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ETHICS AND INTEGRITY COMMISSION

CODE OF JUDICIAL ETHICS
COMMENTARY

LJUBLJANA, APRIL 2016

Amended and updated version of January 2017

Potnik,

*če prideš na razpotje in zagledaš kažipot
in se moraš odločiti,
naj stopiš na lažjo, že izhojeno pot,
ali na težjo, še neizhojeno pot,*

katero boš izbral?

Boris A. Novak: *Etika težje poti*
(Ethics of a more difficult path)

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INTRODUCTORY NOTE BY THE PRESIDENT OF THE ETHICS AND INTEGRITY COMMISSION

In modern democratic societies, with often unclear or vague regulations and numerous legal voids, the judge, who used to merely passively state the letter of the law, has evolved into a co-creator thereof, into someone who shapes social relations based on his or her values. This, of course, involves considerable responsibility on the part of the person holding the judicial office and requires ethical principles consistent with the development of the role of judge in society.

The aim of this Commentary on the Code of Judicial Ethics is to seek a balance between a judge's independence on the one hand and responsibility, transparency in carrying out judicial duties and enhancing the confidence of the public on the other. Focusing on the preventive and recommendatory nature of ethical principles, the Ethics and Integrity Commission has prepared the commentary based on a positive approach according to which transparency as a guiding principle for judges in performing their judicial duties and in their private and public lives is given top priority. Despite the indisputable rigidity of the social role of judges, the Code, which sets out the most important principles to be followed by each and every judge, is not a list of prohibitions. Indeed it is important that it is not so interpreted, because each and every poorly thought-out prohibition even more firmly establishes a vicious circle of misunderstanding of the judge's role in society. Judges should not be isolated from the society in which they live: the judicial system can work effectively only if we judges remain in touch with reality and understand the environment we inhabit.

So where do the limits of what is admissible lie? The survey of moral and ethical dilemmas faced by Slovenian judges has revealed that the latter often view and resolve potentially contentious situations differently. For example, judges may view a situation as not posing a dilemma, whereas the public may feel differently, tending to take a stricter view. So do such differences of opinion mean that judges should be more reserved when it comes to dealing with turbulent social situations in order to "buy" social peace? Value judgments about whether a particular action is good or bad cannot be generalised, because they depend on specific circumstances – one single nuance can change everything. In addition, ethics and morals, in contrast to the law as a rational discipline, are not established through reason alone, but also have an irrational and emotional component to them. Being a judge is a lonely profession. So, rather than finding answers to all the disputed issues, perhaps it is more important for judges to engage in a tolerant and open discussion to raise the awareness of the dilemmas encountered, listen to different views and indicate possible solutions. The Ethics and Integrity Commission would like to contribute to such a discussion by offering guidelines for resolving dilemmas arising in relation to the performance of judicial office and extrajudicial activities, which are illustrated by specific examples provided in the Commentary.

The principles of judicial ethics offer hope and expectations, but they are far less likely to be

implemented if those for whom they are intended do not know how or are not willing to apply them. The decisive criterion of value in this respect is a human being – a judge. Making judicial decisions is not like solving mathematical equations. A judge has to be independent, impartial, highly qualified, committed to the performance of judicial office, discreet, and considerate of his colleagues and parties to proceedings. A good judge, one who truly knows how to wear his judicial robe and will be able to contribute to enhancing confidence in the judiciary, is all this and more; in performing judicial office, he or she acts bravely and wisely, is able to listen and to hear what is being said, and is committed to fulfilling his or her professional mission. He or she does not only process files, but resolves actual disputes and sees parties to proceedings as human beings. Being a judge is much more than a job – it is a way of life.

Ljubljana, April 19 2016

President of the Ethics and Integrity Commission, term of office: 2015–2021
mag. Nina Betetto

THE SIGNIFICANCE AND A BRIEF HISTORY OF THE CODE OF JUDICIAL ETHICS

The significance of codifying judicial ethics

A judge takes office on the day he¹ takes the following oath before the President of the National Assembly: "I swear to carry out the duties of judicial office in accordance with the Constitution and the law, and to pass judgements according to my conscience and impartially." (Article 23 of the Judicial Service Act; hereinafter: the ZSS).

The fundamental moral principle to be followed by a judge in passing judgments, which has been elevated to the level of a principle of law, is his conscience. However, conscience is not just given to a person but is spontaneously formed through socialisation as an inherent part of becoming an individual, who is therefore intimately (and from the inside) bound by it. The judicial oath of office also includes the judge's undertaking to adhere to the Constitution and the law, thereby ensuring that, in his decision-making, he will enforce the principles of generality, predictability, equality, formalism and all other norms of modern law that ensure the legality and uniformity of the case-law and the enforcement of the rule of law. However, such a legal framework allows relatively wide leeway for a judge to act according to his conscience, bringing a relatively "strong" element of subjectivity into his legal decision-making, which is supposed to be as rational and objective as possible in order to establish a uniform case-law. Any "very specific" moral views of a particular judge (for example, prejudice against the personal characteristics of parties to judicial proceedings) may significantly influence the outcome of the case during the trial either through the judge's decisions regarding important procedural acts or directly through his (final) decision-making on the case. It is impossible to have appropriate control over any such, or indeed any other, moral views of judges that are likely to unduly influence legal decision-making, or to restrict them with legal norms, since the law cannot and should not focus on regulating to such an extent judges' inner feelings and moral beliefs. At this point, JUDICIAL ETHICS² – a set of elementary and prevailing moral norms on how judges should act and behave both in their work and in their private lives in order to fulfil their mission as judges and justify the confidence the public places in the judiciary – comes into play.

The Code of Judicial Ethics establishes rules of professional and private conduct of judges with a view to protecting their independence, impartiality and honesty and the good reputation of the judicial service. Judges are obliged to comply with

1 For simplicity, masculine pronouns are used throughout the text to refer to both male and female judges.

2 Miro Cerar, *Etika sodnika, Javna etika in integriteta: Odgovornost za skupne vrednote* (Ethics of a judge, public ethics and integrity: Responsibility for shared values), Commission for the Prevention of Corruption, Ljubljana, 2002, p. 254, accessed at https://www.kpk-rs.si/upload/datoteke/Zbornik_Javna_etika_in_integriteta_odgovornost_za_skupne_vrednote.pdf %281%29.pdf.

the Code of Judicial Ethics both in the performance of judicial office and outside of it (Article 28č of the Courts Act; hereinafter: the ZS).

If the judiciary as the guarantor of justice, one of the fundamental values of the rule of law, is to successfully discharge its duties, it should enjoy the confidence of the public. Confidence in the judiciary is built, first and foremost, on the level of confidence placed in individual judges, based on their conduct in both their professional and private lives.

The purpose of codifying judicial ethics is therefore multifaceted, and there are several aims to be achieved as a result. Laying down ethical standards is underpinned by a concern for the proper functioning of judicial proceedings and is aimed at ensuring that judges are independent and impartial in the discharge of their duties. It is also based on the need to effectively allocate judicial resources with the aim of allowing judges to devote sufficient time to their fundamental task – adjudicating on actual disputes.³ The aim of writing down ethical principles in the form of a code is to strengthen judges' consciousness of belonging to the profession. The code is intended as guidance for judges to help them deal with ethical dilemmas encountered in their professional and private lives. It is also intended for the general public, as it explains what the public can expect from judges, and, by laying down the ethical principles of the judicial profession, strengthens the confidence of the public in the judiciary and enhances the reputation of the profession.

The confidence of the public is a "fragile thing". If the public does not believe a trial has been fair and neutral, it will have less respect for resulting and subsequent judgments, which in turn undermines the legitimacy of the judiciary. In terms of maintaining public support and respect for the judiciary, it is imperative that judges consistently comply with (both written and generally accepted) ethical standards in their conduct.

A brief history of the Code of Judicial Ethics

There is a widespread perception among Slovenian judges that a judge is a person who is confident, independent, cultured, highly qualified and responsible in the performance of judicial office and does not see himself as merely a bureaucrat who processes files but as a person who makes decisions regarding various issues, problems, rights, duties and wrongdoings of people who are often highly interested in having their case resolved as soon as possible⁴. Only one year after the founding of the Slovenian Association of Judges (hereinafter: the SAJ) on 24 April 1971, Slovenian judges adopted the Code of Judicial Ethics (October 1972), which was at that time the only code of its kind in the former Socialist Federal Republic of Yugoslavia (SFRY) and one of the few documents of its kind in the world. A court of honour was also organised as part of the SAJ.

3 Peter Krug, *Urejanje zunajsodnega dela sodnikov: Etični standardi in njihova uporaba v Združenih državah Amerike* (Regulating judges extrajudicial activity: Ethical standards and their application in the United States of America), *Pravnik Magazine*, 2008, Nos 7–8, pp. 331–362.

4 Svetozar Polič, "Kako smo ustanovili sodniško društvo" (How we founded an association of judges), in *Nasih 40 let* (Our 40 years), Slovenian Association of Judges, Ljubljana, 2011, accessed at http://www.sodnisko-drustvo.si/files/dogodki/40_letnica_ssd/slovensko_sodnisko_drustvo_nasih_40_let_zbornik.pdf.

After Slovenia's independence, a new Code of Judicial Ethics with Commentary was adopted on 8 June 2001 at the general assembly of the SAJ. Although it is binding only on the members of the association, its mission has from the very beginning been much wider. It is also intended for the general public, providing an explanation of what they can expect from judges, and for competent national authorities as an appropriate interpretative standard for formally binding rules regarding judges' independence and responsibility. In this period, the Council for Judicial Ethics of the SAJ adopted several positions⁵.

In April 2014, a survey of the moral and ethical dilemmas faced by judges was conducted among Slovenian judges in cooperation with the Commission for the Prevention of Corruption of the Republic of Slovenia.

On 9 September 2014, the Judicial Council adopted a position recommending that all judges respect the Code of Judicial Ethics of the SAJ. At the same time, it used the principles enshrined in the Code as guidance for its own decision-making on activities that are incompatible with judicial office and for adopting principled positions regarding the ethics and integrity of judges.

Before the adoption of the last Act Amending the ZS (the ZS-L), the Judicial Council adopted several principled positions regarding ethics and integrity based on specific cases. The ZS-L has given the Judicial Council additional powers in the field of judicial ethics and integrity. Under Article 28 of the ZS, the Judicial Council must adopt the Code of Judicial Ethics and appoint the Ethics and Integrity Commission, which is to adopt principled opinions on practices constituting an infringement of the Code of Judicial Ethics, issue recommendations for compliance with the rules of judicial ethics and integrity in accordance with the Code of Judicial Ethics, adopt guidelines in the field of judicial ethics and integrity in accordance with the Code of Judicial Ethics, and, in cooperation with the Judicial Training Centre, be responsible for the education and training of judges in the field of judicial ethics and integrity.

At its 55th session held on 11 June 2015, the Judicial Council adopted the Code of Judicial Ethics. At its 57th and 62nd sessions (held on 3 September 2015 and 19 November 2015 respectively), the Judicial Council appointed five members of the Ethics and Integrity Commission; the first (and constitutive) session of the Ethics and Integrity Commission was held on 15 December 2015.

The Ethics and Integrity Commission adopted the text of the Commentary at its session held on 19 April 2016. The basis and starting point for the Commission's reflections in the present Commentary was the text of the Commentary on the Code of Judicial Ethics of the Slovenian Association of Judges of 2001, which has been incorporated, with the approval of the SAJ, in its entirety (sometimes word for word, sometimes just the key points) into the text of the present Commentary, together with various findings from various national, international and foreign

⁵ See the website of the SAJ, <http://www.sodnisko-drustvo.si/>.

normative and ethical acts and texts in the field of judicial ethics. Accordingly, the Commentary builds on and continues the efforts of the Slovenian judiciary in the field of judicial ethics made to date, while representing the beginning of a new chapter in the professional ethics of Slovenian judges. However, concern for identifying conflicts of interests and raising the awareness of judges about professional ethics does not end with the publication of the Commentary. The Commission will continue to develop guidelines for the ethical conduct of judges, particularly through the assessment of the specific actions of judges and the adoption of principled opinions, and, on the basis of new findings, update and supplement the online version of the Commentary.⁶

6 The Commission's decision adopted at its 9th session held on 29 November 2016.

THE ETHICAL AND LEGAL FRAMEWORK OF THE CODE OF JUDICIAL ETHICS

In the Code, the Judicial Council included values and recommendations regarding the conduct of judges in the performance of judicial duties and in their private lives which have been developed spontaneously and autonomously over a longer period of time among judges in Slovenia and on the international scene (for example the Code of Judicial Ethics of the SAJ, October 1972, the Code of Judicial Ethics with Commentary of the SAJ, June 2001, and the Bangalore Principles of Judicial Conduct).

In so doing, it also complied with the constitutional and legal frameworks of the mission of the judicial profession and the main international guidelines in this field.

The Code strives to put into practice the constitutional foundations of the Republic of Slovenia at the level of the judiciary. Slovenia is a democratic republic (Article 1 of the Constitution of the Republic of Slovenia; hereinafter: the URS) based on the principle of the separation of powers, with the judiciary as an equal and independent branch (Articles 3 and 125 of the URS). The judiciary does not have such power by right, but has been vested with it by the people (Article 3 of the URS) and is therefore bound by the Constitution and laws (Article 125 of the URS). Slovenia is a state of all its citizens (Article 3 of the URS) that respects the fundamental rights and freedoms of all people (Article 5 of the URS) irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status, disability, or any other personal circumstance (Article 14 of the URS).

The Code also gives effect to legislative principles that define the mission of the judicial profession. In the performance of judicial office, a judge is bound by the Constitution and the law. Pursuant to the Constitution, a judge is also bound by the general principles of international law and ratified and published international treaties (Article 3 of the ZS). In applying the law, a judge is independent of any court of higher instance, regardless of whether the latter has already expressed its legal opinion on a specific case (paragraphs 1 and 2 of Article 11 of the ZS). Nobody is allowed to interfere with the independent position of a judge. Within the framework of court management and exercising supervision over the implementation of court management tasks, it is not permitted to interfere with the independent position of a judge in decision-making on cases assigned to him (paragraph 2 of Article 60 of the ZS). In the course of official supervision, it is not permitted to interfere with the independence of a judge in the performance of judicial office (paragraph 2 of Article 79a of the ZSS). In the course of disciplinary proceedings, it is not permitted to interfere with the independence of a judge in the performance of judicial office (paragraph 4 of Article 80 of the ZSS). In the exercise of its powers, the Service for the Supervision of Court Administration may not interfere with the independence of a judge in the performance of the duties of judicial office, with the presumption of innocence, with the secrecy of legal proceedings or with the guarantee of a fair

trial and may not examine case files except in parts relating to the review of court fees and administrative review (paragraph 5 of Article 65a of the ZS). In the exercise of its powers, the ministry responsible for justice may not interfere with the independence of a judge in the performance of the duties of judicial office, with the presumption of innocence, with the secrecy of legal proceedings or with the guarantee of a fair trial (paragraph 3 of Article 67a of the ZS).

A judge should always act as if he were to decide on an indefinite number of cases of the same kind. He must decide on rights and duties and charges independently and impartially and without undue delay (paragraphs 3 and 4 of the ZS).

A judge should always (including when exercising his rights) conduct himself in such a manner as to safeguard the impartiality and independence of adjudication and the reputation and independence of the judiciary. A judge may not obstruct the functioning of a court in order to exercise his own rights. He must perform his duties with full commitment and fulfil his obligations to the best of his abilities (Articles 2 and 37 of the ZSS).

A judge is obliged to keep to himself everything he learns about the parties and their *de jure* and *de facto* relations in the course of performing judicial service and to safeguard the confidentiality of all information to which the public does not have access. A judge may not publicly express himself in advance regarding the *de jure* and *de facto* matters that are the subject of a case on which a final decision has not yet been passed or a case in which any extraordinary legal remedies have been lodged (Article 38 of the ZSS).

A judge may not accept gifts or other benefits in connection with his service. A judge's spouse, other members of the judge's family, his relatives and any other persons living in the same household as the judge may also not accept gifts or other benefits in connection with the judge's service (Article 39 of the ZSS).

A judge may not perform any functions or activities deemed to be incompatible with judicial office pursuant to the Constitution or the law (Article 3 of the ZSS). Judicial office is not compatible with office in other state authorities, in local self-government authorities or in bodies of political parties (Article 133 of the URS). A judge may not perform lawyers' or notaries public's transactions or any commercial or other profit-making activities. A judge may not perform managerial transactions and may not be a member of the board of directors or supervisory board of any company or other legal person involved in profit-making activities (Article 41 of the ZSS). A judge may not undertake any employment or work that might interfere with the performance of his service, that might harm the reputation of the judicial service or that might convey the impression that he lacks impartiality in the performance of his duties. He is, however, allowed to perform pedagogical, scientific, journalistic, research or other similar activities within the legal profession if this does not hinder the performance of his judicial service and provided that he notifies the president of the court in writing and in advance thereof. A judge may not enter into an employment relationship in order to perform

the activities specified in the previous paragraph or other activities that judges may perform in addition to the duties of judicial office (Articles 42 and 43 of the ZSS).

The Code also takes into account the following key international guidelines, *inter alia*, in the field of judicial ethics:

1. the Bangalore Principles of Judicial Conduct, adopted by the Economic and Social Council of the United Nations in 2006;
2. Judicial Ethics – Principles, Values and Qualities, adopted by the European Network of Councils for the Judiciary (ENCJ);
3. the Magna Carta of Judges, adopted by the Consultative Council of European Judges (CCJE) on the occasion of its 10th anniversary during its 11th plenary meeting (Strasbourg, 17–19 November 2010);
4. CCJE Opinions Nos 1, 3, 4, 7, 12, 16 and 18 on judicial independence, judicial ethics, the relations between judges and other representatives of the legal profession, the media and the public, and continuing training for judges;
5. Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe on the independence, efficiency and responsibilities of judges; and
6. the UN Basic Principles on the Independence of the Judiciary, adopted in 1985.

THE CODE WITH COMMENTARY

I. THE CODE

The Code of Judicial Ethics is a record of the most important principles according to which every judge shall behave.

Commentary:

1. The Code contains professional and personal ethical principles presented as values and recommendations aimed at directing the behaviour and conduct of judges both in the performance of their judicial duties and in their private lives. These principles are the result of a spontaneous and autonomous process, one which is ever-present among judges both in Slovenia and on the international scene. Thus the Code is a declarative record of ethical values that are based on the generally held view that it is essential that judges, both individually and collectively, respect the honour and reputation of judicial service and strive to enhance confidence in the judiciary.

2. Ethics, unlike law, belong to the free world, are shaped in freedom and address free individuals.⁷ They come to life only after they have been internalised and autonomously (i.e. without being forced) put into practice by individuals. Ethics (and morals), in contrast to the law as a rational discipline, are not established through reason alone, but involve the whole of one's being and, therefore, also have an irrational and emotional component to them. Ethics are also flexible and (unlike the law) are not locked into specifically defined forms or at least forms that can be defined in advance. This is why value judgments about whether a particular action is good or bad are difficult to generalise, as they depend on the circumstances of a particular case and are mindful of nuances which the law often overlooks as it generalises the behaviour and actions of people. The basic function of ethics, unlike that of the law, is not to bring order to society, but to ensure humanity⁸, i.e. the quality of trials, without which a decision that is legally and formally perfectly correct can turn into its opposite.

3. Given that ethics belong to the free world and are not locked into specifically defined forms, ethical postulates are not covered comprehensively by the Code. Instead, the Code contains only the most important ethical recommendations. Hence judges should comply not only with the Code but also with the generally accepted ethical standards.

7 Jan Zobec, *Sodnikove etične dileme* (Ethical dilemmas faced by a judge), *Podjetje in delo*, 2007, Nos 6–7, pp. 1553–1572.

8 Marijan Pavčnik, *Teorija prava: prispevek k razumevanju prava* (Theory of law: A contribution to understanding law), 2015, pp. 267–271.

4. The Code makes recommendations as to the conduct of judges in performing judicial duties and in their private lives. The Code's principles apply to all judges (Article 28 of the ZS).

5. Although judges are bound by the principles of the Code in performing judicial duties, the purpose of these principles is not to establish a judge's disciplinary, criminal or civil accountability. Non-compliance with or a violation of one of the principles of the Code does not automatically imply a disciplinary offence, civil offence or criminal offence. Furthermore, the principles of the Code cannot be a means of establishing judges' responsibility for decisions taken in judicial proceedings. In view of the constitutional right to an independent and impartial trial, the material aspects of a trial (i.e. findings regarding the merits of the case under judicial consideration) are beyond the system of judicial discipline and fall within the scope of proceedings concerning ordinary and extraordinary legal remedies⁹.

6. The purpose of laying down ethical principles is not to enable parties and their representatives in pending judicial proceedings to refer to these principles in order to gain advantage in such proceedings, but rather to provide the public, members of the legal profession and members of the other two branches of power with a better understanding of the functioning and mission of the judicial branch of power and to inform them of what they can expect from judges and the judiciary.

9 Peter Krug, *Urejanje zunajsodnega dela sodnikov: Etični standardi in njihova uporaba v Združenih državah Amerike* (Regulating judges' extrajudicial activity: Ethical standards and their application in the United States of America), *Pravnik Magazine*, 2008, Nos 7–8, pp. 331–362.

II. INDEPENDENCE

A judge shall maintain and protect his independence and the independence of the judiciary and shall not allow any encroachment that could compromise the independent performance of judicial office.

Commentary:

1. The independence (Principle II of the Code) and impartiality (Principle III of the Code) of the judiciary/judges are fundamental prerequisites for the existence of democracy, the protection of human rights and the freedom of every individual, the functioning of the rule of law, the attainment of the ideal of a fair trial, and the regulated operation of the economic foundation of society. These two principles are inseparably linked and are interdependent; they complement each other as regards the aforementioned goals and overlap with each other in certain respects. A judge who is not independent cannot be impartial, though this does not imply that one who is independent is necessarily impartial.

A brief history of judicial independence

2. Judicial independence has developed together with the principle of the separation of powers and is the result of a cyclic interaction of national legal systems and international legal efforts to establish the rule of law based on that principle.

3. As early as in ancient Greece and Rome, philosophers such as Cicero, Aristotle and Plato believed that absolute power should be limited and divided among various holders.¹⁰ An important step in this direction was Magna Carta Libertatum, a charter that was signed in 1215 as a result of political compromise between the King of England and members of the nobility and which granted certain rights to nobles, thereby limiting the – formerly absolute – power of the king. The charter was the first document to prohibit encroachment on the rights of free individuals without a lawful judgment; it also provided that access to justice would not be denied or delayed. Within this framework, the idea of the separation of powers and judicial independence came into being after the English Revolution of 1688 (the Bill of Rights was signed in 1689) and in the context of English political philosophy (especially that of John Locke, 1632–1704) and French Enlightenment philosophy (especially that of Charles de Montesquieu, 1689–1755). It was Montesquieu who first suggested the division of government power into three branches – the legislative, the executive and the judicial, arguing that legislative, executive and judicial powers should not be exercised by one person or state body and that each branch of government could limit the power of the others.¹¹ The

¹⁰ Lovro Šturm, *Omejitve oblasti, ustavna izhodišča javnega prava* (Limits of power: Constitutional premises underlying public law), *Nova Revija* (1998), pp. 11–14.

¹¹ Marko Novak, *Delitev oblasti, Medigra prava in politike* (The separation of powers: An interplay of law and politics), Cankarjeva založba, 2003, pp. 92–97.

principle of the separation of powers was formally declared for the first time in the Constitution of the United States of America in 1787 and later in the French Declaration of the Rights of Man and of the Citizen of 1789, which asserted that a society that had not enforced the principle of the separation of powers did not have a genuine constitution and was not a free society, and the French Constitution of 1791 and other constitutions of bourgeois states. The first legal concept of judicial independence, however, formally came into being with the enactment of the Act of Settlement in 1701. This statute formally recognised the principle of judicial independence in England, established the security of judicial tenure and defined grounds for removing a judge from office.

4. The process of enforcing the principles of the separation of powers and judicial independence spread from England to the international arena as the two principles began to be included in various international documents, in turn influencing national legal systems. Today the right to an independent tribunal is expressly guaranteed in, *inter alia*, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention for the Protection of Human rights and Fundamental Freedoms, and the Treaty establishing a Constitution for Europe. Important factors that establish and develop the culture of judicial independence in individual countries today are the case-law of the ECtHR and of the Court of Justice of the European Union and other non-binding documents of international (intergovernmental and non-governmental) bodies and organisations (such as the Consultative Council of European Judges, the Committee of Ministers of the Council of Europe, the European Network of Councils for the Judiciary, the Economic and Social Council of the United Nations, the International Association of Judges, and the International Association of Judicial Independence and World Peace).

The concept of judicial independence

5. Judicial independence means that a judge is independent of any influence or supervision not provided for by law. In making judicial decisions, a judge should be independent of any unauthorised external influence that is likely to hinder the proper consideration of legal positions or the ensuring of consistency in the application of the law or the safeguarding of the principle of equality before it. Judicial independence means, at a minimum, that, in deciding on a specific case, a judge is bound by the law and his conscience and is free of any external influence.¹² However, an independent judge is not bound by all laws, but is free to judge whether a particular law is constitutionally compliant or whether it can be interpreted in a constitutionally compliant manner¹³.

6. Judicial independence can therefore not be absolute, since a judge is not authorised, in the name of independence, to decide on cases according to whim, but is bound by the law, the Constitution and his conscience. Furthermore, the independence of judges is not a privilege of the judicial branch of power, but the right of citizens to have any decision regarding their rights made

12 Konrad Plauštajner, *Pravica do neodvisnega sodnika* (The right to an independent judge), *Podjetje in delo*, 1994, Nos 5–6, pp. 837–845.

13 Marijan Pavčnik, *Neodvisnost sodnikov* (The independence of judges), *Odvetnik*, 2014, No. 68.

without undue delay and independently of the legislative and executive branches and other influences by an independent and impartial court constituted by law.¹⁴ Judicial independence is thus a responsibility imposed on judges in order to allow them to make judicial decisions fairly and impartially and on the basis of the law and the evaluation of evidence, without external pressure or influence and indeed without fear of any interference.

7. The independence of the judiciary/judges has several aspects and can be defined in various ways. These definitions overlap and complement each other. A judge's duty is to support all aspects of independence.

8. Institutional (collective) independence is the independence of the judiciary as a whole; it guarantees the judiciary, as one of the branches of power, independence from other entities, in particular the other two branches of power, and is the prerequisite for the independence of each individual judge (individual independence). Its essence is enshrined in the highest source of law (i.e. the Constitution) by means of various institutions and rights, in particular the principle of the separation of powers (Article 3 of the URS); the right to a fair and impartial trial (Article 23 of the URS); the guarantee that the jurisdiction of courts may only be determined by law and the prohibition of the establishment of *ad hoc* (extraordinary) courts (Article 126 of the URS), which prevents the powers of the judiciary from being reduced by being transferred to other bodies which are subject to daily politics; the establishment of the Judicial Council, which as an independent body of a constitutional nature defends judicial independence (Article 131 of the URS); the incompatibility of judicial office with offices in other state authorities, in local self-government authorities and in bodies of political parties (Article 133 of the URS); and the prohibition of the retroactive effect of legal acts (Article 155 of the URS), which ensures that the other two branches of power cannot interfere with court decisions by subsequently amending legal regulations.

9. At the level of legislation, it is provided for in the form of the following principles and provisions: the duty of any person or entity (natural and legal persons, state bodies and courts) to comply with final court decisions, the enforcement of which may not be prevented by other state bodies (Article 2 of the ZS); the constitutional right to a lawful (natural) judge (Articles 14–17b of the ZS), which guarantees that a particular case is assigned to a judge who is selected in accordance with predetermined rules; and the provisions guaranteeing that key decisions regarding the functioning of the judicial branch of power, in particular those relating to the position of judges, are adopted by judges themselves or that judges have a significant influence on the adoption of such decisions (for example the provision of Article 28 of the ZS on the powers of the Judicial Council and the provisions on the powers of personnel councils and persons responsible for court management).

10. Individual independence is the independence of a judge in a dispute-resolution process and

14 The Constitutional Court of the Republic of Slovenia; see for example its Decisions Nos U-I-60/06, U-I-214/06 and U-I228/06.

is further divided into substantive (functional) and organisational (personal) independence. This aspect of independence is also enshrined in the Constitution and provided for by legislative provisions.

11. Substantive independence means that no one may interfere with any of the aspects of a judge's decision-making – not its substantive (decision-making), procedural (conduct of proceedings) nor administrative aspects (the drafting of court decisions, judicial documents, etc.). It means that a judge is free of any instructions in making judicial decisions and encompasses independence from the legislative and executive branches, independence from those responsible for court management and justice administration, and independence from society (the media, public opinion, particular interest groups, etc.). It is guaranteed by Article 125 of the URS and provided for in Article 3 of the ZS, which stipulates that, in exercising their judicial office, judges are bound by the Constitution and the law, the general principles of international law, and ratified and published treaties. Accordingly, no one may interfere with the independent position of a judge in making decisions on and handling cases assigned to him. The substantive independence of a judge is subject only to the principles of constitutionality and legality. In their decision-making, judges should comply with the applicable constitutional and statutory law and the generally accepted legal principles, such as the principles of equity and humanity. This defines the mandatory normative boundaries to be respected by every judge.

12. On the other hand, organisational independence means that a judicial term of office and the conditions of judicial service are secured, so as to ensure that a judge makes decisions free from any pressures or restrictions.¹⁵ Of particular importance in this regard is that the appointment of judges is not a political process; that judges enjoy substantive and procedural immunity in the performance of their judicial office (Article 134 of the URS); that they are guaranteed appropriate remuneration for their work¹⁶; that they are elected to a permanent term of office and that there are safeguards against them being transferred during their terms of office (Articles 129 and 132 of the URS); and that their decisions may be revised only by higher courts.

13. In addition to its institutional and individual aspects, judicial independence can also be defined as internal and external. The external independence of the judiciary and judges means independence from external influence, in particular from political elites, political will, economic interests and various other (unauthorised) social impacts on adjudication. The internal independence of the judiciary means the independence of a judge from his judicial colleagues and superiors; it transcends both substantive and organisational independence. This type of independence prevents anyone operating within the judiciary from influencing judges in their decision-making and conduct of proceedings. It applies to the relationship of those responsible for court management with a particular judge (paragraph 2 of Article 60 of the ZS) and with holders of other branches of power who also have certain responsibilities regarding court management (paragraph 5 of Article 65a and

15 Marijan Pavčnik, *Neodvisnost sodnikov* (The independence of judges), *Odvetnik*, 2014, No. 68., p. 10.

16 The Constitutional Court of the Republic of Slovenia; see its Decision No. U-I-60/06.

paragraph 3 of Article 67a of the ZS) and to the relationship between courts of first and second instance with regard to the application of the law (paragraph 2 of Article 11 of the ZS).

Independence as an ethical value

14. Judges should do everything in their power to uphold judicial independence at both the institutional and individual levels. However, judicial independence is not just a matter of institutional and individual (i.e. systemic) regulation, but, and to an equal extent, also a matter of the state of mind of each individual judge. It is, in short, a matter of judges' ethical attitude to their mission. This is a personal quality, one which a judge should continue to nurture, cultivate, constantly monitor and control. Accordingly, he should be aware that in some cases it will take professional courage for him to make decisions that will not have public support, while in other cases he will be required to invest considerable effort in testing the limits of the law in the quest for a just decision.

15. In defending his own independence and the independence of the judiciary, a judge should, in particular, maintain and uphold the high standards of the judicial profession. A judge's professional and personal reputation is a guarantee of the public's confidence in the independence of the judiciary, and the public's confidence (in addition to constitutional and legislative guarantees) is in turn the foundation of the legitimacy of the judiciary. The legitimacy of the judiciary is not based on the democratically expressed will of the people, but on its independence, on how convincing its judgments are, on its high level of expertise and on its ethical integrity. Since a judge is a holder of judicial power, the public's confidence and the legitimacy of the judiciary depend on who the person who has been entrusted with the task of making decisions that directly affect the lives of individuals is¹⁷.

16. In order for a judge to maintain and uphold the individual and institutional independence of the judiciary, he should be aware that, as a holder of state power, he should act in accordance with the responsibilities such a position implies and as is expected of the most responsible of the state's citizens. A judge should thus fulfil his professional mission with care, conscientiously, diligently and with professional competence. With impeccable behaviour, which he ensures by controlling his actions, by being an upright, polite and intellectually honest person, and by preserving the personal dignity of all people, he should ensure compliance with ethical principles.

17. A judge should be able to perform judicial duties independently of any external influence, whether social, economic or political, from the media or public opinion, etc. He should exercise judicial power on the basis of his assessment of the facts and evidence and in accordance with his conscience, the law and the Constitution, allowing no interference with his independence.

¹⁷ Jan Zobec, *Mehki trebuh slovenskega sodstva* (The soft underbelly of the Slovenian judiciary), *Delo*, 8 December 2012. See also CCJE Opinion No. 18 on the position of the judiciary and its relation with other state powers.

18. A judge must pay no regard to whether the law that he has to apply in a particular case enjoys public support or not or to whether the parties to particular proceedings are popular with the public, the media, state employees, or indeed the judge's relatives and friends. A judge's exercising of judicial power may not be undermined by biased interests, public demonstrations or fear of being criticised. As a man of principle, he should immediately reject any attempt (whether by politicians, officials or the media or by friends and family) to influence his decision-making.

19. Independence and impartiality, however, do not require a judge to isolate himself from society and contain his private life within the limits of his home and family and a small circle of friends.¹⁸ Far from being separated from society, in complying with his mission, a judge should be closely linked to it. He should live, breathe and think with society and be a part of social developments; living in an ivory tower, isolated from people, relationships and social developments, does not make a good judge.

20. In modern, pluralist societies, the judge's role is becoming ever more comprehensive and demanding. There is, in other words, an increasing "juridification" of social relations, i.e. an increasing degree to which social relations are being regulated by formal legal rules, increasing and often substantively changing the scope of the legal system. The tremendous scope of general legal acts can result in their lack of transparency and in solutions that are often poorly or even not at all thought-through and which attempt to regulate relations that should be outside the scope of legal norms.¹⁹ As a result of these social developments, the corrective role of the judiciary and its role in creating the law are becoming ever wider. A judge is often expected to not only resolve a dispute, but take a position regarding broader social issues, human rights or contentious moral issues. In applying legal standards when making judicial decisions, a judge must often apply the "reasonable person standard", i.e. consider how an average and reasonable person would act under similar circumstances. Something similar applies to the process of establishing the facts of a case: the assessment of evidence should be based on common sense and life experience. This, in short, is why a judge should be a part of society and social developments.

Subjective and objective tests of independence

21. In making judicial decisions, a judge should not be burdened by any connections, inclinations or prejudices that are likely to affect his impartiality or independence (i.e. actual, subjective independence). But in addition to actual independence, there is also the appearance of independence (i.e. whether an average reasonable person sees a judge as independent – objective independence), which is equally important.

22. In assessing the impartiality of a judge²⁰ and whether a judge is independent, the ECtHR, in addition to the subjective test, has been applying the objective test of independence, whereby the

18 See commentary on Principle III of the Code.

19 Albin Igličar, *Pogledi sociologije prava* (Views on the sociology of law), Ljubljana, 2012.

20 See commentary on Principle III of the Code.

independence and impartiality of a judge are assessed in terms of whether there are ascertainable circumstances that may raise doubts with an average reasonable person as to his independence or impartiality²¹.

23. The appearance of independence could be damaged, for example, if a judge responded to the inquiries of a representative of a particular parliamentary party so as to explain when his case was to be concluded or if he took part in a political meeting of a political party of which his spouse was a member.

The independence of a judge in relation to judicial colleagues and those with responsibility for court management and justice administration

24. Independence gives a judge the autonomy to organise his work, conduct proceedings and make judicial decisions taking into account his mission (i.e. to ensure efficient and fair trials without undue delay). He does not have to report to anyone on the contents, facts or legal aspects of particular proceedings, though he may, of course, consult with his colleagues.

25. His functional (substantive) independence is not compromised by the procedural nature of relations between higher and lower courts, reflected in the opinions and instructions of higher courts adopted on the basis of an appropriate legal remedy (Article 11 of the ZS) and in the fact that it is only higher courts that have the authority to interfere with a court decision (i.e. to annul or amend it). The hierarchy within the functioning of the legal and judicial system, reflected in the fact that decision-making takes place at various instances, prevents legal norms from being applied arbitrarily in the decision-making process and is therefore at the service of and not in opposition to the independence and impartiality of a trial. However, private communication between a judge of first instance and an appellate court judge or judges regarding the dilemmas and outcome of specific pending appeal proceedings would be inappropriate and damaging to the judge's perceived impartiality and independence.

26. The right to a fair, impartial and independent trial within a reasonable time implies the equal importance of both the quantitative effectiveness and the quality of trial, the latter being reflected in carefully thought-out and professionally correct decisions based on a thorough evaluation of evidence and the correct application of laws and the Constitution. In this regard, the independence of a judge could be affected if, either because of the expectations and demands of court management/justice administration or because of the judge's own ambitions regarding the possibility of promotion, he gave quantitative effectiveness priority over quality.

27. The assignment of cases that come before the court, which is the responsibility of judges with managerial responsibilities, should guarantee the parties a trial before an independent and impartial judge, one who has been appointed in accordance with objective criteria established in

21 See, for example, the cases *Sramek v. Austria* and *Sacilor Lormines v. France*.

advance and not according to the preferences of individual parties or even judges.

28. The functional independence of a judge, as long as it remains within the frameworks provided for by law, is not threatened by management and court management tasks carried out by managerial and supervisory structures of the judiciary. The function of court management is to provide the conditions for the regular exercise of judicial functions and the timeliness of procedural acts and of drawing court decisions (paragraph 1 of Article 60 of the ZS). Measures applied by court presidents, the Service for the Supervision of Court Administration and the Judicial Council on the basis of and under the law do not constitute interference with the independence of judges (e.g. monitoring, determining and analysing the efficiency of judges' work at a court – paragraph 1 of Article 60a of the ZS; adopting criteria for the quality of work of courts – Article 60c of the ZS; inspection of case files by the Service for the Supervision of Court Administration, in the part relating to the review of court fees and administrative review – paragraph 5 of Article 65a of the ZS; access to the file and the requirement to produce a report in cases when a party's right to a trial within a reasonable time, the order of priority for resolving cases or legal time limits for fixing preliminary hearings or drawing court decisions might be violated – Article 71c of the ZS; supervisory appeal and motion for a deadline – the Protection of the Right to Trial without Undue Delay Act (the ZVPSBNO), operational case review – Article 73 of the ZS; and official supervision – Articles 79a–79c of the ZSS).

Dialogue with the public with the purpose of maintaining and strengthening the independence of the judiciary

29. A judge must seize every appropriate opportunity to help the public understand the characteristics and importance of the independence of the judiciary. The judiciary (judges) should provide a continuous, transparent and respectful dialogue with the public, the media and the other two branches of power.

30. Understanding of the judiciary and the public's confidence in it are, alongside constitutional and legal guarantees, two important pillars of the legitimacy of the judiciary. The judiciary indeed has a responsibility towards the public,²² not in terms of it being subordinate to public opinion or to the other two branches of power, but in that, in its implementation of public tasks, it has to act transparently and give (valid) reasons for its decisions and conduct. The inclusion of the judiciary in society is therefore, as stressed by international guidelines²³, necessary in order to maintain judicial independence and legitimacy.

31. Judges should be aware that not everyone understands the concept and the importance of judicial independence. A lack of knowledge about and misunderstanding of this principle undermine the public's confidence in the judiciary. Educating the public, with a particular focus on the

22 CCJE Opinion No. 18 on the position of the judiciary and its relation with the other powers of state.

23 CCJE Opinion No. 7 on justice and society and CCJE Opinion No. 18.

importance of respecting the judiciary and its independence, is not only the responsibility of a state and its institutions, but also (or even mostly) that of the judiciary itself.

32. Maintaining and developing the independence of the judiciary is a dynamic and never-ending process. In recent decades, the role of the judiciary in legal systems has been strengthened, which in turn has presented the judiciary with various challenges. As the importance and role of the judiciary in society grow, including due to the increasing differentiation of society and the subsequent "juridification" of social relations, the public's expectations of the judiciary increase, the judiciary is more under the watchful eye of the public and the pressures imposed by the other two branches of government intensify. With regard to the protection and strengthening of independence, the judiciary can address such pressures by engaging in a continuous and respectful dialogue with the public and the other two branches of power and by operating in a transparent manner.

III. IMPARTIALITY

A judge shall perform the duties of judicial office impartially and in this shall not allow his judgement to be subject to his inclinations, prejudices or preconceived notions, political, economic or other interests, his personal knowledge of disputed facts, public demands or criticisms, or other circumstances that could affect his decision in a specific case or that could encourage the appearance of such improper influence.

Commentary:

The concept of impartiality (subjective and objective aspects)

1. The phrase "Not only must justice be done; it must also be seen to be done" is one of the main guiding principles, if not a slogan, of modern legal views on the quality of impartiality of the judiciary. It includes two intertwined aspects (the subjective and objective) of this postulate of the judicial profession.

2. Impartiality is above all a judge's subjective attitude (i.e. state of mind) regarding disputed facts and the parties to proceedings. It assumes the absence of any prejudices, preconceived notions, inclinations and interests on the part of a judge in relation to a particular case, party and/or final decision. However, one cannot expect a judge, who after all is and indeed should be part of society, to have no preconceived views on social, political, ethical and other dilemmas. Every judge is influenced by different (social) factors that help shape his opinions and his attitude to the world (relationships with family, friends and acquaintances; the various information he gathers from the media, friends and family; his participation in sports, cultural and other activities of interest, etc.). Thus a judge is expected to be aware of his views and feelings (including his likes and dislikes) and not to allow them to affect his independence and impartiality and thus his professional decision-making. In relation to parties to proceedings, he should take the position of an objective observer who makes an active effort to interact with parties, treats all parties equally and with the same attention and is at all times open to all outstanding issues (subjective impartiality).

3. His position as an objective observer of a dispute should also be viewed as impartial by a reasonable, average and informed observer (objective impartiality). The right to an impartial trial implies the requirement that a judge should not be linked to any party thereto or to the matter of dispute in such a way that this might give rise to justifiable doubt as to his ability to make decisions objectively and impartially and rely exclusively on legal criteria in so doing.

The test of impartiality

4. The Code requires a judge to be impartial in his performance of judicial office from the moment he is assigned a case to the moment he makes a final decision thereon. The latter may be based only on the pleadings collected in the specific case.

5. The criteria for assessing the impartiality of a judge in a specific case have been developed by the ECtHR through its case-law²⁴, including in the case of *Švarc and Kavnik v. Slovenia*.²⁵ In its decisions, the ECtHR consistently emphasises that the quality of judicial impartiality should be assessed by means of both the subjective and the objective tests of impartiality. A judge may find such an approach useful in assessing his own impartiality or with regard to a possible motion for his disqualification from proceedings.

6. In accordance with the ECtHR case-law, the personal impartiality of a judge must be presumed until there is proof to the contrary. This does not, however, mean that a judge can neglect the need to have a self-reflexive attitude towards his personal convictions. Like independence, impartiality is, above all, a judge's state of mind and a quality he should continue to nurture and constantly monitor. As part of the subjective test, a judge should regularly "review" his personal convictions and behaviour so as to ensure and maintain his complete openness of spirit and mind in every trial. Every time, he must determine whether, irrespective of his personal conduct in and relation to a particular case, there are ascertainable facts which may raise doubts as to his impartiality in the eyes of a reasonable, average and informed individual (the objective test). The appearance of a judge's impartiality could be undermined in various ways, for example because of a conflict of interest, the judge's behaviour in the courtroom or his extrajudicial activities.

Disqualification of a judge

7. A judge should always propose that he be disqualified from proceedings if any of the mandatory disqualifying grounds that are expressly specified by statute exist (*iudex inhabilis*) or if there are other circumstances that justifiably call into question his impartiality (or the appearance thereof) (*iudex suspectus*). The Code does not exhaustively set out the circumstances calling into question a judge's impartiality (*iudex suspectus*), as a judge's impartiality is, above all, subject to his self-control and avoidance of any conflict of interest. With regard to economic interests, in particular, not only the judge's interests but also the interests of persons who live with him should be taken into account.

8. When a judge is confronted with his own doubts about whether any circumstances exist that may give rise to doubt as to his impartiality, thereby justifying his disqualification, or when a

24 For example the cases *Micallef v. Malta*, *Le Compte Van Leuven and De Meyere v. Belgium*, *Driza v. Albania*, *Luka v. Romania*, *Morel v. France* and *Mežnarić v. Croatia*.

25 Accessed at <http://www2.gov.si/dp-rs/escp.nsf>.

dilemma unexpectedly arises in this regard during proceedings, he should be honest and transparent with the parties about the reasons for his disqualification. The parties' statements regarding these reasons help determine whether there are justifiable grounds for doubting the judge's impartiality. Depending on the circumstances, after disclosing circumstances which raise doubts about his impartiality but which he believes will not affect his independence and impartiality (the subjective aspect of impartiality), a judge may let the parties make the decision on this. If they agree that there are no grounds for doubting his impartiality, i.e. his ability to make decisions impartially, relying exclusively on legal criteria in so doing, he may continue to manage the case, provided that as regards the objective appearance of impartiality (from the perspective of a reasonable and informed individual), the quality of judicial impartiality is intact. Careful consideration of the subjective and objective aspects of impartiality lies, first and foremost, within the responsibility of the court. The quality of judicial impartiality and the constitutional guarantee that any particular case will be decided by a court or tribunal constituted by law are, as stressed by the ECtHR, of paramount importance for a fair trial. Moreover, since proper court composition and disqualification are mainly legal issues, the court may not shift the responsibility for their correct implementation entirely onto the parties, i.e. it should not be satisfied merely with the fact that the parties agree or believe that there are grounds for the disqualification of a judge.²⁶

9. When faced with motions for his disqualification, a judge should exercise restraint. He should not be oversensitive and take them as a personal insult. He should be aware that the institution of disqualification is an instrument of the parties for ensuring fair proceedings and the legitimacy of the judiciary.

10. A judge should avoid, as far as is possible, conduct and/or circumstances (both personal and economic) owing to which he might have to be disqualified from hearing a case. If a judge is frequently disqualified, this might damage the appearance of his impartiality, impose an additional burden on his colleagues or even make the work of the court as a whole more difficult. A judge should also encourage his family members to avoid activities that might justifiably undermine the appearance of his impartiality or indicate the abuse of his authority.

A judge's behaviour in the performance of judicial office as an expression of his impartiality

11. In judicial proceedings, a judge should maintain the appearance of impartiality by exercising restraint, showing tolerance, adopting a neutral stance until he makes a decision on the case, protecting the dignity of everyone involved and maintaining equality of arms between the parties. He should be aware that bias may be exhibited through the words he uses, his body language or the manner in which he conducts the proceedings (e.g. overly quick or strict application of punitive measures to maintain order). A judge should therefore always make sure that his words and behaviour do not create a sense of bias.

²⁶ See, for example, the case of *Pfeifer and Plankl v. Austria*, No. 10802/84, Decision of 25 February 1992.

12. He should take account of all persons in the proceedings and ensure that they are treated equally. In so doing, he should be aware of the objective differences between different groups of people and should endeavour to make every party feel heard, understood and respected. He should see to it that no one can say they were overlooked or treated in a condescending or disdainful manner in court. The skill of listening and paying (due) attention to others is not always an innate characteristic, but it is one that can be developed with practice; this is why a judge should develop and strengthen such skills through continuous training (Principle IV of the Code).

13. A judge should strike an appropriate balance between the duty to conduct proceedings in an economic and efficient manner and the duty to maintain impartiality by avoiding circumstances that could give rise to doubts as to his impartiality in the eyes of an average and reasonable individual.

The extrajudicial conduct and activities of a judge as an expression of his impartiality

14. A judge should also maintain and protect his actual impartiality and the appearance of impartiality through his behaviour in both his private and public life outside the court. He should be aware that he, his work and his behaviour in general are always under the watchful eye of the public. Today the public has ever-greater expectations regarding the ethical stance of judges. A judge is therefore expected to exercise a certain restraint in his private and public life. This helps him to cultivate an openness of spirit regarding the cases assigned to him and maintain the appearance of impartiality and independence and, consequently, the public's confidence in him as a judge and the judiciary as an institution. A judge should accept certain limits on his behaviour and conduct which may not apply to the average individual.

15. On the other hand, a judge should not be isolated from the society in which he lives, because the judicial system can work effectively only if judges remain in touch with reality.²⁷ Society expects judges to demonstrate a high level of professional competence and experience in human relations and humanity. It also expects them to ensure fair, just, effective, impartial and independent trials²⁸ free from any undue influences, prejudices and interests and to not make judicial decisions arbitrarily but in accordance with the Constitution and the law. This does not mean that a trial should be formalistic, removed from its social context, but rather that it should, through the judge's conscience²⁹, take into account the core values of society, its development, diversity and respect for human dignity. Only then can an independent and impartial trial be fair and just. Conscience is a quality that has been elevated, as the fundamental moral principle to be followed by a judge in passing judgements, to the level of a principle of law (Article 23 of the ZSS), and one without which fairness and justice in a trial could not be guaranteed. Conscience is formed through socialisation as an inherent part of every individual, this of course including judges. If, in addition

27 See commentary on Principle II of the Code.

28 Article 23 of the Constitution.

29 A judge takes office on the day he takes the following oath before the President of the National Assembly: "I swear to carry out the duties of judicial office in accordance with the Constitution and the law, and to pass judgements according to my conscience and impartially." (Article 23 of the ZSS).

to being an expert in his field, a judge is to be a person with broad horizons, wide knowledge of humanity, and a wealth of life and work experience – and a judge should indeed be such a person – he should live, breathe and think with society and be a part of social developments. He should not be separated from society, but should maintain closely linked to it.

16. In general, a judge may therefore participate in activities, associations and relations outside the court, but in so doing, he should be aware that everything – from his acquaintances and economic interests, through his statements, which he may himself see as harmless, to his membership of particular organisations – may undermine the appearance of impartiality and independence, his reputation, and other principles set out in the Code. A judge serves all people, regardless of their political or social beliefs, and should therefore strive to earn and maintain the trust of all people insofar as this is reasonably practicable. At the same time, he should be aware that he might very quickly exceed the limits of what is ethically acceptable, thereby compromising the reputation of the judiciary and the public's confidence therein. The role of a judge is one of the more rigid social roles and one for which the confines of what is considered acceptable and desired behaviour, in contrast to mandatory conduct, are narrow.³⁰ In seeking the limits of what is considered acceptable behaviour from a judge, one should always take into account the expectations of a reasonable, average and informed individual regarding a judge's conduct.

Public expression of opinion on the part of judges

17. The quality of impartiality and the reputation of the judiciary can quickly become undermined if a judge publicly expresses an opinion about himself, his colleagues, judicial decisions, the judiciary as an institution or controversial political topics, if he publicly supports a particular political party or political candidate, and so forth. The more a judge moves away from the ideal of Lady Justice, blindfolded and holding her balance scales, or from the image of the distant judge in his chambers, writing, isolated from any undue influences, his decisions in a complex and professional language, and the more he expresses his opinions outside the court in a highly controversial, perhaps even personal and overly direct manner, the faster he evokes a sense among the public that something potentially unauthorised is going on, which in turn undermines the ideal of judicial impartiality. This is all the more true when he publicly expresses an opinion on the contentious political issues of the day, as this blurs the line between the judiciary and the other two branches of power, which must, under the principle of the separation of powers, remain separated. The task of the judiciary is to judge (i.e. resolve disputes), while the legislative branch sets policy and adopts laws and the executive branch implements them. It is a judge's duty, therefore, to exercise restraint when publicly expressing an opinion, thereby ensuring that individuals can trust the judiciary without worrying that the judge's opinion might influence the conduct of proceedings.

18. On the other hand, judges, thanks to their wealth of valuable knowledge and experience, may significantly contribute to debate on themes that are crucial to democracy and the development

30 Albin Igličar, *Teme iz sociologije prava* (Themes in the field of sociology of law), 1991, p. 179.

of law. They understand the functioning of the legal system and know its weaknesses and procedural problems inside out. The free exchange of ideas is of paramount importance for the existence and development of a democratic society, particularly for smaller societies (and Slovenian society would be a case in point), which have limited human resources and, for example, only a few experts in any given legal field. Contributions, whether oral or written, from experienced judges can thus be a valuable source for other members of the legal profession.

19. In considering the appropriateness of a judge's public expression of opinion outside the court, account should be taken of the fact that judges, like all other individuals, have the basic human right to freedom of expression (Article 39 of the URS).

20. Judges express their opinions publicly in a number of ways: they are, for example, authors of legal books, literature and autobiographies; they write articles for periodicals and other media; they lecture at faculties and hold seminars; they participate in various conferences; they give initiatives, either through their judgments or through public speeches and written requests, to amend legislation; they participate in TV shows and give interviews; they may express support for a certain socially important topic by attending a public assembly held to that end; or they may express their views through artistic endeavours. They may express an opinion about different things, for example, about themselves (in autobiographical terms) or their colleagues; they may express themselves for educational or cultural purposes; they may express themselves in artistic ways; they may express their views on general social topics and political topics, including views in support of the judiciary as an institution, views on the use and role of the law, views on specific judicial decisions, etc. Public opinions can also be expressed in many ways (depending on the language or style of writing used). In expressing an opinion, a judge might be provocative, tendentious or personal; he might use a sharp tone or express himself in a moderate, calming and professionally sound manner.

21. The circumstances in which a judge publicly expresses an opinion are also very important. There are obvious differences, for example, between a judge addressing legal topics at an expert symposium and a judge appearing on a popular TV show or between a judge publishing a scientific article in a legal magazine and a judge writing a column for a tabloid. Nothing of the above is necessarily questionable in itself; however, when it comes to assessing whether or not a statement is ethically appropriate, the context in which the statement has been made, which is just as important as the content of the statement and the manner in which it has been made, may be.

22. In principle, it holds true that, as follows from Article 39 of the URS and international documents (for example Article 10 of the European Convention on Human Rights; hereinafter: ECHR), judges have the right to freedom of speech and expression, which may be subject to only such restrictions as are necessary in a democratic society. In accordance with the principle of the separation of powers and the requirement for an independent and impartial tribunal, a democratic society expects those whose mission is to resolve disputes pursuant to laws to stay out of the arena of public debate except in duly justified cases, for example when the fundamental values of society

are at stake or when expressing support for the rule of law.

23. In assessing to what extent the judiciary (judges) may participate in public debate (on the basis of the constitutional right to freedom of expression, assembly and association), it is recommended to take into account two considerations: first whether, from the point of view of a reasonable observer, a judge's expression of opinion/participation is likely to undermine the appearance of impartiality and second whether such conduct on his part is likely to leave him open to political attacks or be inconsistent with the dignity of the judiciary. However, when the fundamental values of society (democracy, judicial integrity and independence, human rights, etc.) are at stake, a judge's restraint may and indeed should give way to his duty to express his disagreement. In addition, as part of their educative role, judges, as already mentioned, may contribute to boosting the legal and general social culture by explaining the role of the judiciary and providing a principled interpretation of individual legal institutions. However, in so doing, they should be careful and exercise restraint so as not to give any impression that they are lobbying for a particular solution or indicate what their decision in a particular case would be if it were to be heard in their courtroom. They should also be aware that their opinions, commentaries and proposals may be viewed by the public as representing the views of the entire judiciary. It is not always easy to express an opinion in such a manner that it is accepted as a personal view and not as that of the judiciary as a whole.

Guidelines for judges regarding the public expression of opinion

24. The final decision on whether a judge's public expression of opinion complies with ethical standards always depends on the context in which a particular statement is made and on other circumstances of the case in question. Nevertheless, there are several recommended guidelines for judges regarding the public expression of opinion.

25. A judge should exercise restraint when publicly expressing an opinion.³¹ He should select the forum in which he is to present his views with care and be aware of the type of medium via which or the event at which he is expressing his opinion, regardless of the manner of its expression (in writing, through artistic expression or actions – for example, participation in a public assembly).

26. He should express himself in a calm and not a strident manner. It is not appropriate, for example, for a judge to use immoderate, tendentious or provocative language to discuss matters on which he has already adjudicated or is likely to have to adjudicate. He should be careful not to make ambiguous, ill-thought-out statements (in particular oral statements). A seemingly insignificant remark made in passing by a judge in public can have a very adverse impact on his appearance as an impartial judge. Public utterances by judges therefore pose a greater risk to the appearance of impartiality than written statements, as they may contain careless or ambiguous remarks which,

31 The Judicial Council took this view at its 19th session held on 27 June 2013 regarding a judge writing a column for *Pravna praksa* magazine and at its 51st session held on 9 April 2015 regarding a judge expressing an opinion via social networking sites.

taken out of context, may be used by the public or the media.

27. If a judge discusses a legal topic, he might give the impression that he has formed an opinion about a particular outstanding issue or that he favours a particular group of parties. When expressing an opinion on issues pertaining to the field in which he performs judicial office, he, aware of the risk involved, should exercise restraint so as not to give the impression that he has already taken a view on a matter that might be heard in a court of law. An example of an inappropriate statement of this kind would be a principled statement by a judge that perpetrators of certain criminal offences should be punished only by imprisonment, despite the fact that the law also provides for other sanctions in such cases.

28. In order to maintain (the appearance of) impartiality, a judge should refrain from making (public or private) value judgements regarding *sub judice* cases that are being heard by himself or his colleagues. Caution should also be applied regarding cases that are likely to become the subject of court proceedings (for example during a pre-trial investigation; in a situation where the honour and good name of an individual have been publicly called into question and an action for defamation has been announced but not yet brought against the alleged defendant). It is important to distinguish between value judgments and clarifications provided by a judge responsible for public relations regarding the status of a case that is pending. Such clarifications cannot be controversial in terms of compliance with ethical principles; on the contrary, they can contribute to increasing the transparency of the judiciary and the public's understanding of its functioning.

29. After a case has been ruled on, it is inappropriate for a judge to engage in polemics about the judgment in the case with the parties or any other person who may be dissatisfied with the decision.

30. A judge should always be cautious about expressing an opinion when faced by public criticism or attacks on his decisions. He should be aware that, in a democratic society, the public is entitled to criticise the judiciary, this being regarded as an appropriate manner of determining the accountability of the judiciary and judges. When a judge talks about his decisions, he should do so primarily in connection with the reasons for judgments and should avoid defending his decisions in public. However, he may use the available resources to correct any mistakes in the event of distorted reporting on court proceedings or judgments.³²

The private behaviour and expression of opinion of a judge

31. It is not only the public expression of opinion on the part of a judge that might undermine his reputation and appearance as an impartial judge. A judge should also be cautious about expressing his opinion in private, regardless of whether he is communicating with his family, relatives or friends or with occasional acquaintances.

32 See also the Declaration on the Principles on the Independence of the Judiciary, adopted by the Conference of Presidents of Supreme Courts of Central and Eastern Europe in Brijuni, Croatia, on 14 October 2015.

32. In dealings with third parties, a judge should refrain from taking advantage of his position of authority. It is not appropriate, for example, for a judge to use or attempt to use his position of authority with the intention of obtaining a benefit or advantage for himself or for any other person. Examples of such inappropriate conduct would be if a judge used his authority to attempt to exert pressure on officials who are handling cases involving his close family members (children, parents, spouse, partner, etc.); if he used stationery with the court's letterhead for private purposes; or if he used his authority to write a letter of recommendation for a person about whom he had not formed an opinion in the course of judicial work.

33. A judge should avoid any contacts that might lead people to believe that he might offer a certain benefit to a particular person. For example, it is inappropriate for a judge to respond to an invitation by the lawyer of one of the parties to specific proceedings to give him a lift to a place where evidence will be taken by means of visual inspection.

34. In principle, contacts between the representatives of the judicial branch and other representatives of the legal profession (lawyers, prosecutors, trustees in bankruptcy, etc.) outside of court proceedings can be useful, as they can result in the exchange of legal opinions and critical discourse on legal dilemmas and improve mutual understanding of different profiles of the legal profession, which, in turn, reduces tensions between them. And it would be unrealistic to require that judges should isolate themselves from their former classmates or colleagues. However, a judge should exercise restraint and be careful when it comes to such relationships.

35. The criterion for establishing when a contact with other representatives of the legal profession is inappropriate is the assessment of how the public (i.e. the average reasonable observer) views and understands such relationships and contacts. It is recommended, for example, that a judge exercises restraint when it comes to his relationships with lawyers who are often involved in proceedings conducted by him; that he avoids situations (for example celebrations) where he could be exposed to information on individual cases that are pending; that he avoids invitations to meetings/parties at which, in the opinion of a reasonable observer, a level of hospitality that is considered moderate and normal might be exceeded (e.g. parties at which judges receive expensive gifts from other representatives of the legal profession; meetings, albeit professional, at which judges might indulge in luxury such as exclusive banquets and other benefits, etc.); and that he refrains from making (overly) frequent visits to his previous working environment (for example law firm or prosecutor's office).

36. A judge should not request or accept any gift, legacy or bequest, loan, or any other favour or privilege in connection with his actions or failure to act in the performance of judicial office. At the same time, he should encourage or even require his family members and court staff who carry out administrative and professional tasks for him to behave in a similar manner.

IV. COMPETENCE

A judge shall ensure that he constantly maintains and develops his professional competence.

Commentary:

Continuing education and training as a fundamental standard for judges

1. It follows from CCJE Opinion No. 17 on the evaluation of judges' work, the quality of justice and respect for judicial independence of 24 October 2014 that, in a democratic society, a judge, in the performance of judicial duties, respects the rule of law and protects the rights and freedoms of all persons equally (he ensures "procedural justice"³³). A judge should ensure effective dispute resolution which is sustainable in terms of cost and make decisions within a reasonable time, complying with the applicable law. He must provide reasonable grounds for his decisions and write them down in clear and understandable language.³⁴ In addition, he is faced with the fact that, in a pluralist and open society, legal rules in accordance with which he makes decisions are becoming increasingly complex and often change; there are different kinds of rights, which may contradict each other, and there is an increasing need for social order.

2. The work of a judge is becoming increasingly demanding and today is harder than ever before. These premises require that judges are not only familiar with different legal fields, but are also able to understand the environment in which they live. Competence in different legal fields, ethical conduct, respect for judicial independence and impartiality, restraint and the correct understanding of the human and social reality in which the judiciary functions are all qualities of a good judge. A judge should be able to treat the parties and other participants in judicial proceedings with procedural justice, complying with the principle of the reasonable time of a trial, which means that he treats them in such a manner that they feel listened to and heard and, in so doing, maintains his impartiality and autonomy. A judge should make lawful and fair decisions (taking into account positive substantive law) and explain them in a clear and professional manner. A judge is therefore expected to have a high level of competence in the skill of adjudication, to show empathy for parties to proceedings, to not only process files but resolve disputes, to not only see the "legally relevant" arguments of the parties, but understand the stories of people who have found themselves in a difficult situation and stand before him, their judge, he who can help them, not as someone in authority "with a blindfold and a sword", but as a person in authority who hears and respects them, treats them neutrally and professionally, and is therefore worthy of trust.³⁵

33 For more on procedural justice, see the commentary on Principle IX of the Code.

34 IQJ project – Improving the Quality of the Judiciary, accessed at http://kn.sodisce.si/userfiles/File/SRSU/_ni_Vzpostavitevni_dokument_IKS_ver_1_0-2016.pdf.

35 IQJ project – Improving the Quality of the Judiciary, accessed at http://kn.sodisce.si/userfiles/File/SRSU/_ni_Vzpostavitevni_dokument_IKS_ver_1_0-2016.pdf.

3. In order to perform his judicial duties with competence, a judge is required to prepare himself thoroughly for each case and have all-round professional knowledge and expertise, broad life and work experience, good general knowledge, and high-level communication skills, including the ability to communicate with tact and diplomacy. The public's confidence in the judicial system is strengthened by the fact that a judge's competence goes beyond mere knowledge of the law and also encompasses other social fields.

4. At the same time, a high degree of all-round competence, as stressed by international guidelines³⁶, is crucial to the independent performance of judicial office and is one of the pillars of the independence and impartiality of a judge.

5. Continuing education and training are the fundamental standard to be maintained by a judge and the criterion for measuring judges' attitude to their professional mission.

6. A judge has a duty to take part in various educational programmes, broaden the scope of his legal knowledge and keep an open mind. He has this duty throughout his term of office. In this regard, institutionalised educational programmes which are controlled and influenced by judges themselves are essential (but not exclusive) for judges (or their independence and impartiality). International guidelines stress that, as an element of its independence, the judiciary should have a decisive role and responsibility in the education of judges (i.e. in terms of organising educational programmes and having control over them), while the state should provide the judiciary with the necessary funds for this purpose. This is why judges should take advantage of the educational programmes offered to them by entities in which judges have a key role (for example the Judicial Training Centre (JTC) and the European Judicial Training Network (EJTN)).

Professional competence

7. Only a judge who is an authority in his field of work can be a convincing judge, which is a quality that further strengthens his independence.³⁷ Knowledge is also a factor that contributes considerably to the shortening of judicial proceedings. Each time a judge gains new knowledge or deepens his knowledge, this enables him to perform his tasks faster, making it easier and faster for him to grasp and resolve a problem.³⁸ Judges are therefore expected to continuously broaden and deepen their professional knowledge (for example by monitoring developments in legislation and case-law, reading the professional literature, and participating in professional training).

8. A judge should not be reluctant to change legal fields.

36 CCJE Opinion No. 4, the Magna Carta of Judges, Recommendation No. 12 of the Committee of Ministers of the Council of Europe, the Bangalore Principles of Judicial Conduct, etc.

37 Konrad Plauštajner, *Pravica do neodvisnega sodnika* (The right to an independent judge), *Podjetje in delo*, 1994, Nos 5–6, pp. 837–845.

38 Boris Strohsack, "O moralno etičnem liku sodnika" (A judge as a moral and ethical figure), in *Naših 40 let* (Our 40 years), Slovenian Association of Judges, Ljubljana, 2011, pp. 24–41.

9. A judge should strive to improve the quality of work in the working environment of which he is a part (for example by participating in regular meetings and colleges of the department or of the entire court; by participating in working and project groups for improving the quality of trials; and by actively participating in the provision of training). A judge should be aware that the exchange of views and consultation with colleagues may improve the quality of his work and should therefore also be willing to provide the same kind of assistance to his colleagues.

10. In this regard, international guidelines³⁹ highlight, in particular, professional consultation between judges from different levels of the judiciary and their joint participation in training. Such training enables them to exchange views and knowledge within the judiciary, promotes good practice, and strengthens the unity and coherence of the judiciary in the performance of its judicial functions. It raises the awareness of judges from different levels of the judiciary about the problems encountered by their colleagues at other levels, thereby increasing their mutual understanding of each other's work. It also provides an opportunity for judges from different levels of the judiciary to get acquainted with one another, thereby increasing confidence within the judiciary as a whole, which is of vital importance in order to maintain public trust. The image of the functioning of the judiciary as a whole conveyed by judges to the public is also important. A lack of mutual respect and trust, which is reflected in comments made at hearings and regarding judgments or comments made privately or publicly, cannot have a positive effect on the public's confidence in the judiciary. The situation is completely different if judges understand the position of their colleagues at different levels of the judiciary and the problems they encounter, have confidence in one another's work, and respect one another. A similar objective (i.e. to build mutual respect and trust among representatives of the judicial branch of power of different Member States) is also pursued by the EJTJN, which organises educational programmes at the EU level.

11. Mentoring is also crucial to the exchange of good practice between the generations of judges. New judges are particularly receptive to the knowledge and experience of their more experienced colleagues. This method of learning (training) enables new judges to internalise values and skills that cannot be learned from the literature.⁴⁰ A judge's competence also entails his willingness to be a mentor to younger colleagues, accepting this responsibility with good grace.

General knowledge

12. The general knowledge of judges is important in order for them to properly perform their judicial duties. A judge develops his general knowledge by carefully monitoring all relevant areas of social development. The social context of judicial training eliminates hidden tendencies or prejudice regarding religious, sexual, racial, ethnic and other issues, thereby ensuring the impartiality of a judge's judgment. A judge should therefore also develop as a person and understand the time and

39 Commentary on the Bangalore Principles of Judicial Conduct, p. 135, accessed at https://www.unodc.org/documents/corruption/publications_unodc_commentary-e.pdf.

40 IQJ project – Improving the Quality of the Judiciary, accessed at http://kn.sodisce.si/userfiles/File/SRSU/_ni_Vzpostavitevni_dokument_IKS_ver_1_0-2016.pdf.

place in which he lives⁴¹.

Life and work experience

13. A judge should have a wealth of life and work experience; in order to gain such experience, he should be involved in social developments. He should live, breathe, think with and take part in social developments. He should not be separated from society, but should remain closely linked to it.

Communication skills

14. A judge should have the ability to communicate with tact and diplomacy. The skill of listening and paying (due) attention to others is not always an innate personal characteristic, but it is one that can be developed with practice; a judge should therefore develop and strengthen these skills through continuous training.

Judges with managerial responsibilities

15. A judge involved in the management of the court should also develop his management skills and human resource management skills.

16. His tasks include regularly providing his (subordinate) colleagues with all necessary information regarding the working environment in which they make judicial decisions and encouraging them to take part in professional training.

41 Konrad Plauštajner, *Pravica do neodvisnega sodnika* (The right to an independent judge), *Podjetje in delo*, 1994, Nos 5–6, pp. 837–845.

V. COMMITMENT

A judge shall demonstrate commitment to the performance of judicial office.

Commentary:

1. A judge should perform his professional duties with diligence and to the very limits of his ability. He must deal with cases that are assigned to him within a reasonable period of time, while ensuring the quality of his decisions. He should pay attention to problems from the professional point of view; take his time to properly solve a case; make thorough preparations for a hearing; conduct hearings with due diligence; examine in detail the state of law and the state of facts in cases assigned to him and, in doing so, take care not to unduly delay the proceedings or to allow other participants in the proceedings to delay them, and set himself and the parties to the proceedings reasonable time limits.

2. A judge is also responsible for the effective implementation of administrative and professional tasks in proceedings he conducts (for example the proper and prompt management of files, execution of orders, and operation with regard to the costs of proceedings); he should therefore ensure that such tasks are carried out by the court staff in a responsible manner and in due time. In so doing, he should be aware that he is the one ultimately responsible for the effective conduct of proceedings and the correctness of decisions.

3. In proceedings, he should be careful in his choice of words, express himself in a respectful, non-discriminatory and clear manner, and make sure that his decisions are comprehensible.

4. Commitment to the mission of the judiciary requires that judges share their knowledge and experience with their colleagues. A judge should be aware that the exchange of views and consultation with colleagues will improve the quality of his work and should therefore also be willing to provide this kind of assistance to his colleagues. He should be willing to discuss with his colleagues all aspects of the exercise of the judicial profession (personal, family and ethical aspects, pressures from the public, the parties, the home and local environment, etc.).

5. A judge should devote most of his working time to his activities in the court and to fulfilling the mission of the judiciary and should not succumb to the tendency to devote excessive attention to extrajudicial activities (for example additional professional activities), regardless of their compatibility with judicial office. The work of every individual, including judges, is limited by physical, psychological and intellectual abilities. A judge should not allow his involvement in extrajudicial activities to leave him with insufficient energy to be fully committed to his judicial decision-making.

VI. COMPATIBILITY

A judge shall participate in activities that strengthen the functioning of the judiciary, guarantee legal progress and development and contribute to improving the legal system, provided that this does not give rise to doubts as to his impartiality in decision-making.

Commentary:

Normative and ethical aspects of (in)compatibility of judicial office

1. The principles of compatibility (Principle VI of the Code) and incompatibility (Principle VII of the Code) are two sides of the same coin that define a judge's participation in extrajudicial activities. This is where the legal and ethical aspects of the incompatibility of judicial office overlap. The incompatibility of judicial office is one of the instruments with which democratic countries ensure the independence and impartiality of the judicial branch of power, which is one of the basic postulates of a free, pluralist and democratic society. It is an instrument which, together with other measures, ensures that, in the Republic of Slovenia, everyone is entitled to a fair trial and is guaranteed equal protection of rights in any proceedings before a court (Articles 22 and 23 of the URS and Article 6 of the ECHR).

2. The purpose of defining what judges may or may not do in addition to performing their judicial duties, is to prevent any influence on the work of a judge, which should be independent and impartial, and to ensure that judges are fully committed to the performance of judicial office and that their commitment is not undermined by any other activities.

3. This institution importantly impacts on several fundamental rights and freedoms of judges, as it is at odds with (partly limiting) the right to freedom of expression (paragraph 1 of Article 39 of the URS), the right to freedom of association with others (paragraph 2 of Article 42 of the URS), the right to freedom of work (Article 49 of the URS), the right to freedom of scientific and artistic endeavour (Articles 59 and 60 of the URS), and the right to free economic initiative (Article 74 of the URS).

4. There are two approaches to the normative regulation of a situation where one person simultaneously holds several offices or performs other activities while holding office. The first is based on the ex-ante regulation of positions with regard to which the constitutional lawmaker or the legislature establishes that they carry a significant risk of conflict of interest and that such conflict of interest should be prevented at all times and therefore prohibits high officials from simultaneously holding another office or performing another activity. The second approach is based on a case-by-case assessment of the risk of conflict of interest between the office held by a high

official and other office or activity.⁴² The Slovenian constitutional lawmaker and legislature have used both approaches.

5. The office of a judge is incompatible with offices in other state authorities (such as the office of President of the Republic, the office of Prime Minister, the office of deputy and the office of member of the Government), in local self-government authorities, and in bodies of political parties (Article 133 of the URS); judges may not perform lawyers' or notaries public's transactions, undertake any commercial or other profit-making activities or managerial transactions, or be members of the boards of directors or supervisory boards of any company or other legal person involved in profit-making activities (Article 41 of the ZSS); and judges may not accept any employment or work that might obstruct them in performing their judicial service or that might be in conflict with the reputation of judicial service or encourage the impression that they are not impartial in performing judicial service (paragraph 1 of Article 42 of the ZSS).

6. However, they are allowed to perform pedagogical, scientific, journalistic, research or other similar activities within the legal profession where this does not hinder the performance of their judicial service and other work that is not explicitly prohibited (Article 42 of the ZSS).

7. As already noted, the issue of compatibility or incompatibility of judicial office is not only a normative category, but is also an ethical dimension of the mission of the judiciary. The question of what is (in)compatible with judicial office cannot be subject to only (or even mainly) legal regulation, as the law cannot foresee all possible manners of behaviour and conduct. It is the ethical conduct of representatives of the judicial branch of power in particular that is crucial to the public's confidence in the judiciary, and consequently to its legitimacy.

Guidelines regarding judges' extrajudicial legal activities

8. In accordance with Principle VI of the Code, judges should participate in activities that strengthen the functioning of the judiciary, guarantee legal progress and development, and contribute to improving the legal system, provided this does not give rise to doubts as to their impartiality in decision-making. It is crucial that a judge performing these activities is a legal expert.⁴³ These activities may vary considerably, ranging from pedagogical, scientific, journalistic or research activities within the legal profession to activities within various bodies that draw up legal acts, participation in non-judicial proceedings regarding dispute resolution, and the provision of legal advice and judicial assistance to individuals in judicial proceedings.

9. With regard to the aforementioned activities, the Code encourages involvement (such involvement is also desirable from the ethical point of view) in activities that strengthen the

42 Saša Zagorc, *Poslanski mandat in nezdržljivost poslanske funkcije* (The term of office of deputies and the incompatibility of the office of deputy), p. 82.

43 Franc Testen, *Sodniki in njihove zunajsodne pravne dejavnosti* (Judges and their extrajudicial legal activities), *Pravosodni bilten* (Judicial Bulletin), No. 2/2004.

functioning of the judiciary, guarantee legal progress and development, and contribute to improving the legal system. Judges, as highly qualified legal experts, are in a unique position which enables them to contribute to strengthening legal certainty. They understand the functioning of the legal system and its weaknesses and procedural problems inside out. The legislature thus supports, appreciates and encourages participation in such activities by judges, expressly providing that judges are allowed to perform pedagogical, scientific, journalistic, research or other similar activities within the legal profession if this does not hinder the performance of their judicial service (paragraph 2 of Article 42 of the ZSS). Such participation is also one of the criteria for assessing the working abilities and expertise of judges in evaluating judicial service (Article 8 of the Criteria on the quality of judicial performance for the evaluation of judicial service)⁴⁴.

10. If time permits, and provided that this does not interfere with the performance of judicial office and does not give rise to doubts as to his impartiality in his decision-making, a judge may speak on, write on, teach or in any other way participate in legal activities independently or through judicial or other legal associations and organisations whose aim is to promote legal progress and development.

11. Judges engage in various types of extrajudicial (legal) activities. Judges may, for example, write a legal paper on a particular topic, write legal commentaries, write a textbook on law, give public lectures on legal topics, participate in public conferences regarding law, or write a book on the history of law. All these activities represent (to a lesser or greater extent) a potential threat to the appearance of impartiality. If a judge discusses law, he might give the impression that he has formed an opinion about a particular issue or that he favours specific parties. Moreover, it is not only the content of his statements that plays an important part in this respect, but also the language used and the context of legal engagement. When expressing an opinion on issues pertaining to the field in which he performs judicial office, a judge should exercise restraint and prudent judgment so as not to give the impression that he has already taken a view on a particular matter that might be heard in a court of law and be therefore potentially viewed as unable to keep his mind fully open when resolving cases. If, in his work, a judge monocentrically considers a legal issue that is still contentious in theory and determinedly advocates a particular solution to it, the judge's objective and subjective impartiality – i.e. whether it is possible to infer from his publicly presented arguments that he is definitely not receptive to arguments that support a different point of view – were he to decide on a dispute on that same issue, could be called into question⁴⁵.

12. A judge should also be careful in the choice of forum in which he expresses his expert opinion. The Code of Judicial Ethics with Commentary, adopted by the SAJ in June 2001, provides that it is ethically inappropriate for a judge to participate in legal activities which are intended solely for individuals and groups who are pursuing their interests before courts. Such (as a rule paid for) participation by a judge is very similar to legal advice in terms of content and is therefore not

44 The same had been provided by Article 29 of the ZSS prior to the entry into force of the amendment ZSS-M.

45 Franc Testen, *Sodniki in njihove zunajsodne pravne dejavnosti* (Judges and their extrajudicial legal activities), *Pravosodni bilten* (Judicial Bulletin), No. 2/2004.

acceptable⁴⁶.

13. In assessing whether he will engage in a particular (legal) extrajudicial activity, a judge may find helpful the principle of proportionality, which ensures a balance between conflicting principles in all legal fields⁴⁷, and the test of objective impartiality/independence (i.e. the assessment of the impression a judge makes in the given circumstances with the parties and the public with regard to his impartiality/independence). A judge should exercise caution when engaging in legal activities, providing advance notice of a particular activity being an extrajudicial activity and being aware that he should not participate in legal debate or take a view on matters that might become the subject of court proceedings.

14. With regard to judges' extrajudicial legal activities, at its 31st session held on 6 March 2014, the Judicial Council took the view that it is unacceptable for a judge to represent parties to or participants in court proceedings under power of attorney.

46 Franc Testen, *Sodniki in njihove zunajsodne pravne dejavnosti* (Judges and their extrajudicial legal activities), *Pravosodni bilten* (Judicial Bulletin), No. 2/2004.

47 Franc Testen, *Sodniki in njihove zunajsodne pravne dejavnosti* (Judges and their extrajudicial legal activities), *Pravosodni bilten* (Judicial Bulletin), No. 2/2004.

VII. INCOMPATIBILITY

A judge shall balance his private or public, paid or unpaid (*pro bono*) extrajudicial activities in such a way that they do not come into conflict with his professional duties or with the reputation and dignity of the judicial profession.

Commentary:

1. As has been stressed several times in this commentary, membership of the judiciary requires that a judge exercises a certain restraint in his private and public life, though this does not mean that he should be separated from society. Society needs humane judges with a great breadth of knowledge, judges who are familiar with the needs of society, its diversity, the course of its development and its problems. At the same time, judges should also enjoy all fundamental rights and freedoms. This is why a judge should implement the principle of incompatibility of judicial office in such a way that he does not take on or carry out activities that are incompatible with public confidence in his independence and impartiality, with the necessary degree of commitment to a judge's work, or with the reputation and dignity of the judicial profession. However, he may speak, write, teach or lecture (including on non-legal themes) and be included in cultural, sports and other social activities, provided that in so doing he does not threaten the dignity of judicial office or the exercise of his judicial duties. Under the same conditions, he may also participate in various civil society initiatives (in humanitarian and charitable institutions, on school councils, in religious communities, etc.) where membership of these is not based on exclusiveness or non-transparency and where their activity is not aimed at obtaining economic, social, political or other advantage for members of the initiative or institution.

2. When assessing in what extrajudicial activities he is allowed to engage, a judge should ask himself whether, in a specific social context and from the point of view of an average reasonable observer, his engagement in a particular activity might objectively compromise his reputation, his independence or his impartiality or the appearance thereof⁴⁸.

3. A judge also implements the principle of incompatibility of judicial office by being honest and transparent with regard to his extrajudicial activities.

The political activity of judges

4. Judges, who are, and indeed should be, a part of society, cannot be completely separate from political developments, which are an important aspect of society. While the URS prohibits judges from holding office in bodies of political parties, it does not prohibit them from being members

48 See also the position of the Judicial Council adopted at its 36th session held on 29 May 2014, available at the website <http://www.sodni-svet.si/etika-in-integriteta/sodniska-etika/dvom-o-sodnikovi-nepripranskosti/>.

thereof (Article 133 in connection with Article 42 of the URS). A judge may stand as a candidate for certain political offices, such as the office of President of the Republic, the office of deputy of the National Assembly, the office of Prime Minister, and the office of member of the Government. A judge may be appointed as minister, state-secretary, President or Deputy President of the Commission for the Prevention of Corruption, or member of the European Commission. In the event of his being elected or appointed to such office, a judge will have his judicial office and all rights and duties deriving from judicial service suspended (Article 40 of the ZSS). Judges may also fully exercise their right to vote (Article 7 of the National Assembly Elections Act (the ZVDZ), Article 2 of the National Council Act (the ZDSve), Article 10 of the Election of Slovenian Members to the European Parliament Act (the ZVPEP), Article 5 of the Local Elections Act (the ZLV), and Article 2 of the Election of the President of the Republic Act (the ZVPR)).

5. On the other hand, judges should be aware that they are representatives of one of the three branches of power and that their role differs from that of members of the legislative branch or that of members of the executive branch, this requiring them to exercise a certain restraint with regard to political developments. Politicians act and make decisions on the basis of the guidelines and preferences of the electorate. Political parties convey the (often partial) interests of citizens and are the linking factor between citizens and the executive and legislative branches of power. A judge, on the other hand, should make decisions on the basis of the law and the evaluation of evidence on a case-by-case basis, respecting the equality of all people. This is why – as far as is reasonably possible – judges should be, and be seen to be, free from any political influence or pressure; otherwise public confidence in the impartiality and independence of the judiciary might be undermined. It is from this point of view that the principle of incompatibility should be understood and interpreted in relation to a judge's political restraint.

6. His political restraint would not be adequately enforced if a judge contributed financially to or acted in support of a political party or an independent candidate for political office⁴⁹, if he publicly supported or criticised a candidate of a political party or an independent candidate⁵⁰, if he took part in political gatherings or meetings, or if he participated in the consultative bodies of a political party⁵¹. A judge should also appropriately distance himself from the political activity of his family members.

7. A judge should also exercise restraint in participating in public political debate⁵². In order to maintain public confidence in the judicial system, judges should not expose themselves to political attacks. However, they may support and participate in political activities aimed at developing and

49 At its 72nd session held on 20 March 2008, the Judicial Council of the Republic of Slovenia took the view that a judge may not act in support of a political party and that this also applies during his suspension from his duties as a judge.

50 The Judicial Council of the Republic of Slovenia took this view at its 40th session held on 21 September 2006.

51 The Judicial Council of the Republic of Slovenia took this view at its 36th session held on 18 April 2013; the view was also upheld by the Administrative Court in case III U 207/2013.

52 For more, see the commentary on Principle III of the Code, sub-chapters "Public expression of opinion on the part of judges" and "Guidelines for judges regarding the public expression of opinion".

improving the rule of law, the legal system and the judicial branch of power (the principle of compatibility; see Principle VI of the Code).

Financials and business activities

8. Judges may not perform lawyers' or notaries public's transactions or any commercial or other profit-making activities; they may not perform managerial transactions; and they may not be members of the board of directors or supervisory board of any company or other legal person involved in profit-making activities (Article 41 of the ZSS).

9. Data on the assets of judges are publicly available in the part relating to income and assets obtained during their period of holding public office or activity and within one year after the termination of the office or activity. Judges are therefore obliged to report their assets and any changes in assets upon taking office, during their term of office and on termination of office (Article 41 of the Integrity and Prevention of Corruption Act (ZIntPK)).

10. In accordance with Article 35 of the ZIntPK, judges are obliged to report (within one month after taking office and then no later than within eight days of any change occurring) information on entities with which they or their family members have a relationship, as specified in paragraph 1 of Article 35 of the ZIntPK, i.e. in which they participate as a manager, management member or legal representative or have more than a 5 % level of participation in the founders' rights, management or capital, either by direct participation or through the participation of other legal persons.

11. A judge should refrain from any financial or other business activity that might be viewed as having an undue influence on impartiality or threatening the independence of the judge's position. A judge should manage his investments and other financial interests in such a way that he minimises the number of cases in which he might have to disqualify himself from hearing a case. If a judge or a member of his family or a person with whom he lives accepted a gift from a party to proceedings or the party's authorised representative or any other person who might become a party to proceedings conducted by the judge, or if such gift was given in connection with the judge's performance of his judicial duties, this would be contrary to the aforementioned principle. A judge may only obtain financial loans from institutions which are registered for such activity and provided that he obtains them under conditions that also apply to persons who are not judges.

VIII. DISCRETION

A judge shall respect the principle of professional secrecy in relation to personal, business and all other information which has come to his knowledge during the performance of judicial office.

Commentary:

1. Professional secrecy, which is to be respected by each and every judge, has, like the requirement for the independence and impartiality of a judge, both a normative and an ethical dimension. It has a double objective. First, for the purposes of the protection of judicial independence and impartiality, pursuant to paragraph 2 of Article 38 of the ZSS, judges may not publicly express themselves in advance regarding *de jure* and *de facto* matters that are the subject of a case on which a final decision has not yet been passed or a case in which any extraordinary legal remedies have been lodged. A judge is also required to adopt such an attitude to pending proceedings in accordance with the principles of independence and impartiality (Principles II and III) set out in the Code.⁵³ Second, for the purposes of the protection of human rights, judges are obliged to keep to themselves everything they learn about the parties and their *de jure* and *de facto* relations in the course of performing judicial service and to safeguard the confidentiality of all information to which the public does not have access (paragraph 1 of Article 38 of the ZSS).

2. A state governed by the rule of law is a state in which state authorities are subject to the law and which guarantees fundamental (human) rights.⁵⁴ The protection of human rights is a fundamental principle of the Republic of Slovenia (Article 5 of the URS). The right of every person to personal dignity and safety is an important human right (Article 34 of the URS). As already mentioned, paragraph 1 of Article 38 of the ZSS provides that judges are obliged to keep to themselves everything they learn about the parties and their *de jure* and *de facto* relations in the course of performing judicial service and to safeguard the confidentiality of all information to which the public does not have access (the normative aspect of the duty of professional secrecy). The protection of the dignity, integrity and privacy of natural and legal persons is also a central ethical principle of a judge's professional life and is implemented in the principle of discretion, which includes the duty to safeguard the confidentiality not only of information to which the public does not have access, but also of all information which comes to the knowledge of a judge during the performance of judicial office.

3. A judge therefore may not collect personal, business or other information that is irrelevant to a hearing or a judgement; nor may he disclose any such information he does become aware of outside the proceedings. When a judge has to rely on such information in making a ruling, he is obliged to

⁵³ See commentary on Principle III of the Code, paragraph 28.

⁵⁴ Marijan Pavčnik, *Teorija prava: prispevek k razumevanju prava* (Theory of law: A contribution to understanding law), Ljubljana, 2015, pp. 78–79.

properly protect the dignity and privacy of all persons when orally pronouncing the court ruling and in any written copy thereof. In order to protect the dignity and privacy of participants in proceedings, a judge should take specific precautions, such as locking his office, turning off his computer, and shredding notes and drafts that he no longer needs. At the same time, he should also protect the personal dignity of participants in proceedings by maintaining a proper and respectful attitude towards them (Principle IX of the Code)⁵⁵.

⁵⁵ See commentary on Principle IX of the Code, paragraphs 1–8.

IX. ATTITUDE

A judge shall establish and maintain a proper and respectful attitude towards colleagues and participants in proceedings.

Commentary:

Attitude towards parties and other participants

1. A judge's attitude towards parties to proceedings and other participants in proceedings should be based on an awareness that everyone has the right to personal dignity and safety (Article 34 of the URS). One of the basic premises of the Republic of Slovenia is respect for human beings and their rights and freedoms. A judge should be aware that "the judicial system represents a (repressive) part of the modern state apparatus and involves a potential risk of dehumanising people who pass through its doors. An individual turns to the judicial system for help, which automatically places him in a position of inferiority and powerlessness, thereby making him particularly susceptible to any impression that those in authority who are supposed to help him might abuse their power. Because of a general distrust among people of all types of institutions, everyone who operates within the judicial system (from the security guard at the entrance to the building, the staff in the court registry and the website editor to the judge who makes the final decision) is of great importance. In this regard, it should be stressed that the experience of attending court is an uncommon one for most people, which increases their sense of uncertainty and anxiety. Such an emotional state may (negatively) affect the participation of parties to the proceedings⁵⁶."

2. Complying with the principle of maintaining a reasonable time for a trial, a judge should treat the parties and other participants in judicial proceedings in such a manner that they feel listened to and heard (the postulate of procedural justice). In his dealings with them, he should avoid using stereotypes, gestures, comments and remarks that suggest sexual or other forms of discrimination and dismissive, disdainful or sarcastic remarks. At the same time, he should be aware of personality-related (intellectual or emotional), cultural, racial, national, religious and other differences in society; he should understand such differences, be familiar with them and take them into account so as to ensure equality and respect for the dignity of all people at all times. He should listen to all parties and their representatives at the trial with the same attention. Patience, dignity and politeness are necessary qualities of a judge's behaviour.

3. He should prevent participants in proceedings (parties, lawyers, witnesses, experts, etc.) from behaving disrespectfully by taking measures to maintain order within reasonable limits, without showing any tendency to have revenge or appearing revengeful; using only a necessary degree of

56 See *Otvoritev sodnega leta 2016* (The opening of the 2016 judicial year), Supreme Court of the Republic of Slovenia, accessed at http://www.sodisce.si/mma_bin.php?static_id=20160209122253.

strictness, he should maintain equality, decency and order in the courtroom.

4. Additionally, he should ensure (within the limits of his ability and competence) that the court staff who operate on the basis of his instructions and orders respect the dignity and rights of everyone who comes to the court.

Attitude towards lawyers, prosecutors and other legal experts⁵⁷

5. As highlighted by international recommendations⁵⁸, the sharing of common legal principles and ethical values by all professionals involved in proceedings is essential for the proper administration of justice. Judges, lawyers and prosecutors have different roles to play in judicial proceedings, but the contribution of all these professions is necessary in order to arrive at fair and efficient solutions in all judicial proceedings in accordance with the law. Judges, lawyers and prosecutors share a fundamental obligation, which is compliance with procedural rules and the principles of a fair trial. Constructive relations between them will improve the quality and efficiency of judicial proceedings.⁵⁹ The judiciary (and within it judges) should maintain constructive working relations with institutions and public authorities involved in the management and administration of the courts as well as with all the professionals whose tasks are related to the work of judges⁶⁰.

6. A judge should base his attitude towards lawyers and prosecutors on a firm understanding of their roles in judicial proceedings and respect for their independence, while maintaining his own independence and impartiality.

7. Patience, dignity, politeness and a necessary degree of strictness in ensuring order and dignity in the court are also the necessary qualities of a judge's behaviour in relation to lawyers and prosecutors.

8. In order to maintain their own impartiality, judges should refrain from making any comments on the work of lawyers and prosecutors in judicial proceedings; on the other hand, for maintaining the authority and impartiality of the judiciary, the freedom of expression of lawyers⁶¹ and, taking into account the presumption of innocence, the freedom of expression of prosecutors⁶² are also subject to certain restrictions in accordance with paragraph 2 of Article 10 of the ECHR.

57 See points 35 and 36 of the commentary on Principle III of the Code.

58 CCJE Opinion No. 12, CCJE Opinion No.16, and Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe on the independence, efficiency and responsibilities of judges.

59 See CCJE Opinion No. 16.

60 Recommendation CM/Rec(2010)12 of the Committee of Ministers of the Council of Europe on the independence, efficiency and responsibilities of judges.

61 See CCJE Opinion No. 16.

62 See CCJE Opinion No. 12.

Attitude towards colleagues and the court staff

9. A judge is part of a particular working environment which has rules and working routines which have an impact on his work. A healthy and optimistic working environment provides better work results. Thus every judge should actively contribute to creating such a working environment⁶³.

10. He should treat court staff politely, considerately and with respect. He should not request inappropriate or excessive assistance from them.

11. He should maintain relations with his colleagues that are respectful of their independence. He should not make any comments on how another judge has conducted particular proceedings, assessed facts or taken evidence. This, however, does not mean that he must always agree with his colleagues – he may discuss legal issues and form his own views. He should not deceive his colleagues or hide things from them. If he works in a team, he should pay attention to the views of his colleagues and cultivate the skill of teamwork⁶⁴.

12. A judge should strive to improve the quality of work in the working environment of which he is part (by participating in regular meetings and colleges of the department or of the entire court; by participating in working parties and project groups for improving the quality of trials; by being willing to provide high-quality mentorship to his younger colleagues and accept this responsibility with good grace; by actively participating in the provision of training, etc.).

13. Representatives of different levels of the judiciary should attempt to learn about and understand the positions of their colleagues at other levels of the judiciary and the problems they encounter in their work.⁶⁵ They should treat their colleagues at other levels with respect. Thus a judge of first instance should not criticise the instructions of higher courts in judgments before the parties. The same applies to a judge of a higher court, who should avoid making demeaning or other inappropriate comments on the work of first-instance courts in his judgments.

14. A judge should perform his duties as a mentor with diligence, helping judicial trainees, expert assistants and colleagues to perfect their legal knowledge, working skills and the skill of applying the law.

Attitude of judges with managerial responsibilities

15. A judge with managerial responsibilities should treat all his colleagues and the court staff with respect and dignity and should not give the impression that he gives priority to any one of them. He should endeavour to be informed of everything that is going on in the workplace and

63 Boris Strohsack, "O moralno etičnem liku sodnika" (A judge as a moral and ethical figure), in *Naših 40 let* (Our 40 years), Slovenian Association of Judges, Ljubljana, 2011, pp. 24–41.

64 See the sub-chapter "Professional competence" (points 7–11) of Principle IV (competence), in particular point 9.

65 See also point 10 of the sub-chapter "Professional competence" of Principle IV (competence).

should not tolerate any conspiring, gossiping or slander among the employees.

16. His actions and decisions should be transparent. He should not succumb to any pressure and or attempts to influence him as regards the appointment, transfer or promotion of his subordinates. In assigning cases, he should comply with the Rules of Court and ensure the fair and equal distribution of work among all judges.

17. He should be aware that an optimistic and creative working environment in a particular department or court cannot be established solely by issuing reprimands or cautions or by holding talks, but that praising, seeking out and highlighting the positive characteristics and achievements of individual persons who set an example for others to follow is also required⁶⁶.

18. He should endeavour to maintain correct relations with all other judicial bodies and authorities and with other public authorities.

⁶⁶ Boris Strohsack, "*O moralno etičnem liku sodnika*" (A judge as a moral and ethical figure), in *Naših 40 let* (Our 40 years), Slovenian Association of Judges, Ljubljana, 2011.

X. REPUTATION

A judge shall protect the reputation of the judiciary by personal example and shall avoid inappropriate behaviour in all his activities.

Commentary:

1. Public confidence in the judiciary is based not only on the competence and commitment of judges, but also on their personal integrity and upright bearing in the performance of judicial office and in their private lives. A judge is expected to behave in such a way as to set an example for others (both at work and outside the workplace). He should at all times conduct himself honourably and beyond reproach and in accordance with generally accepted standards and values. If particular conduct on the part of a judge could be considered socially unacceptable (from the point of view of an average and informed observer), the public might view this as an example of hypocrisy. Such conduct might, therefore, lead to a loss of public confidence in the judge and the judiciary as a whole. A judge should therefore always consider how his actions or behaviour might be viewed by a reasonable, prudent and informed individual (the objective test).

2. A judge should be polite, intellectually honest and open in his dealings with others (participants in proceedings, journalists, judicial assistants, attorneys and other lawyers, court staff, colleagues, experts in the judicial system, etc.).

3. He should demonstrate self-discipline in coping with stress and frustration.

4. A judge should also take care of his appearance. Wearing an appropriate suit will not give him authority, of course, but dressing appropriately will help protect his reputation and that of the court⁶⁷.

5. In performing his service, a judge should strive to use a high standard of spoken and written Slovenian.⁶⁸ The judiciary is a public service. A judge's written words are intended above all for parties to proceedings, but they are also meant to be read by the wider public. Court decisions must therefore – and including for purposes of protecting the reputation of the judiciary – be properly organised in terms of layout and content, comprehensible, clear and grammatically correct.

6. A judge should not seek unwarranted interventions in order to achieve any transfer, appointment or personal promotion, nor should he act to seek to procure an advantage for himself or

67 Boris Strohsack, "*O moralno etičnem liku sodnika*" (A judge as a moral and ethical figure), in *Naših 40 let* (Our 40 years), Slovenian Association of Judges, Ljubljana, 2011.

68 Principle 15 of the Code of Judicial Ethics, October 1972; Boris Strohsack, "*O moralno etičnem liku sodnika*" (A judge as a moral and ethical figure), in *Naših 40 let* (Our 40 years), Slovenian Association of Judges, Ljubljana, 2011.

for others.

7. A judge is expected to comply with laws, rules and ethical standards. If a judge violates rules or laws, this might compromise the reputation of the judiciary, encourage non-compliance with laws and undermine public confidence in the judiciary.

8. A judge has the right to use legal remedies to protect his own rights. However, he should be prudent when deciding whether or not to initiate judicial proceedings. As a party to proceedings, he might give the impression that he is taking advantage of his position as a judge. His credibility might be damaged following judicial findings and conclusions in such proceedings.

*Če si mislec,
med črko in duhom izberi duha:
če je duh resničen, bo tudi črka prava.*

Boris A. Novak: *Etika težje poti*
(Ethics of a more difficult path)

REFERENCES

7. Novak, Boris A., *Etika težje poti* (Ethics of a more difficult path), *Nova revija*, Year XVII, Nos 190–192, pp. 114–124
8. Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders in 1985 and endorsed by the General Assembly, accessed at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>
9. Declaration on the Principles on the Independence of the Judiciary, adopted by the Conference of Presidents of Supreme Courts of Central and Eastern Europe in Brijuni, Croatia, on 14 October 2015, accessed at <http://ceeliinstitute.org/wp-content/uploads/2015/10/Brijuni-Statement-Booklet.pdf>
10. Commentary on the Bangalore Principles of Judicial Conduct (2007), accessed at https://www.unodc.org/documents/corruption/publications_unodc_commentary-e.pdf
11. The European Network of Councils for the Judiciary (ENCJ), Judicial Ethics – Report 2009–2010, accessed at <http://encj.eu/images/stories/pdf/ethics/judicialethicsdeontologiefinal.pdf>
12. Commission for the Prevention of Corruption, Public Ethics and Integrity, *Odgovornost za skupne vrednote* (Public ethics and integrity: Responsibility for shared values), Ljubljana 2012, accessed at https://www.kpk-rs.si/upload/datoteke/Zbornik_Javna_etika_in_integriteta_odgovornost_za_skupne_vrednote.pdf%281%29.pdf
13. Igličar, Albin, *Pogledi sociologije prava* (Views on the sociology of law), 2012
14. Igličar, Albin, *Teme iz sociologije prava* (Themes in the field of sociology of law), 1991
15. Kranjc, Janez, *Latinski pravni reki* (Latin legal sayings), Ljubljana, 2006
16. Kranjc, Janez, *Pozabljena latinščina* (The forgotten Latin), Ljubljana, 2014
17. Kranjc, Janez, *Pozabljena latinščina* (The forgotten Latin), *Pravna praksa*, 17 March 2016
18. Krug, Peter, *Urejanje zunajsodnega dela sodnikov: Etični standardi in njihova uporaba v Združenih državah Amerike* (Regulating judges' extrajudicial activity: Ethical standards and their application in the United States of America), *Pravnik Magazine*, 2008, Nos 7–8, pp. 331–362
19. Moran, Jasmin, *Courting Controversy: Judges and the Problems Caused by Extrajudicial Speech*, 2014, accessed at <http://researcharchive.vuw.ac.nz/xmlui/bitstream/handle/10063/4613/thesis.pdf?sequence=2>
20. Mt. Scopus International Standards on Judicial Independence, accessed at <http://www.jiwp.org/#!mt-scopus-standards/c14de>
21. Novak, Marko, *Delitev oblasti, Medigra prava in politike* (The separation of powers: An interplay of law and politics), Cankarjeva založba, 2003
22. Pavčnik, Marijan, *Neodvisnost sodnikov* (The independence of judges), *Odvetnik*, 2014, No. 68., p. 10
23. Pavčnik, Marijan, *Teorija prava: prispevek k razumevanju prava* (Theory of law: A

- contribution to understanding law), 2015
24. Plauštajner, Konrad, *Pravica do neodvisnega sodnika* (The right to an independent judge), *Podjetje in delo*, 1994, Nos 5–6, pp. 837–845
 25. Recommendation CM/Rec(2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities
 26. Schmidt, W. Christopher, Beyond the Opinion: Supreme Court Justice and Extrajudicial Speech, accessed at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2429480
 27. Shetreet, Simon, *The Culture of Judicial Independence, Conceptual Foundations and Practical Challenges*, Boston, 2012
 28. Slovenian Association of Judges, Code of Judicial Ethics, 2001
 29. Slovenian Association of Judges, *Naših 40 let* (Our 40 years), Ljubljana, 2011
 30. Judicial Council positions on ethics and integrity, accessed at <http://www.sodni-svet.si/>
 31. Council of Europe, CCJE, the Magna Carta of Judges, 2010, accessed at <https://wcd.coe.int/ViewDoc.jsp?Ref=CCJE-MC%282010%293&Language=lanSlovenian&Ver=original&Site=COE&BackColorInternet=D BDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>
 32. Council of Europe, CCJE Opinions Nos. 1, 3, 4, 7, 12, 16 and 18, accessed at https://www.coe.int/t/dghl/cooperation/ccje/textes/Avis_en.asp
 33. Council of Europe, Committee of Ministers, Recommendation CM/Rec(2010)12 on the independence, efficiency and responsibilities of judges, accessed at <https://wcd.coe.int/ViewDoc.jsp?id=1707137>
 34. Šturm, Lovro, *Omejitve oblasti, ustavna izhodišča javnega prava* (Limits of power: constitutional premises underlying public law), *Nova Revija*, 1998
 35. Testen, Franc, *Sodniki in njihove zunajsodne pravne dejavnosti* (Judges and their extrajudicial legal activities), *Pravosodni bilten (Judicial Bulletin)*, No. 2/2004
 36. Supreme Court of the Republic of Slovenia, *Otvoritev sodnega leta 2016* (The opening of the judicial year 2016), accessed at http://www.sodisce.si/mma_bin.php?static_id=20160209122253
 37. Supreme Court of the Republic of Slovenia, IQJ project – Improving the Quality of the Judiciary, accessed at http://krn.sodisce.si/userfiles/File/SRSU/_ni_Vzpostavitevni_dokument_IKS_ver_1_0-2016.pdf
 38. Zagorc, Saša, *Poslanski mandat in nezdržljivost poslanske funkcije* (The term of office of deputies and the incompatibility of the office of deputy), 2009
 39. Zalar, Boštjan, *Krajša zgodovina načela pravne države* (A brief history of the principle of the rule of law), *Pravna praksa*, 12 March 2009, 28/882
 40. Zobec, Jan, *Mehki trebuh slovenskega sodstva* (The soft underbelly of the Slovenian judiciary), *Delo*, 8 December 2012
 41. Zobec, Jan, *Sodnikove etične dileme* (Ethical dilemmas faced by a judge), *Podjetje in delo*, 2007, Nos 6–7, pp. 1553–1572

LIST OF ABBREVIATIONS AND ACRONYMS

CCJE	Consultative Council of European Judges
JTC	Judicial Training Centre
EJTN	European Judicial Training Network
ECHR	European Convention on Human Rights, <i>Uradni list RS</i> (The Official Gazette of the Republic of Slovenia) – International Treaties, No. 33/1994
ENCJ	European Network of Councils for the Judiciary
ECtHR	European Court of Human Rights
EU	European Union
Code	Code of Judicial Ethics
Commission	Ethics and Integrity Commission
RS	Republic of Slovenia
SAJ	Slovenian Association of Judges
SFRY	Socialist Federal Republic of Yugoslavia
URS	Constitution of the Republic of Slovenia, <i>Uradni list RS/I</i> , No. 33/1991 and <i>Uradni list RS</i> , Nos 42/1997, 66/2000, 24/2003, 69/2004, 68/2006 and 47/2013
ZDSve	National Council Act, <i>Uradni list RS</i> , Nos 44/1992, 11/2003 – decision of the Constitutional Court, 73/2003 – decision of the Constitutional Court, 76/2005, 94/2007 – decision of the Constitutional Court, 95/2009 – decision of the Constitutional Court, and 21/2013 – ZFDO-F
ZIntPK	Integrity and Prevention of Corruption Act, <i>Uradni list RS</i> , Nos 45/2010, 26/2011, 30/2011 – decision of the Constitutional Court, and 43/2011
ZLV	Local Elections Act, <i>Uradni list RS</i> , Nos 72/1993, 7/1994, 33/1994, 61/1995 – decision of the Constitutional Court, 70/1995, 51/2002, 11/2003 – decision of the Constitutional Court, 73/2003 – decision of the Constitutional Court, 54/2004 – Zdoh-1, 72/2005, 72/2005 – ZLS-M, 121/2005, 70/2006 – decision of the Constitutional Court, 46/2007 – decision of the Constitutional Court, 54/2007 – decision of the Constitutional Court, 60/2007, 45/2008, and 83/2012
ZS	Courts Act, <i>Uradni list RS</i> , Nos 19/1994, 45/1995, 38/1999, 26/1999 – ZPP, 28/2000, 26/2001 – PZ, 67/2002 – ZSS-D, 110/2002 – ZDT-B, 56/2002 – ZJU, 73/2004, 72/2005, 127/2006, 49/2006 – ZVPSBNO, 67/2007, 45/2008, 96/2009, 86/2010 – ZJNepS, 33/2011, 75/2012, 63/2013, and 17/2015
ZS-L	Act Amending the Courts Act, <i>Uradni list RS</i> , No. 17/2015 of 13 March 2015
ZSS	Judicial Service Act, <i>Uradni list RS</i> , Nos 19/1994, 8/1996, 24/1998, 48/2001, 67/2002, 2/2004 – ZPKor, 71/2004, 47/2005 – decision of the Constitutional Court, 17/2006, 27/2006 – decision of the Constitutional Court, 127/2006, 1/2007 – decision of the Constitutional Court, 57/2007, 120/2008 – decision of the Constitutional Court, 91/2009, 33/2011, 46/2013, 63/2013, 69/2013 – corr., 95/2014 – ZUPPJS15, and 17/2015

- ZSS-M Act Amending the Judicial Service Act, *Uradni list RS*, No. 17/2015 of 13 March 2015
- ZVDZ National Assembly Elections Act, *Uradni list RS*, Nos 44/1992, 13/1993, 60/1995, 14/1996 – decision of the Constitutional Court, 67/1997 – decision of the Constitutional Court, 66/2000 – UZ80, 70/2000 – ZpolS-A, 11/2003 – decision of the Constitutional Court, 11/2003 – decision of the Constitutional Court, 73/2003 – decision of the Constitutional Court, 78/2006, 54/2007 – decision of the Constitutional Court, and 35/2014 – decision of the Constitutional Court
- ZVPEP Election of Slovenian Members to the European Parliament Act, *Uradni list RS*, Nos 96/2002, 22/2004, 41/2007 – ZVRK, 109/2009, and 9/2014
- ZVPR Election of the President of the Republic Act, *Uradni list RS*, Nos 39/1992, 11/2003 – decision of the Constitutional Court, and 73/2003 – decision of the Constitutional Court
- ZVPSBNO Protection of Right to Trial without Undue Delay Act, *Uradni list RS*, Nos 49/2006, 117/2006 – Zdoh-2, 58/2009, 30/2010 – decision of the Constitutional Court, and 38/2012