ABSTRACT

This work aims to present the role of the judicial code of ethics as an important factor in improving public’s faith in the judicial system. Judges, while performing their functions, shall always act towards protection of dignity, responsibility, independence and impartiality of judicial bodies. They hold the right and obligation to solve matters put in front of them impartially, relying on facts and in accordance with the law, without being subjected to any influence, pressure, threat or inappropriate direct or indirect interference. Court proceedings shall be conducted free of any interference. Justice, apart from being delivered, shall also be seen as being delivered. Protection of each judge’s effective independence is linked to the appropriate form of his responsibility, essential for this, in my opinion, is ethics. It does not suffice for a judge to say that whatever is legal is also ethical. Often, rules of ethics call for higher standards than the law itself. Ethics represents higher standards, which judges in particular shall endeavour to protect.

Introduction

1. Judicial code of ethics as a necessity in the judicial system

Judges are important state officials whose authority are spread in all areas of social life, and who through the process of resolving contests occurring between people and applying the law, define citizens’ rights and obligations, they decide on important matters in the public and private sector, and also decide in relation to actions of other state officials. Therefore, such large power on judges requires them to have high standards of conduct, inside as well as outside of courts.

In order to determine these standards of conduct, the idea has already been accepted that it is necessary for a framework on rules of judicial ethics to be issued, which shall ensure that judges...
and the public are aware about principles that lead the judges in their personal and professional life.

Issuance of rules on judicial ethics was not always welcome in various countries, and this is mainly due to the connection with the conflict that these rules present opposite the principle of the independence of the judiciary. It is widely known that the independence of the judiciary is considered to be the necessary standard for any democratic society, and in this context, the argument that if rules on conduct of judges are issued than their independence is being restricted was often used. There is this conviction that determination of judicial standards of conduct and investigation of responsibility in cases when they are violated interferes with the independence of the judiciary. On the other hand, in order for citizens to have faith in the judiciary, judges should be able to provide credibility, which is achieved by respecting ethical rules and principles.

Nevertheless, in majority of countries, these two elements, independence of the judiciary and responsibility of judges, are seen as complementary to one another and have the same aim, namely, promotion of independent judiciary and improvement of public’s faith in capacity of judges.

Not only faith of the public, but, also the success of the courts largely depends on implementation of the code of ethics. If judges do execute their ethical function, not bypassing the professional one, the public shall have faith and respect for the judicial institutions and they shall act in accordance with their decisions.

This trust cannot be maintained and strengthened if judges do not act according to this code and if they do not respect the highest standards of the ethical code. Also, if the state does not ensure that the judiciary has available all the necessary means and resources to enable them to execute their duties efficiently and within reasonable time.

At the time when ethical rules presented as necessary, together with the professional qualification, there was a dilemma about who is supposed to issue these rules considering that this framework of judicial rules directly influences the independence of the judiciary.

Considering that the issue of the independence of the judiciary must be regulated by this very branch of the state power and no intervention by legislative or executive powers shall be allowed, than the issue of the code of ethics, which is essential in determining independence of the judiciary and goes inside the area where this independence is influenced, must be regulated by the judicial power itself. Based on the abovementioned fact, the judiciary must take a proactive role in issuing codes and rules of ethics, and it shall not wait for any interventions by the legislative and executive powers. It is precisely the process of issuance of this code that influences in its execution, so, this process shall necessarily reflect discussions and opinions of judges and these principles are issued with their approval.
2. Background on appearance of the judicial code of ethics

Ethics is an essential element in the role of judges. Knowledge and execution of rules of ethics is essential in guarantying the rule of law, democracy and good governance in every society. While all countries accept that ethical and moral rules are necessary, not only to ensure public’s faith, but also to instruct judges how to conduct themselves in various situations, not all countries have regulated this matter in a same way, some of them by judicial codes, and the large majority of them have only issued ethical rules in order to ensure a better judiciary.

The Judicial Code of Ethics, as a compilation of ethical rules, appeared for the first time in the USA, in 1924, by the American Bar Association, who made the issue of ethics a central problem. Since then, these efforts in the USA did not stop and such rules have been rewritten and changed many times and lastly, in 2010, the latest code was issued. Nowadays, all over the world there are judicial code of ethics issued, which are seen as a guarantee for the judicial integrity. Initiatives to issue these codes came at various times, starting from various international meetings, by judges themselves, and courts and also by lawyers. In 1998, the European Charter on the Statute of Judges was issued. In 1999, a similar code was issued in India, and then in following years in South Africa, Australia etc.

Also, in Kosovo, on 25 April 2006, the Judicial Code of Ethics was issued by the Kosovo Judicial Council, which presents a set of moral standards and norms that assists judges in supplying themselves with the most essential abilities, the ability to adjudicate and decide honourably and objectively, without being influenced by external factors and free of any form of pressure.

Judges are also obliged to act in accordance with this Code of Ethics and disrespecting it brings about disciplinary accountability.

3. Content of the Judicial Code of Ethics

The Judicial Code of Ethics aims to determine standards on conduct of judges through principles that serve as instruments to keep judges on tracks of independence, impartiality, professionalism and transparency. Essential principles are the principle of independence, impartiality, integrity, respect for rights of the parties to proceedings etc. During exercise of their duties judges shall respect ethical principles of professional conduct. These principles do not include only obligations that may be sanctioned by disciplinary measures, but also provide instructions for judges how shall they conduct themselves during exercise of their profession.
4. The principle of independence

The independence of the judiciary is a precondition for the rule of law and an essential guarantee for a fair trial. Independence of the judiciary shall be legal, functional and financial. It shall be guaranteed and protected by the other branches of the state power, by parties that seek justice, by other judges and society as a whole through national rules of the highest level. The state and each judge are responsible for promotion and protection of the independence of the judiciary. The independence of the judiciary is guaranteed in particular by the manner of recruiting, nomination until the retirement age, promotion in duty, impossibility of dismissal, training, judicial immunity, discipline, compensation and financing of the judiciary.

The independence of the judiciary is not a privilege of an individual judge. It is a responsibility of each judge that enables him to adjudicate a contest honourably and impartially based on the law and evidence, without any pressure or fear of interference from outside. The essence of the independence of the judiciary principle is full freedom for the judge to review and decide on matters in front of court and no external party including the legislative powers, government, other individuals or judges shall interfere or try to interfere in the way a judge conducts and decides on a matter. So, a judge exercises the judiciary function independently based on evaluation of facts and conscientious understanding of the law, free of any external influence, incitement, pressure, threat or direct or indirect interference from any angle and for any reason. A judge shall encourage and protect execution of judicial duties and protect institutional independence of the judiciary. He shall promote high standards of conduct in order to improve the public’s faith in the judicial system, which is an essential precondition in protecting the independence of the judiciary.

5. The principle of impartiality

Impartiality is essential in correct execution of the judicial function. This is valid not only for a decision but also for the process through which this decision was rendered. In order to better understand the impartiality principle, it should be noted that the independence is a necessary precondition of impartiality. A judge may be independent but not impartial, but a judge who is not independent can never be impartial.

Impartiality is an essential quality required from a judge and it is an essential attribute of the judiciary, it must exist also as factual matter but also as a matter of a reasonable perception. If it is thought that a judge did not act impartially, then this perception creates a feeling of injustice that harms the faith in judiciary system. This perception may rise due to several reasons such as conflict of interest, conduct of a judge while performing his duties or even due to acts or activities of a judge outside a court.

261 Magna Karta for Judges, 17-19 November 2010, Strasbourg
The European Court of Justice clarified that there are two aspects of the impartiality principle. Firstly, a judge must be objectively impartial i.e. he shall not have any prejudice or be personally biased. Personal impartiality shall be presumed, except for cases when there are reasons to believe otherwise. Secondly, a judge shall also be impartial from an objective point of view, so, he shall provide sufficient guarantees to exclude any legitimate doubt in this sense, including his appearance and his personal conduct. If a judge appears partial than this harms the public’s faith in the judicial system. Therefore, a judge shall exclude himself from all activities which may give an impression that a judge’s decision may be influenced by external factors. The very term ‘partial’ is defined as an inclination, tendency, or predisposition towards one or the other party for a certain result. Partiality is a mental state, stance or point of view which influences judge in exercising his function impartially. Partiality may manifest verbally or physically through usage of names, offences, nicknames, body language and face expressions. A judge shall ensure that his conduct, within the court as well as outside it, conserves and improves the faith of the public, legal professionals and parties in his impartiality and namely by avoiding communication ex parte, by “checking“ his conduct and words also outside a court and by showing care when necessary about any conflict of interest.

6. Integrity

Integrity is an essential element in exercising functions of a judge, it is an attribute of honour and justice. Integrity components are honour and judicial moral. A judge shall always, and not only during execution of the official duty, act honourably and be virtuous in conduct and character. Integrity as a concept cannot be graded, it is an absolute value. In judiciary, integrity is more than a virtue, it is a necessity, because the faith of the public in justice institutions does not depend only on judges’ professionalism but also on their moral integrity. It is their duty not only to decide on matters with honour and impartially but also to exercise their duties in such a way that this does not give rise to any suspicions to the contrary. Therefore, their professional ability is only one side of the medal, the other side, of same importance, is to ensure public’s faith in their impartiality. Thus, on top of being a “good judge”, it is expected that a judge also shows that he is also a “good citizen”, because his conduct and image have an influence on a judicial system as a whole. All of this is achieved through high standards in private and public life, conduct in a court and strict following of the law.

Integrity is an internal characteristic which means that a person acts in accordance with specific principles and values, which one does not compromise – at work or in one’s private life. It means conduct of duties honourably, faithfully, correctly and with diligence. In fact, integrity is manifested in completion of judicial acts objectively, equally, fulfilling law conditions, all of this towards legality of the act.

262 Gregory vs United Kingdom, European Court of Human Rights, (1997)
7. Conclusion

Justice is the backbone of every democratic society. The rule of law and acceptance of its values and principles means having faith in justice. In order for citizens’ faith in the system to exist, professionals in the justice system shall be able to provide for trust. They shall show irreproachable conduct and excellent professional demeanour because public’s perception regarding work of the judiciary directly affects the faith on judiciary system and it is the public that delivers the final judgment on ethical performance of the judiciary. Therefore, each judge shall conduct himself and act in accordance with the law and ethical rules set by the Judicial Code of Ethics.

Finally, it should be emphasised that the judicial ethics is a joint concern of judges and the jurists’ community and, furthermore, it is not considered as a privilege for judges, but as a right of citizens to be convinced that the courts are the most legitimate and the most credible institution that treats their issues. The judicial ethics is an associate of the rule of law, good governance and democracy that establishes public’s credibility for constitutional guarantees of their rights and impartial and fair judgment of their contests.

Yet, despite the advantages that code of ethics offer, they are not, and they should not be regarded as replacements for judges’ individual ethics, since the judicial system cannot rely on judges who only show respect for rules determined by a code but do not possess any individual ethical values themselves. Because judges are also human beings with advantages and weaknesses as everybody else. They should always be objective in exercising their duties, but they cannot escape from their personal formation, which they gained during their experience.

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