



**Replies from Ukraine for the 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

- Does your country have a Code of Ethics or equivalent for judges? (please specify)

The Code of professional ethics for judges was adopted during the 5th Congress of judges of Ukraine in 2002. Regulations of this Code are focused on ethic items concerning the status of a judge.

According to the preamble of this Code, its regulations cannot be used in bringing judges to disciplinary responsibility and cannot define a degree of their fault.

It's important to point out, that the 11th Congress of judges will be held on February 22, 2013. One of the main questions, submitted during this Congress is adopting of the new edition of the Code of professional ethics.

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

On October 1, 1999 the High Qualification commission of the Bar approved the Rules of lawyers' ethics as revised by the Association of judges of Ukraine.

The Rules of lawyers' ethics are widely used by local qualification and disciplinary commission of the Bar, by the High qualification commission of the Bar and also by courts.

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

No, there are no joint codes, rules and/or regulations concerning ethics of judges and lawyers.

- 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

Ethic and legal standards of judicial performance and legal practice are provided by number of legal acts, which establish relevant legal system concerning judicial system and status of judges and concerning the Bar. Starting with the Constitution of Ukraine the following legal acts need to be amended: the Criminal Code of Ukraine and the Criminal Procedural Code of Ukraine, the Civil Code and the Civil Procedural Code of Ukraine, the Commercial Code and the Commercial Procedural Code of Ukraine, the Code of Administrative Proceedings of Ukraine, the Law On Judicial System and Status of Judges, the Law On the Bar and legal practice, other legal acts, the Code of professional ethics for judges, Rules of lawyers' ethics and Bar associations' statutes.

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

- judges ?

Fairness, impartiality and independence of judges should be the fundamental ethic principles governing judicial performance.

Thus far deficiency of morality in behavior of parties, as in behavior of judges themselves, can be observed. Some reasons for that are: 1) decrease in level of moral potential in relationships between people in conditions of economic crisis and social instability; 2) insufficient providing of status of judges with guaranties for independence (especially insufficient level of remuneration); 3) low "quality" of legislation which comes into force and functions, while it is still reforming. So the main purpose of ethical demands for judges is inadmissibility of behavior that can interfere with authority of courts and judiciary.

- lawyers?

We suppose that the main principles of lawyers' ethics are the principle of client's interests priority or principle of legal equity; principle of independence; principle of confidentiality; principle of competence and fair practice; principle of responsibility for violation of lawyers' ethics rules.

However, these are specific duties carried out by lawyers, that determine necessity of balancing observance of interests of one client with observance of interests of the society, adherence of principle of legality and rule of law.

Additionally, relationships "court - lawyer" must be based on mutual respect for court and a lawyer.

B. Training of judges and lawyers

- Which are, in your country, the training institutions:

- judges ?

In 2010 by the decision of High qualification commission of judges was established a separate training institution – the National school of judges of Ukraine.

According to the Law "On Judicial System and Status of Judges" the National school of judges is a public educational institution with a special status which provides training of high-qualified specialists for judicial system and perform scientific and research work.

- lawyers?

In 1995 the board of the Association of lawyers of Ukraine carried a resolution to found a new higher law educational institution. The practical realization of new Conception for legal specialists training undertook the International Law firm B.I.M International and Ukrainian Bar Corporation, which became co-founders of the Institute of Advocacy. As follows from the foundation agreement the Institute was established and registered in 1995 as a LLC and got the full title "Institute of Advocacy at Taras Shevchenko National University Of Kyiv" which by the order or rector №113 on December 12, 2011 was transformed into the Academy of Advocacy of Ukraine, LLC.

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

- judges ?

Intra-extramural form of study.

Special training for an applicant for a position of a judge includes theoretical and practical trainings and contains common and special components. Common component of the special training curriculum includes courses of fundamental, social and functional orientation, special component includes training in four directions ("civil proceedings", "criminal proceedings and proceedings in cases about administrative offenses", "administrative proceedings", "commercial proceedings").

Every course is practically oriented according to functions of judges and aimed to mastering the abilities and skills demandable for future occupation. The essence of special trainings lies in shaping abilities and skills of high morality and professional culture of applicants for judges before they hold the position. This training goal is to assist applicants in fostering quality, abilities and skills demanded for exercising duties of judges, which will help in making lawful and justified decisions, in respectful attitude to a person, assist to provide realization of human rights and freedoms, to respect a person and to guarantee rights and fundamental freedoms, to adhere to ethical norms and norms of judicial deontology and also to recognize high importance of a court in democratic society integrated into international environment.

Besides the special training for applicants for a position of a judge the National school of judges is also responsible for initial training for judges appointed for the first time, training for lifetime judges and also judges appointed for administrative positions. Also the range of activities includes providing periodical trainings for judges aiming in upgrading qualifications, trainings for court staff, researches on improvement of judiciary, examination of international experience in court management. Legislator also assigned the National School of judges to provide scientific and methodical activities of general courts, of the High Qualification Commission of Judges of Ukraine and of the High Council of Justice.

- lawyers?

Intra-extramural, distant form of study.

The Academy of Advocacy has two departments – a department of law training and a department of special trainings for lawyers. Education at the last one gives its students an opportunity to have an oriented training for a certain legal profession, it is the most advanced to individual training (small groups of special lawyers' trainings, attaching 2 – 3 students to lawyers and judges in law schools and judicial workshops). Students during 3 years learn Ukrainian business and legal language, two foreign languages, attend conferences, workshops, explore subtleties of lawyer and judicial activities. Students have a possibility to learn on the base of certain "real" cases in courts and on the civil and criminal case-files they learn the following disciplines: "Representation and defense of individuals in separate categories of cases in court", "Speech in court", "Forensics (tactic and methodic of defense)"; almost every discipline from special course has practical workshops on concrete cases, which are proceeded by lawyers or judges who teach in the Academy.

The most importing feature in Academy's of advocacy of Ukraine training program is that students during the whole course are surrounded by practitioners – lawyers, judges, legal advisers at enterprises, financial establishments directly during executing their professional duties and that students following the special training for lawyers constantly broaden their knowledge gathered during the common training, update them by attending workshops, models of court hearings etc.

- What is the duration of the initial training:

- judges ?

As it follows from Art. 69 Law "On the Judicial System and Status of Judges" special training for a candidate for a position of judge includes theoretical and practical intra or extra-mural course. Special training is carried out during six months using State budget funds.

- lawyers?

In accordance with Art.6 Law "On the Bar and legal practice" a natural person can be an attorney if they have complete higher legal education, can speak the official language, have a minimum of two years experience in the legal field, passed the qualification test, completed probationary training, took the oath of the Ukrainian attorney, and received a certificate authorizing them for legal practice.

Probationary training is carried out during six months, under supervision of an attorney appointed by the regional bar council.

- 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, as mentioned above, initial training of judges includes items concerning professional ethics, behavior and responsibility of judges and lawyers, relationships between them and also issues concerning their cooperation.

- 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?

Yes, joint training programs for judges and lawyers are running in Ukraine. Examples of such programs can be the following:

Joint program of European Commission and Council of Europe "Transparency and efficiency of the judicial system of Ukraine". This project was focused on judges, prosecutors, lawyers, law clerks, administrative and teaching staff of institutions for judges and prosecutors and had an overall objective to assist in improving judiciary. In particular, project is aimed to transfer judiciary of Ukraine into a transparent and fair judicial system that is accessible to all citizens, working effectively and transparently vis-à-vis citizens and civil society, and also to improve training programs for judiciary;

Project “Combating ill-treatment and impunity”, which is carried out in execution of current joint program of the European Union and the Council of Europe. It has an objective, without losing the achieved speed and relying on achievements of the last, to develop fruitful partnership with national authorities and other interested parties aiming to expand gathered experience and to introduce new important components, in particular: counteraction to impunity in places of custody arrest and executing of punishment; strengthen combating ill-treatment and impunity;

Project “Providing effective implementation of European Convention on Human Rights on the national level by crucial groups of lawyers”, which has an objective to expand implementation of European Convention on human rights by crucial groups of specialist in law field (judges, prosecutors, lawyers) in the process of their routine work and to promote consolidation of human resources in educational institutions for effective learning of the European Convention on human rights.

Joint program of the European Union and Council of Europe “Transparency, independence and efficiency of the judicial system and increasing in access to justice by all citizens of Ukraine”, which is aimed to promote creating independent, impartial, effective and professional judicial power in Ukraine, accessible to all citizens, efficient, transparent to all citizens and civil society. It concerns following items: automatization of workflow in courts, determination of a caseload per judge, funding of courts, system of basic training and advanced training for judges, disciplinary responsibility of judges, creation of unitary professional association of lawyers, access to legal aid, using alternative dispute resolution, and also instruments to adhere national legislation in accordance with European standards.

These programs are funded not from the State Budget of Ukraine.

C. Efficiency and quality of judicial proceedings

- Are there any procedural instruments to facilitate the interaction between judges and lawyers during the proceedings? If yes, please specify.

Current legislation doesn't provide any procedural instruments to facilitate the interaction between judges and lawyers during the proceedings.

We suppose, that expediency of introduction of required methods in Ukraine demands separate (additional) research.

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

Legislature of Ukraine stipulates only procedural communication between lawyers and judges in the court room, other forms of communication are not provided.

Relevant norms of behavior of a lawyer in court, which oblige him as a party in court proceedings to maintain these norms, are allocated in current legislation. In relationships with court staff lawyer is also obliged to maintain relevant norms.

There are no computerized systems to that end.

- Are there possibilities, procedures and mechanisms for judges and lawyers to come to an agreement concerning the judicial resolution of the case? If yes, is such agreement compulsory? Do they negotiate certain phases of the procedure?

Ukrainian laws don't provide any possibility for judges and lawyers to come to an agreement concerning the judicial resolution of the case.

- 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?

There are no provisions for groundless refusal in satisfaction of lawyers' demands, claims. The Civil Procedural Code of Ukraine stipulates powers of court in a court hearing. Article 168 of the Code stipulates, that claims and petitions of a party are considered by a judge after hearing the opinion of remaining parties, and then a reasoning ruling is carried out.

Though reasoning ruling on refusal in satisfaction of a claim doesn't prevent this claim to be applied on the other grounds.

- 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?

Legislature of Ukraine doesn't provide any legal instruments which potentially could be used by lawyers to delay consideration of the case or to affect its resolution.

- 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?

Adjusting of current provisions in compliance with present requirements, elimination of gaps in the legal field is a civilized way to create a rule-of-law state in Ukraine and to improvement of social and legal defense of citizens.

Successful interaction between judges and lawyers largely depends on current legislature of a state.

Therefore, for example, coordinated and accurate functioning of advocacy in a human rights protection mechanism of modern Ukraine has an immense influence in a formation and functioning process of civil society, insofar as the Bar is a particular "buffer" which counterbalance civil society's interests with requirements and possibilities of a state.

- 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.?

In our opinion, the key factor which largely influence quality of interaction between a judge and a lawyer is a level of their professionalism and morality.

- 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 accordance with current legislation, court is obliged not only to respect honor and dignity of all participants of the proceedings, but to prevent violation of these rights by other participants. Judge shouldn't express his attitude and notices concerning case before it's time to consider a decision.

As art.7 of the Code of professional ethics of judges states, a judge should administer judges in frames and in order envisaged by procedural law and should show tactfulness, affability, moderation and respect for participants in proceedings and others. Hence, no matter if a judge like or not a lawyer, his position or his client, a judge should show "tactfulness, affability, moderation and respect for participants in proceedings and others". Lawyer is a party in a civil proceeding, therefore he has a right to recon on such respect or at least on a facade of that. Herewith the Code doesn't contains any provisions concerning qualification of a lawyer. Besides that judges have to retain that a lawyer acts for the benefit of his client and has a right to enjoy all allowable legitimate means exercising functions of defense and representation. A lawyer himself develops strategy and tactics of his behavior, legal position in a case, because he is personally responsible for his actions, if they are unconscientious towards client.

On the other side, lawyer shouldn't ignore violations of law, indelicate and contemptuous attitude of court or other participants to his client, himself or Bar as a whole, and should respond by means, provided by law, p.2 art. 54 of the Rules of lawyers' ethics.

The Rules of lawyers' ethics also recommend and oblige lawyers to be persistent and high-toned in defending clients' interests in court, to maintain their independence in representing clients but not to impair relations with court.

Taking into account disciplinary practice of the High Council of Justice cases of the open hostile relations between judges and lawyers occurred. Such cases certainly result in bringing a guilty party do disciplinary responsibility, therefore there can be nothing personal between court and a lawyer during the proceedings.

D. Role of judges and lawyers in responding to the needs of parties

- 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).

According to art.175 of the Civil Procedural Code of Ukraine peaceful settlement may be concluded by parties aiming to resolute dispute on a base of mutual acquiescence and concerns only rights and responsibilities

of parties and cause of action. Before making a judgment according to a settlement, judge clarifies for the parties consequences of such decision, checks if a representative of a party has powers to make this action.

Court doesn't admit a settlement in a case with a representative (appropriate adult), if his actions contradicts with interest of a person he represent.

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

The reality is that there three categories of lawyers, which potentially can hold positions in court – court staff, lawyers (attorneys) and prosecutors, that is those who systematically and permanently take part in administration of justice. And it is frequent.

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

No, such powers of lawyers are not acceptable in frames of current judicial system of Ukraine.

E. Judges, lawyers and media

- Have there been any reflections in the mass media as regards the relations between judges and lawyers and their co-operation?

There were no publications in the mass media to that end.

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

As art. 6 of the Code of professional ethics of judges state, a judge has no right to divulge information, came to knowledge during consideration of a case in a closed court session. He are not allowed to make public statements, to comment cases in mass media, while they are considerate in the court, to query judgments entered into force.

Within the frame of criminal proceedings affecting public interests or other court proceedings, which have an impact on society, judicial bodies enlighten mass media on their general actions, if it won't interfere the secrecy of investigation and won't bar current proceedings.

Cooperation with media is provided by press office or press-secretary of the court.

On the other part, more liberated behavior during press-conferences or TV-show concerning ongoing court proceedings or judgments is peculiar to lawyers. The last can be explained by absence of any legal or ethic restraint.