Questionnaire
Rules for ethical conduct of judges, their application and observance
(2004)

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:
   They may indirectly be derived from the penal law (do not accept bribes) and the oath:
   honesty, accuracy, impartiality, neutrality, respecting confidentiality and secrecy etc.

2. Are there ethical rules for judges/magistrates outside the law (e.g in a code of ethics, code of conduct etc.)?
   X Yes O No
   How is this "code" called? Judicial impartiality Guidelines from March 2004

3. Who did elaborate and enact/make the "code"?
   Our Association of Judges together with the general assembly of court presidents,
   supported in the final stadium by the High Council of Justice and the Supreme Court

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?
   General values and what are judicial crimes may be derived from penal law and oath,
   while the Guidelines elaborate in more detail the impartiality issue, especially the
   question when a (deputy) judge should withdraw from a case because of involvement in
   it of: family members, acquaintances, former colleagues, former clients etc of the judge
   and also because of (additional) appointments of the (deputy) judge or his close
   relatives

5. If you don’t have any code of ethics, are there plans in your country to introduce one?
   X Yes O No. The minister of Justice proposed in February 2004 according to wishes of
   the parliament a law which obliges ethical codes for all governmental staff and it is hard
   to imagine how such an obligation is to be fulfilled for courts’ staff under the
   responsibility of the boards of the courts without implications for, i.e. extensions to
   judges. Once there is such a code, it should in more or less detail deal with issues,
   mentioned in question 6; if I choose there to answer “No and should not”, it will be
   because at the moment the mentioned value is not an issue. My preference for a list of
   values as in h through l is a personal one.

B. Contents
6. Does your code of ethics include the following principles/aspects (1):
   a) Independence
      O Yes O No X No, but should
   b) Impartiality in general
      X Yes O No O 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
      X Yes O No O No, but should
   e) Impartiality and other professional activities of judges
      X Yes O No O No, but should
   f) Impartiality and the media
      O Yes O No O No, but should
   g) Party politics and judges
      O Yes O No O No, but should
   h) Propriety
      O Yes O No X No, but should
   i) Equality
      O Yes O No X No, but should
   k) Competence
      O Yes O No X No, but should
   l) Diligence
      O Yes O No X No, but should
   m) Others: Impartiality and former functions; impartiality and former cases with the
      same parties
      O Yes O No O No, but should

   In case your answer is "yes", please give some examples: See the Guidelines; political
   activity may for constitutional reasons be forbidden explicitly by a statute only.

C. Violation of the Code of Ethics

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

In case of bankruptcy or corruption and other crimes: dismissal

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

The president may find a complaint well-founded and give a reprimand or even warning,
   while the Supreme Court may fire the judge

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

It takes away at least narrows the margin of appreciation of what is (un)ethical but is not
   written down. But keep in mind that the Guidelines only deal with impartiality and
   contain no sanctions

10. Are violations of the Code of Ethics made public?
    O Yes X No
This means that of course complainants hear what is the result, but don’t use to take them to the press and that further on the courts and the High Council publicise annually (a.o. on the website rechtspraak.nl) an overall-view of the nature and number of complaints and requests to substitute a judge and how was dealt with these. Besides, the monthly of the judiciary has each month a commentary on an exemplified and anonimised report on a certain complaint in one of the courts.

D. Judicial Ethics

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

For trainee judges a course on it – which I happen to give – is obligatory; for elder judges it may be a case which they deal with at the coffee-counter or – more generally - at court-conferences. The committee that conceived the aforementioned Guidelines, when starting its work, advised the courts to install a permanent commission of judges to reflect on ethical issues; in my court it seemed to be sensible, to compose it out of both judges and staff to whom much judicial work and thus ethical considerations are delegated. Another court has a commission of judges to advise colleagues in advance how to behave.

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

Traditionally the main worry of the public opinion in our country is that the judge is member of an (formerly noble, now academic) elite: does he understand the working class, the immigrants ?

Mostly when our ethics become an issue in the media or are raised by an activist nowadays, it is because of an incident; the Guidelines were on the front pages during one day. Nonetheless it may more systematically raise public interest because ethics of all professionals (recently accountants and notaries) are more and more under public discussion in our country.

E. Analysis

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

Especially when the judiciary is growing rapidly (as in our country), it may make sense to elaborate a written code as a helpful means of sharing traditions with younger generations. A code also may help to raise discussions amongst professionals. Insofar, it is useful to make a code, but do we need to have it ? An American once said: a code is nothing, coding is everything. A code disfunctions when it stands in the way of constant reconsideration and development of new values or standards or when it is used to wave aside critics or only to build up a serious image.

From a viewpoint of transparency and social acceptance of our values and rules of behaviour however, publicising the results of the making of a code, i.e. a readable code seems unavoidable to save public trust in professionals, in casu the judiciary. It seems also important to have our traditions ahead and keeping the lead in discussions which otherwise would be dominated by incidental anxieties of politicians and mass media. It may also teach the public why e.g. a judge is so unfriendly not to want to hear him without the opponent involved.
Besides, the obligation for all governmental institutions to develop a code for its staff, which the legislator wants to introduce, will leave the judiciary no alternative. This does not necessarily mean that sanctions will have to be a part of the code, although this is what media and public seem to be most interested in.

14. Should the IAJ elaborate and adopt a code of ethics which could serve the national associations as a model? Why? Why not?

This necessarily will be a minimum code, as is the Dutch Guidelines mentioned before. The global discussion about the battle against corruption amongst judges in which I took a part as president of the working group which prepared the 2001 IAJ-resolution on the subject however, showed how much judges all over the world differ in opinion: not about the values at stake, but about the rules to maintain them, and the weapons to combat trespassing.

A very complete model should not be widely publicized, because it might raise unnecessary questions to national judiciaries about why they did not embody the whole model in their national code, which on the contrary should try to meet the specific national needs, as they are influenced by both judicial tradition and social and cultural accents in each country.

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.).

The Dutch commission started with a concept of hard and fast rules, which gave specific and concrete do’and don’ts (mentioning the exact grade of relationship and kinship with a party in a process, which forbade acting as a judge), although still without sanctions; after several rounds of discussions with judges especially, what rested in our Guidelines show to be points of orientation, summing up in a more general way ethical values ("basic principles") and issues to keep in mind. Will this experience show to be unique because of the uniqueness of the Dutch polder model?

16. Other remarks on the topic

The focus should be the substance of values and our ethics; the danger is that the mass media and parts of the public are really much more or even only interested in disciplinary procedures and sanctions. We can’t keep our ethics against our breast on one hand, but should act diligently in dealing with complaints against judges and their staff on the other hand; the disciplinary procedures should stay confidential to prevent unnecessary mistrust, originated by querulants, but unethical behaviour and sanctions should be publicised, preferentially anonimised. The public, mass media and politicians should realise that public trust in the judiciary is their common interest: because it arrives by foot and leaves on horseback, it should not leniently be put to danger. Judges and their staff should keep that in mind even more so.

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