because of the economic crisis. For the same reason, in the past lawyers rarely became judges, but now the profession seems to gain more and more popularity among lawyers.

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

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?*

Reflecting the general trend in the public of a low trust in institutions, the media in Slovenia carefully monitor possible improper relations between judges and lawyers. Even though courts constantly figure higher on the scale of public trust in institutions than other branches of government there have been cases of questionable relations between judges and lawyers that have influenced and undermined the position of the judiciary. As the principles of independence and impartiality constitute the basic pillars for a functional judiciary any interference with these two principles has to be taken seriously.

The latest case involves photographs taken at a birthday party of a judge dealing with bankruptcy cases where various bankruptcy managers who handle insolvency proceedings presided by the same judge were present. The questions, correctly posed by the media, concerned the level of impartiality of judges and whether they should have excluded themselves from deciding in cases, in which their friends were involved.

Another question that has gained public attention concerned the possibility of direct transition from the function of a judge to the function of a lawyer. There have been cases where judges have left their function and immediately after that they began their work as lawyers that have raised public doubt regarding the impartiality of judges, former colleagues of the lawyers. The same question was raised about prosecutors becoming lawyers. There have been

legislative initiatives, providing a certain temporary period during which former judges could not practice law. However, such laws have not been passed.

Considering the fact that Slovenia is a rather small country, with 2 million citizens, around 1.000 judges and 1.600 lawyers, there is a high possibility that legal professionals as lawyers and judges know each other from the time of their studies or have constant professional interaction that can evolve into friendship. Bearing this in mind, the judiciary has to be specifically careful at detecting problematic relations between lawyers and judges and show extremely low tolerance towards relations that could seriously undermine the essential principles of independence and impartiality. In the end, the question of relationships between judges and lawyers concerns the very basic ethical principles that every judge has to answer first and foremost him or herself.

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

Court rules (Rules) specifically address the question of ensuring public operation of courts. In this regard the Rules state that courts inform the public of its work, decisions and views of interest to the public through publications and other public media, at press conferences or in another appropriate manner (article 7/2). The president of the court or, pursuant to an authorisation by the president of the court, a public relations officer, is responsible for the monitoring of public media reports and for informing the public (article 8/2). A trial judge should not be involved in giving verbal information on the case to the public (article 8/3).

Article 13 explicitly regulates the question of public appearances of judges, stating that in public appearances a judge should only express his personal opinions and act on his own behalf. On the other hand, if a judge appears in public as a court representative then he must express the opinions of the court.

In practice, the comments of judges on cases are strictly limited. In cases with extensive media coverage it is usually the president of the court who gives a general opinion, avoiding to comment the specific case. Cases that are still *sub judice* are not discussed.

On the other hand, what has just been explained does not apply to lawyers. More and more media savvy lawyers use the channels that the media offer to present their side of the story. In high profile cases it has become usual practice that lawyers defend their clients in front of cameras and microphones, using the media to build informal pressure on the deciding judges. Naturally, media coverage cannot and should not influence the final decision of a judge. However, lawyers use media both for the explained informal pressure as for publicity since direct advertisement is forbidden by law.

Nina Betetto