



## 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

#### Reply from Sweden

##### 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)

There is no code of ethics for judges in Sweden but before assuming the duties of office, a judge shall take the following oath that is in the Swedish code of judicial procedure.

"I (name) promise and affirm on my honor and conscience that I will and shall impartially, as to the rich as well as to the poor, administer justice in all matters to the best of my ability and conscience, and judge according to the law of the Realm of Sweden; that I will never manipulate the law or further injustice for kinship, relation by marriage, friendship, envy, ill will, or fear, nor for bribes or gifts, or any other cause in whatever guise it may appear; nor will I declare guilty one who is innocent, or innocent one who is guilty. Neither before nor after the pronouncement of the judgment of the court shall I disclose to the litigants or to other persons the in camera deliberations of the court. All this, as a honest and righteous judge, I will and shall faithfully observe."

The oath shall be taken before the court or its chairperson.

In the end of 2009 the Swedish Courts Administration got an assignment from the government to create conditions for a debate about ethics for judges within the judiciary. The discussion is led by an appointed judge in cooperation with the Swedish Judge Association and a working group also including the Swedish Union of University Graduates of Law (JU SEK). The discussions have led to publication of three papers on ethics including principles and questions that can be used in the judges' daily work.

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

Yes.

The activities of lawyers are governed by several rules and regulations.

The statutory rules concerning lawyers in Sweden are chiefly found in *the Code of Judicial Procedure*. The Code gives provisions on the Swedish Bar Association, and the position of lawyers in the legal system. The Code gives the Bar Association the power to exert public authority within certain fields, including the right to accept new members of the Bar and to supervise members from a disciplinary point of view. The Code also establishes the lawyers' duty to absolute professional secrecy.

The Bar Association's own rules are found in the Association's Charter, the Code of Conduct and in the Accounting Regulations. The Code of Conduct for European Lawyers is applicable to members' cross-border activities.

[The Charter](#) of the Swedish Bar Association was adopted in 1962. It was last amended in 2010. The Charter is adopted by the General Assembly of the Bar Association. The Charter and any amendments made to it shall be ratified by the government of Sweden before entering into force.

All members of the Swedish Bar Association must observe the [Code of Conduct](#).

The Code of Conduct provides a framework for the professional and ethical standards to be observed in lawyers' professional activities. It contains rules on running a law firm, on fees, on relations to the opposite party and to the court, and on conflicts of interest. A cornerstone of the Code of Conduct is the lawyer's obligation to loyalty towards the client.

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?

Not in any other way than continuing work on the areas mentioned above under 1 and 2.

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

The procedures in court, including communication between the court and the parties are regulated in for example the Code of Judicial Procedure. Otherwise there are no regulations on the subject. However most of the Swedish courts have on-going projects concerning the routines of communication with parties and their representatives such as lawyers and prosecutors. The National Courts Administration has a mission from the government to create possibilities for the courts to exchange experience on, among other subjects, this kind of questions.

6. In your opinion, what are the main principles which should govern the ethics of:
- Judges: Independence, impartiality and equal treatment, good conduct and treatment of others, good expertise and efficiency.
  - Lawyers: Loyalty to the client, good conduct and treatment of others, good expertise and efficiency.

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

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

The Courts of Sweden Judicial Training Academy has the main responsibility for all education aimed for permanent judges and judges doing their four year judge training-employment, concerning their judicial education.

Under Swedish law, only members of the Swedish Bar Association may use the professional title "*advokat*". The Swedish Bar Association offers both mandatory education and continuous training.

There are also many private actors offering different kind of education. These courses are open for all parties interested in the subject.

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

The Courts of Sweden Judicial Training Academy offers both initial and continuous training. The most extensive initial education offered is the one for persons doing their four year training-employment. For those, when they are appointed, as well as for newly appointed permanent judges who have another background than such an employment the Academy offers basic courses on central areas. Those courses are often three days each.

- for lawyers?

Among the requirements for membership in the Swedish Bar Association is passing the Swedish Bar Examination after completing mandatory training courses. The Association give these courses. A member of the Association has an obligation to take courses for at least 18 hours a year. The Association offers these courses as well.

9. What is the duration of the initial training:

- for judges ?

The initial training program for judges on their four year training-employment is ten courses spread over the period. The courses are four days each.

- for lawyers?

To become a member of The Swedish Bar Association you have to take a course which is given in three parts during three terms. Every part has a duration of 2,5 days. The examination is usually taken during term four.

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, the initial training offered by the Courts of Sweden Judicial Training Academy includes parts about ethics and related subjects.

The first part of the mandatory training for lawyers given by the Swedish Bar Association is about ethics and techniques working as a lawyer. One part of the course concerns the relations to courts and other authorities.

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

Yes, see 7 above about the private actors.

The Courts of Sweden Judicial Training Academy and The Swedish Bar Association don't give joint training courses. Sometimes though, lawyers are lecturers at the courses given by the Academy and vice versa. The Academy sometimes invites some lawyers to join there courses. One reason is to create opportunities for discussions about future relations.

If yes:

- what is their content and duration?

It differs depending on the subject and how thorough the training is but as mentioned above they are often three days. Sometimes the courses offered by private actors are shorter.

- are they mandatory for judges and lawyers?

No

- how are these courses funded?

It is most likely that the costs for the judge are born by the courts budget and for the lawyer by the law firm or the lawyer him/herself.

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.

When communicating shall take place in different cases, is governed by the Swedish Code of Judicial Procedure and other regulations governing the processes in the courts. The regulations are not specifically concerning judges and lawyers but the court and the parties.

However, many courts have cooperation with lawyers, who are frequently in contact with the court, to create and evaluate routines to facilitate the interaction.

13. If not, how are they planned?

See above question 12.

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

The use of e-mail for communication between the court and lawyers is more and more frequent. I think it is rather efficient. However it is important to take into account the rules of integrity concerning personal data. The Swedish National Courts Administration is developing secure lines for the courts and lawyers which can be used for such sensitive communication.

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

In criminal cases there are no such possibilities beyond planning the case, such as time/schedule for court sessions.

However, in the civil litigious cases, the possibilities are much wider for the court to helping the parties to coming to an agreement. Chapter 42 section 17 in the Swedish Code of Judicial Procedure states that the court shall work for the parties to reach a settlement, if it is not inappropriate considering the nature of the case and other circumstances.

16. If yes, is such agreement compulsory?

The agreement is compulsory as any civil contract. If the parties ask for it the court can determine the settlement in a judgement which is also enforceable.

17. Do they negotiate certain phases of the procedure?

The trial in the court of first instance is mainly divided in two parts, the preparation and the determination of the case. The determination can be made after a main hearing or without such a hearing. It is usually during the part of preparation that discussions about settlement take place. Nevertheless, settlements can be made during the whole procedure.

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?

Chapter 42 section 5 in the Swedish Code of Judicial Procedure states that if an application is not dismissed by formal reasons, the court shall issue a summons calling upon the defendant to answer the case. If the plaintiff's statement does not constitute a legal basis for the case, or if it is otherwise clear that the case is unfounded the court may, however, immediately enter judgment in the case without issuing a summons.

There is also a regulation in chapter 9 section 3 in the Code stating that a party in a civil case who endeavours to prolong the course of litigation by the interposition of clearly unfounded allegations or defences, by withholding evidence, or by any other improper measure, shall be sentenced to a fine. This regulation is very rarely used.

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 substantive potential way to delay a case for a lawyer is to ask for respite. However, the process is controlled by the judge who grants a request for respite. If there is a risk that the parties delay the process deliberately a request for respite can be denied.

Another way that potentially can be used to delay the consideration of a case is to make objections to the counterparty's evidence and claim that it should be dismissed.

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?

As mentioned above many courts have an on-going cooperation with lawyers in the jurisdiction to improve the quality and effectiveness of the court process. However, sometimes it can be efficient to have some legislation or at least routines to refer to, when the cooperation in a certain case is not ultimate.

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.?

The subjective factors are important and it comes closer to some judges and lawyers to be working together to improving the process. However, education, routines, maybe legislation and on-going discussions on the subjects improve the work and can give the stakeholders the tools for cooperation.

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?

Please see question number 5.

#### **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).

One example is when judges and lawyers plan the process/schedule in a case together. This often takes place in more extensive cases both criminal and civil ones.

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

Yes, since a couple of years ago the recruitment of judges is more open. The employment as a permanent judge requires a certain law degree and experience from qualified legal activities. The goal for the courts is to recruit permanent judges who are among the most skilled and professional best suited lawyers in the country, no matter background.

One way to achieve experience and skills is working in the courts for a longer period. After the graduation you can apply for notarial work in the courts of first instance. That employment is for two years and then you can apply to the court of appeal for employment. That employment is a combination between working as a judge and being educated for the role. After four years you have, if approved, finished the working/training period and can apply for an employment as a permanent judge. However, it is very usual that the approved judge work somewhere else than in court for a period to get experience from other judicial work, for example as a lawyer.

Other qualifying judicial experience can be working in a university of law, in the government with judicial issues, in an authority such as the Prosecutions office and as an advocate in different areas.

A judge can become a lawyer but is not, according to the Swedish Code of Judicial Procedure allowed to serve as an attorney during the employment as a judge.

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

Yes, there is a possibility for a lawyer to apply for an employment as a deputy judge in a court of appeal to gather experience from judging and maybe to becoming a permanent judge later on. These employments are often limited in time for six months. There are also other time-limited employments as deputy judges in the courts in Sweden, often for lawyers with judging experience.

#### **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?

There have been some articles about the work going on in the courts concerning cooperation on routines and treatment of the parties in court.

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

It is becoming more usual than before that judges comment on pending cases and even more on judgments. Still it is more often the lawyer who is commenting a judgment in the media. The Swedish National Courts Administration administrates a media group with judges who have special skills for and interests in contact with the media. These

judges can help with comments and discussions on a general level. Contact with the media is also part of the education given by the Swedish Courts Administration and the Courts of Sweden Judicial Training Academy.