Rules for ethical conduct of judges, their application and observance

REPORT FROM JAPAN

A. General Aspects

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

There are no such ethical rules/rules of conduct for judges expressed in an independent law, but the provisions on restriction of dual employment, obligation of secrecy, etc., are included in the Constitution, the Court Organization Law, and other laws.

- Article 49 of the Court Organization Law:
  “When a judge has swerved from his or her duty, neglected his or her duty, or degraded himself or herself,” he or she shall be subjected to disciplinary punishment by decisions.

- Article 2 of the Law of Impeachment of Judges
  A judge is liable to be removed from his or her position on being impeached and convicted for “conduct in grave contraventions of official duties or grave neglect of official duties” or “other misconducts seriously affecting the integrity of a judge.”

- Public Service Disciplines
  A judge “shall value a sense of honor and shall not conduct corrupt practices” (the first sentence of Article 3), and “shall not receive gifts from others in relation to his or her duty, directly or indirectly, as reward, gratuity, or any other title” (Article 8, para. 1).

- Penal Code
  In addition to the provisions on bribery of Articles 197 and 198, it is also provided that a person performing or assisting in judicial functions who “abuses his or her authority and arrests or imprisons another” shall be punished for “abuse of authority by a special public officer” (Article 194).

National public service officials in general shall be subject to the National Public Service Ethics Law that is designed to “deter activities that create suspicion or distrust against the fairness of performance of duties among the people.” This law shall not apply to judges who have maintained high ethical standards over many years of conduct, but the code of ethics set forth in the said law shall also be respected in the relationship between judges and the parties to lawsuits.

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

No

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

No

B. Contents

(Not applicable due to lack of code of ethics)
C. Violation of the Code of Ethics

7. What happens if a judge/magistrate violates a duty explicitly stated in a provision of law?

As mentioned in A. 1, a judge who has violated a duty shall be subjected to the disciplinary procedures or impeachment procedures. In the case of the former, in accordance with the provisions of the Law on Disciplinary Actions against Judges, the Supreme Court or a high court shall, through judicial proceedings, caution or impose non-penal fines not exceeding 10,000 yen on the judge. In the case of the latter, in accordance with the Law of Impeachment of Judges, if a judge commits conduct in grave contraventions or neglect of official duties or other misconducts seriously affecting the integrity of a judge, the judge shall be removed from his or her position. The Court of Impeachment shall consist of 14 Diet members, 7 elected from the House of Representatives and 7 from the House of Councillors. If the Court of Impeachment passes a verdict enabling dismissal, the judge in question naturally shall lose his or her position.

8. What happens if a judge violates a duty stated in the Code of Ethics?

(Not applicable due to lack of code of ethics)

9. Is there any influence of the Code of Ethics on a disciplinary procedure?

(Not applicable due to lack of code of ethics)

10. Are violations of the Code of Ethics made public?

(Not applicable due to lack of code of ethics)

D. Judicial Ethics

11. Is judicial ethics an issue among the judiciary? Why? Why not?

It is not an issue among the judiciary.

Japanese judges have a strong will to perform their duties independently from the legislature, the administration, and any other parties, because of their status guaranteed under the Constitution, the independence of the judiciary is secured satisfactorily. In Japan, “cleanness” has been maintained as a tradition of the judiciary, and there have been almost no corruption cases in which judges are involved. For these reasons, judicial ethics is currently not an issue of the judiciary.

12. Is judicial ethics an issue in the public? Why? Why not?

It is not an issue that concerns the public (in the course of the ongoing judicial reforms, there is no argument that measures should be taken to deal with this issue), for the same reasons as mentioned in 11.

E. Analysis

13. Do you consider a code of ethics an useful institution for the judiciary? Why? Why no?

It is difficult to judge the usefulness of a code of ethics for the judiciary because we do not have an independent code of ethics in Japan.

Judicial ethics have been maintained appropriately and have not become an issue in Japan (as mentioned in 11 and 12), not because of the existence of legal provisions mentioned in A. 1, but because of the fact that a good tradition has been established within the judiciary, and individual judges, proud of such tradition, maintain extremely strict self-discipline while cautioning themselves not to disgrace it or training one another.
14. Should the IAJ elaborate and adopt a code of ethics which could serve the national associations as a model? Why? Why not?

Considering the extreme importance of the establishment of judicial ethics, it is worth noting the proposal of the IAJ to establish a code of ethics as a model.

However, attention should be given to the fact that judicial systems differ greatly depending on the country with respect to the judicial proceedings and the historical backgrounds. It would be difficult to actually establish such a code.

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.).

(Not applicable due to lack of code of ethics)