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[ccje/doc2002/ccje(2002)37e]

CCJE (2002)37

## CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE)

Report of the 3rd meeting  
Strasbourg, 13-15 November 2002

### REPORT TO THE COMMITTEE OF MINISTERS

#### FOREWORD

The CCJE invites the Committee of Ministers:

- a) to note that, in accordance with its specific terms of reference, it has prepared, for the Ministers' attention, Opinion No. 3 (2002) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality (see section II and Appendix III to this report);
- b) to note that it has forwarded Opinion No. 3 (2002) to the European Committee on Legal Co-operation (CDCJ), the European Committee on Crime Problems (CDPC) and the Steering Committee for Human Rights (CDDH);
- c) to note that its working party (CCJE-GT) has adopted comments on the Bangalore draft code of judicial conduct (see section III and Appendix IV of this report);
- d) to agree to hear its Chair on the past and future work of the CCJE and to fix a date for this hearing (if possible, 9 July 2003);
- e) to note that it has invited the association "European Judges for Democracy and Liberties" (MEDEL) to participate in the activities of the CCJE as an observer;
- f) to take note of this report as a whole.

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## REPORT TO THE COMMITTEE OF MINISTERS

### **I. INTRODUCTION**

1. The Consultative Council of European Judges (CCJE) held its 3<sup>rd</sup> meeting at Council of Europe headquarters in Strasbourg from 13 to 15 November 2002 with the Right Honourable Lord Justice Mance (United Kingdom) in the Chair. The list of participants is shown in Appendix I to this report, and the agenda in Appendix II.
2. The CCJE's main task is to prepare opinions for the Committee of Ministers on general questions concerning the independence, impartiality and competence of judges and to contribute to the implementation of the framework global action plan for judges in Europe, adopted by the Committee of Ministers at its 740<sup>th</sup> meeting.
3. In accordance with its terms of reference and pursuant to the decision taken at its second meeting (see CCJE (2001) 43, section V A i), the CCJE adopted, for the attention of the Committee of Ministers, Opinion No. 3 (2002) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality. The text of Opinion No. 3 (2002) is set out in Appendix III to this report (see also section II below).
4. The CCJE-GT's comments on the Bangalore draft code of judicial conduct are set out in Appendix IV to this report (see also section III below).

### **II. ADOPTION OF OPINION No. 3 (2002)**

5. Having taken account of delegations' written and oral observations, the CCJE amended the draft text drawn up by the CCJE-GT and unanimously adopted Opinion No. 3 (2002) on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality.
6. The CCJE noted that Opinion No. 3 (2002) advantageously supplemented the observations it had made in Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges (with reference to Recommendation No. R (94) 12 on the independence, efficiency and role of judges and the relevance of its standards and of any other international standards to current problems in these fields).
7. In accordance with its terms of reference, the CCJE submitted Opinion No.3 (2002), as set out in Appendix III to this report, to the Committee of Ministers.
8. The CCJE invited the Committee of Ministers to note that, in accordance with its terms of reference, it had forwarded Opinion No. 3 (2002) to the CDCJ, the CDPC and the CDDH so that they could consider any appropriate further action, especially of a standard-setting nature.
9. Having completed its work on Opinion No. 3 (2002), the CCJE thanked all those who had participated in preparing the text for their valuable input, in particular its specialist, Mr D. Salas, for the very useful report and information he had provided, and his assistant, Mr H. Epineuse, for his summary of the replies to the questionnaire.

### **III. COMMENTS ON THE BANGALORE DRAFT CODE OF JUDICIAL CONDUCT**

10. The Chair of the CCJE informed participants that, as requested by Mr Param Kumaraswamy, Special Rapporteur on the independence of judges and lawyers, appointed under Resolution 1994/41 of 4 March 1994 of the United Nations Commission on Human Rights, the CCJE-GT had prepared comments on the Bangalore draft Code of Judicial Conduct, adopted by the Judicial Group on Strengthening Judicial Integrity in February 2001 in Bangalore (India).

11. The CCJE felt that these comments constituted a significant contribution to discussion on the rules governing judges' professional conduct and congratulated the CCJE-GT on its work.

12. The CCJE-GT's comments are set out in Appendix IV to this report. The Council of Europe also sent them to the Special Rapporteur.

13. Bangalore draft has since been revised in November 2002, and in their revised form have become The Bangalore Principles of Judicial Conduct. A copy of these Principles is also annexed for information (see Appendix V). The Explanatory Note to these Principles acknowledges the input of the CCJE's Working Party in June 2002 (see in particular page 91 of Appendix V).

### **IV. PREPARATION OF THE DRAFT OPINION ON "APPROPRIATE INITIAL AND IN-SERVICE TRAINING FOR JUDGES AT THE NATIONAL AND EUROPEAN LEVELS"**

14. In accordance with its specific terms of reference, in 2003 the CCJE would prepare an opinion on the following theme: "Appropriate initial and in-service training for judges at the national and European levels". To that end, a specialist would be asked to draft a report on the basis of the replies to the questionnaire, and the Secretariat would be responsible for listing questions to be considered and possible solutions for inclusion in the draft opinion, to be examined by the working party at its first meeting in 2003.

15. Following that meeting, the Secretariat, in consultation with the Chair and Vice-Chair of the CCJE, would draw up, by a specified date, a preliminary draft opinion, which would be sent to members of the CCJE-GT for comment.

16. Delegations wishing to submit written comments would be required to e-mail these to the Secretariat in good time.

17. The preliminary draft opinion, amended in the light of the comments received, would be submitted to the CCJE-GT for consideration at its second meeting in 2003, and then to the CCJE for adoption at its 2003 meeting.

18. In accordance with the terms of reference, the opinion on appropriate initial and in-service training for judges at the national and European levels would then be submitted to the Committee of Ministers.

19. The CCJE would also send the opinion to the CDCJ, the CDPC and the CDDH for consideration of any appropriate further action, especially of a standard-setting nature, and to members of the Lisbon Network so that they could take it into account in their future work.

20. In this connection, the CCJE noted with thanks that the President of Portugal's Supreme Court, who also chaired the country's Judicial Service Commission, had offered to co-organise with

the Council of Europe and host in Evora (Portugal) a meeting of the directors of member states' training schools/centres for the judiciary, along with a meeting of the CCJE-GT.

21. The CCJE considered that the proposed meeting of directors would constitute a major contribution to its work on the opinion on training of judges. It accordingly hoped that steps could be taken to enable members of the CCJE-GT to benefit from the discussions taking place at that meeting. Information on national training situations would be extremely useful and enhance the effectiveness of work on the draft opinion.

## **V. EUROPEAN CONFERENCE OF JUDGES**

22. As part of the CCJE's contribution to implementation of the framework global action plan for judges in Europe (see doc. CCJE (2000)24), the CCJE proposed considering the possibility of holding a European Conference of Judges in 2003. The conference would comprise, inter alia, the various Council of Europe bodies working on matters of relevance to the judiciary and justice.

23. The CCJE was pleased to note that its working party, the Lisbon Network and the Committee of Experts on the Efficiency of Justice (CJ-EJ) were in favour of holding a European Conference of Judges.

24. After an exchange of views on the subject-matter of the conference, taking into account the needs of the different member states, the CCJE chose the theme "Early settlement of disputes and the role of judges".

25. The conference would be organised by the Secretariat in co-operation with the Chair of the CCJE. Delegations to the CCJE were asked to send any information of relevance to the conference's theme to the secretariat by the end of January 2003.

26. The European Conference of Judges would take place in Strasbourg on 24 and 25 November 2003 during the same week as the meeting of the CCJE.

## **VI. OPINIONS TO BE PREPARED IN 2004 AND 2005**

27. The CCJE agreed that in 2004, subject to adoption of its revised terms of reference by the Committee of Ministers, it should address issues in line with the theme of the European Conference of Judges (see V above). It identified the following themes coming within the framework global action plan for judges in Europe (see doc. CCJE (2001) 24) as priority fields:

- case management (point II e of the plan);
- judges' role in trial proceedings (point III C a of the plan);
- the educational role of the courts in a democracy, relations with the public (point V b of the plan);
- relations with all those involved in court proceedings (point V c of the plan);
- accessibility, simplification and clarity of the language used by the courts in proceedings and decisions (point V d of the plan).

28. The CCJE asked its working party to submit proposals for themes to be dealt with in 2004 and 2005 in the light of the results of the exchange of views.

## **VII. PREPARATION OF REVISED TERMS OF REFERENCE FOR THE CCJE FOR 2004 AND 2005**

29. The CCJE asked its working party to prepare revised terms of reference for it for 2004 and 2005, taking account of the subject-matter of the European Conference of Judges (see V above). The draft terms of reference would be discussed at the CCJE's next meeting in 2003.

## **VIII. COOPERATION WITH OTHER BODIES**

### **a. Request for a hearing with the Committee of Ministers**

30. The CCJE wished the Ministers' Deputies to grant its Chair a hearing concerning its past and future work. Subject to an invitation from the Ministers' Deputies, this hearing might take place in the week of 7 July 2003.

### **b. CCJE participation in the Working Group on Conditions of Service of Judges of the European Court of Human Rights**

31. The Chair of the CCJE informed delegations that, as a result of his chairmanship, he had been invited to participate in the activities of the Working Group on Conditions of Service of Judges of the European Court of Human Rights.

32. The CCJE expressed satisfaction at this invitation, which showed the relevance of its activities for other Council of Europe bodies.

### **c. Exchange of views with the Venice Commission**

33. The CCJE held an exchange of views with the Deputy Secretary of the Commission for Democracy through Law ("Venice Commission") on that body's areas of activity. At the end of the discussion, the Chair of the CCJE accepted an invitation from the Venice Commission to present the CCJE's work and fields of interest at the Commission's plenary meeting in 2003.

34. The Chair of the CCJE expressed the CCJE's willingness to answer questions within its areas of competence which the Venice Commission might wish to raise with it.

### **d. Information on the European Commission for the Efficiency of Justice**

35. The CCJE took note of information provided by the Secretariat on the status and objectives of the European Commission for the Efficiency of Justice (CEPEJ). Resolution Res (2002)12 establishing the European Commission for the Efficiency of Justice (CEPEJ) is set out in Appendix VI to this report.

## **IX. OTHER BUSINESS**

### **a. Agenda for the next meeting of the CCJE**

36. The CCJE agreed the following agenda for its next meeting:

- Preparation of the opinion for the Committee of Ministers on appropriate initial and in-service training of judges at the national and European levels;
- Preparation of the revised terms of reference of the CCJE for 2004 and 2005;

- Exchange of views on follow-up action to the European Conference of Judges;
- Exchange of views on draft questionnaires to be drawn up by the Chair of the working party on themes to be dealt with in 2004 and 2005;
- Election of the Chair and the Vice-Chair of the CCJE.

b. CCJE Working Party

37. In accordance with its revised terms of reference, the CCJE had set up its working party (CCJE-GT), comprising a Chair, Mr Alain Lacabarats (France), and 11 members: Mr Gerhard Reissner (Austria), Mr Robert Fremr (Czech Republic), Mr Otto Mallmann (Germany), Ms Hjördís Hákonardóttir (Iceland), Mr Raffaele Sabato (Italy), Mr Virgilijus Valančius (Lithuania), Mr Jean-Claude Wiwinius (Luxembourg), Mr Lars Oftedal Broch (Norway), Mr Orlando Afonso (Portugal), Mr Dušan Ogrizek (Slovenia) and the Right Honourable Lord Justice Mance (United Kingdom). Mr Joaquin Delgado-Martín was substitute member.

38. The CCJE would review the membership of its working party in the light of the themes identified under its future specific terms of reference.

c. Dates of next meetings

39. The CCJE noted that its next plenary meeting would take place in Strasbourg from 26 to 28 November 2003. The fourth meeting of the CCJE-GT would be held in either Strasbourg or Evora (see IV above) during the week of 7 April 2003, and the fifth meeting in Strasbourg during the week of 7 July 2003.



**APPENDIX I****LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS****MEMBER STATES / ETATS MEMBRES**

ALBANIA / ALBANIE: Mr Perikli ZAHARIA, Supreme Court of the Republic of Albania, TIRANA

ANDORRA/ANDORRE: M. Antoni FINANA, Batllia d'Andorre, ANDORRA LA VELLA

ARMENIA / ARMENIE: M. Khatchatour BAGHDASARYAN, Court of First Instance, EREVAN

AUSTRIA / AUTRICHE: Mr Gerhard REISSNER, District Court of Floridsdorf, VIENNA

AZERBAIJAN / AZERBAÏDJAN: M. Etibar NABIYEV, Ministère de la Justice, BAKOU

BELGIUM / BELGIQUE: M. Marc LAHOUSSE, Palais de Justice, BRUXELLES

BULGARIA / BULGARIE: Ms Cveta MARKOVA, District Court of Varna, VARNA

CROATIA / CROATIE: Mr Duro SESSA, Municipal Court in Zagreb, ZAGREB

CYPRUS / CHYPRE: Mr Stelios NATHANAEL, District Court Larnaca-Famagusta, LARNACA

CZECH REPUBLIC / REPUBLIQUE TCHEQUE: Mr Robert FREMR, High Court, PRAGUE

DENMARK / DANEMARK: Mr Børge DAHL, Supreme Court, KØBENHAVN K

ESTONIA / ESTONIE: Mr Uno LÖHMUS, Supreme Court of the Republic of Estonia, TARTU

FINLAND / FINLANDE: Mr Gustav BYGGLIN, Supreme Court of Finland, HELSINKI

FRANCE: M. Alain LACABARATS, Cour d'Appel de Paris, PARIS

GEORGIA / GEORGIE: Mr Theimuraz MUKHRANELLI, Tbilisi Regional Court, TBILISI

GERMANY / ALLEMAGNE: Mr Otto MALLMANN, Federal Administrative Court, BERLIN

GREECE/GRECE: Mr Dimitrios LINOS, Supreme Civil and Criminal Court, ATHENS

HUNGARY / HONGRIE: Mr Károly HORECZKY, Supreme Court, BUDAPEST

ICELAND / ISLANDE: Ms Hjördís HÁKONARDÓTTIR, District Court of Reykjavik, REYKJAVIK

IRELAND / IRLANDE: Mr Kevin O'HIGGINS, High Court, DUBLIN

ITALY / ITALIE: Mr Raffaele SABATO, Tribunale di Napoli, NAPLES

LATVIA / LETTONIE: (excusé/apologised)

LIECHTENSTEIN : Mr Lothar HAGEN, Criminal Court, VADUZ

LITHUANIA / LITUANIE: Mr Virgilijus VALANČIUS, Supreme Administrative Court of Lithuania, VILNIUS

LUXEMBOURG : M. Jean-Marie HENGEN, Justice de Paix Esch-sur Alzette, ESCH-SUR-ALZETTE

M. Jean-Claude WIWINIUS, Cour Supérieure de Justice, LUXEMBOURG

MALTA / MALTE: Mr Joseph D. CAMILLERI, The Courts of Justice, VALLETTA

MOLDOVA : (excusé/apologised)

NETHERLANDS / PAYS-BAS: Mrs Will TONKENS-GERKEMA, District Court Amsterdam, THE HAGUE

M. Peter P. LAMPE, Tribunal de Maastricht, MAASTRICHT

NORWAY / NORVEGE: Mr Lars OFTEDAL BROCH, Supreme Court of Justice, OSLO

POLAND / POLOGNE: Mrs Irena PIOTROWSKA, Circuit Court in Katowice, KATOWICE

PORTUGAL : M. Orlando AFONSO, Cour d'Appel d'Evora, ALMADA

ROMANIA / ROUMANIE: Mme Sanda HUIDUC, Supreme Court of Romania, BUCAREST

RUSSIAN FEDERATION / FEDERATION DE RUSSIE : M. Vladimir TOUMANOV, Cour Constitutionnelle de la Fédération de Russie, MOSCOU

SAN MARINO / SAINT-MARIN: (excusé/apologised)

SLOVAKIA / SLOVAQUIE: Mr Milan KARABIN, Supreme Court of the Slovak Republic, BRATISLAVA

SLOVENIA / SLOVENIE: Mr Dušan OGRIZEK, Supreme Court of the Republic of Slovenia, LJUBLJANA

Mr Aleš ZALAR, Ljubljana District Court, LJUBLJANA

Mr Norman Manfred DOUKOFF, Ministry of Justice, LJUBLJANA

SPAIN / ESPAGNE: M. Joaquin DELGADO MARTÍN, General Council of the Judiciary, MADRID

SWEDEN / SUEDE: Mr Johan HIRSCHFELDT, Svea Court of Appeal, STOCKHOLM

Mr Lars WENNERSTRÖM, Supreme Administrative Court, STOCKHOLM

SWITZERLAND / SUISSE : M. Martin SCHUBARTH, Tribunal Fédéral suisse, LAUSANNE

“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA” / “L’EX-REPUBLIQUE YOUGOSLAVE DE MACEDOINE”: (excusé/apologised)

TURKEY / TURQUIE: Mr Şeref ÜNAL, Ministry of Justice, ANKARA

UKRAINE: Mr Victor GORODOVENKO, Melitopol local court of Zaporizhska, MELITOPOL

UNITED KINGDOM / ROYAUME-UNI: The Right Honourable Lord Justice MANCE, Royal Courts of Justice, LONDON

### **SPECIALISTS / SPECIALISTES**

M. Denis SALAS, Ecole Nationale de la Magistrature, PARIS

M. Harold EPINEUSE, Institut des Hautes Etudes sur la Justice, PARIS

### **COMMUNAUTE EUROPEENNE/EUROPEAN COMMUNITY**

Commission européenne/European Commission : (excusé/apologised)

Union européenne / European Union : (excusé/apologised)

### **OBSERVERS WITH THE COUNCIL OF EUROPE / OBSERVATEURS AUPRES DU CONSEIL DE L’EUROPE**

CANADA: M. Charles D. GONTHIER, Cour Suprême du Canada, OTTAWA

HOLY SEE / SAINT-SIEGE: (apologised/excusé)

UNITED STATES OF AMERICA / ETATS-UNIS D’AMERIQUE: (excusé/apologised)

JAPAN / JAPON: M. Mitsuru YAMASHITA, Tribunal de grande instance de Yamahuchi

Mr Koichi TAMURA, Tribunal de grande instance de Sendai

Mr Naoyuki IWAI, Ministry of Foreign Affairs, TOKYO

Mr Naoki ONISHI, Consulate General of Japan, STRASBOURG

MEXICO / MEXIQUE: M. Manuel BARQUÍN ALVAREZ, Federal Council on the Judiciary, MEXICO CITY

### **OBSERVERS WITH THE COMMITTEE / OBSERVATEURS AUPRES DU COMITE**

#### **States Observers / Etats Observateurs**

FEDERAL REPUBLIC OF YUGOSLAVIA / REPUBLIQUE FEDERALE DE YOUGOSLAVIE:  
Mr Omer HADŽIOMEROVIČ, District Court of Belgrade, BEOGRAD

**International Intergovernmental Organisations/  
Organisations Internationales Intergouvernementales**

EUROPEAN ASSOCIATION OF JUDGES / ASSOCIATION EUROPEENNE DES  
MAGISTRATS : Mr Ernst MARKEL, WIEN

**COUNCIL OF EUROPE'S SECRETARIAT /  
SECRETARIAT DU CONSEIL DE L'EUROPE**

Mrs Margaret KILLERBY, Head of the Department of Private Law, Directorate General I - Legal Affairs / Chef du Service du droit privé, Direction Générale I - Affaires Juridiques

Mme Danuta WIŚNIEWSKA-CAZALS, Administrative Officer, Secretary of the CCJE, Department of Private Law, Directorate General I - Legal Affairs / Administratrice, Secrétaire du CCJE, Service du droit privé, Direction Générale I - Affaires Juridiques

Mr Angel GALGO, Administrative Officer, Department of Private Law, Directorate General I - Legal Affairs / Administrateur, Service du droit privé, Direction Générale I - Affaires Juridiques, Tel.: +33 3 88 41 28 64, Fax: +33 3 90 21 50 33, E-mail : angel.galgo@coe.int

Mme Marie-Luce DAVIES, Secretary, Department of Private Law, Directorate General I - Legal Affairs / Secrétaire, Service du droit privé, Direction Générale I - Affaires Juridiques

Interpreters/Interprètes:

Mme Corinne McGEORGE

Mr Derrick WORDSDALE

**APPENDIX II****AGENDA**

1. Opening of the meeting / *Ouverture de la réunion*
2. Adoption of the agenda / *Adoption de l'ordre du jour*
3. Information by the Secretariat / *Informations par le Secrétariat*
4. Examination and adoption of the draft opinion on the principles and rules governing judges professional conduct with special reference to ethics, incompatible behaviour and impartiality / *Examen et adoption d'un projet d'avis sur les principes et les règles régissant les impératifs professionnels applicables aux juges, en mentionnant particulièrement la déontologie, les comportements incompatibles et l'impartialité*

**Working document / Document de travail**

Draft opinion based on the texts prepared by the specialist, the Secretariat and the replies sent by States to a questionnaire on this subject / *Projet d'avis basé sur les textes élaborés par le spécialiste, le Secrétariat et les réponses envoyées par les Etats au questionnaire sur ce sujet*

**CCJE-GT (2002) 7  
Appendix IV**

5. Exchange of views on questions to be considered by the CCJE as from 2004 / *Echange de vues sur les questions devant être examinées par le CCJE à partir de 2004*
6. Calendar of the future meetings of the CCJE and the CCJE-GT / *Calendrier des futures réunions du CCJE et CCJE-GT*
7. Examination of the request of the Association « Magistrats européens pour la démocratie et les libertés » (MEDEL) for status of observer to the CCJE / *Examen de la demande du statut d'observateur auprès du CCJE présentée par l'Association des Magistrats européens pour la démocratie et les libertés (MEDEL)*

**Working document / Document de travail**

Request of the Association « Magistrats européens pour la démocratie et les libertés » (MEDEL) for status of observer to the CCJE / *Demande du statut d'observateur auprès du CCJE présentée par l'Association des Magistrats européens pour la démocratie et les libertés (MEDEL)*

**CCJE (2002) 33**

8. Any other business / *Divers*
  - 8.1. Exchange of views on practical assistance to the States in the field of the judiciary / *Echange de vues sur l'assistance pratique aux Etats dans le domaine de la justice*
  - 8.2. Exchange of views on partnerships in the judicial field / *Echange de vues sur le partenariat dans le domaine judiciaire*

8.3. Exchange of views on publications / *Echange de vues sur les publications*

8.4. Exchange of views on the working methods of the CCJE between meetings /  
*Echange de vues sur les méthodes de travail du CCJE en dehors des réunions*

Background document / Document de référence

Report of the 1<sup>st</sup> meeting of the Consultative Council of European Judges (CCJE) (Strasbourg, 8-10 November 2000) / *Rapport de la première réunion du Conseil Consultatif de Juges Européens (CCJE) (Strasbourg, les 8-10 novembre 2000)*

**CCJE(2000) 3**

Report of the 2<sup>nd</sup> meeting of the Consultative Council of European Judges (CCJE) (Strasbourg, 21-23 November 2001) / *Rapport de la deuxième réunion du Conseil Consultatif de Juges Européens (CCJE) (Strasbourg, les 21-23 novembre 2001)*

**CCJE (2002) 43**

Report of the 2<sup>nd</sup> and 3<sup>rd</sup> meetings of the Working Party of the Consultative Council of European Judges (CCJE-GT) (Strasbourg, 19-21 June 2002 and 16-18 September 2002) / *Rapport des deuxième et troisième réunions du Groupe de travail du Conseil Consultatif de Juges Européens (CCJE-GT) (Strasbourg, les 19-21 juin 2002 et 16-18 septembre 2002)*

**CCJE-GT (2002) 7**

Framework global action plan for judges in Europe /  
*Programme cadre d'action global pour les juges en Europe*

**CCJE (2001) 24**

Report prepared by Mr Denis SALAS, Specialist, lecturer in Ecole Nationale de la Magistrature (Paris) responsible for Studies and Research / *Projet de rapport établi par M. Denis SALAS, spécialiste, maître de Conférences à l'Ecole Nationale de la Magistrature (Paris) chargé d'Etudes et de Recherches*

**CCJE-GT (2002) 3**

Questionnaire on the conduct, ethics and responsibility of judges / *Questionnaire relatif à la conduite, l'éthique et la responsabilité des juges*

**CCJE (2001) 34 rev.**

Answers to the questionnaire submitted by national delegations/ *Réponses au questionnaire soumises par les délégations nationales :*

Austria/*Autriche*

**CCJE (2002) 30**

English only/*anglais seulement*

Andorra/*Andorre*

**CCJE (2002) 26**

French only/*français seulement*

Azerbaijan/*Azerbaïdjan*

**CCJE (2002) 6**

English only/*anglais seulement*

Belgium/*Belgique*

**CCJE (2002) 7**

French only/*français seulement*

Croatia/ <i>Croatie</i>	<b>CCJE (2002) 29</b> <u>English only/<i>anglais seulement</i></u>
Czech Republic/ <i>République Tchèque</i>	<b>CCJE (2002) 8</b> <u>English only/<i>anglais seulement</i></u>
Cyprus/ <i>Chypre</i>	<b>CCJE (2002) 24</b> <u>English only/<i>anglais seulement</i></u>
Estonia/ <i>Estonie</i>	<b>CCJE (2002) 1</b> <u>English only/<i>anglais seulement</i></u>
Finland/ <i>Finlande</i>	<b>CCJE (2002) 28</b> <u>English only/<i>anglais seulement</i></u>
France	<b>CCJE (2002) 9</b> <u>French only/<i>français seulement</i></u>
Germany/ <i>Allemagne</i>	<b>CCJE (2002) 23</b> <u>English only/<i>anglais seulement</i></u>
Iceland/ <i>Islande</i>	<b>CCJE (2002) 27</b> <u>English only/<i>anglais seulement</i></u>
Ireland/ <i>Irlande</i>	<b>CCJE (2002) 10</b> <u>English only/<i>anglais seulement</i></u>
Italy/ <i>Italie</i>	<b>CCJE (2002) 11</b> <u>English only/<i>anglais seulement</i></u>
Japan/ <i>Japon</i>	<b>CCJE (2002) 31</b> <u>English only/<i>anglais seulement</i></u>
Liechtenstein	<b>CCJE (2002) 21</b> <u>English only/<i>anglais seulement</i></u>
Lithuania/ <i>Lituanie</i>	<b>CCJE (2002) 12</b> <u>English only/<i>anglais seulement</i></u>
Luxembourg	<b>CCJE (2002) 13 and Appendix/<i>et Annexe</i></b> <u>French only/<i>français seulement</i></u>
Malta/ <i>Malte</i>	<b>CCJE (2002) 14</b> <u>English only/<i>anglais seulement</i></u>
Moldova	<b>CCJE (2002) 4</b> <u>French only/<i>français seulement</i></u>
Norway/ <i>Norvège</i>	<b>CCJE (2002) 15</b> <u>English only/<i>anglais seulement</i></u>

Poland/ <i>Pologne</i>	<b>CCJE (2002) 5</b> <u>English only/anglais seulement</u>
Portugal	<b>CCJE (2002) 22</b> <u>French only/français seulement</u>
Romania/ <i>Roumanie</i>	<b>CCJE (2002) 2</b> <u>English only/anglais seulement</u>
Slovak Republic/ <i>République Slovaque</i>	<b>CCJE (2002) 16</b> <u>English only/anglais seulement</u>
Slovenia/ <i>Slovénie</i>	<b>CCJE (2002) 25</b> <u>English only/anglais seulement</u>
Sweden/ <i>Suède</i>	<b>CCJE (2002) 17</b> <u>English only/anglais seulement</u>
Switzerland/ <i>Suisse</i>	<b>CCJE (2002) 18</b> <u>French only/français seulement</u>
Turkey/ <i>Turquie</i>	<b>CCJE (2002) 19</b> <u>English only/anglais seulement</u>
Ukraine	<b>CCJE (2002) 20</b> <u>English only/anglais seulement</u>
United Kingdom/ <i>Royaume-Uni</i>	<b>CCJE (2002) 34</b> <u>English only/anglais seulement</u>



**APPENDIX III****OPINION No 3 (2002)  
OF THE CONSULTATIVE COUNCIL OF EUROPEAN JUDGES  
FOR THE ATTENTION OF THE COMMITTEE OF MINISTERS  
OF THE COUNCIL OF EUROPE****ON THE PRINCIPLES AND RULES GOVERNING  
JUDGES' PROFESSIONAL CONDUCT,  
IN PARTICULAR ETHICS,  
INCOMPATIBLE BEHAVIOUR AND IMPARTIALITY**

1. The Consultative Council of European Judges (CCJE) drafted this opinion on the basis of replies by the Member States to a questionnaire and texts drawn up by the CCJE Working Party and the specialist of the CCJE on this topic, Mr Denis SALAS (France).
2. The present opinion makes reference to CCJE Opinion No. 1 (2001) ([www.coe.int/legalprof](http://www.coe.int/legalprof), CCJE(2001) 43) on standards concerning the independence of the judiciary and the irremovability of judges, particularly paragraphs 13, 59, 60 and 71.
3. In preparing this opinion, the CCJE took into account a number of other documents, in particular:
  - the United Nations "Basic principles on the independence of the judiciary" (1985);
  - Recommendation No. R (94) 12 of the Committee of Ministers of the Council of Europe on the independence, efficiency and role of judges;
  - the European Charter on the Statute for Judges (1998) (DAJ/DOC(98) 23);
  - the Code of judicial conduct, the Bangalore draft<sup>1</sup>.
4. The present opinion covers two main areas:
  - the principles and rules governing judges' professional conduct, based on determination of ethical principles, which must meet very high standards and may be incorporated in a statement of standards of professional conduct drawn up by the judges themselves (A);
  - the principles and procedures governing criminal, civil and disciplinary liability of judges (B).
5. The CCJE questioned, in this context, whether existing rules and principles were in all respects consistent with the independence and impartiality of tribunals required by the European Convention on Human Rights.
6. The CCJE therefore sought to answer the following questions:
  - What standards of conduct should apply to judges?

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<sup>1</sup> This has since been revised in November 2002, to become The Bangalore Principles of Judicial Conduct. The CCJE did not have these Principles before it. The Explanatory Note to them acknowledges the input of the CCJE's Working Party in June 2002.

- How should standards of conduct be formulated?
- What if any criminal, civil and disciplinary liability should apply to judges?

7. The CCJE believes that answers to these questions will contribute to the implementation of the framework global action plan for judges in Europe, especially the priorities relating to the rights and responsibilities of judges, professional conduct and ethics (see doc. CCJE (2001) 24, Appendix A, part III B), and refers in this context its conclusions in paragraphs 49, 50, 75, 76 and 77 below.

## A. STANDARDS OF JUDICIAL CONDUCT

8. The ethical aspects of judges' conduct need to be discussed for various reasons. The methods used in the settlement of disputes should always inspire confidence. The powers entrusted to judges are strictly linked to the values of justice, truth and freedom. The standards of conduct applying to judges are the corollary of these values and a precondition for confidence in the administration of justice.

9. Confidence in the justice system is all the more important in view of the increasing globalisation of disputes and the wide circulation of judgments. Further, in a State governed by the rule of law, the public is entitled to expect general principles, compatible with the notion of a fair trial and guaranteeing fundamental rights, to be set out. The obligations incumbent on judges have been put in place in order to guarantee their impartiality and the effectiveness of their action.

### *1°) What standards of conduct should apply to judges?*

10. Any analysis of the rules governing the professional demands applicable to judges should include consideration of the underlying principles and the objectives pursued.

11. Whatever methods are used to recruit and train them and however broad their mandate, judges are entrusted with powers and operate in spheres which affect the very fabric of people's lives. A recent research report points out that, of all the public authorities, it is probably the judiciary which has changed the most in the European countries<sup>2</sup>. In recent years, democratic societies have been placing increasing demands on their judicial systems. The increasing pluralism of our societies leads each group to seek recognition or protection which it does not always receive. Whilst the architecture of democracies has been profoundly affected, national variations remain marked. It is a truism that the East European countries that are emerging from authoritarian regimes see law and justice as providing the legitimacy essential for the reconstruction of democracy. There more than elsewhere, the judicial system is asserting itself in relation to other public authorities through its function of judicial supervision.

12. The powers entrusted to judges are subject not only to domestic law, an expression of the will of the nation, but also to the principles of international law and justice as recognised in modern democratic societies.

13. The purpose for which these powers are entrusted to judges is to enable them to administer justice, by applying the law, and ensuring that every person enjoys the rights and/or assets that are legally theirs and of which they have been or may be unfairly deprived.

14. This aim is expressed in Article 6 of the European Convention on Human Rights which, speaking purely from the point of view of users of the judicial system, states that "*everyone is*

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<sup>2</sup> *Les mutations de la justice. Comparaisons européennes*, Ph. Robert and A. Cottino (ed.), Harmattan, 2001.

*entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law".* Far from suggesting that judges are all-powerful, the Convention highlights the safeguards that are in place for persons on trial and sets out the principles on which the judge's duties are founded: independence and impartiality.

15. In recent years, there has been some recognition of the need for increased assurances of judicial independence and impartiality; independent bodies have been set up to protect the judiciary from partisan interference; the significance of the European Convention on Human Rights has been developed and felt through the case-law of the European Court in Strasbourg and national courts.

16. Independence of the judge is an essential principle and is the right of the citizens of each State, including its judges. It has both an institutional and an individual aspect. The modern democratic State should be founded on the separation of powers. Each individual judge should do everything to uphold judicial independence at both the institutional and the individual level. The rationale of such independence has been discussed in detail in the Opinion N° 1 (2001) of the CCJE, paragraphs 10-13. It is, as there stated, inextricably complemented by and the pre-condition of the impartiality of the judge, which is essential to the credibility of the judicial system and the confidence that it should inspire in a democratic society.

17. Article 2 of the "Basic principles on the independence of the judiciary" drawn up by the United Nations in 1985 stipulates that "the judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason". Under Article 8, judges "shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary".

18. In its Recommendation N° R (94) 12 on the independence, efficiency and role of judges (Principle I.2.d), the Committee of Ministers of the Council of Europe stated that "judges should have unfettered freedom to decide cases impartially, in accordance with their conscience and their interpretation of the facts, and in pursuance of the prevailing rules of the law".

19. The European Charter on the Statute for Judges indicates that the statute for judges should ensure the impartiality which all members of the public are entitled to expect of the courts (paragraph 1.1). The CCJE fully endorses this provision of the Charter.

20. Impartiality is determined by the European Court both according to a *subjective* approach, which takes into account the personal conviction or interest of a particular judge in a given case, and according to an *objective* test, ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect<sup>3</sup>.

21. Judges should, in all circumstances, act impartially, to ensure that there can be no legitimate reason for citizens to suspect any partiality. In this regard, impartiality should be apparent in the exercise of both the judge's judicial functions and his or her other activities.

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<sup>3</sup> See for example Piersack case, judgment of 1 October 1982, Series A 53, para. 30, De Cubber case, judgment of 26 October 1984, Series A 86, para. 24, Demicoli case, judgment of 27 August 1991, Series A 210, para. 40, Sainte-Marie case, judgment of 16 December 1992, Series A 253-A, para. 34.

**a. Impartiality and conduct of judges in the exercise of their judicial functions**

22. Public confidence in and respect for the judiciary are the guarantees of the effectiveness of the judicial system: the conduct of judges in their professional activities is understandably seen by members of the public as essential to the credibility of the courts.

23. Judges should therefore discharge their duties without any favouritism, display of prejudice or bias. They should not reach their decisions by taking into consideration anything which falls outside the application of the rules of law. As long as they are dealing with a case or could be required to do so, they should not consciously make any observations which could reasonably suggest some degree of pre-judgment of the resolution of the dispute or which could influence the fairness of the proceedings. They should show the consideration due to all persons (parties, witnesses, counsel, for example) with no distinction based on unlawful grounds or incompatible with the appropriate discharge of their functions. They should also ensure that their professional competence is evident in the discharge of their duties.

24. Judges should also discharge their functions with due respect for the principle of equal treatment of parties, by avoiding any bias and any discrimination, maintaining a balance between the parties and ensuring that each receives a fair hearing.

25. The effectiveness of the judicial system also requires judges to have a high degree of professional awareness. They should ensure that they maintain a high degree of professional competence through basic and further training, providing them with the appropriate qualifications.

26. Judges must also fulfil their functions with diligence and reasonable despatch. For this, it is of course necessary that they should be provided with proper facilities, equipment and assistance. So provided, judges should both be mindful of and be able to perform their obligations under Article 6.1 of the European Convention on Human Rights to deliver judgment within a reasonable time.

**b. Impartiality and extra-judicial conduct of judges**

27. Judges should not be isolated from the society in which they live, since the judicial system can only function properly if judges are in touch with reality. Moreover, as citizens, judges enjoy the fundamental rights and freedoms protected, in particular, by the European Convention on Human Rights (freedom of opinion, religious freedom, etc). They should therefore remain generally free to engage in the extra-professional activities of their choice.

28. However, such activities may jeopardise their impartiality or sometimes even their independence. A reasonable balance therefore needs to be struck between the degree to which judges may be involved in society and the need for them to be and to be seen as independent and impartial in the discharge of their duties. In the last analysis, the question must always be asked whether, in the particular social context and in the eyes of a reasonable, informed observer, the judge has engaged in an activity which could objectively compromise his or her independence or impartiality.

29. Judges should conduct themselves in a respectable way in their private life. In view of the cultural diversity of the member states of the Council of Europe and the constant evolution in moral values, the standards applying to judges' behaviour in their private lives cannot be laid down too precisely. The CCJE encourages the establishment within the judiciary of one or more bodies or persons having a consultative and advisory role and available to judges whenever they have some uncertainty as to whether a given activity in the private sphere is compatible with their status of

judge. The presence of such bodies or persons could encourage discussion within the judiciary on the content and significance of ethical rules. To take just two possibilities, such bodies or persons could be established under the aegis of the Supreme Court or judges' associations. They should in any event be separate from and pursue different objectives to existing bodies responsible for imposing disciplinary sanctions.

30. Judges' participation in political activities poses some major problems. Of course, judges remain citizens and should be allowed to exercise the political rights enjoyed by all citizens. However, in view of the right to a fair trial and legitimate public expectations, judges should show restraint in the exercise of public political activity. Some States have included this principle in their disciplinary rules and sanction any conduct which conflicts with the obligation of judges to exercise reserve. They have also expressly stated that a judge's duties are incompatible with certain political mandates (in the national parliament, European Parliament or local council), sometimes even prohibiting judges' spouses from taking up such positions.

31. More generally, it is necessary to consider the participation of judges in public debates of a political nature. In order to preserve public confidence in the judicial system, judges should not expose themselves to political attacks that are incompatible with the neutrality required by the judiciary.

32. From reading the replies to the questionnaire, it seems that in some States a restrictive view is taken of judges' involvement in politics.

33. The discussions within the CCJE have shown the need to strike a balance between the judges' freedom of opinion and expression and the requirement of neutrality. It is therefore necessary for judges, even though their membership of a political party or their participation in public debate on the major problems of society cannot be proscribed, to refrain at least from any political activity liable to compromise their independence or jeopardise the appearance of impartiality.

34. However, judges should be allowed to participate in certain debates concerning national judicial policy. They should be able to be consulted and play an active part in the preparation of legislation concerning their statute and, more generally, the functioning of the judicial system. This subject also raises the question of whether judges should be allowed to join trade unions. Under their freedom of expression and opinion, judges may exercise the right to join trade unions (freedom of association), although restrictions may be placed on the right to strike.

35. Working in a different field offers judges an opportunity to broaden their horizons and gives them an awareness of problems in society which supplements the knowledge acquired from the exercise of their profession. In contrast, it entails some not inconsiderable risks: it could be viewed as contrary to the separation of powers, and could also weaken the public view of the independence and impartiality of judges.

36. The question of judges' involvement in certain governmental activities, such as service in the private offices of a minister (*cabinet ministériel*), poses particular problems. There is nothing to prevent a judge from exercising functions in an administrative department of a ministry (for example a civil or criminal legislation department in the Ministry of Justice); however, the matter is more delicate with regard to a judge who becomes part of the staff of a minister's private office. Ministers are perfectly entitled to appoint whomsoever they wish to work in their private office but, as the minister's close collaborators, such staff participate to a certain extent in the minister's political activities. In such circumstances, before a judge enters into service in a minister's private office, an opinion should ideally be obtained from the independent organ responsible for the

appointment of judges, so that this body could set out the rules of conduct applicable in each individual case.

### **c. Impartiality and other professional activities of judges <sup>4</sup>**

37. The specific nature of the judicial function and the need to maintain the dignity of the office and protect judges from all kinds of pressures mean that judges should behave in such a way as to avoid conflicts of interest or abuses of power. This requires judges to refrain from any professional activity that might divert them from their judicial responsibilities or cause them to exercise those responsibilities in a partial manner. In some States, incompatibilities with the function of judge are clearly defined by the judges' statute and members of the judiciary are forbidden from carrying out any professional or paid activity. Exceptions are made for educational, research, scientific, literary or artistic activities.

38. Different countries have dealt with incompatible activities to varying effects (a brief summary is annexed) and by various procedures, though in each case with the general objective of avoiding erecting any insurmountable barrier between judges and society.

39. The CCJE considers that rules of professional conduct should require judges to avoid any activities liable to compromise the dignity of their office and to maintain public confidence in the judicial system by minimising the risk of conflicts of interest. To this end, they should refrain from any supplementary professional activity that would restrict their independence and jeopardise their impartiality. In this context, the CCJE endorses the provision of the European Charter on the Statute for Judges under which judges' freedom to carry out activities outside their judicial mandate "may not be limited except in so far as such outside activities are incompatible with confidence in, or the impartiality or the independence of a judge, or his or her required availability to deal attentively and within a reasonable period with the matters put before him or her" (para. 4.2). The European Charter also recognises the right of judges to join professional organisations and a right of expression (para. 1.7) in order to avoid "excessive rigidity" which might set up barriers between society and the judges themselves (para. 4.3). It is however essential that judges continue to devote the most of their working time to their role as judges, including associated activities, and not be tempted to devote excessive attention to extra-judicial activities. There is obviously a heightened risk of excessive attention being devoted to such activities, if they are permitted for reward. The precise line between what is permitted and not permitted has however to be drawn on a country by country basis, and there is a role here also for such a body or person as recommended in paragraph 29 above.

### **d. Impartiality and judges' relations with the media**

40. There has been a general trend towards greater media attention focused on judicial matters, especially in the criminal law field, and in particular in certain west European countries. Bearing in mind the links which may be forged between judges and the media, there is a danger that the way judges conduct themselves could be influenced by journalists. The CCJE points out in this connection that in its Opinion No. 1 (2001) it stated that, while the freedom of the press was a pre-eminent principle, the judicial process had to be protected from undue external influence. Accordingly, judges have to show circumspection in their relations with the press and be able to maintain their independence and impartiality, refraining from any personal exploitation of any relations with journalists and any unjustified comments on the cases they are dealing with. The right of the public to

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<sup>4</sup> For a detailed analysis of incompatibilities, see the Communication by Jean-Pierre Atthenont, presented at the seminar organised by the Council of Europe on the statute for judges (Bucharest, 19-21 March 1997) and the Communication by Pierre Cornu presented at a seminar organised by the Council of Europe on the statute for judges (Chisinau, 18-19 September 1997).

information is nevertheless a fundamental principle resulting from Article 10 of the European Convention on Human Rights. It implies that the judge answers the legitimate expectations of the citizens by clearly motivated decisions. Judges should also be free to prepare a summary or communiqué setting up the tenor or clarifying the significance of their judgements for the public. Besides, for the countries where the judges are involved in criminal investigations, it is advisable for them to reconcile the necessary restraint relating to the cases they are dealing with, with the right to information. Only under such conditions can judges freely fulfil their role, without fear of media pressure. The CCJE has noted with interest the practice in force in certain countries of appointing a judge with communication responsibilities or a spokesperson to deal with the press on subjects of interest to the public.

## ***2°) How should standards of conduct be formulated?***

41. Continental judicial tradition strongly supports the idea of codification. Several countries have already established codes of conduct in the public sector (police), in regulated professions (solicitors, doctors) and in the private sector (press). Codes of ethics have also recently been introduced for judges, particularly in East European countries, following the example of the United States.

42. The oldest is the Italian "Ethical Code" adopted on 7 May 1994 by the Italian Judges' Association, a professional organisation of the judiciary. The word "code" is inappropriate, since it consists of 14 articles which cover the conduct of judges (including presidents of courts) in its entirety and includes public prosecutors<sup>5</sup>. It is clear that the code does not consist of disciplinary or criminal rules, but is a self-regulatory instrument generated by the judiciary itself. Article 1 sets out the general principle: "In social life, the judge must behave with dignity and propriety and remain attentive to the public interest. Within the framework of his functions and in each professional act he must be inspired by the values of personal disinterest, independence and impartiality".

43. Other countries, such as Estonia, Lithuania, Ukraine, Moldova, Slovenia, the Czech Republic and Slovakia, have a "judicial code of ethics" or "principles of conduct" adopted by representative assemblies of judges and distinct from disciplinary rules.

44. Codes of conduct have some important benefits: firstly, they help judges to resolve questions of professional ethics, giving them autonomy in their decision-making and guaranteeing their independence from other authorities. Secondly, they inform the public about the standards of conduct it is entitled to expect from judges. Thirdly, they contribute to give the public assurance that justice is administered independently and impartially.

45. However, the CCJE points out that independence and impartiality cannot be protected solely by principles of conduct and that numerous statutory and procedural rules should also play a part. Standards of professional conduct are different from statutory and disciplinary rules. They express the profession's ability to reflect its function in values matching public expectations by way of counterpart to the powers conferred on it. These are self-regulatory standards which involve recognising that the application of the law is not a mechanical exercise, involves real discretionary power and places judges in a relationship of responsibility to themselves and to citizens.

46. Codes of professional conduct also create a number of problems. For example, they can give the impression that they contain all the rules and that anything not prohibited must be admissible.

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<sup>5</sup> It covers relations with individuals, the duty of competence, the use of public resources, the use of professional information, relations with the press, membership of associations, the image of impartiality and independence, the obligation to act correctly with collaborators, conduct in office and outside and the duties of presiding judges.

They tend to oversimplify situations and, finally, they create the impression that standards of conduct are fixed for a certain period of time, whereas in fact they are constantly evolving. The CCJE suggests that it is desirable to prepare and speak of a “statement of standards of professional conduct”, rather than a code.

47. The CCJE considers that the preparation of such statements is to be encouraged in each country, even though they are not the only way of disseminating rules of professional conduct, since:

- appropriate basic and further training should play a part in the preparation and dissemination of rules of professional conduct<sup>6</sup>;
- in States where they exist, judicial inspectorates, on the basis of their observations of judges' behaviour, could contribute to the development of ethical thinking; their views could be made known through their annual reports;
- through its decisions, the independent authority described in the European Charter on the Statute for Judges, if it is involved in disciplinary proceedings, outlines judges' duties and obligations; if these decisions were published in an appropriate form, awareness of the values underlying them could be raised more effectively;
- high-level groups, consisting of representatives of different interests involved in the administration of justice, could be set up to consider ethical issues and their conclusions disseminated;
- professional associations should act as forums for the discussion of judges' responsibilities and deontology; they should provide wide dissemination of rules of conduct within judicial circles.

48. The CCJE would like to stress that, in order to provide the necessary protection of judges' independence, any statement of standards of professional conduct should be based on two fundamental principles:

i) firstly, it should address basic principles of professional conduct. It should recognise the general impossibility of compiling complete lists of pre-determined activities which judges are forbidden from pursuing; the principles set out should serve as self-regulatory instruments for judges, i.e. general rules that guide their activities. Further, although there is both an overlap and an interplay, principles of conduct should remain independent of the disciplinary rules applicable to judges in the sense that failure to observe one of such principles should not of itself constitute a disciplinary infringement or a civil or criminal offence;

ii) secondly, principles of professional conduct should be drawn up by the judges themselves. They should be self-regulatory instruments generated by the judiciary itself, enabling the judicial authority to acquire legitimacy by operating within a framework of generally accepted ethical standards. Broad consultation should be organised, possibly under the aegis of a person or body as stated in paragraph 29, which could also be responsible for explaining and interpreting the statement of standards of professional conduct.

### **3<sup>o</sup>) Conclusions on the standards of conduct**

49. The CCJE is of the opinion that:

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<sup>6</sup> In his summary report, presented following the first meeting of the Lisbon Network, Daniel Ludet stressed that training should offer a link and encourage discussion of judges' professional practices and the ethical principles on which they are based (see *Training of judges and prosecutors in matters relating to their professional obligations and ethics*. 1st meeting of the members of the network for the exchange of information on the training of judges and prosecutors, Council of Europe Publishing).



- i) judges should be guided in their activities by principles of professional conduct,
- ii) such principles should offer judges guidelines on how to proceed, thereby enabling them to overcome the difficulties they are faced with as regards their independence and impartiality,
- iii) the said principles should be drawn up by the judges themselves and be totally separate from the judges' disciplinary system,
- iv) it is desirable to establish in each country one or more bodies or persons within the judiciary to advise judges confronted with a problem related to professional ethics or compatibility of non judicial activities with their status.

50. As regards the rules of conduct of every judge, the CCJE is of the opinion that:

- i) each individual judge should do everything to uphold judicial independence at both the institutional and the individual level,
- ii) judges should behave with integrity in office and in their private lives,
- iii) they should at all times adopt an approach which both is and appears impartial,
- iv) they should discharge their duties without favouritism and without actual or apparent prejudice or bias,
- v) their decisions should be reached by taking into account all considerations material to the application of the relevant rules of law, and excluding from account all immaterial considerations,
- vi) they should show the consideration due to all persons taking part in the judicial proceedings or affected by these proceedings,
- vii) they should discharge their duties with due respect for the equal treatment of parties, by avoiding any bias and any discrimination, maintaining a balance between the parties and ensuring each a fair hearing,
- viii) they should show circumspection in their relations with the media, maintain their independence and impartiality by refraining from any personal exploitation of any relations with the media and from making any unjustified comments on the cases they are dealing with,
- ix) they should ensure they maintain a high degree of professional competence,
- x) they should have a high degree of professional awareness and be subject to an obligation of diligence in order to comply with the requirement to deliver their judgments in a reasonable time,
- xi) they should devote the most of their working time to their judicial functions, including associated activities,
- xii) they should refrain from any political activity which could compromise their independence and cause detriment to their image of impartiality.

## **B. CRIMINAL, CIVIL AND DISCIPLINARY LIABILITY OF JUDGES**

### ***4°) What criminal, civil and disciplinary liability should apply to judges?***

51. The corollary of the powers and the trust conferred by society upon judges is that there should be some means of holding judges responsible, and even removing them from office, in cases of misbehaviour so gross as to justify such a course. The need for caution in the recognition of any such liability arises from the need to maintain judicial independence and freedom from undue pressure. Against this background, the CCJE considers in turn the topics of criminal, civil and disciplinary liability. In practice, it is the potential disciplinary liability of judges which is most important.

### **a. Criminal liability**

52. Judges who in the conduct of their office commit what would in any circumstances be regarded as crimes (e.g. accept bribes) cannot claim immunity from ordinary criminal process. The answers to questionnaire show that in some countries even well-intentioned judicial failings could constitute crimes. Thus, in Sweden and Austria judges (being assimilated to other public functionaries) can be punished (e.g. by fine) in some cases of gross negligence (e.g. involving putting or keeping someone in prison for too long).

53. Nevertheless, while current practice does not therefore entirely exclude criminal liability on the part of judges for unintentional failings in the exercise of their functions, the CCJE does not regard the introduction of such liability as either generally acceptable or to be encouraged. A judge should not have to operate under the threat of a financial penalty, still less imprisonment, the presence of which may, however sub-consciously, affect his judgment.

54. The vexatious pursuit of criminal proceedings against a judge whom a litigant dislikes has become common in some European states. The CCJE considers that in countries where a criminal investigation or proceedings can be started at the instigation of a private individual, there should be a mechanism for preventing or stopping such investigation or proceedings against a judge relating to the purported performance of his or her office where there is no proper case for suggesting that any criminal liability exists on the part of the judge.

### **b. Civil liability**

55. Similar considerations to those identified in paragraph 53 apply to the imposition on judges personally of civil liability for the consequences of their wrong decisions or for other failings (e.g. excessive delay). As a general principle, judges personally should enjoy absolute freedom from liability in respect of claims made directly against them relating to their exercise in good faith of their functions. Judicial errors, whether in respect of jurisdiction or procedure, in ascertaining or applying the law or in evaluating evidence, should be dealt with by an appeal; other judicial failings which cannot be rectified in this way (including e.g. excessive delay) should, at most, lead to a claim by the dissatisfied litigant against the State. That the state may, in some circumstances, be liable under the European Convention of Human Rights, to compensate a litigant, is a different matter, with which this opinion is not directly concerned.

56. There are however European countries, in which judges may incur civil liability for grossly wrong decisions or other gross failings<sup>7</sup>, particularly at the instance of the state, after the dissatisfied litigant has established a right to compensation against the state. Thus, for example, in the Czech Republic the state may be held liable for damages caused by a judge's illegal decision or incorrect judicial action, but may claim recourse from the judge if and after the judge's misconduct has been established in criminal or disciplinary proceedings. In Italy, the state may, under certain conditions, claim to be reimbursed by a judge who has rendered it liable by either wilful deceit or "gross negligence", subject in the latter case to a potential limitation of liability.

57. The European Charter on the statute for judges contemplates the possibility of recourse proceedings of this nature in paragraph 5.2 of its text - with the safeguard that prior agreement should be obtained from an independent authority with substantial judicial representation, such as that commended in paragraph 43 of the CCJE's opinion no. 1 (2001). The commentary to the Charter emphasises in its paragraph 5.2 the need to restrict judges' civil liability to (a) reimbursing the state

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<sup>7</sup> Merely because the State has been held liable for excessive delay, it by no means follows, of course, that any individual judge is at fault. The CCJE repeats what it said in paragraph 27 above.

for (b) “gross and inexcusable negligence” by way of (c) legal proceedings (d) requiring the prior agreement of such an independent authority. The CCJE endorses all these points, and goes further. The application of concepts such as gross or inexcusable negligence is often difficult. If there was any potential for a recourse action by the state, the judge would be bound to have to become closely concerned at the stage when a claim was made against the state. The CCJE’s conclusion is that it is not appropriate for a judge to be exposed, in respect of the purported exercise of judicial functions, to any personal liability, even by way of reimbursement of the state, except in a case of wilful default.

### **c. Disciplinary liability**

58. All legal systems need some form of disciplinary system, although it is evident from the answers given by different member states to the questionnaires that the need is much more directly felt in some, as opposed to other, member states. There is in this connection a basic distinction between common-law countries, with smaller professional judiciaries appointed from the ranks of experienced practitioners, and civil law countries with larger and on average younger, career judiciaries.

59. The questions which arise are:

- i) What conduct is it that should render a judge liable to disciplinary proceedings?
- ii) By whom and how should such proceedings be initiated?
- iii) By whom and how should they be determined?
- iv) What sanctions should be available for misconduct established in disciplinary proceedings?

60. As to question (i), the first point which the CCJE identifies (repeating in substance a point made earlier in this opinion) is that it is incorrect to correlate breaches of proper professional standards with misconduct giving rise potentially to disciplinary sanctions. Professional standards, which have been the subject of the first part of this opinion, represent best practice, which all judges should aim to develop and towards which all judges should aspire. It would discourage the future development of such standards and misunderstand their purpose to equate them with misconduct justifying disciplinary proceedings. In order to justify disciplinary proceedings, misconduct must be serious and flagrant, in a way which cannot be posited simply because there has been a failure to observe professional standards set out in guidelines such as those discussed in the first part of this opinion<sup>8</sup>

61. This is not to say that breach of the professional standards identified in this opinion may not be of considerable relevance, where it is alleged that there has been misconduct sufficient to justify and require disciplinary sanction. Some of the answers to questionnaires recognise this explicitly: for example, professional standards are described as having "a certain authority" in disciplinary proceedings in Lithuania and as constituting a way "of helping the judge hearing disciplinary proceedings by illuminating the provisions of the law on judges" in Estonia. They have also been

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<sup>8</sup> It was for these reasons that the CCJE Working Party, during and after its meeting with the United Nations Commissioner for Human Rights on 18<sup>th</sup> June 2002, qualified its otherwise substantially positive attitude to the Bangalore Code in its present draft form by disagreeing with the direct link which it drew between the principles of conduct which it stated and the subjects of complaints and discipline (see paragraph 2(iii) of Appendix V, doc. CCJE-GT (2002) 7): see the CCJE-GT’s comments No. 1 (2002) on the Bangalore draft.

used in disciplinary proceedings in Moldova. (On the other hand, the Ukrainian and Slovakian answers deny that there is any relationship between the two).

62. In some countries, separate systems have even been established to try to regulate or enforce professional standards. In Slovenia, failure to observe such standards may attract a sanction before a "Court of Honour" within the Judges' Association, and not before the judges' disciplinary body. In the Czech Republic, in a particularly serious situation of non-observance of the rules of professional conduct, a judge may be excluded from the "Judges' Union", which is the source of these principles.

63. The second point which the CCJE identifies is that it is for each State to specify by law what conduct may give rise to disciplinary action. The CCJE notes that in some countries attempts have been made to specify in detail all conduct that might give grounds for disciplinary proceedings leading to some form of sanction. Thus, the Turkish law on Judges and Prosecutors specifies gradations of offence (including for example staying away from work without excuse for various lengths of period) with matching gradations of sanction, ranging from a warning, through condemnation [i.e. reprimand], various effects on promotion to transfer and finally dismissal. Similarly, a recent 2002 law in Slovenia seeks to give effect to the general principle *nulla poena sine lege* by specifying 27 categories of disciplinary offence. It is, however, very noticeable in all such attempts that, ultimately, they all resort to general "catch-all" formulations which raise questions of judgment and degree. The CCJE does not itself consider that it is necessary (either by virtue of the principle *nulla poena sine lege* or on any other basis) or even possible to seek to specify in precise or detailed terms at a European level the nature of all misconduct that could lead to disciplinary proceedings and sanctions. The essence of disciplinary proceedings lies in conduct fundamentally contrary to that to be expected of a professional in the position of the person who has allegedly misconducted him or herself.

64. At first sight, Principle VI.2 of Recommendation No. R (94) 12 might be thought to suggest that precise grounds for disciplinary proceedings should always "be defined" in advance "in precise terms by the law". The CCJE fully accepts that precise reasons must be given for any disciplinary action, as and when it is proposed to be or is brought. But, as it has said, it does not conceive it to be necessary or even possible at the European level to seek to define all such potential reasons in advance in other terms than the general formulations currently adopted in most European countries. In that respect therefore, the CCJE has concluded that the aim stated in paragraph 60 c) of its Opinion No. 1 (2001) cannot be pursued at a European level.

65. Further definition by individual member States by law of the precise reasons for disciplinary action as recommended by Recommended No. R (94) 12 appears, however, to be desirable. At present, the grounds for disciplinary action are usually stated in terms of great generality.

66. The CCJE next considers question (ii): by whom and how should disciplinary proceedings be initiated? Disciplinary proceedings are in some countries brought by the Ministry of Justice, in others they are instigated by or in conjunction with certain judges or councils of judges or prosecutors, such as the First President of the Court of Appeal in France or the General Public Prosecutor in Italy. In England, the initiator is the Lord Chancellor, but he has agreed only to initiate disciplinary action with the concurrence of the Lord Chief Justice.

67. An important question is what if any steps can be taken by persons alleging that they have suffered by reason of a judge's professional error. Such persons must have the right to bring any complaint they have to the person or body responsible for initiating disciplinary action. But they cannot have a right themselves to initiate or insist upon disciplinary action. There must be a filter,

or judges could often find themselves facing disciplinary proceedings, brought at the instance of disappointed litigants.

68. The CCJE considers that the procedures leading to the initiation of disciplinary action need greater formalisation. It proposes that countries should envisage introducing a specific body or person in each country with responsibility for receiving complaints, for obtaining the representations of the judge concerned upon them and for deciding in their light whether or not there is a sufficient case against the judge to call for the initiation of disciplinary action, in which case it would pass the matter to the disciplinary authority.

69. The next question (iii) is: by whom and how should disciplinary proceedings be determined? A whole section of the United Nations Basic Principles is devoted to discipline, suspension and removal. Article 17 recognises judges' "right to a fair hearing". Under Article 19, "all disciplinary (...) proceedings shall be determined in accordance with established standards of judicial conduct". Finally, Article 20 sets out the principle that "decisions in disciplinary, suspension or removal proceedings should be subject to an independent review". At the European level, guidance is provided in Principle VI of Recommendation No. R (94) 12, which recommends that disciplinary measures should be dealt with by "a special competent body which has as its task to apply any disciplinary sanctions and measures, where they are not dealt with by a court, and whose decisions shall be controlled by a superior judicial organ, or which is a superior judicial organ itself" and that judges should in this connection benefit, at the least, by protections equivalent to those afforded under Article 6.1 of the Convention on Human Rights. Further, the CCJE emphasises in this context that disciplinary measures include any measures adversely affecting a judge's status or career, including transfer of court, loss of promotion rights or pay.

70. The replies to the questionnaire show that, in some countries, discipline is ensured by courts specialising in cases of this type: the disciplinary committee of the Supreme Court (Estonia, Slovenia - where each level is represented). In Ukraine, there is a committee including judges of the same level of jurisdiction as the judge concerned. In Slovakia, there are now two tiers of committee, one of three judges, the second of five Supreme Court judges. In Lithuania, there is a committee of judges from the various tiers of general jurisdiction and administrative courts. In some countries, judgment is given by a Judicial Council, sitting as a disciplinary court (Moldova, France, Portugal).<sup>9</sup>

71. The CCJE has already expressed the view that disciplinary proceedings against any judge should only be determined by an independent authority (or "tribunal") operating procedures which guarantee full rights of defence - see para. 60(b) of CCJE Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges. It also considers that the body responsible for appointing such a tribunal can and should be the independent body (with substantial judicial representation chosen democratically by other judges) which, as the CCJE advocated in paragraph 46 of its first Opinion, should generally be responsible for appointing judges. That in no way excludes the inclusion in the membership of a disciplinary tribunal of persons other than judges (thus averting the risk of corporatism), always provided that such other persons are not members of the legislature, government or administration.

72. In some countries, the initial disciplinary body is the highest judicial body (the Supreme Court). The CCJE considers that the arrangements regarding disciplinary proceedings in each

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<sup>9</sup> In England, the Lord Chancellor is responsible for initiating and deciding disciplinary action. By agreement disciplinary action is initiated only with the concurrence of the Lord Chief Justice, and thereafter (unless the judge concerned waives this) another judge of appropriate standing, nominated by the Lord Chief Justice, is appointed to investigate the facts and to report, with recommendations. If the Lord Chief Justice concurs the Lord Chancellor may then refer the matter to Parliament (in the case of higher tier judges) or remove a lower tier judge from office, or take or authorise any other disciplinary action.

country should be such as to allow an appeal from the initial disciplinary body (whether that is itself an authority, tribunal or court) to a court.

73. The final question (iv) is: what sanctions should be available for misconduct established in disciplinary proceedings? The answers to questionnaire reveal wide differences, no doubt reflecting the different legal systems and exigencies. In common law systems, with small, homogeneous judiciaries composed of senior and experienced practitioners, the only formal sanction evidently found to be necessary (and then only as a remote back-up possibility) is the extreme measure of removal, but informal warnings or contact can prove very effective. In other countries, with larger, much more disparate and in some cases less experienced judiciaries, a gradation of formally expressed sanctions is found appropriate, sometimes even including financial penalties.

74. The European Charter on the Statute for Judges (Article 5.1) states that "the scale of sanctions which may be imposed is set out in the statute and must be subject to the principle of proportionality". Some examples of possible sanctions appear in Recommendation No. R (94) 12 (Principle VI.1). The CCJE endorses the need for each jurisdiction to identify the sanctions permissible under its own disciplinary system, and for such sanctions to be, both in principle and in application, proportionate. But it does not consider that any definitive list can or should be attempted at the European level.

### **5°) *Conclusions on liability***

75. As regards criminal liability, the CCJE considers that:

- i) judges should be criminally liable in ordinary law for offences committed outside their judicial office;
- ii) criminal liability should not be imposed on judges for unintentional failings in the exercise of their functions.

76. As regards civil liability, the CCJE considers that, bearing in mind the principle of independence:

- i) the remedy for judicial errors (whether in respect of jurisdiction, substance or procedure) should lie in an appropriate system of appeals (whether with or without permission of the court);
- ii) any remedy for other failings in the administration of justice (including for example excessive delay) lies only against the state;
- iii) it is not appropriate for a judge to be exposed, in respect of the purported exercise of judicial functions, to any personal liability, even by way of reimbursement of the state, except in a case of wilful default.

77. As regards disciplinary liability, the CCJE considers that:

- i) in each country the statute or fundamental charter applicable to judges should define, as far as possible in specific terms, the failings that may give rise to disciplinary sanctions as well as the procedures to be followed;
- ii) as regard the institution of disciplinary proceedings, countries should envisage introducing a specific body or person with responsibility for receiving complaints,

for obtaining the representations of the judge and for considering in their light whether or not there is a sufficient case against the judge to call for the initiation of such proceedings;

- iii) any disciplinary proceedings initiated should be determined by an independent authority or tribunal, operating a procedure guaranteeing full rights of defence;
- iv) when such authority or tribunal is not itself a court, then its members should be appointed by the independent authority (with substantial judicial representation chosen democratically by other judges) advocated by the CCJE in paragraph 46 of its Opinion N° 1 (2001);
- v) the arrangements regarding disciplinary proceedings in each country should be such as to allow an appeal from the initial disciplinary body (whether that is itself an authority, tribunal or court) to a court;
- vi) the sanctions available to such authority in a case of a proven misconduct should be defined, as far as possible in specific terms, by the statute or fundamental charter of judges, and should be applied in a proportionate manner.

**A P P E N D I X**

**SUMMARY OF THE REPLIES TO THE QUESTIONNAIRE  
ON THE CONDUCT, ETHICS  
AND RESPONSIBILITY OF JUDGES**



	What are the obligations by which judges are bound ?				
	Source	Date	In relation to the law	In relation to the office	Personal qualities
ANDORRA	Qualified Justice Act	1993		professional secrecy	Duty to act with reservation
AZERBAIJAN			loyalty to the law	honesty, objectivity, incorruptibility	
BELGIUM	Judicial code	1967, an Act of 1999 was to reform the system, but the implementing decree was never adopted and now Parliament is seeking to repeal the Act	obligation to adjudicate under pain of a denial of justice	obligation under the Constitution to state the reasons for decisions, to deal with cases within a specified time	
CYPRUS	Courts of justice law		oath of loyalty to the Republic and to the Constitution	judicial oath to exercise his duties without favoritism, without allowing himself to be impressed, without allowing himself to be influenced by his passions	
CZECH REP	New Act on courts and judges	Entered into force on 1 April 2002	must interpret the law to the best of his abilities, according to his knowledge and his convictions	impartiality, reasonable time, loyalty in carrying out duties, must do nothing which would compromise the dignity of the judicial system and the confidence which it must inspire	no right to strike, no right to take part in a public demonstration prejudicial to his activities, must not be a member of a political party.
ESTONIA	Status of Judges Act	a new Act is being debated in 2002			
FINLAND	Constitution, oath, Code of Procedure, Act on Civil Servants		obey the law	impartiality, efficiency, reasonable time, secrecy of deliberations	behaviour in accordance with the office
FRANCE			judges are required to adjudicate, even when the law is silent, under pain of a denial of justice	not to infringe the principle of the secrecy of the deliberations, duty of reserve, no right to strike	refrain from any political deliberation, from any display of hostility to the powers of the Republic

GERMANY	German Judiciary Act			principle of moderation in expressing views, keeping the deliberations secret, not compromising confidence in the independence of the judicial system in his work	... and outside his duties
ICELAND	Constitution and European Act on the Judiciary	1998		must carry out their duties with complete independence, without ever being subject to the authority of anyone whomsoever, within a reasonable time	must maintain their level of legal knowledge and be attentive to their extra-judicial activities
IRELAND	Oath provided for in the Constitution	1937	comply with the Constitution and the law	Carry out his duties as a judge faithfully and to the best of his abilities, without fear or favour	
ITALY	Law on the judges' discipline	1946			
JAPAN	Constitution, Court Organisation Law	1947 (both)	compliance with the Constitution and with law	independence in the exercise of their conscience, impartiality and fairness	requirements of devotion to duty and secrecy; must refrain from any conduct casting doubt on their integrity
LIECHTENSTEIN	Constitution and Court Organisation Act	1921 and 1922, Bill on judiciary currently being examined	duties of officials in general, Civil Servants Act 1938		
LITHUANIA	Courts Act	2002	obey the Constitution and the law	satisfy the requirements of judicial ethics, impartiality, deal with cases within a reasonable time, stand down if necessary, disclose that members of his family are to appear before the court in which he works	
LUXEMBOURG	No law defining judges' duties				
MALTA	First oath of allegiance before the President provided for in the Constitution, second oath in the Code of Judicial Organisation and Procedure		adjudicate in accordance with the law and Maltese custom, to the honour of God and the Maltese Republic	act honestly and fairly, must not communicate with the parties or advise them except in public, in court or with the leave of the President, provide reasons for his decisions, explain the reasons for delays	

MOLDOVA	Law on the status of the judiciary		strict observance of the requirements of the law in the interests of justice, protector of individual freedoms	safeguard the honour and dignity of citizens, the high culture of the judiciary, be impartial and human, not discredit justice, compromise the honour or dignity of the judiciary, cause doubts as to their objectivity	
NETHERLANDS	Art. 29 of the "Organisation of the Judiciary Act"	1827	They will be loyal to the King, they will maintain and obey the Constitution	They will carry out their duties impartially, honestly and conscientiously	
NORWAY	Constitution, oath of obedience and loyalty to the Constitution and the King, Court of Justice Act			must give an undertaking in writing to carry out the duties of his post conscientiously	
POLAND	Constitution, laws, codes and rules of procedure – oath before the President, internal rules of the courts	Acts of 1984, 1995 and 1997 updated in October 2001	loyalty to the nation, guardian of the law	Meticulously observe the obligations associated with his work, comply with the oath, loyalty, impartiality, dignity and honesty in the administration of justice, secrecy of the deliberations	obligation to declare assets and resources, avoid any conflict of interests
PORTUGAL	The status of judges			Common duties to all the public function, duty of reservation, must wear gown	must reside in the place in which they sit; judges of the lower courts must not be absent from that place except at weekends and during holidays; other judges must not be absent for more than three consecutive days and not more than 10 days in a year, declared to the Judicial Service Board; political activities prohibited
ROMANIA	Article 24 of the Constitution Articles 82-87 of the Judicial Organization 92/92 Act	1991 1992	Oath of loyalty to the constitution and law	must not do anything which would compromise the dignity of the profession	must not do anything which would compromise their personal dignity

SLOVAK REP	Act on judges and lay judges	2000		Impartiality, reasonable time, loyalty in carrying out duties, must do nothing which would compromise the dignity of judicial system and the confidence which it must inspire, must refuse gifts, not allow himself to be influenced by his relationships, including by the media	must have reached the age of 30 years, have completed higher studies in law, be capable of being a judge, in particular as regards his health and his integrity, must reside permanently in Slovakia, must have been through a selection procedure
SLOVENIA	Judicial Service Act	1994, 1996 et 1998		conduct himself in his professional life in such a way as not to call in question his impartiality, his independence or the reputation of the judicial system.	In the exercise of his personal freedoms and rights, a judge must always take into account his duty to protect the independence and impartiality of justice and must not compromise the reputation of justice.
SWEDEN	Constitution, Codes of Procedure (oath) and Public Employment Act		must observe the law, must not manipulate it	an honest and upright judge: impartial, must administer justice to the best of his abilities and his conscience, must not be involved in corruption or personal, family or friendly favours, must not find the innocent guilty or vice versa, must observe the secrecy of the deliberations	
SWITZERLAND					
TURKEY	Constitution of the Republic of Turkey and Law on the Judges and Public Prosecutors.	Both in 1982	loyalty to the Constitution, to the law and to his convictions provided they are compatible with the law	protect their independence, even though they may be linked to the Ministry in their administrative duties	no official functions, unless prescribed by law
UKRAINE	Law on the status of judges		Loyalty to the law and to the Constitution, objectivity, must deal fully and conscientiously with the cases brought before him	must submit himself to the discipline and to the organisation of work in the court; professional secrecy	
UNITED KINGDOM	Common law		Oath of loyalty and allegiance to the Crown while observing the law	apply the law independently and impartially	

	Is there a judge's code of conduct?				
	Drafted by...	Adopted by...	Date	Obligations	Sanction
ANDORRA	NO				
AZERBAIJAN	YES, prepared and adopted by all the judges and by the Judicial Council			Same as the provisions of the Statutes	Disciplinary proceedings
BELGIUM	NO				
CYPRUS	NO, but standards exist on recruitment in order to ensure the high moral quality of the future judge noted in his practice as a lawyer				
CZECH REP	YES AND NO, but 7 brief principles have been drawn up by the Judges' Union (an organisation representing 50% of judges) and could be made into a Code	Approved by a representative assembly of judges	2000	7 principles setting out the duties and conduct of the judge in his professional life	No cases
ESTONIA	YES, Association of Estonian Judges	Delegation by Parliament in the Judges Act for adoption by the Judges' Conference	1994	35 basic rules on professional conduct (conscience and diligence in work, professional relations, independence and impartiality) and restriction of personal freedoms (extra-judicial activities, private relations)	No actual sanction but may help to judge in disciplinary proceedings by shedding light on the provisions of the Judges Act
FINLAND	NO				
FRANCE	NO				
GERMANY	NO				

ICELAND	NO, some unwritten rules				
IRELAND	NO, but a report on the ethics and professional conduct of judges in 1999 recommended that an ethics and professional conduct committee draw up a Code which would be given to all new judges when taking up their posts. Such a committee does not yet exist. The law is in the course of being reformed.				
ITALY	YES, National Association of Judges	National Association of Judges, with the authority of the government and the legislature	1994	Dignity and correctness in private life, sense of public duty, disinterested exercise of the judicial function, independence, impartiality, attention given to relations with citizens, professional conscience, continuous training, procedures for using the resources of the administration, professional secrecy, discipline of relations with the media, no protection from conflicts of political or financial interests, concern to examine his impartiality, relations with his peers and judicial personnel	It is primarily a means of self-regulation. A sanction may be available if the breach is one covered by the disciplinary provisions or the general law.
JAPAN	YES, stipulated in certain laws, although there is no independent code of conduct				
LIECHTENSTEIN	NO				
LITHUANIA	YES, National Judges' Association	National Congress of all judges	1998	Independence, conduct and duties of the judge, then outside his judicial duties, etc.	NO, but authority in disciplinary proceedings
LUXEMBOURG	NO, a Committee which examined the question concluded that it was preferable to stick to general unwritten rules.				
MALTA	YES, drafted by the judiciary	All except 1 judge, presented to the President at the head of the Justice Administration Committee, which accepted the Code with few amendments	2000	28 paragraphs reflecting agreement on good practice, confirming the values to which judges have adhered when taking the oath, image of justice for those subject to it who must also be effectively sanctioned if necessary	"The Code itself" is accompanied by sanctions

MOLDOVA	YES, by the CSM	Judges' Conference	2000	Confidentiality, correctness, punctuality, temperance, must be sober, polite, formal, calm, tolerant, must listen, must sanction those who do show contempt of court, must not discuss the case with the parties other than during the proceedings, respect human rights, no discrimination	YES, disciplinary
NETHERLANDS	NO				
NORWAY	No code, despite an attempt in 1999 by the Norwegian Law Court Commission, which is now pending before Parliament				
POLAND	NO, but the National Council on the Judiciary is authorised to draft such a code, and has since July 2001 been working on a collection of principles relating to judges' ethics				
PORTUGAL	NO				
ROMANIA	NO, but there are some general rules in the Judicial Organisation Act	Romanian Parliament	1992	Magistrates shall refrain from any acts or deeds able to compromise their dignity in function and in society. Magistrates shall be forbidden to be affiliated to political parties or to be engaged in public activities with a political character. Magistrature is incompatible with any other public or private office, except that of an academic professional activity. Magistrates shall be forbidden the exercise of trading activities, participation in the management of trading, civil companies or of autonomous companies, either directly or through interposed persons. They shall also be forbidden the participation in the administration of such companies or autonomous companies. Other obligations for judges are considered conditions for being judge: ex. Good reputation or characteristic for judge's activity: ex. independence, impartiality, secret of deliberation	Penal and disciplinary proceedings.

SLOVAK REP	YES	President of the Council of the Judiciary and the Minister for Justice	2001	Private life, professional life and professional duties	NO, only the Judges Act
SLOVENIA	YES (it has just replaced a former Code of Professional Responsibility dating from 1972), by a group of judges from the Judges' Association	Association	2001	9 principles : independence, impartiality and neutrality, ability, diligence, incompatibilities/compatibilities, discretion, professional relations, reputation.	No, but there is a Court of Honour which may deal with an infringement without any sanction being imposed.
SWEDEN	No specific code, but there is an historical model which serves to inspire judges' conduct, namely the General Code of Law (1734), which includes an old code which is not binding on judges	Olaus Petri in the sixteenth century; a judges' association has recently been working on a draft code which has not been completed, in the face of numerous critics	1540		By another system, the law empowers the Ombudsman and the Justice Chancellor to criticise a judge publicly for his conduct
SWITZERLAND	There are practically no written rules at federal level or to a large extent at local level				
TURKEY	Law on the Judges and the Public Prosecutors and rules of conduct	Parliament, Supreme Council of Judges and Public Prosecutors	1982	Same as the provisions of the Statutes	Disciplinary proceedings
UKRAINE	YES, taken up by a Congress of Judges in 1999 on the basis of experiences in Canada, America and Russia, in particular, together and amendments and proposals by Ukrainian judges	Council of Judges	2002	Obedience of the law, impartiality, maintenance of legitimate expectations, loyalty, justice and equity, sincerity, conduct faithful to the oath	NO, in accordance with the wishes of the Congress of Judges
UNITED KINGDOM	NO, but there are some informal guides which some (Judicial Studies Board, Scottish Justice Minister and a doctrine in Northern Ireland) would wish to see placed on a formal basis without constituting statutory duties	Established by the Lord Chancellor by agreement with the Lord Chief Justice		Before being appointed, judges are informed of what is expected of them in terms of conduct	



	Incompatibilities		
	Source	Type of incompatibility	Exceptions
ANDORRA	Law on Justice (L.Q.J.)	Any other public office; commercial, industrial or professional activities; work as a lawyer or legal aid work	
AZERBAIJAN	"this question is unclear for us"		
BELGIUM		A judge may not, at the same time, be a public prosecutor, elected representative, solicitor, bailiff, barrister, soldier or religious officer, or hold paid political or administrative office of any kind	
CYPRUS		Any other post or profession	Lectures and legal writings
CZECH REPUBLIC		No political office (eg President of the Republic or member of parliament), no government department or business activity. Scientific work, teaching and literary and artistic activities are allowed, as is work as a political adviser, if they do not undermine the dignity of the judiciary and the confidence it should inspire.	
ESTONIA		No political mandate or activity, no other posts except teaching or research; may not sit on the boards of public or private companies	
FINLAND	Act on Civil Servants	any public office, any civil, commercial and salaried profession or activity	permission may be obtained from the court or a higher court
FRANCE		Incompatibility with all types of public office, any civilian, commercial or salaried profession and work as an arbitrator	

GERMANY	German Judiciary Act	Idea of the separation of powers: no administrative activity (except in the court, research and teaching); may belong to a political party and stand for election as member of parliament: if elected, is suspended from duties as a judge; advisory and conciliation activities prohibited	The government may authorise a judge to sit as an arbitrator or be heard as an expert by an arbitration tribunal
ICELAND	1998 Act on the Judiciary	May not accept a post or have a holding in a company if this is incompatible with his/her office or likely to impair the quality of his or her work.	Teaching, chairing committees, lectures, writings, etc. Permission to engage in non-judicial activities must be requested from the Judicial Office Committee
IRELAND	Constitution of 1937	No judge shall be eligible. to be a member of either house of parliament or to hold "any other office or position of emolument".	
ITALY	Royal decree of 30 January 1941	No job or public or private office except as member of parliament or of a charitable organisation, no commercial, industrial or professional activity. The High Council for the Judiciary may authorize "tasks of any other kind".	Teaching and scientific activities possible with authorisation - under strict conditions - from High Council. Arbitration is only exceptionally authorised.
JAPAN	Court Organisation Law	Prohibition of political and commercial activities and of receiving remuneration other than for holding judicial office.	Permission may be obtained from the Supreme Court for receiving remuneration other than for holding judicial office
LIECHTENSTEIN	Article 6, 1938 Civil Servants Act	No other remunerated or particularly time-consuming activity without authorisation from the government, which considers whether it is compatible with the work of a judge, which is generally the case for part-time research and teaching	

LITHUANIA	2002 Judicial Act	No political activity, may not be called up for military service, no lucrative private activity, though compensation is allowed in the case of teaching, no work in an association if it impairs the judge's independence	Lecturing and legal writings
LUXEMBOURG	Constitution and Judicial Organisation Act	No paid employment	
MALTA	Code of Organisation and Civil Procedure, Code of Ethics	No personal involvement or involvement as counsel in a case that has already been opened or is probably within the judge's remit, no other activity, even temporary, except in an international judicial body or the university	With the consent of the President of the Republic
MOLDOVA	Status of Judges Act	No other public or private office or post as member of parliament or local authority adviser; may not belong to political parties or other socio-political organisations; may not engage in business or in written or oral consultation except for close relatives. Publications and media appearances possible if they do not concern domestic policy issues.	
NETHERLANDS	Art. 44 "Organisation of the Judiciary Act (1827/2001)"; Act concerning incompatibilities national and European parliaments (1994)	Judges may not be (the Dutch equivalent of) barrister, solicitor, notary-public; they may not act in other professions that entail the giving of legal aid or advice; judges of the Supreme Court may not be a member of the Dutch or the European Parliament.	
NORWAY	Courts of Justice Act and State Basic Agreement	Judges are relatively free; only Supreme Court judges are subject to specific provisions. Generally speaking, however, they may be barristers, mediators or jurors without having to resign.	The law before parliament, which is to replace tolerant case law, contains strict provisions on the prohibition, authorisation and declaration of ancillary activities and makes the incompatibility rules stricter.

POLAND	Constitution and Statute	No other work except scientific publications and part-time teaching, provided these do not affect the judge's work; no activity or lucrative position that could tarnish the image of the judiciary; no political activity	The application must be forwarded to the hierarchical superior (president of the court or supreme court or the minister)
PORTUGAL		No public or private professional post; incompatibilities applicable to civil servants in general	Teaching and legal research may be authorised by the Judicial Service Commission, but may not be remunerated
ROMANIA		No political activity, no post other than collaboration with scientific publications and teaching	
SLOVAK REPUBLIC	2000 Act	No political posts in the broad sense of the term, including government departments and the army, no lucrative private activity except scientific, teaching or artistic activity, and then on condition that it does not undermine the dignity of the post of judge.	
SLOVENIA	Constitution and Judicial Organisation Act	Any administrative or political post, any commercial or professional activity, lucrative activity or involvement in the management of companies, and anything that might tarnish the reputation of the judiciary. Teaching and research are authorised subject to this condition.	
SWEDEN	Laws and constitution	No judge is subordinate to another judge or public official	

SWITZERLAND		No other public office or post, no other career or profession, no post as director, manager or member of a body running a lucrative establishment, no post assigned or title or declaration awarded by foreign authorities	The court may authorise work as an expert or arbitrator and other ancillary activities and lay down the relevant conditions provided the independence and prestige of the judiciary are not impaired
TURKEY	Law on the Judges and Public Prosecutors	No public activity unless authorised by law, no profit bringing activity.	
UKRAINE	No incompatibilities formally provided for		
UNITED KINGDOM	Guidelines	May not sit as an arbitrator or engage in any lucrative professional activity (save writing or editing) or any professional activity (save writing or editing) or any political activity; substantial restrictions also apply when a judge has left office	

	<b>Circumstances in which impartiality may be called into question</b>	
	Source	Circumstances
ANDORRA	Law on Justice (L.Q.J.)	Family proximity, to have been lawyer or representative; commercial or economic legal relationship. To have had a litigation with a Party or his lawyer, interest in the object of the litigation, hierarchical or friendly relationship.
AZERBAIJAN	Question brought to the discussion by the Attorney General's Department in a situation referred to by law	
BELGIUM	Case-law based on the provisions of the Code and the legislation on standing down and on incompatibilities	
CYPRUS	Case-law of the Supreme Court	Conflict of family or personal interests, knowing the case or the parties
CZECH REP	Codes of Civil and Criminal Procedure, mechanism for ... seeking damages from a judge who has misused his authority	
ESTONIA		Conflict of interests, any relationship which might adversely affect the credibility of the judicial system, bias
FINLAND	Code or Procedure	Family connections, conflict of interest, bias, involvement in the case and other reasons, which bring the judge's impartiality under reasonable suspicion
FRANCE		A judge may be challenged and must refrain from hearing a case in various circumstances which call his objective and subjective impartiality into question: family or friendly relations, conflict of financial interests, where he has already taken a decision or delivered an delivered in the same case, where there is a link of subordination
GERMANY	Code of Civil Procedure	Family connections, a case in which the judge has given evidence or been examined as an expert, or in which he has already taken a decision, doubts in respect of his impartiality may thus be revealed by a conflict of financial or friendly interests or a stated preference for one of the parties

ICELAND	Law on Civil Procedure and Law on Criminal Procedure	Party to the dispute, has given advice to a party to a case, having a family, friendly or professional relationship with one of the parties; is a witness in a case or has a close relation to a witness.
IRELAND	<i>Nemo iudex in causa sua</i> rule of law	No conflict of personal, family or financial interests, no bias or prejudice, otherwise the judge must stand down
ITALY	Codes of Civil and Criminal Procedure	Conflict of family, personal or professional interests, knowledge of the case or of the parties, bias and prejudice.
JAPAN	Constitution and Codes of Civil and Criminal Procedure such as the party of a case being his/her relative	Apart from compliance with the rules on incompatibilities, judges may be challenged and/or are required to withdraw from proceedings in certain circumstances
LIECHTENSTEIN		Conflicts of personal or family interests, bias, raised by the Court of its own motion or by the parties
LITHUANIA	Code of civil procedure	Conflict of personal or family interests, bias, involvement in the case as a witness
LUXEMBOURG	Article 521 of the New Code of Civil Procedure, Article 542 of the Code of Criminal Investigation, Article 6 of the European Convention on Human Rights	Where the judge's impartiality is challenged or where there is a reasonable doubt as to the fairness of the proceedings
MALTA	A comprehensive list of circumstances in which the judge must stand down or the parties refuse to allow him to deal with the case is set out in the code of Judicial Organisation and Civil Procedure	Conflict of personal or family interests, bias, involvement in the case as a witness
MOLDOVA	Codes of Civil Procedure and Criminal Procedure	Must stand down where he has a direct or indirect interest in the case or where there is a family connection with the parties
NETHERLANDS	Civil Procedure Act, Criminal Procedure Act, Administrative Procedure Act	"Facts or circumstances that could call the impartiality of the judge into question" (The law does not go into detail, jurisprudence conforms to the guidelines set by the European Court of Justice)
NORWAY	Courts of Justice Act	Family connections with the parties or their legal advisers, provided that confidence in the judge may be affected, the judge must stand down (conflict of interests in the majority of cases)

POLAND	Laws on Criminal and Civil Procedure	Where the judge knows the parties or is familiar with the case because he has already taken part in it (close involvement with one of the parties or with the case in a personal or professional capacity); two categories of case: <i>iudex inhabilis</i> and <i>iudex suspectus</i>
PORTUGAL	Statute on the Judiciary, Code of Civil Procedure, Code of Criminal Procedure	A judge may not sit in a court in which a member of his family works, where there is a reasonable doubt as to the fairness of the proceedings or where he asks to be relieved of the case in the event of a conflict of personal, economic or family interests, he cannot have been involved in the case or have taken part in it in a different capacity
ROMANIA	Legislation	Close connection with one of the parties, political influence, media pressure, friendly relations
SLOVAK REP		Any circumstances in which, in the performance of his duties, in his private life or after he has left office, the judge brings the dignity of his office into disrepute or jeopardises the necessary confidence in the judicial system.
SLOVENIA	Codes of Civil and Criminal Procedure, ECHR	Where the judge is a party to the proceedings or is involved in the case, or has a connection with such a person, if he has given evidence or been involved in the case as an expert witness, if he has taken part in a decision taken or delivered in the case, if there is a reasonable doubt as to his impartiality.
SWEDEN	Codes of Procedure	Family connection, conflict of personal, financial or political interests, bias, professional or personal involvement in the case
SWITZERLAND	Legislation and case-law	...consistent with the case-law of the European Court of Human Rights
TURKEY	Codes of Criminal and Civil Procedure	Bias, conflict of interests, personal involvement in an offence as victim, witness, counsel, arbitrator or through a family connection
UKRAINE	Codes of Procedure	Close connection with one of the parties, personal interest in the case, or where the performance of the judge's duties would in any way call his impartiality into question
UNITED KINGDOM	ECHR	



	<b>Criminal or civil liability of judges</b>			
	<b>Criminal liability</b>		<b>Civil liability</b>	<b>Procedures</b>
	Offences	Sanctions		
ANDORRA	Criminal code, Article 114, corruption, corrupt practices		Judges bear civil liability in the event of fraud in the performance of their duties	In criminal matters, a judge can be arrested only where is caught in the act of committing an offence; temporary suspension from duties is automatic, with the consent of the Supreme Judicial Council
AZERBAIJAN	Where a judge knowingly convicts an innocent party, for example	Prison or damages	A higher court rehearing a case may find that the judge who dealt with the case at first instance is liable	The President and the Council of Judges decide to proceed by referring the matter to the Attorney General's department, the judge will be tried by an ordinary court
BELGIUM	Offences against the general law on the occasion or in the exercise of his duties	Penalties prescribed under the general law	Mechanism for seeking damages from a judge who has misused his authority which allows a judge to be held personally liable in the event of fraudulent intent or fraud on the part of the judge, the State may also be held liable for misconduct by a judge	In criminal matters, the action is in the hands of the Public Prosecutor attached to the Court of Appeal, in civil matters the proceedings are held before the Court of Cassation
CYPRUS	The Constitution guarantees immunity for the judges of the Supreme Constitutional Court and of the High Court (now combined into the Supreme Court).. Common law and equity ensure that judges of the lower courts also enjoy immunity			
CZECH REP	In connection with the exercise of duties		Where there has been an unlawful decision or a harmful activity, the damage is made good by the State, which is entitled to bring an action for indemnity if the judge has been found guilty of a disciplinary offence	Criminal proceedings against a judge must be authorised by the President of the Republic; jurisdiction lies with the ordinary courts, according to the procedures of the general law

ESTONIA	Where the judge has deliberately delivered an illegal decision	Removal from office	No personal liability on the part of the judge, State liability	The representative of the Attorney General's department addresses the Supreme Court, which ascertains that the prosecution may be brought under the Criminal Code and the Code of Criminal Procedure, with the consent of the President of the Republic.
FINLAND	Offences described in the Criminal Code committed in the course of duties	Penalties prescribed by general law, including removal from office	Liability for damage caused in the exercise of the judge's duties. The compensation is as a rule paid by the State, which in certain cases may be reimbursed by the judge.	Ordinary procedures, which, according to the Constitution, may be instituted by anyone whose rights have been offended (exceptions and special procedure for members of the Supreme Courts).
FRANCE	Offences defined by law	Penalties prescribed by the general law	Civil liability only where the judge is personally at fault	Normal criminal procedure, a civil action is available only against the State, which has a right to bring an action for indemnity
GERMANY	Breaches of the Criminal Code involving misuse of their judicial office and corruption.	Penalties prescribed under the general law	Personal civil liability limited by Article 839(2) of the Civil Code, where the act giving rise to the damage is a criminal offence. State liability is incurred in other cases, and the State can bring an action for indemnity whenever it is ordered to pay damages	Normal criminal and civil procedures
ICELAND	Where the judge has deliberately delivered an unjust decision, where he uses illegal procedures to obtain admissions or where he orders illegal arrests or investigations	Aggravated penalties prescribed by the general law	The State bears civil liability but may recover from the judge if the fault was deliberate	Procedures laid down by the general law
IRELAND	Complete immunity for judicial office is recognised at common law			

ITALY	Prescribed in the Criminal Code and aimed particularly at the judge in the performance of his judicial duties, such as corruption	Penalties prescribed by the general law	Civil liability for gross negligence or a denial of justice was provided for in a Law of 1988 which marked a break from the relative immunity from liability denounced in a referendum. The State acts as guarantor and can bring an action for indemnity against the judge, the amount of damages is limited if the damage was caused unintentionally.	Specific rules on jurisdiction in order to ensure that the case is dealt with in a different area, examination of the admissibility of applications (can a problem raised by corrected by a remedy? does the complaint relate to the interpretation of the law?). Cases are heard by the ordinary courts
JAPAN	Ordinary criminal liability		Under a precedent established by the Supreme Court in 1955, judges have no personal, civil liability for damage caused to parties in the performance of duty	
LIECHTENSTEIN	Offences under the general law, plus certain particular offences such as malfeasance in office or corruption	Penalties prescribed by the general law, a judge who is sentenced to a term of imprisonment of more than one year is removed from his post	General rules on the civil liability of the State, which may bring an action for indemnity	Ordinary courts and procedures in criminal matters and in civil matters; the Supreme Court has jurisdictions to hear appeals
LITHUANIA	Breaches of the Criminal Code involving misuse of their judicial office and corruption	Penalties prescribed under the general law	The State alone is liable, but has a right to bring an action for indemnity against the judge	Any criminal prosecution or detention must be approved by Parliament; the judge is then suspended from office pending the outcome of the proceedings.
LUXEMBOURG	Article 4 of the Civil Code, abuse of powers and denial of justice	Fines, prohibition on exercising duties or from occupying public posts or office	Only State liability can be incurred (procedure under the general law, Law of 1 September 1988)	Article 639 of the New Code of Civil Procedure for seeking damages from a judge who has misused his authority

MALTA	The Criminal Code makes express provision for cases in which a judge dismisses or refuses to hear a lawfully submitted application for habeas corpus; like any holder of public authority: misuse of powers or malfeasance, corruption, financial misappropriation	Penalties prescribed by the general law	No special rules; there is no known case of an attempt to render a judge civilly liable	The ordinary procedures of the ordinary criminal courts
MOLDOVA	The general law, under the principle that all are equal before the law		No civil liability for judges	Criminal prosecution authorised by the CSM and the President of the Republic or Parliament, depending on circumstances, and heard before the higher courts.
NETHERLANDS	General law applies		Only State liability can be incurred	General law applies, no special procedures
NORWAY	Offences against the general law		An action to establish civil liability on the part of the judge is available only if the decision has been set aside and if the judge committed an offence when taking it	The charges against a judge are defined by the King's Council and the judge is always tried by a higher court than the one in which he sits
POLAND	Offences connected with judicial activities and duties		The judge may be held personally liable in accordance with the general law, the State may be held liable in a case of unintentional fault or misconduct in office (an action for indemnity is limited to three months' salary, is unlimited in a case of serious breach), there is no liability for the consequences of a judgment	Criminal proceedings and custodial measures must be authorised by the Disciplinary Court (except where the person is caught in the act of committing the offence); the Disciplinary Court may also suspend the judge from office; an appeal lies to a higher court

PORTUGAL	Offences against the general law committed on the occasion or in the exercise of the judge's duties, special offences of misuse of powers, abuse of authority, misappropriation of public funds, denial of justice, breach of secrecy	Penalties prescribed by the general law	A judge incurs civil liability only where the facts causing the damage have led to a criminal conviction for bribery, misappropriation of public funds or prevarication, the judge is required to reimburse the compensation paid by the State or to indemnify the State	Ordinary criminal procedure before a higher court than that in which the judge sits in criminal matters, and before the court where the facts arose in civil matters
ROMANIA	General law	General law	General law	Ordinary procedures and courts in civil matters; in criminal matters, prior opinion of the Minister or the President, then ordinary procedures and courts (higher courts for judges at a certain level in the hierarchy)
SLOVAK REP	Offences committed in the course of the judge's duties	Imprisonment, loss of professional and honorary qualifications, prohibition on practising, fines		In criminal matters, proceedings must be authorised by the body which appointed or elected the judge and are brought at the initiative of the President of the court concerned or the Minister for Justice
SLOVENIA	Malfeasance having given rise to a deliberate offence	Penalties prescribed by the general law, which may have the consequence of removal from office		In criminal matters, any proceedings or detention must be authorised by Parliament
SWEDEN	Offence committed in the exercise of duties set out in the Criminal Code: breach of duty, corruption, breach of professional secrecy	Penalties prescribed by the general law (fines, prison) and possibly disciplinary consequences, including removal from office	Damage caused in the exercise of the judge's duties, the State is generally liable for the negligence of a public servant, the judge may be personally liable where there are aggravating circumstances	In criminal matters, if the judge is a judge of the Supreme Court on the Ombudsman and the Justice Chancellor can bring proceedings

SWITZERLAND	Offences connected with the judge's activities or official position		Only the State can bear civil liability, the direct civil liability of the judge is precluded	In criminal matters, only Parliament can authorise proceedings; it may also provisionally suspend the judge from office; the case falls within the jurisdiction of the ordinary courts
TURKEY	Code of Criminal Procedure: misuse or abuse of office, corruption, favouritism	Imprisonment	Code of Civil Procedure: civil consequences of a criminal offence, arbitrary decisions, illegal decisions, decisions dictated by personal considerations or by considerations extraneous to the case	Criminal proceedings require the consent of the Supreme Council of Judges and Public Prosecutors, which who appoints the investigators and the prosecutor, decides if a matter is disciplinary and forwards the documents to the competent authorities – special procedure in cases of treachery (felony)
UKRAINE		Penalties prescribed by the general law, plus removal from office.	No civil liability for judges	Ordinary criminal procedure, however any preventive detention of a judge must be exceptional and authorise by the Supreme Council. The judge is suspended from office immediately an action is initiated. The competent court is a Court of Appeal designated for the purpose, where the judge has never worked
UNITED KINGDOM	Immunity at common law in the exercise of judicial duties, otherwise immunity only if the judge has acted in good faith			

	<b>Disciplinary proceedings</b>			
	Circumstances	Procedure	Authority	Sanction
ANDORRA	Serious or very serious breaches set out in Articles 83 and 84 of L.Q.J.	The Supreme Judicial Council takes the initiative for an investigation upon application by an injured person, a citizen who was aware of the facts, the Attorney General's department or the president of the court concerned	Supreme Judicial Council	Article 85 of L.Q.J., reprimand, fine, suspension of post, removal from office
AZERBAIJAN		In the even of minor offences	The Minister requests the Judges' Council to deal with the case	Warning or dismissal
BELGIUM	Breach of the rules of conduct laid down by law or deriving from case-law, i.e. confidence in the judicial institution		The judge appears before his President, the First President of the Court of Appeal or before the General disciplinary Assembly of either the Court of Appal or the Court of Cassation, depending on his grade and the gravity of the breach or of the penalty available	Warning, simple censure, censure with a reprimand, suspension for between 15 days and 1 year, dismissal
CYPRUS	Mental or physical incapacity preventing the judge from carrying out his duties, breach of his ethical duties	The Supreme Court appoints an investigating judge and then decides to send the judge before the disciplinary body	Supreme Council of the Judicature	Reprimand or removal from office

CZECH REP	Breach of the disciplinary rules laid down in a Law of 2002	The Minister for Justice or the President of the Court concerned or the President of the Supreme Court decide to bring proceedings within two months of becoming aware of the facts, which must not have happened more than two years previously	Disciplinary Court composed of five judges appointed by a President of a Court appointed by agreement with the Judicial Council for a period of three years, an appeal lies to the Supreme Court.	Reprimand, temporary reduction in salary, suspension from duties as president, suspension from duties as judge
ESTONIA	Failure to follow procedures and any breach or conduct that jeopardises confidence in the judicial system	Proceedings initiated by the President of the Supreme Court or the Minister for Justice	Disciplinary Committee of the Supreme Court	Warning, reprimand, fine, removal from office (can only be ordered by the Supreme Court in plenary assembly)
FINLAND	No disciplinary proceedings: also minor offences (breach of duty) may result in criminal proceedings			
FRANCE	Breach of the duties associated with his post, dishonourable unscrupulous or undignified conduct		Supreme Council of the Judiciary, under the presidency of the First President of the Court of Cassation	From a simple reprimand recorded in the file to removal from office
GERMANY	Breach of the duties defined in the Statutes, proceedings are very rarely brought	Procedure administered by a special department	The Federal Service Court, a Division of the Federal Court of Justice composed of professional judges appointed for life and other career judges	Reprimand, fine, reduction in salary, transfer to another post, removal from office



ICELAND	A breach in discharge of judicial functions.	A complaint in writing may be lodged before the Committee on Judicial Functions by any person who has suffered harm owing to the conduct of a judge. If found valid, the judge is invited to comment before the Committee rules.	a) Committee on Judicial Functions composed of three members appointed by the Minister for Justice (one proposed by the Assembly of Icelandic Judges and one proposed by the Faculty of Law) b) President of Court	Admonition, personal opinion (removal from office only by conclusions of court proceedings in a more serious matters)
IRELAND	There is only a procedure before Parliament for removal from office; it resembles the impeachment procedure deriving from common law and is rarely used.			
ITALY	Any breach of the duties associated with his post, public or private conduct adversely affecting the confidence and prestige that a judge and the judicial institution must inspire (cases determined by the case-law)	Proceedings initiated by the Attorney General's representative at the Court of Cassation or on application by the Minister for Justice. The procedure is judicial in nature, with all the guarantees provided by such a procedure	Disciplinary court composed of nine judges who are members of the Supreme Council of the Judiciary elected by their peers; two of them must have been nominated by Parliament	
JAPAN	Court Organisation Law, Law for Impeachment of Judges and Law on Disciplinary Actions against Judges	Stipulated in the Law on Disciplinary Actions against Judges and Law for Impeachment of Judges	Hearing by a court of a level higher than that to which the judge concerned belongs in the impeachment procedure in which the most serious cases are handled, hearing by the Court of Impeachment made up of Diet members.	The disciplinary procedure: Caution or fines / the impeachment procedure: Dismissal
LIECHTENSTEIN	Those laid down in the Statutes of Officials of the State	No specific procedure, similar to criminal procedure	Higher court in the case of ordinary judges and Supreme Court in the case of higher judges	Reprimand, temporary reduction in salary, dismissal

LITHUANIA	Breach of judge's duties, flagrant breach of the law, failure to observe rules on incompatibility	The Judicial Council or the President of the Court may initiate disciplinary proceedings	Ethical and Disciplinary Committee of the Judicial Council (composed of judges – elected or appointed – and of representatives of the other Powers), which refers the case to a Court of Honour, which, where it decides that a judge is to be dismissed, proposes that sanction to the President or to Parliament	Reprimand or removal from office
LUXEMBOURG	Article 155 of the Law on the Judicial Organisation, wide definition	Article 157 <i>et seq.</i>		Article 156
MALTA	Constitution. Inability (physical or mental) to carry out his duties or particularly serious misconduct	S. 971 of the Constitution S. 8 of Act No. 41 of 1944	Removal from office by the President on an address from Parliament (approved by two thirds of the votes). Before this step is taken the case is investigated by the Commission for the Administration of Justice when it is found that the judge has a case to answer	Removal from office
MOLDOVA	Premeditated breach of the law in administering justice, disciplinary offence, public activity of a political nature, breach of the rules on incompatibilities, systematic or serious breach of the Code of Conduct	Disciplinary proceedings may be brought by: the President of the Supreme Court, the President of the Supreme Council of the Judiciary, any member of the Supreme Council of the Judiciary	Disciplinary Board of the supreme council of the Judiciary	Observation, warning, dismissal

NETHERLANDS	In case of minor breaches of duties or rules of conduct by the judge, the president of the court can issue a warning. If the judge is convicted or committing a crime and/or is sentenced to a prison sentence, if he is declared bankrupt or legally unfit and, more generally, if he acts in such a way that justice or the confidence of the judiciary is seriously impaired, the Supreme Court can suspend or dismiss the judge.			
NORWAY	A current Bill seeks to put an end to the practice whereby judges, like all senior officials, are not subject to disciplinary proceedings	A party, a witness or a lawyer with a complaint about the conduct of a judge in the exercise of his duties may bring the matter before the Disciplinary Committee – the Committee's decision may be reviewed by an ordinary court composed of lay judges	A committee composed of two judges, one lawyer and two outsiders, all appointed by the Government	Warning and reprimand only; removal from office, as provided for in the Constitution, for grave and repeated offences involves a special procedure provided for in the Constitution
POLAND	Breach of the dignity of his office, flagrant breach of the rules of law, minor offences	Closely resembles criminal proceedings; proceedings are administered by judges elected for the purpose, on application by the Minister, the Supreme Court or any head of court, the National Council of the Judiciary or Prosecutor elected himself; the proceedings are held in public and the judge is defended by counsel	Different disciplinary courts deal with matters arising in the ordinary courts, the administrative courts, the military courts and the Supreme Court: there are three judges at first instance and seven judges hear appeals	Warning, reprimand, removal from post – whether definitive or merely a way of transfer – removal from office

PORTUGAL	Breach of professional duties, acts or omissions in the capacity of judge which are incompatible with the dignity essential to the exercise of judicial functions (in varying degrees, which determine the sanction)	Provided for in the Statutes of Judges	Supreme Council of the Judiciary; and appeal lies to the Supreme Court	Fine of between 5 days' and 90 days' remuneration, transfer, suspension for between 20 days and 240 days, compulsory retirement, removal from office
ROMANIA	Professional misconduct and conduct contrary to the interests of the service or to the prestige of the judicial system (delays in dealing with cases, absence, acting in the judge's personal interest, interference in the work of judges, breach of secrecy)	Proceedings initiated by the Ministry, investigation carried out by judges of the same rank, defense provided by a judge	Supreme Council of the Judiciary, then at last resort before the Supreme Court	Reprimand, warning, reduction in salary, block on promotion, transfer, suspension, removal from office
SLOVAK REP	Breach of the disciplinary rules laid down in a Law of 2000 or the consequences of a criminal conviction	The Minister of Justice or the President of the Court concerned are competent to initiate proceedings	Disciplinary Courts	Admonition, temporary reduction in salary, suspension, removal from office
SLOVENIA	Very strict cases provided for by the Law on the Judicial Organisation	Proceedings on the initiative of the President of the Court, then application of the ordinary criminal procedure	Disciplinary Court composed of one judge of the Supreme Court as President and four judges representing the different levels of courts	Transfer, suspension of all promotion, reduction in salary, removal from office
SWITZERLAND	Switzerland is not concerned			

TURKEY	Failure to carry out duties, misconduct, insulting behaviour in the course of work, absence, delays, time-wasting, bringing the image of justice into disrepute, malfeasance, failure to fulfil administrative and ministerial duties	Depending on the hierarchical level, inspectors appointed by the Minister, who takes the initiative for proceedings, observance of the rights of defence	Supreme Council of the Judges and Prosecutors (which is also competent for appointments and career management)	Warning, reprimand, delay in and block on promotion, withholding of salary, compulsory transfer, dismissal
UKRAINE	Flagrant breach of the law, failure to fulfil duties as judge and those duties which that post imposes in the judge's private life		Disciplinary Committees	Reprimand or recommendation to the High Council on Justice that the judge be removed from office
UNITED KINGDOM	Particular serious misconduct	On the initiative of the Lord Chancellor and the Lord Chief Justice	By the Queen on address of both Houses of Parliament in the case of the senior judiciary and by the Lord Chancellor in the case of the rest of the judiciary (but in each case, no such steps would be taken without obtaining an independent judicial report and without the concurrence of the Lord Chief Justice)	Removal from office (extremely rare)

**APPENDIX IV****COMMENTS N° 1 (2002)  
OF THE WORKING PARTY  
OF THE CONSULTATIVE COUNCIL OF EUROPEAN JUDGES (CCJE-GT)  
ON “CODE OF JUDICIAL CONDUCT.  
THE BANGALORE DRAFT”**

1. The Working Party welcomed the opportunity given to it to attend the meeting proposed by the United Nations Commissioner for Human Rights and held in Strasbourg on 18<sup>th</sup> June 2002 and to comment on the Bangalore draft. It emphasises that it is not authorised to speak for the full Consultative Council of European Judges (which will only meet in plenary session in November 2002). These are therefore no more than comments, which it is hoped may assist in the Bangalore drafting process.
2. The Working Party starts with three general comments:
  - i) The title or description “Code” should be avoided, especially in view of its prescriptive and exhaustive connotations in civil law countries. It would be preferable to describe the document as containing “Principles (or “Standards”) of Judicial Conduct”.
  - ii) The scheme and order of the present draft are questionable. The fundamental principles are those of independence (although this is primarily a structural matter, to be guaranteed by the constitution or law of the particular society) and impartiality (which the judge must both possess and display in the context of any particular dispute). The principle of equality is linked with that of impartiality – factors such as ethnic origin, gender and disability cannot be disregarded; on the contrary their relevance to the way people behave, both outside and inside the courtroom, needs to be taken into consideration, in order to ensure the fair and impartial adjudication of any dispute. Further, the principles of integrity and propriety appear to have much in common. In these circumstances, it suggested that a logical scheme would involve taking Independence, Impartiality and then Equality first, in that order, followed by Integrity and Propriety, with Competence and Diligence coming last.
  - iii) The section Implementation and Accountability contains propositions which do not really concern judicial conduct, but rather the existence and structure of arrangements for handling complaints against and disciplining judges. The Working Party does not agree with the direct links drawn (in paragraphs 7.1 and 7.3 to 7.6) between the previously stated principles and complaints/discipline. No doubt non-compliance with such principles could in many cases be of considerable relevance to any complaint or disciplinary step. But the wording (especially the repeated references to “the implementation of the code”) suggests that any non-compliance would necessarily justify a complaint or disciplinary step - which is not (or should not be) be the case. In the

same connection, the Working Party considers that the words “and to a structure for regulating judicial conduct” in the last full paragraph of the Preamble should be deleted.

3. More particular points follow:

- i) *Explanatory note and Preamble:* The Working Party mentions, as a potential further source of encouragement for the Bangalore drafting committee, the Consultative Council of European Judges’ Opinion No. 1 (2001) on “Standards concerning the independence of the judiciary and the irremovability of judges” (especially to paragraphs 10-13 concerning the rationale of judicial independence) and Opinion No. 2 (2001) on “The Funding and Management of Courts with reference to the efficiency of the judiciary and to article 6 of the European Convention on Human Rights”.
- ii) The Working Party expressed reservations about the last two recitals in the Preamble, particularly the philosophical (or sociological) statement made regarding the real source of judicial power. In most civil law countries, there is a much more obvious “real source” – namely a constitution; and too great an emphasis on the ultimate dependence of the judicial power upon general acceptance could in some circumstances even be dangerous. The Working Party would suggest another wording for the penultimate recital, such as:
  - a) “WHEREAS public confidence in the judicial system and in the authority and integrity of the judiciary is of the utmost importance in a modern democratic society.”
- iii) *Independence:* This section is, at first sight, surprisingly weak – although the reason is (no doubt) that pointed out earlier in these comments, namely that independence is primarily a structural matter for the other branches of the state to introduce and ensure. Much of what is included falls in reality under the heading of Impartiality. The Working Party felt, however, that paragraph 2.3 might be misunderstood, especially in civil law countries with a strong tradition of collegiate decision-making. Paragraph 2.5 is in its first eleven words dealing (in an essentially circular way) with Propriety, rather than Independence, and is in the rest simply repeating the sense of part of the Preamble.
- iv) *Impartiality:* The general principle and paragraphs 4.1 to 4.6 appear unexceptionable. The Working Party questioned whether paragraph 4.7 is in appropriate terms, in so far as it suggests a general duty on judges to keep themselves informed, unrelated to any possible risk to their actual or apparent impartiality. Paragraph 4.8 has no counterpart in a number of civil law countries and was regarded as positively inappropriate by some civil law members of the Working Party. Paragraph 4.9 also lacks any equivalent in some civil law systems (and

it was thought that situations of emergency or necessity could anyway have been more briefly and generally covered).

- v) *Equality*: Paragraphs 5.2 to 5.8 met with general approval. However, the Working Party would suggest that paragraphs 5.4 and 5.5 should also extend specifically to public prosecutors (because of their special status in civil law countries) and to police.
- vi) *Integrity*: Paragraphs 3.1-3.3 met with general approval.
- vii) *Propriety*: This is unquestionably the most contentious area; there are grouped under its head a whole list of subjects (some of which, it might be said, could equally well appear under the head of Impartiality). The following comments are made:
  - a) Paragraphs 1.1, 1.2, 1.9 , 1.10, 1.16 (first)<sup>1</sup> (confidential information), 1.20 (gifts, etc), and 1.19 (membership of judges' associations) appear generally acceptable.
  - b) The Working Party questioned the inclusion of paragraph 1.23 – why focus on only one aspect of a judge's general duty to obey the law? If reference is to be made to this subject, it might be made more generally, perhaps in the Explanatory Memorandum, at the end of which the general scope of the proposed draft is also touched on.
  - c) Certain of the principles are limited expressly to activities that might reasonably “give rise to a suspicion or appearance of bias” or might “reasonably undermine public confidence in” or “reflect adversely on” the judge's impartiality (it is not clear why these three different formulations are used and it might be better to use only one of them). The relevant paragraphs are:
    - i) 1.3: close personal relationship with individual lawyers;
    - ii) 1.5: use of judge's residence by lawyers to receive clients or other lawyers;
    - iii) 1.6: membership of any group or organisation or participation in public discussion;
    - iv) 1.14 first sentence: civic and charitable activities;
    - v) 1.16 (first)<sup>2</sup>: financial or business dealings.

As to these paragraphs: the Working Party understands the general aim behind paragraph 1.3, but questions its width and the appropriateness of the direction from which it approaches quite common situations, such as marriage or a close personal relationship with a lawyer. The focus in such a case should not be on prohibiting (or purporting to prohibit) the relationship, but on the judge's need to withdraw in any case where the other party to the relationship is involved.

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<sup>1</sup> The present draft has (no doubt by mistake) two paragraphs numbered 1.16.

<sup>2</sup> See footnote 1.



The other paragraphs were regarded by the Working Party as in some respects very detailed for a general statement of principles, but open to no particular objection. The approach in the Canadian Judicial Council's Ethical Principles for Judges is to have general statements followed by a more detailed commentary, and this might have something to commend itself in relation to some of the detailed points in the present draft.

d) *Political activity - 1.7 (first sentence) and 1.8*: whilst these represent common law principles, civil law countries do not always follow the same approach. In Switzerland, judges are elected on the basis of their party membership. In some other countries, judges have the right to engage in politics, and be elected as members of local councils (even while remaining judges) or of Parliament (their judicial status being in this case suspended). The present position in the Working Party's view is that there is no general international consensus, that judges should either be free to engage in or should refrain from political participation. It appears to be for each country to strike its own balance between judges' freedom of opinion and expression on matters of social significance and the requirement of neutrality. But, even though membership of a political party or participation in public debate on the major problems of society may not be prohibited, judges must at least refrain from any political activity liable to compromise their independence or jeopardise the appearance of impartiality.

e) *1.11 - testifying as a character witness*: A detailed provision not considered by the Working Party.

f) *1.12 and 1.13 - writing, lecturing, teaching and engaging in public activities relating to (I) the law and (II) non-legal activities, and 1.22 - receipt of compensation and expenses*: There was no real disagreement within the Working Party about any of the points made. But it was questioned whether it was necessary or wise to have a list of (permitted) activities in paragraph 1.13 – could not the wording simply allow judges to “engage in other non-legal activities, if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties in accordance with [these Principles]”?

g) *1.14 second sentence - fund-raising for civic or charitable organisations*: The Working Party did not consider that the very strict limitations proposed by this paragraph of the draft either were, or should be, generally accepted as an international standard.

h) *1.21 - miscellaneous gifts*: The Working Party had no particular comment or objection to make.

i) *1.15 - estate or trust activities*: The Working Party did not agree with this very strict limitation. Why is it necessary?

j) *1.18 - appointment to government commissions, committees or positions concerned with non-legal matters:* Again, the Working Party did not agree with this as a general international principle. The subject has been discussed in various states, from various viewpoints. The use of judges for non-legal activities can risk compromising the separation of powers, or exposing judges to public criticism in circumstances where politicians do not wish to address a difficult subject themselves, and of course it reduces the number of active judges. However, judicial training and characteristics can have important value in the context of certain enquiries. Current practice in a number of European countries is to allow judges to undertake such work.

Concern was, however, expressed in the Working Party about the possibility in some European countries of judges spending periods of time in the political cabinets of government ministers, or other posts of a political nature.

- viii) The Working Party suggested that the Bangalore draft could address more specifically the issue of relations with the media. Paragraphs 1.16 (second) 14 and 4.4 go some way, but not very far. The Working Party identified a number of possible aspects of concern. The first was the use of the media (in or out of court) to promote a judge's public image and career, or (to take the other side of the coin) the possibility of concern on the part of a judge as to possible media reaction to a particular decision. For a judge to allow himself or herself to be influenced in either such direction by the media would almost certainly infringe paragraph 2.1 of the Bangalore draft, if not also other paragraphs such as 1.1, 3.1, 3.2, 4.1 and 4.2.

The second aspect is the question of contact out of court with the media. The common law tradition is that judges do not speak to the media about either cases involving themselves or cases involving other judges. The media gain information from those (defined) court records and documents which are open to them, and from the public nature of proceedings in court. In some countries (particularly those where court files are secret), a system exists whereby one particular judge in any court is deputed to inform the media of the actual position relating to any particular case. Apart from the provision of information of this nature, any out of court comment by judges on cases before them or before other judges would seem inappropriate.

A third aspect concerns comment, even in an academic article, on the judge's own or another judge's decision. Comment outside court on a judge's conduct of a particular case or upon evidence or factual rulings in a particular case appears generally unacceptable. Comment on a purely legal point of general interest decided or considered in a particular case would appear to fall on the other (permissible) side of the line.

- ix) *Competence and Diligence*: paragraphs 6.1-6.7 met with general approval. However, it was suggested that reference should be made to the need for appropriate training or continuing education or studies programmes to be available to judges. This could be done, for example, by adding to paragraph 6.3 a phrase such as: “taking advantage for this purpose of the training and other facilities which should be made available to judges (under judicial control) for this purpose”.

**APPENDIX**

**CODE OF JUDICIAL CONDUCT**

**THE BANGALORE DRAFT**

*Explanatory Note*

At its first meeting held in Vienna in April 2000, the Judicial Group on Strengthening Judicial Integrity recognized the need for a code against which the conduct of judicial officers may be measured. Accordingly, the Judicial Group requested that codes of judicial conduct which had been adopted in some jurisdictions be analyzed, and a report be prepared concerning: (a) the core considerations which recur in such codes; and (b) the optional or additional considerations which occur in some, but not all, such codes and which may or may not be suitable for adoption in particular countries.

In preparing a draft code of judicial conduct in accordance with the directions set out above, reference was made to several existing codes and international instruments including, in particular, the following:

- (a) Restatement of Values of Judicial Life adopted by the Chief Justices Conference of India, 1999.
- (b) Code of Conduct for the Judges of the Supreme Court of Bangladesh, prescribed by the Supreme Judicial Council in the exercise of power under Article 96(4)(a) of the Constitution of the People's Republic of Bangladesh, May 2000.
- (c) The Judges' Code of Ethics of Malaysia, prescribed by the Yang di-Pertuan Agong on the recommendation of the Chief Justice, the President of the Court of Appeal and the Chief Judges of the High Courts, in the exercise of powers conferred by Article 125(3A) of the Federal Constitution of Malaysia, 1994.
- (d) The Code of Judicial Conduct of the Philippines, September 1989.
- (e) The Canons of Judicial Ethics of the Philippines, proposed by the Philippines Bar Association, approved by the Judges of First Instance of Manila, and adopted for the guidance of and observance by the judges under the administrative supervision of the Supreme Court, including municipal judges and city judges.
- (f) Code of Conduct to be observed by Judges of the Supreme Court of the Supreme Court and of the High Courts of Pakistan.
- (g) Yandina Statement: Principles of Independence of the Judiciary in Solomon Islands, November 2000.
- (h) Code of Conduct for Judicial Officers of the Federal Republic of Nigeria.
- (i) Code of Conduct for Judicial Officers of Tanzania, adopted by the Judges and Magistrates Conference, 1984.
- (j) Code of Conduct for Judicial Officers of Kenya, July 1999.
- (k) Code of Conduct for Judges, Magistrates and Other Judicial Officers of Uganda, adopted by the Judges of the Supreme Court and the High Court, July 1989.
- (l) The Judicial (Code of Conduct) Act, enacted by the Parliament of Zambia, December 1999.

- (m) Guidelines for Judges of South Africa, issued by the Chief Justice, the President of the Constitutional Court, and the Presidents of High Courts, the Labour Appeal Court, and the Land Claims Court, March 2000.
- (n) The European Charter on the Statute for Judges, Council of Europe, July 1998.
- (o) Ethical Principles for Judges, drafted with the cooperation of the Canadian Judges Conference and endorsed by the Canadian Judicial Council, 1998.
- (p) The Code of Judicial Conduct adopted by the House of Delegates of the American Bar Association, August 1972.
- (q) The Code of Conduct of the Judicial Conference of the United States.
- (r) The Canons of Judicial Conduct for the Commonwealth of Virginia, adopted and promulgated by the Supreme Court of Virginia, 1998.
- (s) The Iowa Code of Judicial Conduct.
- (t) Draft Principles on the Independence of the Judiciary ("Siracusa Principles"), prepared by a committee of experts convened by the International Association of Penal Law, the International Commission of Jurists, and the Centre for the Independence of Judges and Lawyers, 1981.
- (u) Minimum Standards of Judicial Independence adopted by the International Bar Association, 1982.
- (v) United Nations Basic Principles on the Independence of the Judiciary, endorsed by the UN General Assembly, 1985.
- (w) Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration") prepared by Mr L.V. Singhvi, UN Special Rapporteur on the Study on the Independence of the Judiciary, 1989.
- (x) The Beijing Statement of Principles of the Independence of the Judiciary in the Lawasia Region, adopted by the 6<sup>th</sup> Conference of Chief Justices, August 1997.
- (y) The Latimer House Guidelines for the Commonwealth on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights to ensure the effective implementation of the Harare Principles, 1998.
- (z) The Policy Framework for Preventing and Eliminating Corruption and Ensuring the Impartiality of the Judicial System, adopted by the expert group convened by the Centre for the Independence of Judges and Lawyers, February 2000.

At its second meeting held in Bangalore in February 2001, the Judicial Group, proceeding by way of examination of the draft placed before it, identified the core values, formulated the relevant principles, and agreed on the code set out in this document: the Bangalore Draft. The Judicial Group recognized, however, that since the draft Code had been developed by judges drawn principally from common law countries, it was essential that it be scrutinized by judges of other legal traditions to enable it to assume the status of a duly authenticated draft international code of judicial conduct.

In deciding to publish the Bangalore Draft, the Judicial Group agreed that the judicial duty is to conform to any code of conduct which, by law or practice, is already in force in a judge's jurisdiction. The development and existence of an international code does not relieve a judge of his or her duty under municipal law to comply with a code of conduct currently in operation in that judge's jurisdiction. The Bangalore Draft is designed:

- to spread the example of codes of judicial conduct to those jurisdictions which do not yet have them;
- to encourage deliberation amongst judges and others concerning the terms of the code and the improvement of codes of judicial conduct already in force; and
- to develop the broad principles appropriate to an international code of judicial conduct drawing on the best practice and precedents in many jurisdictions of the world.

### *Preamble*

WHEREAS the *Universal Declaration of Human Rights* recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge.

WHEREAS the *International Covenant on Civil and Political Rights* guarantees that all persons shall be equal before the courts, and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

WHEREAS the foregoing fundamental principles and rights are also recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions.

WHEREAS the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice.

WHEREAS an independent judiciary is likewise essential if the courts are to fulfil their roles as guardians of the rule of law and thereby to assure good governance.

WHEREAS the real source of judicial power is public acceptance of the moral authority and integrity of the judiciary.

AND WHEREAS consistently with the *United Nations Basic Principles on the Independence of the Judiciary*, it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

The following principles and rules are intended to establish standards for ethical conduct of judges. They are principles and rules of reason to be applied in the light of all relevant circumstances and consistently with the requirements of judicial independence and the law. They are designed to provide guidance to judges and to afford a structure for regulating judicial conduct. They are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.

The values which this Code upholds are:

- Propriety
- Independence
- Integrity
- Impartiality
- Equality
- Competence and Diligence
- Accountability

## I

*Value:*

### **PROPRIETY**

*Principle:*

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

*Code*

- 1.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.<sup>1</sup>
- 1.2 As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.<sup>2</sup>
- 1.3 A judge shall avoid close personal association with individual members of the legal profession, particularly those who practise in the judge's court, where such association might reasonably give rise to the suspicion or appearance of favouritism or partiality.<sup>3</sup>
- 1.4 Save in exceptional circumstances or out of necessity, a judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case<sup>4</sup>.
- 1.5 A judge shall avoid the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession in circumstances that might reasonably give rise to the suspicion or appearance of impropriety on the part of the judge<sup>5</sup>.

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<sup>1</sup> cf Beijing Principles, Philippines, Bangladesh, Pakistan, Solomon Islands, ABA Code.

<sup>2</sup> cf India, Philippines, Bangladesh.

<sup>3</sup> cf India, Bangladesh, Kenya.

<sup>4</sup> cf India, Bangladesh.

<sup>5</sup> cf India.

- 1.6 A judge shall refrain from conduct such as membership of groups or organisations or participation in public discussion which, in the mind of a reasonable, fair-minded and informed person, might undermine confidence in the judge's impartiality with respect to any issue that may come before the courts<sup>6</sup>.
- 1.7 A judge shall, upon appointment, cease all partisan political activity or involvement. A judge shall refrain from conduct that, in the mind of a reasonable fair-minded and informed person, might give rise to the appearance that the judge is engaged in political activity<sup>7</sup>.
- 1.8 A judge shall refrain from:
- 1.8.1 Membership of political parties;
  - 1.8.2 Political fund-raising;
  - 1.8.3 Attendance at political gatherings and political fund-raising events;
  - 1.8.4 Contributing to political parties or campaigns; and
  - 1.8.5 Taking part publicly in controversial discussions of a partisan political character<sup>8</sup>.
- 1.9 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge<sup>9</sup>.
- 1.10 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties<sup>10</sup>.
- 1.11 A judge shall not testify voluntarily as a character witness, except that a judge may testify as a witness in a criminal proceeding if the judge or a member of the judge's family is a victim of the offence or if the defendant is a member of the judge's family or in like exceptional circumstances<sup>11</sup>.
- 1.12 Subject to the proper performance of judicial duties, a judge may engage in activities such as:
- 1.12.1 The judge may write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice and related matters;
  - 1.12.2 The judge may appear at a public hearing before an official body concerned with matters relating to the law, the

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<sup>6</sup> cf Canada, South Africa, European Charter, ABA Code.

<sup>7</sup> cf Canada, Virginia.

<sup>8</sup> cf Canada, Virginia, Alaska, India.

<sup>9</sup> cf Tanzania, Alaska, Texas, Virginia, Washington, Iowa.

<sup>10</sup> cf Tanzania, Virginia, Iowa.

<sup>11</sup> cf Iowa, Alaska.



legal system and the administration of justice or related matters;  
and

1.12.3 The judge may serve as a member of an official body devoted to the improvement of the law, the legal system, the administration of justice or related matters.

- 1.13 A judge may speak publicly on non-legal subjects and engage in historical, educational, cultural, sporting or like social and recreational activities, if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties in accordance with this Code<sup>12</sup>.
- 1.14 A judge may participate in civic and charitable activities that do not reflect adversely on the judge's impartiality or interfere with the performance of judicial duties. A judge should not be involved in fund-raising or membership solicitation<sup>13</sup>.
- 1.15 A judge shall not serve as the executor, administrator, trustee, guardian or other fiduciary, except for the estate, trust or person connected with a member of the judge's family and then only if such service will not interfere with the proper performance of judicial duties<sup>14</sup>.
- 1.16 Save for holding and managing appropriate personal or family investments, a judge shall refrain from being engaged in other financial or business dealings as these may interfere with the proper performance of judicial duties or reflect adversely on the judge's impartiality<sup>15</sup>.
- 1.16 Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to the judge's judicial duties<sup>16</sup>.
- 1.17 A judge shall not practise law whilst the holder of judicial office<sup>17</sup>.
- 1.18 Except as consistent with, or as provided by, constitutional or other law, a judge shall not accept appointment to a government commission, committee or to a position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, the administration of justice or related matters. However, a judge may represent the judge's country or the state on ceremonial occasions or in connection with historical, educational, cultural, sporting or like activities<sup>18</sup>.

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<sup>12</sup> cf Tanzania, Alaska, Virginia, Texas, Washington, Tanzania, Iowa, USA.

<sup>13</sup> cf Iowa.

<sup>14</sup> cf Iowa, Tanzania, Washington, Nigeria, Alaska, Texas, Virginia.

<sup>15</sup> cf Iowa, Nigeria, Alaska, Virginia, Texas, Washington.

<sup>16</sup> cf Texas, Alaska, Virginia, Iowa.

<sup>17</sup> cf Washington, Virginia, Texas, Iowa, Tanzania, Alaska, Nigeria.

<sup>18</sup> cf Iowa, Washington, Texas.

- 1.19 A judge may form or join associations of judges or participate in other organisations representing the interests of judges to promote professional training and to protect judicial independence<sup>19</sup>.
- 1.20 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.
- 1.21 Subject to law and to any legal requirements of public disclosure, a judge may receive a small token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality<sup>20</sup>.
- 1.22 A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by this Code, if such payments do not give the appearance of influencing the judge in the performance of judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:
- (a) Such compensation and reimbursement shall not exceed a reasonable amount nor shall it exceed what a person who is not a judge would receive for the same activities; and
  - (b) Reimbursement shall be limited to the actual cost of travel and accommodation reasonably incurred by the judge and, where appropriate to the occasion, by the judge's family. Any payment in excess of such an amount is compensation<sup>21</sup>.
- 1.23 A judge shall make such financial disclosures and pay all such taxes as are required by law<sup>22</sup>.

## II *Value* INDEPENDENCE

### *Principle:*

An independent judiciary is indispensable to impartial justice under law. A judge should therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

### *Code*

- 2.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious

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<sup>19</sup> cf Nigeria, Basic Principles, Singhvi Declaration; Siracusa Principles.

<sup>20</sup> cf Iowa, Nigeria, Alaska, Texas, Washington, Virginia, India.

<sup>21</sup> cf Washington, Texas, Alaska, Virginia, USA, Iowa.

<sup>22</sup> cf Alaska, Washington.

understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason<sup>23</sup>.

- 2.2 A judge shall reject any attempt to influence his or her decision in any matter before the judge for decision where such attempt arises outside the proper performance of judicial duties<sup>24</sup>.
- 2.3 In performing judicial duties, a judge shall, within the judge's own court, be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently<sup>25</sup>.
- 2.4 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary<sup>26</sup>.
- 2.5 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence which is fundamental to the maintenance of judicial independence<sup>27</sup>.

### III *Value* INTEGRITY

#### *Principle:*

Integrity is essential to the proper discharge of the judicial office.

#### *Code:*

- 3.1 A judge shall ensure that his or her conduct is above reproach in the view of reasonable, fair-minded and informed persons<sup>28</sup>.
- 3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done<sup>29</sup>.
- 3.3 A judge, in addition to observing personally the standards of this Code, shall encourage and support their observance by others<sup>30</sup>.

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<sup>23</sup> cf Basic Principles; Singhvi Declaration; Siracusa Principles.

<sup>24</sup> cf Canada.

<sup>25</sup> cf Singhvi Declaration.

<sup>26</sup> cf Canada, Iowa, Texas, Virginia.

<sup>27</sup> cf Canada.

<sup>28</sup> cf Canada.

<sup>29</sup> cf India.

<sup>30</sup> cf Canada.

**IV**  
*Value*  
**IMPARTIALITY**

*Principle*

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the making of a decision itself but also to the process by which the decision is made.

*Code*

- 4.1 A judge shall perform his or her judicial duties without favour, bias or prejudice<sup>31</sup>.
- 4.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary<sup>32</sup>.
- 4.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases<sup>33</sup>.
- 4.4 A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue<sup>34</sup>.
- 4.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which a reasonable, fair-minded and informed person might believe that the judge is unable to decide the matter impartially<sup>35</sup>.
- 4.6 A judge shall disqualify himself or herself in any proceedings in which there might be a reasonable perception of a lack of impartiality of the judge including, but not limited to, instances where:
- 4.6.1 The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
- 4.6.2 The judge previously served as a lawyer or was a material witness in the matter in controversy;

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<sup>31</sup> cf Washington.

<sup>32</sup> cf Canada.

<sup>33</sup> cf Canada.

<sup>34</sup> cf Iowa, Texas, Tanzania, Nigeria, Virginia, Alaska, Washington.

<sup>35</sup> cf Canada.

- 4.6.3 The judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy<sup>36</sup>.
- 4.7 A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family<sup>37</sup>.
- 4.8 A judge who would otherwise be disqualified on the foregoing grounds may, instead of withdrawing from the proceedings, disclose on the record the basis of such disqualification. If, based on such disclosure, the parties, independently of the judge's participation, agree in writing or on the record, that the judge may participate, or continue to participate, in the proceedings, the judge may do so<sup>38</sup>.
- 4.9 Disqualification of a judge is not required if necessity obliges the judge to decide the matter in controversy including where no other judge may lawfully do so or where, because of urgent circumstances, failure of the judge to participate might lead to a serious miscarriage of justice<sup>39</sup>. In such cases of necessity, the judge shall still be obliged to disclose to the parties in a timely way any cause of disqualification and ensure that such disclosure is included in the record.
- 4.10 Save for the foregoing, a judge has a duty to perform the functions of the judicial office and litigants do not have a right to choose a judge.

## V

### *Value*

## **EQUALITY**

### *Principle:*

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

### *Code*

- 5.1 A judge shall strive to be aware of, and to understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds")<sup>40</sup>.
- 5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds<sup>41</sup>.

<sup>36</sup> cf Tanzania, Alaska, Washington, Iowa, Nigeria, Virginia, USA, India, Siracusa Principles.

<sup>37</sup> cf Virginia, Tanzania, Alaska, Washington, Iowa, Nigeria.

<sup>38</sup> cf Tanzania, Virginia, Washington, Iowa, Nigeria.

<sup>39</sup> cf Canada.

<sup>40</sup> cf Canada.

<sup>41</sup> cf Alaska, Iowa, Texas, Virginia.

- 5.3 A judge shall carry out his or her duties with appropriate consideration for all persons (for example, parties, witnesses, lawyers, court staff and judicial colleagues) without unjust differentiation on any irrelevant ground, immaterial to the proper performance of such duties<sup>42</sup>.
- 5.4 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter which is before the judge, on any irrelevant ground.
- 5.5 A judge shall require lawyers in proceedings before a court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds. This requirement does not preclude legitimate advocacy where any such grounds are legally relevant to an issue in the proceedings<sup>43</sup>.
- 5.6 A judge shall not be a member of, nor associated with, any society or organisation that practises unjust discrimination on the basis of any irrelevant ground<sup>44</sup>.
- 5.7 Without authority of law and notice to, and consent of, the parties and an opportunity to respond, a judge shall not engage in independent, personal investigation of the facts of a case.
- 5.8 Without authority of law and notice to, and consent of, the parties and an opportunity to respond, a judge shall not, in the absence of the other parties to the proceedings, communicate with any party to proceedings in the judge's court concerning such proceedings<sup>45</sup>.

## VI

### *Value*

#### **COMPETENCE AND DILIGENCE**

##### *Principle*

Competence and diligence are prerequisites to the due performance of judicial office.

##### *Code*

- 6.1 The judicial duties of a judge take precedence over all other activities<sup>46</sup>.
- 6.2 A judge shall devote his or her professional activity to judicial duties. Such duties are broadly defined and include not only the performance of judicial duties in court and the making of decisions but other tasks relevant to the court's operations or to the judicial office<sup>47</sup>.

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<sup>42</sup> cf Canada.

<sup>43</sup> cf Canada, Alaska, Texas.

<sup>44</sup> cf Canada, Nigeria, Texas, Virginia, USA, Iowa.

<sup>45</sup> cf Tanzania, Nigeria, Alaska, Texas, Virginia.

<sup>46</sup> cf Iowa, Washington, Virginia, Texas, Alaska.

<sup>47</sup> cf Canada.

- 6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties<sup>48</sup>.
- 6.4 A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms and, within any applicable limits of constitutional or other law, shall conform to such norms as far as is feasible<sup>49</sup>.
- 6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness<sup>50</sup>.
- 6.6 A judge shall maintain order and decorum in all proceedings in which the judge is involved. He or she shall be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control<sup>51</sup>.
- 6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties<sup>52</sup>.

## VII

### *Value*

#### **IMPLEMENTATION AND ACCOUNTABILITY**

##### *Principle*

Implementing these principles and ensuring the compliance of judges with them are essential to the effective achievement of the objectives of this Code.

##### *Code*

- 7.1 Institutions and procedures for the implementation of this Code shall provide a publicly credible means of considering and determining complaints against judges without eroding the essential principle of judicial independence.
- 7.2 By the nature of the judicial office judges are not, except in accordance with law, accountable to any organ or entity of the state for their judicial decisions but they are accountable for their conduct to institutions that are established to implement this Code.
- 7.3 The institutions and procedures established to implement this Code shall be transparent so as to strengthen public confidence in the judiciary and thereby to reinforce judicial independence.

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<sup>48</sup> cf Canada, Alaska, Tanzania.

<sup>49</sup> cf Iowa, Tanzania, Nigeria, Alaska, Washington, Texas, Virginia.

<sup>50</sup> cf Canada, Alaska, Nigeria.

<sup>51</sup> cf Virginia, Texas, Alaska, Tanzania, Nigeria, Canada, Washington.

<sup>52</sup> cf Canada.

- 7.4 Ordinarily, except in serious cases that may warrant removal of the judge from office, proceedings established to implement this Code shall be conducted in confidence.
- 7.5 The implementation of this Code shall take into account the legitimate needs of a judge, by reason of the nature of the judicial office, to be afforded protection from vexatious or unsubstantiated accusations and due process of law in the resolution of complaints against the judge.
- 7.6 The judiciary and any institution established to implement this Code shall promote awareness of these principles and of the provisions of the Code.

## **VIII DEFINITIONS**

In this Code, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

*"Court staff"* includes the personal staff of the judge including law clerks.

*"Judge"* includes a magistrate, a member of customary or village courts and any person exercising judicial office, however designated.

*"Judge's family"* includes a judge's spouse, the judge's son, daughter, son-in-law or daughter-or-law. it also includes any other close relative or person who is a companion or employee of the judge and who lives in the judge's household.

*"Judge's spouse"* includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.



**APPENDIX V****THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT (2002)**

*(The Bangalore Draft Code of Judicial Conduct 2001  
adopted by the Judicial Group on Strengthening Judicial Integrity,  
as revised at the Round Table Meeting of Chief Justices  
held at the Peace Palace, The Hague, November 25-26, 2002)*

***Preamble***

WHEREAS the *Universal Declaration of Human Rights* recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge.

WHEREAS the *International Covenant on Civil and Political Rights* guarantees that all persons shall be equal before the courts, and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law.

WHEREAS the foregoing fundamental principles and rights are also recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions.

WHEREAS the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice.

WHEREAS a competent, independent and impartial judiciary is likewise essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law.

WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society.

WHEREAS it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country.

AND WHEREAS the *United Nations Basic Principles on the Independence of the Judiciary* are designed to secure and promote the independence of the judiciary, and are addressed primarily to States.

THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the

judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.

*Value 1:*  
**INDEPENDENCE**

*Principle:*

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

*Application:*

- 1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.
- 1.2 A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.
- 1.3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.
- 1.4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.
- 1.5 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.
- 1.6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

*Value 2:*  
**IMPARTIALITY**

*Principle:*

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

*Application:*

- 2.1 A judge shall perform his or her judicial duties without favour, bias or prejudice.
- 2.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.
- 2.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.
- 2.4 A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.
- 2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where
  - 2.5.1 the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
  - 2.5.2 the judge previously served as a lawyer or was a material witness in the matter in controversy; or
  - 2.5.3 the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:

Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

*Value 3:*  
**INTEGRITY**

*Principle:*

Integrity is essential to the proper discharge of the judicial office.

*Application:*

- 3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.
- 3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

*Value 4:***PROPRIETY***Principle:*

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

*Application:*

- 4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
- 4.2. As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.
- 4.3. A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.
- 4.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.
- 4.5 A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.
- 4.6 A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.
- 4.7 A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.

- 4.8 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.
- 4.9 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.
- 4.10 Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.
- 4.11 Subject to the proper performance of judicial duties, a judge may:
- 4.11.1 write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
  - 4.11.2 appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;
  - 4.11.3 serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or
  - 4.11.4 engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.
- 4.12 A judge shall not practise law whilst the holder of judicial office.
- 4.13 A judge may form or join associations of judges or participate in other organisations representing the interests of judges.
- 4.14 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.
- 4.15 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.
- 4.16 Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be

perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

*Value 5:*  
**EQUALITY**

*Principle:*

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

*Application:*

- 5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").
- 5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.
- 5.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.
- 5.4 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.
- 5.5 A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

*Value 6:*  
**COMPETENCE AND DILIGENCE**

*Principle:*

Competence and diligence are prerequisites to the due performance of judicial office.

*Application:*

- 6.1 The judicial duties of a judge take precedence over all other activities.
- 6.2 A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.
- 6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.
- 6.4 A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.
- 6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.
- 6.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.
- 6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

**IMPLEMENTATION**

By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

**DEFINITIONS**

In this statement of principles, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

"*Court staff*" includes the personal staff of the judge including law clerks.

"*Judge*" means any person exercising judicial power, however designated.

"*Judge's family*" includes a judge's spouse, son, daughter, son-in-law, daughter-in-law, and any other close relative or person who is a companion or employee of the judge and who lives in the judge's household.

"*Judge's spouse*" includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.



*Explanatory Note*

1. At its first meeting held in Vienna in April 2000 on the invitation of the United Nations Centre for International Crime Prevention, and in conjunction with the 10<sup>th</sup> United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Judicial Group on Strengthening Judicial Integrity (comprising Chief Justice Latifur Rahman of Bangladesh, Chief Justice Bhaskar Rao of Karnataka State in India, Justice Govind Bahadur Shrestha of Nepal, Chief Justice Uwais of Nigeria, Deputy Vice-President Langa of the Constitutional Court of South Africa, Chief Justice Nyalali of Tanzania, and Justice Odoki of Uganda, meeting under the chairmanship of Judge Christopher Weeramantry, Vice-President of the International Court of Justice, with Justice Michael Kirby of the High Court of Australia as rapporteur, and with the participation of Dato' Param Cumaraswamy, UN Special Rapporteur on the Independence of Judges and Lawyers) recognized the need for a code against which the conduct of judicial officers may be measured. Accordingly, the Judicial Group requested that codes of judicial conduct which had been adopted in some jurisdictions be analyzed, and a report be prepared by the Co-ordinator of the Judicial Integrity Programme, Dr Nihal Jayawickrama, concerning: (a) the core considerations which recur in such codes; and (b) the optional or additional considerations which occur in some, but not all, such codes and which may or may not be suitable for adoption in particular countries.

2. In preparing a draft code of judicial conduct in accordance with the directions set out above, reference was made to several existing codes and international instruments including, in particular, the following:

- (aa) The Code of Judicial Conduct adopted by the House of Delegates of the American Bar Association, August 1972.
- (bb) Declaration of Principles of Judicial Independence issued by the Chief Justices of the Australian States and Territories, April 1997.
- (cc) Code of Conduct for the Judges of the Supreme Court of Bangladesh, prescribed by the Supreme Judicial Council in the exercise of power under Article 96(4)(a) of the Constitution of the People's Republic of Bangladesh, May 2000.
- (dd) Ethical Principles for Judges, drafted with the cooperation of the Canadian Judges Conference and endorsed by the Canadian Judicial Council, 1998.
- (ee) The European Charter on the Statute for Judges, Council of Europe, July 1998.
- (ff) The Idaho Code of Judicial Conduct 1976.
- (gg) Restatement of Values of Judicial Life adopted by the Chief Justices Conference of India, 1999.
- (hh) The Iowa Code of Judicial Conduct.
- (ii) Code of Conduct for Judicial Officers of Kenya, July 1999.
- (jj) The Judges' Code of Ethics of Malaysia, prescribed by the Yang di-Pertuan Agong on the recommendation of the Chief Justice, the President of the Court of Appeal and the Chief Judges of the High Courts, in the exercise of powers conferred by Article 125(3A) of the Federal Constitution of Malaysia, 1994.
- (kk) The Code of Conduct for Magistrates in Namibia.
- (ll) Rules Governing Judicial Conduct, New York State, USA.
- (mm) Code of Conduct for Judicial Officers of the Federal Republic of Nigeria.
- (nn) Code of Conduct to be observed by Judges of the Supreme Court and of the High Courts of Pakistan.

- (oo) The Code of Judicial Conduct of the Philippines, September 1989.
- (pp) The Canons of Judicial Ethics of the Philippines, proposed by the Philippines Bar Association, approved by the Judges of First Instance of Manila, and adopted for the guidance of and observance by the judges under the administrative supervision of the Supreme Court, including municipal judges and city judges.
- (qq) Yandina Statement: Principles of Independence of the Judiciary in Solomon Islands, November 2000.
- (rr) Guidelines for Judges of South Africa, issued by the Chief Justice, the President of the Constitutional Court, and the Presidents of High Courts, the Labour Appeal Court, and the Land Claims Court, March 2000.
- (ss) Code of Conduct for Judicial Officers of Tanzania, adopted by the Judges and Magistrates Conference, 1984.
- (tt) The Texas Code of Judicial Conduct
- (uu) Code of Conduct for Judges, Magistrates and Other Judicial Officers of Uganda, adopted by the Judges of the Supreme Court and the High Court, July 1989.
- (vv) The Code of Conduct of the Judicial Conference of the United States.
- (ww) The Canons of Judicial Conduct for the Commonwealth of Virginia, adopted and promulgated by the Supreme Court of Virginia, 1998.
- (xx) The Code of Judicial Conduct adopted by the Supreme Court of the State of Washington, USA, October 1995.
- (yy) The Judicial (Code of Conduct) Act, enacted by the Parliament of Zambia, December 1999.
- (zz) Draft Principles on the Independence of the Judiciary ("Siracusa Principles"), prepared by a committee of experts convened by the International Association of Penal Law, the International Commission of Jurists, and the Centre for the Independence of Judges and Lawyers, 1981.
- (aaa) Minimum Standards of Judicial Independence adopted by the International Bar Association, 1982.
- (bbb) United Nations Basic Principles on the Independence of the Judiciary, endorsed by the UN General Assembly, 1985.
- (ccc) Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration") prepared by Mr L.V. Singhvi, UN Special Rapporteur on the Study on the Independence of the Judiciary, 1989.
- (ddd) The Beijing Statement of Principles of the Independence of the Judiciary in the Lawasia Region, adopted by the 6<sup>th</sup> Conference of Chief Justices, August 1997.
- (eee) The Latimer House Guidelines for the Commonwealth on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights to ensure the effective implementation of the Harare Principles, 1998.
- (fff) The Policy Framework for Preventing and Eliminating Corruption and Ensuring the Impartiality of the Judicial System, adopted by the expert group convened by the Centre for the Independence of Judges and Lawyers, February 2000.

At its second meeting held in Bangalore in February 2001, the Judicial Group (comprising Chief Justice Mainur Reza Chowdhury of Bangladesh, Justice Claire L'Heureux Dube of Canada, Chief Justice Reddi of Karnataka State in India, Chief

Justice Upadhyay of Nepal, Chief Justice Uwais of Nigeria, Deputy Chief Justice Langa of South Africa, Chief Justice Silva of Sri Lanka, Chief Justice Samatta of Tanzania, and Chief Justice Odoki of Uganda, meeting under the chairmanship of Judge Weeramantry, with Justice Kirby as rapporteur, and with the participation of the UN Special Rapporteur and Justice Bhagwati, Chairman of the UN Human Rights Committee, representing the UN High Commissioner for Human Rights) proceeding by way of examination of the draft placed before it, identified the core values, formulated the relevant principles, and agreed on the Bangalore Draft Code of Judicial Conduct. The Judicial Group recognized, however, that since the Bangalore Draft had been developed by judges drawn principally from common law countries, it was essential that it be scrutinized by judges of other legal traditions to enable it to assume the status of a duly authenticated international code of judicial conduct.

The Bangalore Draft was widely disseminated among judges of both common law and civil law systems and discussed at several judicial conferences. In June 2002, it was reviewed by the Working Party of the Consultative Council of European Judges (CCJE-GT), comprising Vice-President Reissner of the Austrian Association of Judges, Judge Fremr of the High Court in the Czech Republic, President Lacabarats of the Cour d'Appel de Paris in France, Judge Mallmann of the Federal Administrative Court of Germany, Magistrate Sabato of Italy, Judge Virgilijus of the Lithuanian Court of Appeal, Premier Conseiller Wiwinius of the Cour d'Appel of Luxembourg, Juge Conseiller Afonso of the Court of Appeal of Portugal, Justice Ogrizek of the Supreme Court of Slovenia, President Hirschfeldt of the Svea Court of Appeal in Sweden, and Lord Justice Mance of the United Kingdom. On the initiative of the American Bar Association, the Bangalore Draft was translated into the national languages, and reviewed by judges, of the Central and Eastern European countries; in particular, of Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo, Romania, Serbia and Slovakia.

The Bangalore Draft was revised in the light of the comments received from CCJE-GT and others referred to above; Opinion no.1 (2001) of CCJE on standards concerning the independence of the judiciary; the draft Opinion of CCJE on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality; and by reference to more recent codes of judicial conduct including the Guide to Judicial Conduct published by the Council of Chief Justices of Australia in June 2002, the Model Rules of Conduct for Judges of the Baltic States, the Code of Judicial Ethics for Judges of the People's Republic of China, and the Code of Judicial Ethics of the Macedonian Judges Association.

The revised Bangalore Draft was placed before a Round-Table Meeting of Chief Justices (or their representatives) from the civil law system, held in the Peace Palace in The Hague, Netherlands, in November 2002, with Judge Weeramantry presiding. Those participating were Judge Vladimir de Freitas of the Federal Court of Appeal of Brazil, Chief Justice Iva Brozova of the Supreme Court of the Czech Republic, Chief Justice Mohammad Fathy Naguib of the Supreme Constitutional Court of Egypt, Conseillere Christine Chanet of the Cour de Cassation of France, President Genaro David Gongora Pimentel of the Suprema Corte de Justicia de la Nacion of Mexico, President Mario Mangaze of the Supreme Court of Mozambique, President Pim Haak of the Hoge Raad der Nederlanden, Justice Trond Dolva of the Supreme Court of Norway, and Chief Justice Hilario Davide of the Supreme Court of the Philippines.

Also participating in one session were the following Judges of the International Court of Justice: Judge Ranjeva (Madagascar), Judge Herczegh (Hungary), Judge Fleischhauer (Germany), Judge Koroma (Sierra Leone), Judge Higgins (United Kingdom), Judge Rezek (Brazil), Judge Elaraby (Egypt), and Ad-Hoc Judge Frank (USA). The UN Special Rapporteur was in attendance. The "Bangalore Principles of Judicial Conduct" was the product of this meeting.

**APPENDIX VI****Resolution Res(2002)12  
establishing the European Commission  
for the efficiency of justice (CEPEJ)**

*(Adopted by the Committee of Ministers on 18 September 2002  
at the 808th meeting of the Ministers' Deputies)*

The Committee of Ministers under the terms of Articles 15.a and 16 of the Statute of the Council of Europe,

Recognising that the rule of law on which European democracies rest cannot be ensured without fair, efficient and accessible judicial systems;

Acknowledging also that the rule of law principle can be a reality only if citizens can uphold their legal rights and challenge unlawful acts;

Underlining the need to improve inter-state co-operation by, *inter alia*, analysing the results achieved by the different judicial systems, facilitating the implementation of the international legal instruments concerning efficiency and fairness of justice and defining concrete means to improve the functioning of the judicial systems in Europe;

Stressing the need for enhanced communication amongst all those principally concerned with the functioning of justice;

Conscious of the need to make full use of all appropriate information and communication technologies to facilitate access to justice, improve the efficiency and the functioning of the judicial system, reduce the costs of justice and extend the service available to the public;

Bearing in mind the requirements of the European Convention on Human Rights, and in particular its Articles 5, 6, 13 and 14, as well as the relevant provisions of its protocols, the case law of the European Court of Human Rights and the relevant international legal instruments drawn up within the Council of Europe in the area of the efficiency and fairness of justice and the necessity of their proper implementation;

Having regard also to the decisions of the Committee of Ministers concerning the monitoring procedure regarding questions relating to the functioning of the judicial system;

Having regard to the resolutions of the 20th, 22nd, 23rd and 24th Conferences of European Ministers of Justice (Budapest 1996, Chişinău 1999, London 2000, and Moscow 2001 respectively);

Having regard to the report on cost-effective measures taken by states to increase the efficiency of justice, prepared by the European Committee on Legal Co-operation (CDCJ) in consultation with the European Committee on Crime Problems (CDPC);

Recalling the results achieved during the multilateral and bilateral legal co-operation activities carried out by the Council of Europe and its member states and convinced of the need for these results to be properly followed up through concrete legislative or other proposals aiming at improving the functioning of the judicial system;

Taking into account the work carried out by the various bodies of the Council of Europe in the field of the protection and promotion of human rights and the rule of law as regards the proper and efficient functioning of justice, in particular the work of the CDCJ, the CDPC, the Steering Committee on Human Rights (CDDH) and the Consultative Council of European Judges (CCJE);

Taking into account in particular the following principles:

*I. Access to justice and proper and efficient functioning of courts*

*1. Access to justice*

- i. Access to justice shall be guaranteed in all cases concerning the determination of civil rights and obligations or of any criminal charges; legal advice and assistance shall be available when the interests of justice so require.
- ii. To this end, the provisions contained in the relevant Council of Europe international legal instruments referred in Appendix II should, *inter alia*, be taken into account.

*2. Efficiency of judicial proceedings*

- i. All necessary measures shall be taken to comply with Article 6 of the European Convention on Human Rights by affording judicial proceedings within a reasonable time, whilst complying with the other guarantees of a fair trial. Consistent with that, steps should be taken to avoid undue delays in judicial proceedings and to reduce their cost.
- ii. Efficiency of justice shall be guaranteed and, in order to do so, the provisions contained in the relevant Council of Europe international legal instruments referred to in Appendix II should, *inter alia*, be taken into account.
- iii. Provisional, protective or any other urgent measures obtained by simple and rapid procedures should be available in order to provide interim solutions, which, although not final, ensure the effective protection of the rights of the parties or of third persons, as well as the efficiency of judicial proceedings.

*3. Execution of court decisions*

- i. All judicial decisions shall be executed in an effective manner and within a reasonable time-limit.
- ii. Bailiffs, where they exist, or any other execution agents, shall carry out their work according to the law, fairly, impartially, efficiently and transparently.

## II. *The status and role of the legal professionals*

### 1. *Judges*

- i. All necessary measures shall be taken to respect, protect and promote the independence and impartiality of judges and, at the same time, to ensure their efficiency and competence.
- ii. To this end, the provisions contained in the relevant Recommendation referred to in Appendix II should, *inter alia*, be taken into account.

### 2. *Public prosecutors*

- i. All necessary measures shall be taken to protect and promote the status and role of public prosecutors and, at the same time, to ensure their efficiency and competence, in order to enable them to perform their professional duties and responsibilities without unjustified interference.
- ii. To this end, the provisions contained in the relevant Recommendation referred to in Appendix II should, *inter alia*, be taken into account.

### 3. *Lawyers*

- i. All necessary measures shall be taken to allow the freedom of exercise of the profession of lawyer and, at the same time, to ensure lawyers' competence and responsible conduct in judicial proceedings.
- ii. To this end, the provisions contained in the relevant Recommendation referred to in Appendix II should, *inter alia*, be taken into account.

### 4. *Training*

- i. Initial and on-going training is a right and a duty of all those involved in the judicial service and is an essential requirement for justice to fulfil its functions.
- ii. Initial and on-going training of legal professionals shall be guaranteed, in particular by taking into account the relevant Council of Europe international legal instruments referred to in Appendix II.

## III. *Administration of justice and management of courts*

- i. The proper administration of justice and the effective management of courts is an essential condition for the proper functioning of the judicial system and requires, amongst others, adequate budgetary appropriations. Consideration should be given in this respect to the report on cost-effective measures taken by states to increase the efficiency of justice presented by the CDCJ and the CDPC to the 23rd Conference of European Ministers of Justice (London, 2000).

- ii. In order to improve the administration of justice and the management of courts, the provisions contained in the relevant Council of Europe international legal instruments referred to in Appendix II should, *inter alia*, be taken into account.

IV. *Use of information and communication technologies*

- i. The use of information and communication technologies shall be promoted in order to strengthen the efficiency of justice, in particular in order to facilitate access to justice, speed up court proceedings, improve the training of legal professionals, as well as the administration of justice and management of courts.
- ii. To this end, the provisions contained in the relevant Council of Europe international legal instruments referred in Appendix II should, *inter alia*, be taken into account.

Resolve to establish the European Commission for the Efficiency of Justice (CEPEJ) governed by the statute contained in Appendix I hereto. The CEPEJ shall work in close co-operation and co-ordination with the CDCJ.



## **Appendix 1 to Resolution Res(2002)12**

### **Statute of the European Commission for the Efficiency of Justice (CEPEJ)**

#### **Article 1 – Aims**

The aim of the European Commission for the Efficiency of Justice (hereinafter referred to as “the CEPEJ”) is (a) to improve the efficiency and the functioning of the justice system of member states, with a view to ensuring that everyone within their jurisdiction can enforce their legal rights effectively, thereby generating increased confidence of the citizens in the justice system and (b) to enable a better implementation of the international legal instruments of the Council of Europe concerning efficiency and fairness of justice.

#### **Article 2 – Functions**

1. Without prejudice to the competence of other bodies of the Council of Europe and taking into account the work they have already carried out on the subject, the CEPEJ shall encourage and enable member States to co-operate with each other and with participating international institutions concerning specific themes. It shall have the task:

- a.* to examine the results achieved by the different judicial systems in the light of the principles referred to in the preamble to this resolution by using, amongst other things, common statistical criteria and means of evaluation;
- b.* to define problems and areas for possible improvements and to exchange views on the functioning of the judicial systems;
- c.* to identify concrete ways to improve the measuring and functioning of the judicial systems of the member States, having regard to their specific needs;
- d.* to provide assistance to one or more member States, at their request, including assistance in complying with the standards of the Council of Europe;
- e.* to suggest, if appropriate, areas in which the relevant steering committees of the Council of Europe, in particular the European Committee on Legal Co-operation (CDCJ), may, if they consider it necessary, draft new international legal instruments or amendments to existing ones, for adoption by the Committee of Ministers.

2. The CEPEJ shall not be a supervisory or monitoring body.

#### **Article 3 – Working methods**

The CEPEJ shall fulfil its tasks by:

- a.* identifying and developing indicators, collecting and analysing quantitative and qualitative data, and defining measures and means of evaluation;
- b.* drawing up reports, statistics, best practice surveys, guidelines, action plans, opinions and general comments;
- c.* establishing links with research institutes and documentation and study centres;

- d.* inviting to participate in its work, on a case-by-case basis, any qualified person, specialist or non-governmental organisation active in its field of competence and capable of helping it in the fulfilment of its objectives, and holding hearings;
- e.* creating networks of professionals involved in the justice area.

#### **Article 4 – Procedure**

1. The CEPEJ may carry out the functions referred to in Article 2, paragraph 1, sub-paragraphs *a*, *b*, *c* and *e* on its own initiative.
2. The CEPEJ may carry out the functions referred to in Article 2, paragraph 1, sub-paragraph *d*, at the request of one or more member States.
3. The CEPEJ shall supply opinions upon request by the Parliamentary Assembly of the Council of Europe, the European Court of Human Rights, the appropriate Committees of the Council of Europe, in particular the European Committee on Legal Co-operation (CDCJ), the European Committee on Crime Problems (CDPC), the Steering Committee on Human Rights (CDDH) and the Consultative Council of European Judges (CCJE) and the Secretary General.
4. Steering committees of the Council of Europe, in particular the CDCJ, the CDPC and the CDDH, may request the CEPEJ to prepare specific action plans, best practice surveys or guidelines.
5. Any non-member state of the Council of Europe, as well as any international institution, may benefit from the activities of the CEPEJ by making a request to the Committee of Ministers, with a view to obtaining its consent.

#### **Article 5 – Composition of the CEPEJ**

1. The CEPEJ shall be composed of experts who are best able to contribute to its aims and functions, and who have in particular an in-depth knowledge of the administration, functioning and efficiency of civil, criminal and/or administrative justice.
2. Each member State of the Council of Europe shall appoint an expert to the CEPEJ. The travel and subsistence expenses of this expert, as well as of the president of the CEPEJ, are covered by the budget of the Council of Europe. Each member of the CEPEJ may appoint additional experts at its own expense.
3. The presidents of the Parliamentary Assembly and of the European Court of Human Rights, as well as the chairs of the relevant steering committees of the Council of Europe, in particular the CDCJ, or their representatives may participate in the work of the CEPEJ without a right to vote.

## **Article 6 – Observers and participation of the European Community**

1. Observers may be admitted to the CEPEJ under the terms of Resolution (76)3.
2. The participation of the European Community in the CEPEJ shall be governed by the arrangement between the Council of Europe and the European Community concluded on 15 June 1987, as amended by the exchange of letters between the Secretary General of the Council of Europe and the President of the European Commission of 5 November 1996.

Specific modalities of co-operation may be the subject of further agreements.

## **Article 7 – Operation of the CEPEJ**

1. The CEPEJ shall draw up its own rules of procedure.
2. The CEPEJ:
  - a. shall hold at least one plenary meeting a year;
  - b. may decide to set up working parties and to organise, within the available resources, *ad hoc* meetings, whenever necessary; and
  - c. shall decide on the publicity to be given to its activities, taking into account in particular the possibilities offered by new information technologies.
3. The CEPEJ shall be assisted by a secretariat provided by the Secretary General of the Council of Europe.
4. Members of the CEPEJ shall have the right to vote.
5. The CEPEJ shall draw up its draft annual programme of activities for the Secretary General who, as far as overall priorities and resources allow, shall take account of this programme in proposals for the Programme of Activities as a whole.
6. The CEPEJ shall approve its annual activity report, prior to its submission to the Committee of Ministers.
7. The CEPEJ shall publish every year its annual activity report, once approved by the Committee of Ministers.

## **Article 8 – Amendments**

1. The Committee of Ministers may adopt amendments to this statute, to Appendix II and to the principles contained in the preamble to this resolution, by the majority foreseen at Article 20.d of the Statute of the Council of Europe, after consulting the CEPEJ.
2. The CEPEJ may propose amendments to this statute, to Appendix II and to the principles contained in the preamble to this resolution, to the Committee of Ministers, which shall decide by the above-mentioned majority.

## Appendix 2 to Resolution Res(2002)12

### Non-exhaustive list of relevant Council of Europe recommendations<sup>1</sup>

- *Access to justice and proper and efficient functioning of courts*
  - *Access to justice*
    - . Resolution (76) 5 on legal aid in civil, commercial and administrative matters;
    - . Resolution (78) 8 on legal aid and advice;
    - . Recommendation No. R (81) 7 on measures facilitating access to justice;
    - . Recommendation No. R (93)1 on effective access to the law and to justice for the very poor,
    - . Recommendation No. R (98) 1 on family mediation;
    - . Recommendation No. R (99) 19 concerning mediation in penal matters;
    - . Recommendation Rec(2001)9 on alternatives to litigation between administrative authorities and private parties.
  - *Efficiency of judicial proceedings*
    - . Recommendation No. R (84) 5 on the principles of civil procedure designed to improve the functioning of justice;
    - . Recommendation No. R(86)12 concerning measures to prevent and reduce the excessive workload of courts;
    - . Recommendation No. R (87) 8 concerning the simplification of criminal justice;
    - . Recommendation No. R (95) 5 concerning the introduction and improvement of the functioning of appeal systems and procedures in civil and commercial cases.
- *The status and role of the legal professionals*
  - *Judges*
    - . Recommendation No. R (94) 12 on the independence, efficiency and role of judges
  - *Public prosecutors*
    - . Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system
  - *Lawyers*
    - . Recommendation Rec(2000)21 on the freedom of exercise of the profession of lawyer

<sup>1</sup> See [www.legal.coe.int](http://www.legal.coe.int). For a list of treaties of the Council of Europe, see <http://conventions.coe.int>

- Training
  - . Recommendation No. R (94) 12 on the independence, efficiency and role of judges;
  - . Recommendation Rec(2000)19 on the role of public prosecution in the criminal justice system;
  - . Recommendation Rec(2000)21 on the freedom of exercise of the profession of lawyer.
- *Administration of justice and management of courts*
  - . Recommendation No. R (87) 18 on the simplification of criminal justice;
  - . Recommendation No. R (95) 12 on the management of criminal justice;
  - . Recommendation Rec(2001)2 concerning the design and re-design of court systems and legal information systems in a cost effective manner;
  - . Recommendation Rec(2001)3 on the delivery of court and other legal services to the citizen through the use of new technologies.
- *Use of information and communication technologies*
  - . Recommendation Rec(2001)2 concerning the design and re-design of court systems and legal information systems in a cost effective manner;
  - . Recommendation Rec(2001)3 on the delivery of court and other legal services to the citizen through the use of new technologies.