

KOSOVO JUDICIAL AND PROSECUTORIAL COUNCIL

Code of Ethics and Professional Conduct for Judges

Referring to UNMIK Regulation No. 2001/8 on the establishment of the Kosovo Judicial and Prosecutorial Council,

Recalling internationally recognized human rights standards and fundamental freedoms which in particular guarantee to everyone the principle of equality before the law, the presumption of innocence and the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law;

Having regard for the United Nations Basic Principles on the Independence of the Judiciary, endorsed by the United Nations General Assembly in November 1985;

Referring to Recommendation No R (94) 12 of the Committee of Ministers of the Council of Europe to member states on the independence, efficiency and role of judges, and having made their own, the objectives, which it expresses;

Considering the European Charter on the Statute for Judges and its Explanatory Memorandum prepared by the experts of the Council of Europe and adopted in Strasbourg in July 1998;

Recognizing that an independent and honorable judiciary is essential to grant justice in a democratic society, for strengthening the pre-eminence of the rule of law and for the protection of individual liberties; and

Conscious of the necessity, in particular due to the state of transition of Kosovo, that provisions calculated to ensure the best guarantees of the competence, independence and impartiality of judges be supplemented by a code of ethics and professional conduct for judges.

The present code defines the following standard of ethics and professional conduct that should be observed by Judges, and whose breach constitutes grounds for sanction as provided for and in accordance with the provision of section 7 of Regulation No. 2001/8 and section 2 of the Administrative Direction No. 2001/4. As a necessary corollary, provisions have been adopted to protect the judge in the exercise of judicial independence.

The specific misconducts described in the present code are not exhaustive, any action undertaken by a judge even though not expressly contemplated by the provisions herein contained but having a similar effect, may be considered a breach of the present code and consequently sanctioned.

This code applies to all professional judges in Kosovo, including those dealing with criminal, civil, commercial and administrative law matters, at all level of proceedings including Minor Offences Courts

I. GENERAL PRINCIPLE

A judge shall act at all times in a manner that promotes public confidence in the dignity, integrity and independence of the judiciary. This implies that a judge shall observe high standards of professional and personal conduct, respect and comply with the law, perform the

duties of office impartially and diligently and avoid any conduct and situation that could lead to a judge's integrity, impartiality or independence, being questioned. This applies not only to the judge's professional life but also to certain aspects of a judge's private life, when they may impair judge's image in the public eyes, thus affecting the judiciary as a whole.

II. SPECIFIC RULES OF ETHICS

A. Judicial Activities

1. In proceedings, a judge has a duty to protect the rights and freedoms of all persons.
2. In exercising judicial responsibilities, a judge has the duty to ensure that the law, including the internationally recognized standards, is properly applied and that cases are dealt with fairly by avoiding any discriminatory attitude based on any ground, including gender, sexual orientation, race, color, other genetic features, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth, health, handicaps or other status.
3. A judge has in particular the following responsibilities:
 - a) to act impartially and independently in all cases and free from any outside influence, and perform judicial duties based on the facts and the law applicable in each case, without any restriction, improper influence, inducements, pressures, threats of interferences, direct or indirect, from any quarter;
 - b) to avoid any potential conflict of interest based on family or social relationships as well as financial or professional relationships;
 - c) if, for any reason, a judge feels unable to comply with the provisions of the previous paragraphs of this section, he/she must take immediate action including withdrawing from a case and requiring the President of the Court where he/she serves to be exempted from the case. In any event, if a judge is in a situation which might be questioned he/she is under the obligation to disclose it to the parties involved and agree with them his/her possible disqualification;

B. Non judicial activities

1. Generally a judge may freely carry out activities outside the scope of the judicial mandate including those activities which are the embodiments of his/her rights as citizen or which represent his/her professional interests and independence. This freedom is only limited so far as such outside activities are incompatible with confidence in, or the impartiality or the independence of a judge, or his or her required availability to deal attentively and within a reasonable period with the matters put

before him or her¹. Provided what is established in the present section, a judge may engage in the following activities:

- (a) speak, write, lecture, teach and participate in other activities concerning the law, the legal system, and the administration of justice, including through organization or governmental agency devoted to their improvement; and
 - (b) engage in the arts, sports and other social and recreational activities as well as participate in civic and charitable activities;
2. In particular, a judge shall not be engaged in any activity, including political activity, which is incompatible with a judge's functions.
 3. A judge shall not promote or participate in any organization supporting any kind of discrimination.
 4. A judge shall not personally solicit funds for an organization or agency, allow his or her name to be used in solicitation of funds or allow the use of the prestige of judicial office for that purpose, except for humanitarian organizations or agencies or those organizations or agencies which are devoted to the strengthening of the independence of the judiciary, the improvement of the legal system and legal education.
 5. A judge shall refrain from financial and business dealings that tend to reflect adversely on his/her impartiality, interfere with the proper performance of judicial duties, exploit the his/her judicial position, or involve him/her in transactions with lawyers or persons likely to come before the court on which he or she serves.
 6. For the all term of their appointment, judges are forbidden to conduct other legal practice or privately carry out any judicial functions (such us to act as defenders, arbiters, mediators). They may be appointed as guardian or personal representative only in cases provided by law.
 7. A judge and his/her judge's family shall not, under any circumstance, accept gifts, favors, privileges, or promises for material help from any person having a direct or indirect interest in a case tried by the judge.

III. SPECIFIC RULES OF PROFESSIONAL CONDUCT

A. Adjudicative responsibilities

1. A judge has the duty, in exercising his/her judicial responsibilities, to ensure that cases are dealt with fairly and efficiently. This implies, in particular, a duty to ensure that a fair hearing is given to all parties and that the procedural rights of the parties are respected throughout the proceeding, and to avoid any undue delays as well as any forms of absenteeism and negligence at work.

¹ The negative effects of outside activities on the conditions under which judicial duties are discharged shall be pragmatically assessed

2. When hearing a case, a judge has a particular obligation to seek the truth. This implies calling for additional witnesses and ordering further forensics tests whenever he/she considers it necessary for the sake of determining the truth;
3. A judge shall maintain and improve the highest standards of professionalism and legal expertise and for that purpose engage in continuing legal education and training in particular when available.
4. In order to be involved in adjudicating actions involving juveniles a judge shall have the relevant professional qualifications and/or experience.
5. When permitted by law and if appropriate, a judge shall encourage the parties to reach a friendly settlement. In any event and except where the law or established practice otherwise provides, a judge shall give clear and complete reasons for his/her judgments and where necessary, explain procedural matters to parties in an impartial manner using language which is readily understandable.
6. When applicable, a judge shall respect the secrecy of information entrusted to them and/or confidentiality of the proceedings. This implies that while a proceeding is pending in any court, the judge shall avoid making any public comment that might reasonably be expected to affect its outcome or impair its fairness or undermine the judiciary's credibility, and shall require similar abstention on the part of court personnel subject to the judge's direction and control.
7. Except in cases provided by law, a judge shall avoid and discourage *ex-parte* communication. Upon occurrence of such communication the judge has to disclose promptly the relevant information to the other parties involved and, when possible, procure their attendance.
8. In the performance of judicial duties a judge shall avoid words or conduct manifesting bias or prejudice and shall not allow staff, court officials and others subjects to the judge's direction and control to do so.
9. A judge shall show availability and respect for individuals², be patient, dignified and courteous to litigants, defendants, witnesses, lawyers, prosecutors other judges and lay-judges and any third party with whom he/she deals in his/her official capacity, and should require reciprocity from lawyers, staff and court officials, and others with whom he/she may come in contact during the court proceedings or who are subject to his/her direction and control.

B. Administrative responsibilities

1. A judge shall discharge his/her administrative responsibilities with professionalism and diligence and should cooperate with other judges and court officials in the administration of court's activities.

² "Availability" refers both to the time required to judge cases properly and to the attention and alertness that are obviously required for such important duties, since it is the **Judge's** decision that safeguards individual rights. Respect for individuals is particularly vital in positions of power such as that occupied by the **Judge**, especially since individuals often feel very vulnerable when confronted with the judicial system.

2. In particular, a judge shall:
 - a) respect the necessary obligations pertaining to his/her function in terms of supervision of the other court staff under his/her control.
 - b) organize his/her activities and respect the particular obligations of time and duty necessary to performing such activities.
 - c) comply with the administrative instructions from the Department of Justice to the extent such instructions are aimed to rationalize and improve a consistent managing of the Courts administrative operations and provided that no interference with the free judgment is exercised thereby.
3. The function of Court President requires a particularly high degree of responsibility. A Court President must display a particular commitment to his/her responsibilities as Court President, in terms of court administration and court management, in addition to adjudicative activities. This includes appropriate practice of organizational, managerial and human resources skills in a judicial context.
4. Because the Court President is representing the Court, he/she is under a particular obligation to preserve the image of the judiciary, in regard to the seriousness and dignity citizens are entitled to expect from the justice system.
5. A Court President and any judge in charge of case allocation should not be influenced by the wishes of any party to the case or any person concerned with the results of the case. Therefore, allocation based on drawing of lots, automatic distribution according to alphabetic order or some similar system should be privileged.

Adopted on 31 July 2001

The Chairperson