

Judicial Ethics in Europe

Good judicial practice - Principles and Issues

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Questions and Main Theses

Is there special Judicial Ethics for Judges?

The word “ethics” itself is multifaceted. A wide definition could be “The basic concepts and fundamental principles of decent human conduct.” Of course judges should be guided by the same set of moral principles as other citizens and most people think that judges, because of the nature of our work should have a higher – not different – morale than other people. It could be argued that by setting up a special set of ethical rules, applicable only on judges, the judges form a guild, screened from the rest of the society.

Judicial ethics has nothing much to do with ethics in the sense of “The basic concepts and fundamental principles of decent human conduct” though it should of course not be in contradiction of these principles. Judicial Ethics to us are rules or standards governing the conduct of judges as members of the judiciary. It is the professional ethics of judges, dealing with how a good judge should act in different situations or dealing with different questions while performing his or her duties as judge.

Why draft a set of written ethical rules or guidelines for judges?

- a. The rules/guidelines shows the citizens that judges are aware of the ethical questions connected to their profession and shows the standards which judges themselves have set up as a goal.
- b. The rules/guidelines are useful for the individual judges themselves to find solutions in situations where they are confronted with an ethical problem.
- c. The rules/guidelines can be used on seminars and discussions on judicial ethics and in further education of judges.
- d. The rules/guidelines can serve as rules or standards for authorities that supervise courts and judges or for a governmental disciplinary board when deciding if judges have behaved “unethical”.
- e. The rules/guidelines are needed for Sweden to follow the Recommendation CM/Rec(2010)12 by the Committee of Ministers of the Council of Europe on the independence, efficiency and responsibilities of judges.
- f. Every profession with any self-respect such as lawyers, real estate agents, masseurs and homeopaths as well as judges should adopt a set of ethical guidelines to be looked on as a serious profession.

The purpose of the rules or guidelines also has big influence on how they should be drafted. The use or purpose of such ethical rules or guidelines highly depends on national conditions.

The main reasons for the working party composed of nine judges nominated by the Swedish Judges Association for not adopting a set of ethical rules but (only) listing a number of ethical questions were:

- a. It is very difficult to draft a set of rules so precise that they give any guidance in a special case without making them very long and detailed.
- b. Rules that are put in general terms often become so bland that they become meaningless obviousness's.
- c. The important thing was that it created the conditions for a living and ongoing discussion among judges about the ethical aspects of our work. A set of rules risked creating converse. End of discussion, here are the ethical rules, follow them!