Report Working Party 13

Judicial Ethics in Europe

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The moderator *Annika Sandström*, Senior Judge at the High Administrative Court of Sundsvall/Sweden, opened the working party with the statement that – as established by the recommendations by the Council of Europe – ethical rules for judges should exist. She reported on a Swedisch-Russian co-operation which led in 2012 to the adoption of a Russian Code of Ethics. Different to the Swedish way the Russian code would provide detailed rules to a wide extent.

In his introductory report *Thed Adelswärd*, Senior Judge at the District Court of Malmö/Sweden, dealt with the question whether special ethics for judges exist or should exist. Judges should be guided by the the same moral principles like other citizens and some people would think that judges should have a higher but not different moral. The discussion on the compilation of ethic rules and guidelines for judges in Sweden came to the conclusion, that there is no need for written ethic rules. Such would in the sense of a status quo freeze a standard which would prevent an open and ongoung discussion about ethics among judges. Written ethical rules in their necessary brevity and conciseness could be comprised only abstractly and so would be not very usefull to answer concrete ethical question in judges's daily life. The attempt to comprise the majority or a large number of practical ethical questions would lead to a no longer praticable volume of such set of rules. Hence a working group established by the Swedish judges association – guided by the „Säulen richterlichen Handelns“ as adopted in the year 2007 by the „Schleswiger Ethikrunde“ - has decided to adopt a paper titeled „Good judicial practice – Principles and Issues“. This paper is based on the four basic principles as definded by the so called Bangalore principles independence, impartiality and equality, good behaviour and apropriate treatment of others and high competence and diligence and deals with questions on this. The catalog of questions is within these four basic principles devided into specific areas such as behaviour against influence from outside and inner or personell indepedence, where it is distinguished between professional and private behaviour.

In the discussion it was established that the question on the necessity of ethical rules for judges and the way how they should be comprised would very much depend on the cultural background. While in Finland ethical rules were adopted on the basis of a broad dicussion, judges in Germany would be more reluctant against written ethical rules as they would be seen as a basis for disciplinary sanctions against judge's behaviour. From Latvia it was reported that – other than the disciplinary board in Sweden – no institution in charge of disciplinary decisions would exist so that judges under circumstances would be directly confronted with criminal charges. On the question of the necessity of binding ethical rules or more a code of conduct it was reported from the German perspective that in cases of public statements e.g. during assemblies judges would impose a self-restraint without need for a written code. The reluctance of Swedish judges against written ethical rules would had been critizised in public discussion as they would not be up to selfcommitment.

After the break *Bernard Even*, Judge at the Administrative Court of Appeal in Paris/France, reported on the French developments which would have led in 2011 to the adoption of an ethical charter called „Charter on the deontology for members of administrative courts“ and which would be available on the homepage of the Conseil'd Etat in English soon. One would have emanated from the distinction between ethical principles for the Supreme Court and for the other courts which were merged to a corporated document. After the parliament had decided for the compilation of a charter of ethics, after three years of discussion a charter for ordinary judges had been adopted by the High Judicial Council in 2010. In 2011 the parliament had decided to draft a law on ethics which fell victim to the discontinuity of the Sarkozy gouvernment. The new discussion would have had the

double function of administrative judges in mind who perform adjudicational tasks on the one and advising tasks for the gouvernment on the other hand. The necessity of a preventive code would result from the demand of the population on trust in administrative jurisdiction and its work on the basis of ethical principles. Thereafter an overview on the structure and the content of the charter was given. On the basis of the charter a council for ethics had been implemented which would consist of one member from the Council of State, one from the High Judicial Council and the vicepresident of the Council of State, which could be addressed by judges and which could upon request issue written recommendations. Since 2011 the council has issued ten recommendations which were published anonymized.

In Lativia a judicial ethic committee would have been implemented to which judges could present complaints against other judges. The committee would announce recommendations in cases where a peacefull settlement between the judges concerned cannot be reached by the president of the respective court.

According to a report by *Carlo Schockweiler,* Judge at the Luxembourg Administrative Court, following a general demand in Luxembourg within a short period of time ethical rules and principles had been adopted by the parliament, the gouvernment and the judiciary which considerably have put existing rules in writing. In Mai 2012 a working group implemented by the presidents of the highest courts and prosecutors would have presented a draft on ethical rules for the judiciary on which only a hand full of the 200 judges would have reacted. Hence the democratic legitimation of this draft should be doubted. The so adopted rules would inter alia contain rules concerning the respect for the judiciary, the quality of the work of judges and the contatct with the media und would aim in strengthening confidence of the people in the functioning of the courts. According to the rules the expression of opinions by judges in public should be avoided, while a public discussion on adjudication should be possible. It would be forbidden to report on experiences at the courts in public so one should be prevented from cirticism on the Luxembourgian court system. There also should be no direct communication with the media and especially own decisions should not be commented. In case of direct criticism against a judge one could decide whether to react by oneself or through judges representatives or associations. The rules would be applicable also for retired judges.

The reports were followed by a discussion emanating from the question in front of what judges should fear in relation to ethical rules. Beside all restriction in the freedom of expression there should remain a right to criticsm and the majority was of the oppinion that teaching activities and a right for scientific publications should be permitted under an ethical view. A fear was seen in the composition of ethic commissions which – if to much dominated by court presidents – could be used to influence young judges. On this the occupation of such panels in diffenrent Member States was discussed. Out of ethical reasons sideline jobs for judges such as mediators should be possible. It was discussed controversialy whether ethical rules should be applicable for retired judges.