ANSWERS OF AUSTRIA

Rules for ethical conduct of judges, their application and observance

A. General Aspects

1. Are there any ethical rules/rules of conduct for judges/magistrates explicitly expressed in the law?

X Yes  O No

If your answer is positive, are these rules made in the shape of

O a catalogue  X a general wording  O both

Quote some examples:

A judge has to devote himself to his/her duties with all his/her strength, with conscientiousness, impartiality and unselfishness. A judge has to finish his/her cases as quickly as possible. He/She has to avoid everything which might affect the trust in his/her impartiality be it by his extra-judicial activities, be it within the office. He/She should not harm the respect for the office and social position of judges. He/She has to respect confidentiality. He/She is forbidden to be member of an executive or supervising board of an enterprise. Extrajudicial activities which might conflict with impartiality of which might influence the possibility of the judge to handle his/her workload are forbidden

2. Are there ethical rules for judges/magistrates outside the law (e.g. in a code of ethics, code of conduct etc.)?

O Yes   X No

3. Who did elaborate and enact/make the “code”?

there is no code see 2.)

4. If you have both a code of ethics and legally fixed ethical rules for judges/magistrates in what way do they complement one another?

there is no code see 2.)

5. If you don’t have any code of ethics, are there plans in your country to introduce one?

O Yes  O No.  There is a discussion within the Austrian Association of Judges whether such a code should be elaborated or not

B. Contents

6. Does your code of ethics include the following principles/aspects:¹  there is no code see 2.)

a) Independence O Yes  O No  X  No, but should

b) Impartiality in general O Yes  O No  X  No, but should

c) Impartiality and conduct of judges in the exercise of their judicial functions O Yes  O No  X  No, but should

d) Impartiality and extra-judicial conduct of judges O Yes  O No  X  No, but should

e) Impartiality and other professional activities of judges
   O Yes O No X No, but should
f) Impartiality and the media
   O Yes O No X No, but should
g) Party politics and judges
   O Yes O No X No, but should
h) Propriety
   O Yes O No X No, but should
i) Equality
   O Yes O No X No, but should
j) Competence
   O Yes O No X No, but should
k) Diligence
   O Yes O No X No, but should
l) Others:
   C. Violation of the Code of Ethics

7. What happens if a judge/magistrate violates a duty explicitly stated in a provision of law?
   There might be a disciplinary procedure

8. What happens if a judge violates a duty stated in the Code of Ethics?
   there is no code see 2.)

9. Is there any influence of the Code of Ethics on a disciplinary procedure?
   There is no code see 2.)

10. Are violations of the Code of Ethics made public?
    O Yes O No
    there is no code see 2.) ; disciplinary procedures and their results are not made public

D. Judicial Ethics

11. Is judicial ethics an issue among the judiciary? Why? Why not?
    Yes it is. They Austrian Association of Judges started to organize seminars on this issue. It is seen as the other side of the coin of independence and the project to enlarge this independence from the other powers of the state.

12. Is judicial ethics an issue in the public? Why? Why not?
    No it is not. If there is a problem with a judge it is always a disciplinary sanction if not even a criminal procedure against this judge, which the public is pleading for.

E. Analysis

13. Do you consider a code of ethics an useful institution for the judiciary? Why? Why no?
    If it is seen not as a catalogue for disciplinary offences but as a guideline for a best DEONTOLOGY, which means a set of ways of behaviour judges should aim at

14. Should the IAJ elaborate and adopt a code of ethics which could serve the national associations as a model? Why? Why not?
    This should be discussed in the meeting in Mexico itself

15. If you have a code of ethics, give some practical hints to those who are willing to introduce one (what should they take care of etc.).
    there is no code see 2.)

16. Other remarks on the topic:
    None

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