R.O.C. (Taiwan)

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? Yes

If your answer is positive, are these rules made in the shape of
O a catalogue O a general wording O both

Quote some examples:
The Constitution of Republic of China (Taiwan) Article 80 states that “judges shall be above partisanship and shall, in accordance with law and free from any interference, hold trials independently.”

……………………

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

How is this "code" called? … The Guidance for Judges’ Conduct…………………………

3. Who did elaborate and enact/make the "code"?
The Association of Judges?
The High Council of Justice?
The Supreme Court?
Parliament?
Government?
●Others?
The Judicial Yuan, the highest judicial administrative authority in Taiwan, promulgates that code. The Judicial Yuan is not a judicial organ because it has no trial power under Taiwan’s current judiciary practices despite the Article 77 of Constitution explicitly reads that “The Judicial Yuan shall be the highest judicial organ of the State in charge of the trial of civil, criminal, and administrative cases, and imposition of disciplinary measures against public functionaries.”

If you have both a code of ethics and legally fixed ethical rules for judges/magistrates in what way do they complement one another?
Article 80 of Constitution indicates the general concept of the judges’ legal obligation; on the contrary, the ethics for judges is more elaborated. The Article 80 of Constitution is interpreted to resist undue influence coming from outside; the ethics for judges is used to evaluate the working quality of each individual judge.

5. If you don’t have any code of ethics, are there plans in your country to introduce one?
No.

B. Contents

6. Does your code of ethics include the following principles/aspects (1):
   a) Independence
      Yes

   b) Impartiality in general
      Yes

   c) Impartiality and conduct of judges in the exercise of their judicial functions
      Yes

   d) Impartiality and extra-judicial conduct of judges
      Yes

   e) Impartiality and other professional activities of judges
      Yes

   f) Impartiality and the media
      No

   g) Party politics and judges
      Yes

   h) Propriety
      Yes

   i) Equality
      Yes

   k) Competence
      Yes
l) Diligence
Yes

m) Others:

In case your answer is "yes", please give some examples.

a) Judges shall behavior themselves in diligence, maintaining good moral character, avoiding inappropriate or may be deemed as inappropriate conduct.

b) Judges shall not participate any political activity or other activities, which are not compatible with the judiciary career.

C. Violation of the Code of Ethics

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

The Constitution Article 80 is interpreted in the way to protect the judges from the undue influence caused by politics or lobby. It has never been used to go against the judges.

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

He will probably subject to professional disciplinary sanctions.

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

The content provides more accurate and concrete standards evaluating the appropriateness of judges’ conduct either in the judicial activity or extra-judicial activity.

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

Yes

D. Judicial Ethics

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

Yes, the judiciary in Taiwan is trying to articulate clear standards excluding those judges who conduct their job in poor performance. However, no judge has been removed from the office because of the violation of judicial ethics so far. The reason is that the Article 81 of the Constitution stipulates “Judges shall hold office for life. No judge shall be removed from office unless is found guilty of a criminal offense, subjected to disciplinary measure, or declared to be under interdiction. No judge shall, except in accordance with law, be suspended or
transferred or have his salary reduced.” Due to the high threshold for the disciplinary measure, no judge has been successfully removed from the office without his consent.

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

Most people do not recognize the importance of the judicial ethics

E. Analysis

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

Yes, it may provide some guidance for the judges’ conduct in case of the omission of legal obligation.

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

The idea is good. However, how can IAJ elaborate a general code of ethics which could serve various countries whose expectations to judges may differ is many aspects?

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.).

16. Other remarks on the topic

A Hot Case in Taiwan involving judicial ethics, politics, conspiracy and due process of law

One month ago, Independent Legislator Su Ying-kuei alleged that Cheng Chung-mo, one of the Grand Justice of Judicial Yuan, and another Grand Justice had called him earlier seeking his support for the Cabinet’s motion launched to override a law.

The law is called “Truth Investigation Statue, TIS”. It was proposed by the opposition parties (KMT & PFP) to investigate the truth about the incumbent President Chen Shui-bian’s mysterious shooting happened on the eve of the Taiwan presidential election day (20 March, 2004). The President Chen and Vice President Liu were both shot at the same time but only slightly injured. The gunman was unbelievably missing right in front of hundreds of secret agents of National Security Agency. The opposition parties strongly doubt that the shooting may be a “fraud show” created by President Chen. So they passed the TIS and nominated the former Judicial Yuan chief head a committee probing the election-eve shooting that injured President Chen Shui-bian.
The ruling party (DPP) argued that TIS was unconstitutional because it violated the human rights protected by the Criminal Procedure Law and filed a suit to the Council of Grand Justice. DPP viewed the TIS as a constitutional monster.

Su refused to produce proof for his accusations of lobbying against the Grand Justices. He has refused to name the two Grand Justices, although his accusations have prompted doubts about the integrity of the Grand Justices. Despite the tremendous pressure for him to name the lobbying Justices, Su said he would not identify those he would call "friends." But he maintained that he was not lying, and if the accusations were false, he would resign.

Su later denied that Cheng had lobbied him on behalf of the Cabinet, saying the Judicial Yuan's vice chief Cheng had only called him to give his "regards." Cheng was a professor of law while Su was the student in the same university.

All Grand justices denied they had acted on the behalf of the government by asking independent lawmakers to help annul the law governing the investigation of the March 19 shooting. They took a rare action to collectively sign a pledge that they did not engage in lobbying for the government when lawmakers recently cast their ballots to create an independent 3-19 shooting truth committee to probe the mysterious attempt on President Chen Shui-bian's life on March 19.

Only Justice Cheng, who concurrently serves as vice president of the Judicial Yuan, has reportedly confirmed that he made phone calls to Su to ask questions about the typhoon disasters and general political developments in Taiwan during his trip to Britain.

One famous judicial NGO (Judicial Reform Foundation) made a statement demanding that Justice Cheng must be removed from the office because of his inappropriate involvement in politics. Now, the Control Yuan, a government organ assigned to impeach high rank government officers, has started to investigate whether Justice Cheng violates any law or regulation.

Another event was that Weng Yueh-sheng, chief of the Judicial Yuan, wrote a private letter to the Speaker of Legislative Yuan (Congress) urging the Legislative Yuan carefully revised the text of TIS during the legislative process. Weng’s purpose was to defend the court from being deprived the inherent rights expressed by the Constitution. Since the DPP has formally asked the Council of Grand Justice to determine the legitimacy of the TIS, Grand Justices Weng and Chen has decided to withdraw themselves from the Panel voluntarily.

So far, all the cases are still pending.