

Questionnaire answers

Belgium

1) Responsabilité disciplinaire:

a) Dans votre pays, une énumération spécifique des fautes disciplinaires est-elle prévue?

- oui (joindre, si possible, le texte en anglais ou en français)
 non (passer à la question c)

b) Cette énumération est-elle unique pour les juges et pour les ministères publics?

- oui
 non (spécifier les différences)

c) En l'absence d'une énumération spécifique, existe-t-il une disposition générique permettant d'en déduire quelles sont les fautes disciplinaires?

- oui** (joindre, si possible, le texte en anglais ou en français)
non (passer à la question e)

L'article 404 du Code judiciaire dispose que "ceux qui manquent aux devoirs de leur charge, ou qui par leur conduite portent atteinte à la dignité de son caractère, peuvent faire l'objet de sanctions disciplinaires" ... "les sanctions disciplinaires peuvent également être infligées à ceux qui négligent les tâches de leur charge et qui portent ainsi atteinte au bon fonctionnement de la justice ou à la confiance dans l'institution." (ainsi modifié par la loi du 7 juillet 2002)

d) Cette disposition générique est-elle unique pour les juges et pour les ministères publics?

- oui**
 non (spécifier les différences)

En Belgique il existe deux magistratures, celle du siège (juges) et celle du ministère public (procureurs). Leur indépendance fonctionnelle, qui en fait leur qualité de magistrats, a été précisée dans l'article 151 de la Constitution belge.

e) Qui intente l'action disciplinaire?

Suivant la nouvelle loi sur la discipline des membres de l'ordre judiciaire (loi du 7 juillet 2002 en vigueur depuis le 14 février 2005) l'action disciplinaire est intentée par le chef de corps de la

juridiction ou du parquet concerné (le président du tribunal ou le premier président de la cour – le procureur du Roi ou le procureur général).

Le procureur du Roi ou le procureur général peuvent mettre l'action disciplinaire à l'encontre d'un juge en mouvement, car l'action disciplinaire est d'ordre public.

Le ministre de la justice peut mettre l'action disciplinaire à l'encontre d'un magistrat du ministère public (procureur) en mouvement, car, en vertu de l'article 152 de la Constitution, le Roi (son ministre) est seul compétent pour révoquer les magistrats du ministère public.

f) Qui est le juge disciplinaire?

Il faut faire une distinction entre les juges et les procureurs. En outre le juge disciplinaire est différent selon la sanction à infliger (peines mineures et peines majeures).

Pour les juges :

Les peines mineures (avertissement et réprimande) : c'est le chef de corps du magistrat concerné. L'instruction est confiée par le chef de corps à un autre magistrat.

Si le chef de corps estime qu'une peine majeure doit être infligée, il transmet le dossier au Conseil National de discipline (composé de 3 magistrats -du siège et de 2 magistrats du ministère public- et d'1 avocat et d'1 professeur de droit d'une université). Le Conseil instruit à nouveau l'affaire et propose une peine (mineure ou majeure) à la cour (du degré de cassation ou d'appel selon le cas) compétente pour prononcer les peines majeures.

Les peines majeures (du premier degré :retenue de traitement, suspension disciplinaire, retrait du mandat {de chef de corps, du mandat adjoint (ex. vice-président) du mandat spécifique (ex. juge des saisies)), la suspension disciplinaire avec retrait du mandat, du second degré : la démission d'office et la destitution)

Toutes les peines majeures, tant du premier que du second degré,

sont infligées par la première chambre de la cour concernée compte tenu des fonctions exercées par le magistrat concerné (ex. : cour d'appel pour un juge du tribunal de première instance ou de commerce, cour du travail pour un juge du tribunal du travail, ex. : Cour de cassation pour les magistrats du degré d'appel et de cassation).

Pour les procureurs :

Sous réserve de la situation particulière du Procureur général près la Cour de cassation qui relève du ministre de la Justice , la procédure peut être synthétisée comme suit :

Les peines mineures (avertissement et réprimande) : c'est le chef de corps du magistrat concerné. L'instruction est confiée par le chef de corps à un autre magistrat.

Si le chef de corps estime qu'une peine majeure doit être infligée, il transmet le dossier au Conseil National de discipline (composé de 3 magistrats -du siège et de 2 magistrats du ministère public- et d'1 avocat et d'1 professeur de droit d'une université). Le Conseil instruit à nouveau l'affaire et propose une peine (mineure ou majeure) au chef de corps (appel , cassation) compétent pour prononcer les peines majeures.

Les peines majeures (du premier degré :retenue de traitement, suspension disciplinaire, retrait du mandat {de chef de corps, du mandat adjoint (ex. premier substitut)}, la suspension disciplinaire avec retrait du mandat, **du second degré** : la démission d'office et la révocation)

Les peines majeures du premier degré sont infligées par le chef de corps du degré supérieur (appel , cassation)

Les peines majeures du second degré sont infligées par le Roi (ministre de la justice)

g)Quelles sanctions sont prévues?

Voir ci –dessus sous le point f.

h) Quelles sont les garanties pour le magistrat inculpé?

Le magistrat bénéficie d'une procédure contradictoire. Il peut être assisté par la personne de son choix (avocat, magistrat, professeur ...)

Le magistrat du siège bénéficie dans tous les cas d'un appel possible devant une juridiction collégiale (cour d'appel, cour du travail ou Cour de cassation, selon le cas).

Les magistrats du ministère public bénéficient d'un appel possible devant le chef de corps du degré supérieur, sauf pour ce qui concerne les peines majeures du second degré qui relèvent de la décision du Roi (cependant, puisqu'il s'agit d'un acte administratif, un recours est possible devant le Conseil d'Etat).

Le conseil national de discipline (instance d'avis non contraignant) est en quelque sorte le garant de l'unité de jurisprudence et offre donc des garanties contre des décisions individuelles arbitraires.

L'effacement automatique des peines mineures se fait après 3 ans.

La mise en place d'une procédure de réhabilitation est prévue après un temps d'épreuve de 6 ans, ainsi qu'une procédure en révision en cas de survenance d'éléments ignorés.

i) La condamnation disciplinaire a-t-elle des effets sur la carrière du magistrat?

oui (préciser lesquels)

non

Indépendamment du fait qu'il peut être décidé de mettre fin à la fonction même de magistrat, voire à certaines fonctions qui font l'objet d'un mandat temporaire, la sanction est nécessairement abordée lors de postulations ultérieures. En effet, toute condamnation disciplinaire doit être signalée à la Commission de nomination et de désignation du Conseil supérieur de la justice appelée à présenter au ministre le candidat retenu pour la place à pourvoir.

j) Quelle est la nature de la mesure disciplinaire?

juridictionnelle.

administrative

**Exclusivement juridictionnelles pour les magistrats du siège.
Egalement juridictionnelle pour les magistrats du ministère public
, sauf pour ce qui concerne les sanctions pouvant être infligées
par le Roi (ministre de la justice) où elles sont administratives.**

2) Abstraction faite des normes sur la responsabilité disciplinaire et des comportements passibles de sanction disciplinaire existe-t-il dans votre pays un Code déontologique des magistrats?

oui (joindre, si possible, le texte en anglais ou en français)

non

3) Le Code déontologique est-il unique pour les juges et pour les ministères publics?

oui

non (spécifier les différences)

Voir ci-dessus point 2)

4) Quelles sont les conséquences, juridiques ou non, de la violation des normes déontologiques? Si des conséquences juridiques sont prévues, sur quel plan agissent-elles?

a) l'évaluation de la professionnalité;

b) la responsabilité disciplinaire;

c) la responsabilité pénale;

d) la responsabilité civile

Les manquements aux devoirs de la charge, c'est-à-dire la manière dont le magistrat s'acquitte de ses fonctions, relève de la déontologie et peut être sanctionnée disciplinairement.

Ces mêmes comportements relèvent également de l'évaluation à laquelle le magistrat est soumis la première année d'entrée en fonction et ensuite tous les trois ans. Ceci pose un problème dans la mesure où l'évaluation négative conduit automatiquement à une perte de l'augmentation automatique du salaire. L'on ne peut en effet sanctionner deux fois pour un même fait.

Les infractions pénales conduisent inmanquablement à l'intervention disciplinaire. L'appréciation disciplinaire est indépendante de la décision pénale.

La responsabilité civile a un lien avec le disciplinaire. Si l'Etat belge est condamné du fait fautif d'un de ses préposés (magistrat), il n'est pas exclu qu'une intervention disciplinaire s'opère. Il convient de préciser qu'en Belgique la seule action civile possible à l'encontre d'un magistrat personnellement se retrouve dans une procédure particulière, "la prise à partie", menée devant la Cour de cassation. Il s'agit d'actes à caractère frauduleux du juge ou du procureur.

La procédure d'excès ou d'abus de pouvoir du juge ou du procureur, également menée devant la Cour de cassation, peut aussi déboucher sur une action disciplinaire.

5) Par qui et comment le Code déontologique a-t-il été élaboré?

- a) par la loi (indiquer sa date);
- b) par les règlements;
- c) par la jurisprudence;
- d) par les Associations de magistrats (Codes d'auto réglementation)

Il n'existe pas de Code de déontologie. Les normes déontologiques peuvent être dégagées d'une série de dispositions légales que l'on retrouve de manière disparate dans le Code judiciaire (par exemple les causes de récusations, les incompatibilités). Les normes déontologiques se dégagent pour le surplus de l'examen de la jurisprudence et de la doctrine (notamment les mercuriales des procureurs généraux de la Cour de cassation) .

Dans la mesure où toute la jurisprudence n'est pas publiée et où les éléments de fait ne sont pas toujours explicites, il est malaisé de dégager à partir de la jurisprudence actuellement publiée des normes de conduite.

Cette question sera probablement réglée dans l'avenir car une banque de donnée, reprenant de manière anonyme les faits et la sanction, sera constituée. Cette banque de donnée sera consultable par les magistrats.

Les avis du conseil national de discipline devraient également, à plus long terme, permettre d'avoir une idée plus précise sur les normes de conduites attendues des magistrats.

6) Quels sont les principaux devoirs déontologiques pour les juges et pour les ministères publics?

- a) dans l'exercice de leurs fonctions;
- b) dans la vie privée

a) tous les textes internationaux et la doctrine belge (voir principalement la mercuriale de Monsieur le Procureur général E. Krings, de 1988, "devoirs et servitudes des membres du pouvoir judiciaire") convergent vers l'idée que c'est en raison des pouvoirs importants confiés aux juges et procureurs que le citoyen est en droit d'attendre en contrepartie de ces pouvoirs qu'ils adoptent en toutes circonstances un comportement correct et impartial afin d'éviter que ne puisse naître dans l'esprit des justiciables un soupçon de partialité.

**Dans l'exercice de leurs fonctions il est attendu des magistrats:
la compétence (connaissance du droit, recyclage, connaissance de la vie en société, rapidité dans le travail, limitation des absences...)**

la loyauté et l'objectivité (éléments liés à l'indépendance fonctionnelle du magistrat, à son impartialité objective et présumée)

la discrétion (obligation de réserve du magistrat et respect du secret professionnel)

b) dans la vie privée, il est attendu que la magistrat respecte la loi et n'adopte pas dans ses contacts publics un comportement qui puisse heurter les citoyens et ternir l'image qu'il peuvent se faire du magistrat (impartialité apparente). Indépendamment du respect du secret professionnel dans la vie privée, l'obligation de discrétion est également de mise, il faut notamment éviter des opinions publiques catégoriques qui pourraient le placer ensuite dans une position délicate (récusations sur la base de la suspicion légitime de partialité - préjugé)

7) En particulier, outre le devoir d'être impartial existe-t-il aussi un devoir d'apparaître impartial?

Voir ci-dessus point 6)

8) Existe-t-il des règles déontologiques en ce qui concerne les rapports avec les médias?

Il existe des circulaires des chefs de corps du degré d'appel pour les magistrats du siège et des circulaires ministérielles pour les magistrats du ministère public.

Pour les dossiers en cours en matière pénale , le Code de procédure prévoit les modalités d'expression des juges d'instruction et du parquet.

9) Existe-t-il des règles déontologiques qui sauvegardent l'indépendance interne (par rapport aux chefs de service, au C.S.M. etc.) et externe (par rapport au pouvoir exécutif, législatif, etc.)?

L'indépendance fonctionnelle des juges et des procureurs se trouve inscrite dans l'article 151 de notre Constitution. Les chefs de corps se doivent donc, tout comme le Conseil Supérieur de la Justice, de respecter cette indépendance.

Toute atteinte caractérisée à cette indépendance opérée, fut-ce indirectement, par un chef de corps pourrait être constitutive d'un manquement aux devoirs de la charge dans le chef de ce dernier.

La constitution en instituant le Conseil supérieur a prévu qu'il doit, dans l'exercice de ses missions, respecter l'indépendance des magistrats. Des dispositions légales prévoient en outre des garanties, par exemple : incompétence à traiter une plainte qui critique une décision judiciaire ; enquête particulière dans une juridiction ou parquet sous la conduite d'un magistrat membre du Conseil ; secret professionnel des membres etc.

10) Existe-t-il des règles déontologiques sur l'incompatibilité entre l'exercice des fonctions judiciaires et les autres fonctions, professions et activités (d'étude, de recherche, d'enseignement) ?

Les articles 292 à 309 du Code judiciaire belge prévoient un régime d'incompatibilités. Deux catégories d'incompatibilités y figurent, d'une part, l'interdiction du cumul de fonctions judiciaires avec d'autres emplois ou activités (en même temps juge et procureur, exercer la profession de notaire, d'avocat, d'huissier de justice , de

greffier, exercer un mandat politique, une activité commerciale , gérant de société ...), et d'autre part, des empêchements personnels qui sont déduits de rapport de parenté ou d'alliance.

11) Existe-t-il des règles déontologiques concernant l'exercice des droits constitutionnels (de liberté d'opinion et d'expression, d'association, à la protection de la vie privée etc.) ?

L'obligation de discrétion, développée ci-dessus, constitue un frein au droit fondamental d'expression.

La liberté d'association est tempérée par l'impartialité dont doit faire preuve le magistrat. S'il peut adhérer à un parti politique il doit cependant éviter toute forme de militantisme actif et public. Il ne peut adhérer à une association qui poursuivrait des buts illicites ou qui prône des opinions combattant l'Etat belge ou ses institutions constitutionnelles, en raison notamment du serment de fidélité que le magistrat a prêté à la Constitution et à la loi.

12) Une formation, initiale ou permanente, ayant pour objet la déontologie est-elle prévue?

Les stagiaires judiciaires sont tenus de suivre une formation dispensée par le Conseil supérieur de la Justice. Cette formation est proposée aux magistrats nouvellement nommés qui ne sont pas issus du stage judiciaire, mais elle n'est pas légalement obligatoire.

Cyprus

1) Disciplinary responsibility:

a) Is there a specific list of disciplinary wrongdoings in your country?

- Yes (if possible, attach the document in English or French)
 No (go on to question c)

b) Is this list the same for judges and for the public ministries?

- Yes
 No (specify differences)

c) If no specific list exists, are there any general instructions from which disciplinary wrongdoings can be deduced?

- Yes (if possible, attach the document in English or French)
 No (go on to question e)

The Constitution provides that judges of the Supreme Court may be dismissed on the ground of misconduct. Furthermore the Supreme Court Rules of 2000 provide that disciplinary proceedings may be brought against a judge for improper conduct or for the commission of a disciplinary offence.

d) Are these general instructions the same for judges and for the public ministries?

- Yes
 No (specify differences)

According to the Public Service Law (1/90) a civil servant is subject to disciplinary proceedings if he commits an offence of dishonesty or immorality or if he acts or fails to act according to his obligations as a civil servant.

If a civil servant is found guilty he may be reprimanded or transferred. A fine may be imposed on him, or he may be forced to retire or be dismissed. He may also lose his right to salary increase or be demoted to a lower position.

e) Who promotes disciplinary action?

Disciplinary proceedings against judges are exclusively within the competence of the Judiciary.

f) Who is the disciplinary judge?

The Supreme Council of Judicature, which is composed of all the Judges of the Supreme Court, is the only competent body to decide on disciplinary actions against judges.

g) What sanctions are imposed?

The Supreme Council of Judicature in the case of improper conduct, imposes the sanction of dismissal. If a judge is found to be guilty of a disciplinary offence then the sanction of reprimand is imposed.

h) What guarantees does the accused judge have?

Accused judges have the defence rights acknowledged to an accused person.

i) Does the disciplinary ruling affect the judge's career?

- Yes (specify how).
- No

j) Is the disciplinary procedure

- jurisdictional ?
- administrative ?

2) Aside from the regulations concerning disciplinary responsibility and conduct that can be punished, is there a code of ethics for judges in your country?

- Yes (if possible, attach the document in English or French)
- No. However as our justice system is based on common law we follow the historical tradition created by the above system of law.

3) Is the code of ethics the same for judges and for public ministries?

- Yes
- No (specify differences)

As mentioned above, there is no code of ethics.

4) What are the legal or non legal consequences of violating the rules of ethics? If any legal consequences are foreseen, how are they enacted?

- a) Evaluating professionalism;
- b) Disciplinary responsibility;

- c) Penal responsibility;
- d) Civil responsibility;

Not applicable

5) Who drew up the code of ethics and in which way?

- a) The law (indicated date);
- b) regulations;
- c) legal precedent;
- d) the judges' associations (self-regulating codes)

Not applicable

6) What are the main ethical duties for judges and public ministries?

- a) In the carrying out of their roles;
- b) In their private lives;

Not applicable

7) In particular, is there a duty to appear to be impartial, in addition to the obligation to be impartial?

Not applicable

8) Are there any ethical rules about relations with the mass media?

Not applicable

9) Are there any ethical rules that protect internal (with respect to the court heads, the CSM etc) and external (compared to executive power, legislative power etc) independence?

Not applicable

10) Are there any ethical rules on the incompatibility between judicial roles and other positions, professions and activities (study, research, teaching)?

Not applicable

11) Are there any ethical rules on the carrying out of constitutional rights (freedom of thoughts, of association, the protection of privacy etc.)?

Not applicable

12) Does any initial or continuing training exist concerning professional ethics?

Not applicable

Denmark

1) Disciplinary responsibility:

- a) Is there a specific list of disciplinary wrongdoings in your country?
 Yes (if possible, attach the document in English or French)
 No (go on to question c)
- b) Is this list the same for judges and for the public ministries?
 Yes
 No (specify differences)
- c) If no specific list exists, are there any general instructions from which disciplinary wrongdoings can be deduced?
 Yes (The Administration of Justice Act)
 No (go on to question e)
- d) Are these general instructions the same for judges and for the public ministries?
 Yes
 No
- e) Who promotes disciplinary action?
- According to the Administration of Justice Act, article 48 and 49, cases on disciplinary action towards judges can be promoted by “Anyone” or “the high court presidents” or “The Public Procecuter upon recommendation from the minister of Justice”.
- f) Who is the disciplinary judge?
- Special Court of Indictment and Revision
- g) What sanctions are imposed?
- The Special Court of Indictment and Revision has the possibility to pronounce disapproval, pass sentence of fine or dismiss the judge.
- h) What guarantees does the accused judge have?
- The accused judge has the possibility to have a lawyer present and to make a statement prior to the decision and
- i) Does the disciplinary ruling affect the judge’s career?
 Yes (Special Court of Indictment and Revision has the possibility to fine or dismiss the judge)
 No

j) Is the disciplinary procedure

jurisdictional ?

administrative ?

2) Aside from the regulations concerning disciplinary responsibility and conduct that can be punished, is there a code of ethics for judges in your country?

Yes (if possible, attach the document in English or French)

No

3) Is the code of ethics the same for judges and for public ministries?

Yes

No (specify differences)

4) What are the legal or non legal consequences of violating the rules of ethics?

If any legal consequences are foreseen, how are they enacted?

e) Evaluating professionalism;

f) Disciplinary responsibility;

g) Penal responsibility;

h) Civil responsibility;

5) Who drew up the code of ethics and in which way?

e) The law (indicated date);

f) regulations;

g) legal precedent;

h) the judges' associations (self-regulating codes)

6) What are the main ethical duties for judges and public ministries?

c) In the carrying out of their roles;

d) In their private lives;

7) In particular, is there a duty to appear to be impartial, in addition to the obligation to be impartial?

- According to the Administration of Justice Act, chapter 5, no judge can act in a case, if there is circumstances which indicates that he is not impartial.

8) Are there any ethical rules about relations with the mass media?

No

9) Are there any ethical rules that protect internal (with respect to the court heads, the CSM etc) and external (compared to executive power, legislative power etc) independence?

No

10) Are there any ethical rules on the incompatibility between judicial roles and other positions, professions and activities (study, research, teaching)?

No

11) Are there any ethical rules on the carrying out of constitutional rights (freedom of thoughts, of association, the protection of privacy etc.)?

No

12) Does any initial or continuing training exist concerning professional ethics?

No

England / Wales

Complaints are currently initially investigated by Presiding Judges and a Judicial Complaints team at the Department of Constitutional Affairs. If the complaint is taken forward a judge is asked to investigate the complaint by the Lord Chancellor and the Lord Chief Justice and to provide a report.

Following implementation of the Constitutional Reform Act 2005, a new judicial complaints and discipline system is coming into effect. This will have a higher profile than at present and in addition to the new regulations there will be a grievance procedure and an annual report. It is anticipated that there will be much more publicity surrounding complaints against judges.

The regulations providing for the procedures that are to be followed are currently being drafted on behalf of the Lord Chief Justice by a working group chaired by a senior judge and consisting of other judges and Lawyers and Officials from the Department of Constitutional Affairs. This new system is due to be laid before Parliament in February 2006 with a view to becoming law in April 2006. The new procedures will be more formal; there will be a separate office for judicial complaints; investigations and reports will be undertaken by a judge; decisions will be taken jointly by the Lord Chief Justice and the Lord Chancellor; there will be a right to have a decision reviewed by an independent body consisting of judges and a lay person and a Judicial Complaints Ombudsman will be appointed.

1) Disciplinary responsibility:

a) Is there a specific list of disciplinary wrongdoings in your country?

Yes (if possible, attach the document in English or French)

No (go on to question c)

b) Is this list the same for judges and for the public ministries?

Yes

No (specify differences)

c) If no specific list exists, are there any general instructions from which disciplinary wrongdoings can be deduced?

Yes (if possible, attach the document in English or French)

No (go on to question e) There are no special instructions but judges on appointment are provided with letters and Terms and Conditions of Appointment according to the rank of the judge. There is also the Guide to Judicial Conduct, published by the Judges' Council, which is sent to all judges on appointment.

d) Are these general instructions the same for judges and for the public ministries?

Yes

No (specify differences)

e) Who promotes disciplinary action? The Office for Judicial Complaints. This body is currently part of the Department of Constitutional Affairs. Under the proposed new Regulations it will be operationally independent and responsible through its head to the Lord Chief Justice and the Lord Chancellor.

f) Who is the disciplinary judge? The Office for Judicial Complaints will decide whether further information is needed to establish whether the complaint requires investigation. .Currently the Lord Chancellor asks the Lord Chief Justice to select a judge to investigate the complaint and report to him. Under the proposed Regulations, the Lord Chief Justice appoints a senior judge who will in turn select a judge to investigate the complaint if it should require further investigation.

g) What sanctions are imposed? The Lord Chancellor may give the judge formal advice or a formal warning or a reprimand for disciplinary purposes for disciplinary purposes but he can give informal advice if he wishes. He may suspend a judge from office if he or she is subject to criminal proceedings, is serving a sentence for criminal proceedings and/or has been convicted of an offence. He may also suspend a judge from office if he or she has been convicted of a criminal offence or it appears that the suspension is necessary for maintaining confidence in the judiciary. Under the proposed new Regulations this function will be exercised by the Lord Chief Justice with the agreement of the Lord Chancellor.

h) What guarantees does the accused judge have? He or she will be provided with information on how the complaint will be handled and kept up to date on progress and the outcome. The investigating judge will decide how the complaint will be investigated and will draft a report which he will show to the judge under investigation before submitting it to the Lord Chief Justice. Under the proposed new regulations there is will also be a Review Body to which the judge under investigation can appeal. can refer his case.

i) Does the disciplinary ruling affect the judge's career?

Yes (specify how)

No There is no career structure for English and Welsh judges and therefore no automatic progression from one judicial tier to the next. do have

j) Is the disciplinary procedure

Jurisdictional?

Administrative? We are unsure what this question means

2) Aside from the regulations concerning disciplinary responsibility and conduct that can be punished, is there a code of ethics for judges in your country?

Yes (if possible, attach the document in English or French)

No

3) Is the code of ethics the same for judges and for public ministries?

Yes

No (specify differences) We are unable to comment on this

4) What are the legal or non legal consequences of violating the rules of ethics? If any legal consequences are foreseen, how are they enacted?

The Code is merely a guide to judges and there are no formal sanctions. A complaint may result in the judge being removed or suspended for office or receiving a reprimand.

5) Who drew up the code of ethics and in which way? A working group of the Judges' Council consisting only of judges.

6) What are the main ethical duties for judges and public ministries?

e) In the carrying out of their roles; impartiality, integrity, propriety, competence and diligence as set out in the Code

f) In their private lives; as above

7) In particular, is there a duty to appear to be impartial, in addition to the obligation to be impartial? Yes

8) Are there any ethical rules about relations with the mass media? Judges should exercise their freedom to talk to the media with the greatest circumspection. They should not answer public criticism of a judgement or decision whether from the Bench or otherwise and not air disagreements over judicial decisions in the Press.

9) Are there any ethical rules that protect internal (with respect to the court heads, the CSM etc) and external (compared to executive power, legislative power etc) independence? .Yes Judicial independence is a cornerstone of our system of government in a democratic society and a safeguard of the freedom and rights of the citizen under the law. The judiciary is and must be seen to be independent of the legislative and executive arms of government. The judicial oath taken by all judges when taking up judicial office says” I will do right to all manner of people after the laws and usages of the Realm, without fear or favour, affection or ill-will.” The Constitutional Reform Act 2005 states that the Lord Chancellor, other Ministers of the Crown and all with responsibility for matters relating to the judiciary or otherwise to the administration of justice, must uphold the continued independence of the judiciary.

10) Are there any ethical rules on the incompatibility between judicial roles and other positions, professions and activities (study, research, and teaching)? There is no objection to judges contributing to these, provided the issues do not directly affect the operation of the courts, the independence of the judiciary or aspects of the administration of justice. However judges must take care that the public do not associate him or her with a particular organisation, group or cause. Also a public conflict of views may bring the judiciary into disrepute. After retirement a judge’s terms of appointment may provide that he or she may provide services as an independent arbitrator/mediator and remuneration for lectures, talks or articles. However there is a convention that they should not return to private practice as a barrister or a solicitor and not provide services as an advocate or offer or provide legal advice. This convention however is currently the subject of debate with the Lord Chancellor.

11) Are there any ethical rules on the carrying out of constitutional rights (freedom of thoughts, of association, the protection of privacy etc.)? No.

12) Does any initial or continuing training exist concerning professional ethics? No. Judges receive a copy of the Guide to Judicial Conduct published by the Judges’ Council and also Terms and Conditions of Appointment.

Finland

1) Disciplinary responsibility:

a) Is there a specific list of disciplinary wrongdoings in your country?

Yes (if possible, attach the document in English or French)

X No (go on to question c)

b) Is this list the same for judges and for the public ministries?

Yes

No (specify differences)

c) If no specific list exists, are there any general instructions from which disciplinary wrongdoings can be deduced?

Yes (if possible, attach the document in English or French)

X No (go on to question e)

d) Are these general instructions the same for judges and for the public ministries?

Yes

No (specify differences)

e) Who promotes disciplinary action?

A judge in Finland can only be deprived of his right to office on the basis of a court decision. This means that we do not have any special disciplinary procedures or sanctions for judges. Instead offences committed by civil servants (and judges among them) are covered so comprehensively in the Finnish criminal code, that nearly all inappropriate behaviour, negligence or dereliction of duty on the part of a judge constitutes a criminal offence punishable under the code of criminal procedure like the crimes of other civil servants. Therefore, one can say that penal responsibility in Finland partly fulfils those objectives which other nations strive to attain through disciplinary sanctions.

f) Who is the disciplinary judge?

See above e). The prosecutions against judges are heard in different courts depending on the court, in which the accused judge is working. The competent court is normally a higher court than the court, in which the accused judge works.

g) What sanctions are imposed?

Normal sanctions of criminal procedure.

h) What guarantees does the accused judge have?

Normal guarantees of criminal procedure.

i) Does the disciplinary ruling affect the judge's career?

Yes (specify how)

No (There is no disciplinary procedure for judges in Finland.)

j) Is the disciplinary procedure

jurisdictional ?

administrative ?

There is no disciplinary procedure for judges in Finland.

2) Aside from the regulations concerning disciplinary responsibility and conduct that can be punished, is there a code of ethics for judges in your country?

Yes (if possible, attach the document in English or French)

No

In Finland all judges give an oath in the beginning of their career. There also are some ethical rules for a judge in the preface of our law book, that are given by a chancellor during the 1600th century, but these rules are not an official code of ethics.

3) Is the code of ethics the same for judges and for public ministries?

Yes

No (specify differences)

4) What are the legal or non legal consequences of violating the rules of ethics?

If any legal consequences are foreseen, how are they enacted?

a)Evaluating professionalism;

b)Disciplinary responsibility;

c)Penal responsibility;

d)Civil responsibility;

There is not a code of ethics for judges in Finland.

5) Who drew up the code of ethics and in which way?

a)The law (indicated date);

b)regulations;

- c) legal precedent;
- d) the judges' associations (self-regulating codes)

There is not a code of ethics for judges in Finland.

- 6) What are the main ethical duties for judges and public ministries?
- a) In the carrying out of their roles;
 - b) In their private lives;

There is not a code of ethics for judges in Finland. There is, of course, informal and unwritten conception of the ethics (good and bad behaviour) of a judge.

- 7) In particular, is there a duty to appear to be impartial, in addition to the obligation to be impartial?

There are rules in the Code of Civil/Criminal/Administrative Procedure that enact that judges must be impartial when handling a case. There is not a code of ethics for that.

- 8) Are there any ethical rules about relations with the mass media?

There are Information Plans in all courts, but there is not a code of ethics for that. The publicity of the court work is enacted in law.

- 9) Are there any ethical rules that protect internal (with respect to the court heads, the CSM etc) and external (compared to executive power, legislative power etc) independence?

According to Article 3 of the Constitution of Finland judicial power in Finland is exercised by independent courts. An independent judiciary is a fundamental requirement of an independent court. The legal guarantees for the functional independence of the courts have the secondary effect that judges are also independent at a personal level. In addition to functional independence and in connection therewith one can also demand that judges be *financially solvent*, that *their wellbeing be on a sufficiently sound footing* (permanent job), and that they *are independent of their judicial colleagues or the chief justice in the court* where they work.

There is not a code of ethics for that in Finland.

- 10) Are there any ethical rules on the incompatibility between judicial roles and other positions, professions and activities (study, research, teaching)?

No. According to law a judge has to inform his/her employer of the secondary occupation and in certain situation a judge needs a permission of the employer to be able to accept a secondary occupation.

11) Are there any ethical rules on the carrying out of constitutional rights (freedom of thoughts, of association, the protection of privacy etc.)?

No. They belong to judges like they belong to everybody else.

12) Does any initial or continuing training exist concerning professional ethics?

There is continuing training for judges, but this topic is not a theme on a certain course. Instead the ethics appear in different courses like in the course on Human Rights.

France

1) Responsabilité disciplinaire:

a) Dans votre pays, une énumération spécifique des fautes disciplinaires est-elle prévue?

- oui (joindre, si possible, le texte en anglais ou en français)
 non (passer à la question c)

b) Cette énumération est-elle unique pour les juges et pour les ministères publics?

- oui
 non (spécifier les différences)

c) En l'absence d'une énumération spécifique, existe-t-il une disposition générique permettant d'en déduire quelles sont les fautes disciplinaires?

- oui (joindre, si possible, le texte en anglais ou en français)

Article 43 alinéa 1 de l'ordonnance n° 58-1270 du 22 décembre 1958 (modifiée) portant loi organique relative au statut de la magistrature :

«Tout manquement par un magistrat aux devoirs de son état, à l'honneur à la délicatesse ou à la dignité constitue une faute disciplinaire. »

Il convient d'indiquer que les devoirs du magistrat, visés d'une manière générique par ce texte, ont été précisés en détail par la jurisprudence disciplinaire du Conseil supérieur de la magistrature qui fait actuellement l'objet de la publication d'un recueil exhaustif destiné à être diffusé à tous les magistrats (sous forme de CD-Rom et d'ouvrage imprimé).

Il est aussi utile de mentionner que d'autres articles du statut de la magistrature précité ont précisé le contenu de certains devoirs : article 6 contenant le texte du serment prêté par les magistrats, article 10 concernant le devoir de réserve, les manifestations d'ordre politique et le droit de grève, ainsi que plusieurs articles édictant une série d'incompatibilités destinées à entourer de garanties objectives l'indépendance et l'impartialité des magistrats (articles 8, 9, 9-1, 9-2 et 32).

Par ailleurs, certains textes ne figurant pas dans le statut de la magistrature précisent également la nature de ces devoirs (ex : article 2 du décret du 10 janvier 1935 “relatif à la communication des dossiers des magistrats et interdisant à ceux-ci toute intervention en leur faveur”).

non (passer à la question e)

d) Cette disposition générique est-elle unique pour les juges et pour les ministères publics?

oui

**Toutefois, l’alinéa 2 de l’article 43 précité précise :
“ Cette faute s’apprécie pour un membre du parquet ou un magistrat du cadre de l’administration centrale du ministère de la justice compte tenu des obligations qui découlent de sa subordination hiérarchique”.**

non (spécifier les différences)

e) Qui intente l’action disciplinaire?

Jusqu'en 2002, le Conseil supérieur de la magistrature ne pouvait être saisi de poursuites disciplinaires qu'à l'initiative du ministre de la Justice. Depuis 2002, l'action disciplinaire peut-être également déclenchée par les chefs de cour d'appel (Le premier président pour les juges et le procureur général pour les membres du ministère public).

f) Qui est le juge disciplinaire?

1. En France, le Conseil supérieur de la magistrature est l’instance disciplinaire des magistrats mais avec une différence dans ses pouvoirs selon qu’il s’agit d’un juge ou d’un membre du ministère public.

Quand il s'agit d'un juge, le Conseil rend une décision juridictionnelle écrite et motivée qui détermine la sanction.

Quand il s'agit d'un membre du ministère public, le Conseil rend un avis écrit motivé qui propose une sanction au ministre de la Justice : c'est donc le ministre et non le Conseil

qui décide de cette sanction. Toutefois, le Ministre ne peut prononcer une sanction plus lourde que celle proposée sans avoir demandé un nouvel avis au Conseil.

2. Lorsque le Conseil statue en matière disciplinaire, il est soumis à des règles spécifiques d'organisation mises en œuvre pour garantir l'indépendance de l'autorité judiciaire :

- **le président de la République et le ministre de la Justice ne siègent pas au Conseil en matière disciplinaire,**
- **la formation du Conseil compétente pour les juges est alors présidée par le premier président de la Cour de Cassation, la formation compétente pour les membres du ministère public est alors présidée par le procureur général de cette cour,**
- **en matière disciplinaire, le Conseil se réunit à la Cour de Cassation et non au siège habituel de ses travaux.**

g) Quelles sanctions sont prévues?

Elles sont prévues par les articles 45 et 46 du statut de la magistrature précité et sont communes aux juges et aux membres du ministère public.

Les sanctions sont au nombre de huit :

- **la réprimande avec inscription au dossier,**
- **le déplacement d'office,**
- **le retrait de certaines fonctions,**
- **l'abaissement d'échelon,**
- **l'exclusion temporaire de fonctions pour une durée maximum d'un an, avec privation totale ou partielle du traitement,**
- **la rétrogradation,**
- **la mise à la retraite d'office ou l'admission à cesser ses fonctions lorsque le magistrat n'a pas le droit à une pension de retraite,**
- **la révocation avec ou sans suspension des droits à pension.**

Ces sanctions ne se cumulent pas à l'exception du

déplacement d'office qui peut accompagner le retrait de certaines fonctions, l'abaissement d'échelon et la rétrogradation.

h) Quelles sont les garanties pour le magistrat inculpé?

1.Phase préalable à la saisine du CSM :

L'enquête préliminaire ordonnée par le ministre de la justice est confiée à l'inspection générale des services judiciaires. Aucun texte ne régleme cette enquête et l'ouverture officielle des droits de la défense n'intervient seulement qu'au moment de la saisine de l'instance disciplinaire. Toutefois, l'inspection est soumise dans son travail au respect de principes généraux qui sont autant de garanties pour le magistrat (respect de la dignité de la personne, respect de la vie privée, information donnée sur la mission de l'inspection, règles de forme concernant les procès-verbaux...)

Au cours de cette enquête, le magistrat n'est pas assisté par un avocat et le droit à la communication des pièces n'est pas prévu.

L'enquête préliminaire décidée par un chef de cour ne peut être confiée à l'inspection des services judiciaires qui ne peut être utilisée que par le ministre : le chef de cour la réalise donc lui-même. Toutefois, après saisine du CSM par le chef de cour, le ministre de la justice peut décider d'ordonner une enquête confiée à l'inspection.

2.Phase postérieure à la saisine du CSM et antérieure à l'audience disciplinaire :

- **après saisine de l'instance disciplinaire par le ministre de la justice ou par un chef de cour, une enquête disciplinaire est confiée par le président de la formation disciplinaire à un membre de cette formation désigné en qualité de rapporteur,**
- **le magistrat bénéficie alors des droits de la défense (audition par le rapporteur, assistance par un avocat ou l'un de ses pairs, communication des pièces de la procédure, droit de demander au rapporteur d'accomplir certaines investigations).**

3.Phase de l'audience :

- **droit pour le magistrat à la communication de son dossier, des pièces de l'enquête et du rapport du rapporteur,**
- **droit d'être assisté par un avocat ou par l'un de ses pairs,**
- **caractère public de l'audience.**

4 .Phase postérieure à l'audience :

- **la décision rendue par la formation disciplinaire compétente pour les magistrats du siège est notifiée au magistrat qui peut exercer un recours devant le Conseil d'Etat (juridiction administrative)**
- **l'avis rendu par la formation compétente pour les membres du ministère public est communiqué au ministre qui prend la sanction (cf. f ci-dessus : si le ministre veut appliquer une sanction plus forte, il le peut mais seulement après avoir demandé un nouvel avis au Conseil ; dans les faits, le ministre n'utilise pas cette prérogative). Cette sanction est notifiée au magistrat qui peut exercer une voie de recours contre la décision du ministre devant le Conseil d'Etat.**
- **les sanctions disciplinaires qui ne concernent pas des faits contraires à l'honneur ou aux bonnes mœurs peuvent être effacées par l'effet des lois d'amnistie.**

h) La condamnation disciplinaire a-t-elle des effets sur la carrière du magistrat?

oui (préciser lesquels)

Toutes les sanctions disciplinaires prévues ont des effets directs sur le déroulement de carrière compte tenu de leur nature (cf. g ci-dessus).

Elles ont également des effets indirects dans la mesure où lorsqu'un choix intervient entre plusieurs magistrats dans le processus de nomination, le fait pour l'un d'entre eux d'avoir été sanctionné disciplinairement a pour effet de privilégier les candidatures des concurrents.

non

i) Quelle est la nature de la mesure disciplinaire?

juridictionnelle en ce qui concerne les décisions rendues par le CSM à l'égard des magistrats du siège (cf. f et h ci-dessus)

administrative à l'égard des décisions rendues par le ministre de la justice, sur avis du CSM, à l'égard des membres du ministère public (cf. f et h ci-dessus).

2) Abstraction faite des normes sur la responsabilité disciplinaire et des comportements passibles de sanction disciplinaire existe-t-il dans votre pays un Code déontologique des magistrats?

oui (joindre, si possible, le texte en anglais ou en français)

non, pour les raisons exposées dans la “Contribution à la réflexion sur l'éthique dans la magistrature “ du 2 octobre 2003 , élaborée par le CSM (cf. extraits ci-dessous et document complet joint à la réponse au questionnaire).

Extraits :

**“S’agissant de la déontologie des magistrats, le Conseil Supérieur de la Magistrature estime que la formule du « code de déontologie » très détaillé n’est pas appropriée et qu’il convient d’adopter, ou plus exactement de conserver puisque telle est la conception retenue en France depuis 1958, celle de l’énoncé de principes généraux.*

La première raison de cette option tient à ce que la déontologie des magistrats est intimement liée aux valeurs fondamentales que représente et que sert l’institution judiciaire elle-même, valeurs au premier rang desquelles figurent l’indépendance et l’impartialité.

La déontologie des magistrats doit donc, d’emblée, se placer à ce niveau et se référer explicitement à ces valeurs dont elle procède immédiatement.

D’autre part, même s’il est vrai que cette déontologie ne peut pas se limiter à l’expression de valeurs et qu’elle doit s’efforcer d’explicitier des règles de comportement des magistrats, il serait périlleux, et assez vain, de vouloir fixer à l’avance dans un texte le catalogue détaillé et supposé exhaustif des conduites requises dans toutes les situations, professionnelles et extra-professionnelles.

Le risque serait grand, à la fois d’aller trop loin dans l’encadrement normatif des comportements individuels et de rester malgré tout incomplet puisqu’il est impossible d’imaginer toutes les situations et conditions dans lesquelles un magistrat se trouvera confronté à ses devoirs déontologiques et d’indiquer à l’avance les attitudes qu’il devrait alors adopter.

Pour le Conseil, les devoirs des magistrats doivent donc s’exprimer, pour l’essentiel, sous la forme de principes directeurs ayant la force contraignante de normes obligatoires mais se présentant, par

leur généralité, comme des objectifs de référence et des guides de comportement susceptibles d'interprétation, tant par les magistrats que par les instances disciplinaires, en fonction des cas particuliers. »

**“Mais, sur le même thème et s’agissant précisément de la magistrature, c’est un autre débat qui prévaut aujourd’hui, portant sur la question de savoir si la déontologie des magistrats est ou non, par nature, « sanctionnable » en termes disciplinaires.*

Au fond, les partisans de la réponse négative à cette question semblent concevoir la déontologie comme un corps de concepts et principes de niveau supérieur, formulant des objectifs, des exigences et des recommandations qui, tout en étant indispensables au bon exercice des fonctions judiciaires, seraient dépourvus de valeur normative et, en tout cas, non sanctionnables devant une instance disciplinaire.

A quoi s’opposeraient les véritables « règles disciplinaires », d’inspiration moins ambitieuse mais juridiquement opposables, destinées à encadrer les comportements concrets et ponctuels des magistrats et dont la méconnaissance ferait seule l’objet de sanctions disciplinaires.

Une telle conception de la déontologie est nouvelle car, historiquement, la déontologie professionnelle a toujours été associée à la sanction de la méconnaissance des devoirs qu’elle édicte. Elle est à certains égards intéressante et séduisante et on comprend que le conseil consultatif des juges européens l’ait soutenue dans son avis n°3/2002. Pourtant, l’idée selon laquelle les « principes déontologiques » devraient se distinguer des « règles disciplinaires » ne paraît pas pertinente, du moins pour la France en raison de son système juridique ; plus généralement, elle ne semble pas praticable dès lors qu’une instance disciplinaire a été instituée.

Tout d’abord, ne serait-il pas fort difficile, en pratique, de distinguer nettement, par leur contenu, les « principes déontologiques » des « règles disciplinaires » comme s’il s’agissait de normes de nature différente ? En réalité, il s’agit, pour la plupart, de normes qui ont le même fondement et qui ne diffèrent que par leur mode de formulation ou leur degré de précision.

D’autre part, quelles seraient l’utilité et la légitimité de tels principes ? Comment expliquer aux justiciables qu’un principe jugé assez important pour être reconnu comme déontologique pourrait être méconnu par un magistrat sans qu’aucune sanction disciplinaire ne soit encourue ?

Au demeurant, on ne voit pas comment on pourrait empêcher l’instance disciplinaire, qui n’est pas tenue par la règle « nullum crimen sine lege », de qualifier de faute disciplinaire et de sanctionner comme telle un comportement que cette instance jugerait contraire à ce qui lui paraît constituer un principe déontologique opposable au magistrat, alors même que ce principe, ou sa substance, serait énoncé dans un texte élaboré à des fins « non disciplinaires ».

En tout état de cause, en droit public français, les obligations déontologiques des magistrats, quels que soient leur mode de formulation et leur degré de précision, ont le caractère de dispositions statutaires dont la définition est de la compétence du législateur organique en vertu de l’article 64 de la Constitution. Et il n’est guère imaginable que ce législateur veuille soustraire telle ou telle partie de ces obligations au contrôle de l’instance disciplinaire instituée par le même statut. Du reste, même si la chose était concevable, ne serait-il pas singulier que le statut de la magistrature ne contienne, en fait de déontologie, qu’un « code disciplinaire » des comportements des magistrats tandis qu’un autre texte, dépourvu de force contraignante, aurait, lui seul, vocation à énoncer les exigences élevées, les nobles valeurs et les grands principes ?”

* *“Pour avoir une vue exacte et complète des principes déontologiques applicables aux magistrats, il est indispensable de se référer aussi à l’abondante jurisprudence élaborée par les instances disciplinaires, c’est à dire par le Conseil Supérieur de la Magistrature et par la commission de discipline du parquet, tels qu’ils étaient institués jusqu’à la réforme constitutionnelle de juillet 1993, puis par les deux formations du Conseil Supérieur de la Magistrature depuis cette réforme, cette jurisprudence devant être complétée par un certain nombre de décisions du Conseil d’Etat statuant sur des recours en cassation ou des recours pour excès de pouvoir formés par des magistrats contre des sanctions disciplinaires.*

L’examen de cette jurisprudence – qui a été régulièrement et fort bien analysée, jusqu’à l’année 2000, par la direction des services judiciaires de la Chancellerie – confirme d’abord que le caractère succinct et la formulation souvent très générale des textes définissant la déontologie des magistrats n’ont nullement empêché les instances disciplinaires de jouer pleinement leur rôle, c’est à dire de se prononcer sur des situations extrêmement variées et de procéder à des qualifications disciplinaires en rattachant les comportements mis en cause aux principes énoncés par les textes.

On constate ensuite qu’afin de pallier le laconisme de certains de ces textes, les instances disciplinaires ont progressivement dégagé, à travers les motivations de plus en plus développées de leurs décisions et avis rendus sur des cas particuliers, un ensemble de principes « dérivés » des valeurs et qualités fondamentales mentionnées dans le statut.

Nombre de décisions et avis de ces instances contiennent ainsi de véritables attendus de principe établissant des principes directeurs et des règles de caractère déontologique, en s’attachant à placer les comportements fautifs des magistrats dans la perspective plus générale de la place de l’institution judiciaire dans la société, de sa crédibilité et de son autorité.

Cet apport jurisprudentiel intéresse l’ensemble du champ de la déontologie des magistrats.

Il est particulièrement significatif en ce qui concerne, par exemple, les implications nombreuses et diverses du devoir d’impartialité, mais aussi les « devoirs de l’état de magistrat » dont la nature et l’étendue sont précisées de façon explicite et concrète, compte tenu notamment des fonctions et des responsabilités exercées, l’obligation de réserve (dans ses relations avec la liberté d’expression, l’exercice du droit syndical, les devoirs de délicatesse et d’impartialité, l’indépendance de la justice...), ainsi que la vie privée, qui doit être respectée, sauf si, par le « retentissement extérieur » de certains comportements, elle serait de nature à faire gravement suspecter l’indépendance et l’impartialité du magistrat.

Au total, on trouve dans cette jurisprudence disciplinaire non seulement un répertoire très instructif de cas et de situations qui sont autant d’illustrations concrètes de comportements confrontés aux exigences déontologiques, mais aussi, dans la motivation volontiers didactique des décisions et avis, l’énoncé de principes qui viennent décliner, en les interprétant et les précisant, les valeurs et exigences essentielles affirmées par les textes.

On peut dire qu’à partir de ces concepts majeurs, les instances disciplinaires ont ouvert progressivement, au fil des saisines et de l’apparition de nouveaux contextes, toutes les rubriques utiles de la déontologie des magistrats.”

3) Le Code déontologique est-il unique pour les juges et pour les ministères publics?

Sans objet.

4) Quelles sont les conséquences, juridiques ou non, de la violation des normes déontologiques? Si des conséquences juridiques sont prévues, sur quel plan agissent-elles?

a) l'évaluation de la professionnalité;

La violation des normes déontologiques peut donner lieu à des mentions écrites dans l'évaluation professionnelle des magistrats (voir le système français d'évaluation Groupe de travail RECJ 2004/2005).

b) la responsabilité disciplinaire;

Toute faute disciplinaire est nécessairement une violation de norme déontologique mais toute violation de norme déontologique ne donne pas nécessairement lieu à poursuite disciplinaire.

c) la responsabilité pénale;

Si la violation de norme déontologique constitue en même temps une infraction pénale, le magistrat peut être poursuivi au plan pénal.

d) la responsabilité civile

En France, la responsabilité civile personnelle d'un magistrat ne peut être engagée que sur action récursoire de l'Etat condamné pour "faute lourde" du service public de la justice ou "dénier de justice" et à la condition que le magistrat ait commis une "faute personnelle" se rattachant au service public de la justice ; cette faute personnelle peut également constituer la violation d'une norme déontologique.

5) Par qui et comment le Code déontologique a-t-il été élaboré?

Sans objet

6) Quels sont les principaux devoirs déontologiques pour les juges et pour les ministères publics?

- a. **Ne sont cités ici que les principaux devoirs au sein de l'énumération détaillée des devoirs tels qu'ils résultent de la jurisprudence disciplinaire du CSM.**
- b. **Les devoirs déontologiques sont communs aux juges et aux magistrats du ministère public, la jurisprudence les adaptant aux exigences des fonctions particulières des uns et des autres. Ainsi, par exemple, le CSM a précisé le contenu du devoir de loyauté pour un membre du ministère public compte tenu du principe de subordination hiérarchique auquel il est soumis.**

1. Certains devoirs s'imposent aussi bien dans la sphère professionnelle qu'hors de la sphère professionnelle :

- **devoir de respecter la loi,**
- **devoir de probité**
- **devoir de dignité**
- **devoir de délicatesse**
- **devoir de réserve**
- **devoir de prudence,**
- **etc...**

D'une manière générale en ce qui concerne la vie privée, le CSM ne sanctionne que les comportements privés qui, ayant un retentissement extérieur, portent atteinte à l'image de celui qui est appelé à juger autrui, et, par voie de conséquence, à l'institution judiciaire elle-même.

2. Certains devoirs s'imposent plus spécialement dans la sphère professionnelle :

- **devoir d'impartialité**
- **devoir de loyauté**
- **devoir de diligence professionnelle**
- **devoir de ne pas abuser de ses fonctions**
- **devoirs spécifiques à certaines fonctions (ex : chefs de juridiction, juges d'instruction, membres du ministère public...)**
- **etc...**

7) En particulier, outre le devoir d'être impartial existe-t-il aussi un devoir d'apparaître impartial?

Oui

8) Existe-t-il des règles déontologiques en ce qui concerne les rapports avec les médias?

Les règles déontologiques régissant les rapports avec les médias sont détaillées par la jurisprudence du CSM relative à l'obligation de réserve qui s'impose à tous les magistrats.

Elles découlent également des règles du code de procédure pénale relatives au secret de l'enquête et de l'instruction applicables aux magistrats.

9) Existe-t-il des règles déontologiques qui sauvegardent l'indépendance interne (par rapport aux chefs de service, au C.S.M. etc.) et externe (par rapport au pouvoir exécutif, législatif, etc.)?

- L'indépendance de l'autorité judiciaire est inscrite dans la Constitution.

L'autorité judiciaire comporte à la fois les magistrats du siège et les membres du parquet.

Toutefois, les magistrats du parquet sont placés sous la direction et le contrôle de leurs chefs hiérarchiques et sous l'autorité du ministre de la Justice.

- Le respect des devoirs déjà évoqués (respect de la loi et impartialité notamment) constituent en même temps une protection pour le magistrat qui les applique.

10) Existe-t-il des règles déontologiques sur l'incompatibilité entre l'exercice des fonctions judiciaires et les autres fonctions, professions et activités (d'étude, de recherche, d'enseignement) ?

Article 8 du statut de la magistrature précité :

« L'exercice des fonctions de magistrat est incompatible avec l'exercice de toutes fonctions publiques et de toute autre activité professionnelle ou salariée.

Des dérogations individuelles peuvent toutefois être accordées aux magistrats, par décision des chefs de cour, pour donner des enseignements ressortissant de leurs compétences ou pour exercer des fonctions ou activités qui ne seraient pas de nature à porter atteinte à la dignité du magistrat et à son indépendance, à l'exception des activités d'arbitrage, sous réserve des cas prévus par les dispositions législatives en vigueur.

Les magistrats peuvent, sans autorisation préalable, se livrer à des travaux scientifiques, littéraires ou artistiques. »

11) Existe-t-il des règles déontologiques concernant l'exercice des droits constitutionnels (de liberté d'opinion et d'expression, d'association, à la protection de la vie privée etc.) ?

- Article 10 du statut de la magistrature précité : « Toute délibération politique est interdite au corps judiciaire. Toute manifestation d'hostilité au principe ou à la forme du gouvernement de la République est interdite aux magistrats, de même que toute démonstration de nature politique incompatible avec la réserve que leur impose leurs fonctions. Est également interdite toute action concertée de nature à arrêter ou entraver le fonctionnement des juridictions ».

- Sur la protection de la vie privée : voir réponse à la question 6 ci-dessus.

12) Une formation, initiale ou permanente, ayant pour objet la déontologie est-elle prévue?

L'Ecole Nationale de la Magistrature a inscrit depuis plusieurs années les questions d'éthique et de déontologie dans les programmes de la formation initiale et de la formation continue des magistrats.

Germany

1) Disciplinary responsibility:

a) Is there a specific list of disciplinary wrongdoings in your country?

Yes (if possible, attach the document in English or French)

No (go on to question c)

b) Is this list the same for judges and for the public ministries?

Yes

No (specify differences)

c) If no specific list exists, are there any general instructions from which disciplinary wrongdoings can be deduced?

Yes (if possible, attach the document in English or French)

No (go on to question e)

The subject matter of a disciplinary proceeding is a service violation. A service violation is described only generally as the violation of official duties.

d) Are these general instructions the same for judges and for the public ministries?

Yes

No (specify differences)

e) Who promotes disciplinary action?

The disciplinary superior, i.e. the president of the court

f) Who is the disciplinary judge?

The German Judiciary Act (Deutsche Richtergesetz – DRiG) provides the following sections on the disciplinary judge:

Section 61 Constitution of the service court

2

(1) A special division of the Federal Court of Justice shall be established as a Federal

Service Court for judges in federal service.

(2) The Federal Service Court shall conduct its proceedings and give its decisions

sitting with a presiding judge, two permanent associate judges and two non-permanent associate

judges. The presiding judge and the two permanent associate judges shall be members of the

Federal Court of Justice, and the two non-permanent associate judges shall,

as judges for life, be

member of the jurisdiction to which the judge concerned is attached. The president of a court and his permanent deputy may not be members of the Federal Service Court.

(3) The presidium of the Federal Court of Justice shall appoint the presiding judge as well as the associate judges and their deputies for five business years. When bringing in the nonpermanent associate judges the presidium shall be bound to follow the order on the list of nominations drawn up by the presidiums of the supreme courts of the Federation.

(4) The Federal Service Court shall be deemed to be a criminal division within the meaning of section 132 of the Courts Constitution Act (Gerichtsverfassungsgesetz).

Section 62 Jurisdiction of the Federal Service Court

(1) The Federal Service Court shall give a final decision

1. in disciplinary matters, relating to judges in retirement as well;
2. on a transfer in the interests of the administration of justice;
3. in the case of a judge for life or for a specified term and in respect of
 - a) nullity of an appointment,
 - b) revocation of an appointment,
 - c) dismissal,
 - d) retirement on account of unfitness for service,
 - e) limited employment on account of limited unfitness for service;
4. on a challenge being made to
 - a) a measure taken in view of a change in the organisation of the courts,
 - b) the secondment of a judge pursuant to section 37 subsection 3,
 - c) an order by virtue of which a judge on probation or a judge by commission is dismissed, or by virtue of which his appointment is revoked or the nullity of his appointment is established, or by virtue of which he is retired on account of unfitness for service,
 - d) procurement for an additional activity,
 - e) a supervisory measure taken for the reasons stated in section 26 subsection 3,

f) an order concerning limitation of service or leave pursuant to section 48a to section 48c.

(2) The Federal Service Court shall also hear appeals on points of law from the judgments of the service courts of the Laender (section 79).

3

...

Section 77 Establishment of service courts

(1) Service courts shall be established in the Laender.

(2) The service courts shall give their decisions sitting with a presiding judge and with

an equal number of permanent associate judges and non-permanent associate judges. All

members shall be judges appointed for life. The non-permanent members shall be members of

the jurisdiction to which the judge concerned belongs.

(3) The members of a service court shall be appointed by the presidium of the court at

which the service court has been established. Land legislation can bind the presidium to follow

the list of nominations drawn up by the presidiums of other courts. The president of a court or his

permanent deputy may not be members of a service court.

Section 78 Jurisdiction of a service court

(1) The service court shall give a decision

1. in disciplinary matters, relating to judges in retirement as well;

2. on a transfer in the interests of the administration of justice;

3. in the case of a judge for life or for a specified term and in respect of

a) nullity of an appointment,

b) revocation of an appointment,

c) dismissal,

d) retirement on account of unfitness for service,

e) limited employment as a result of limited fitness for service;

4. on a challenge being made to

a) a measure taken in view of a change in the organisation of the courts,

b) the secondment of a judge pursuant to section 37 subsection 3,

c) an order by virtue of which a judge on probation or a judge by commission is dismissed, or

by virtue of which his appointment is revoked or the nullity of his appointment is established,
or by virtue of which he is retired on account of unfitness for service,
d) procurement for an additional activity,
e) a supervisory measure taken for the reasons stated in section 26 subsection 3,
f) an order concerning limitation of service or leave pursuant to section 76a in conjunction with section 48a; an order concerning part-time employment or leave pursuant to section 76a subsections 2 to 5.

g) What sanctions are imposed?

4

Section 26 (1) of the German Judiciary Act (Deutsche Richtergesetz – DRiG) provides that judges are generally under administrative supervision, to the extent that this does not interfere with their independence (Article 97 of the Basic Law – Grundgesetz - GG). Administrative supervision does not apply to determining a legal position on a matter, which is a core area of judicial service, but instead entails only those duties of a judge which have to do with ancillary forms of the fulfilment of public service (e.g. conducting meetings in conference rooms, the use of uniform documents etc.). In the event of a judge's misconduct, administrative supervision includes only two possible measures pursuant to section 26 (2) DRiG: The judge may be reprimanded for misconduct in the performance of his official duties, and he may be warned that he must properly and immediately fulfil such duties. Administrative supervision is undertaken by the presidents of the courts; and by the competent ministries in the last instance – as a rule, these are the justice ministries. Further serious disciplinary measures may only be imposed in the course of a formal disciplinary proceeding conducted by the judicial service court; this is intended to ensure the

most extensive possible independence of judges from executive bodies. Disciplinary law for judges is not independently regulated, neither at the federal nor at the Land level. For judges in federal service, the applicable law pertaining to public officials is the Federal Disciplinary Law (*Bundesdisziplinargesetz* – BDG); for judges in service at the Land level, the respective Land disciplinary laws apply according to the individual Land laws governing judges.

Dependent upon the severity of the violation of official duties, the following additional disciplinary measures may be imposed (pursuant to section 63 (1) DRiG in conjunction with section 5 BDG):

- regulatory fine,
- reduction in wages,
- transfer to an position within the same career path with a lower top basic salary,
- removal from office.

h) What guarantees does the accused judge have?

The accused judge has every right according to the Basic Law and the Federal Disciplinary Law, especially the right of his lawful judge and a hearing in accordance with law.

i) Does the disciplinary ruling affect the judge's career?

Yes (specify how)

No

It depends on the measure imposed (please see answer to question 1g)

5

j) Is the disciplinary procedure

jurisdictional ?

administrative ?

There is an administrative supervision as well as a formal disciplinary proceeding conducted by the judicial service court (please see answer to question 1g).

2) Aside from the regulations concerning disciplinary responsibility and conduct that can be

punished, is there a code of ethics for judges in your country?

Yes (if possible, attach the document in English or French)

No

The subject matter of a disciplinary proceeding is a service violation. A service violation is

described only generally as the violation of official duties.

A civil servant commits a service violation if he culpably violates the obligations incumbent

upon him (section 77 (1) of the Act on Federal Civil Servants (*Bundesbeamtengesetz – BBG*)).

This central provision applies by force of reference in section 46 DRiG to judges serving on the

federal level as well; the same applies to judges in the service of the Länder by way of section

71 DRiG in conjunction with section 45 (1), 1st sentence of the Framework Act Defining the

Scope of Civil Servants' Rights and Duties (*Beamtenrechtsrahmengesetz - BRRG*). Official

misconduct is graded according to the degree of reproachability of the judge's overall conduct.

Special duties on the part of judges are laid down in sections 38 to 42 DRiG and in the

catalogue of duties according to civil service law, contained in sections 52 to 76 BBG as well as

sections 35 et seqq. BRRG; if appropriate, these apply in conjunction with additional provisions

of Land law, to the extent that these are applicable to judges on the Land level pursuant to

section 71 DRiG.

A decision as to whether or not a violation of official duties has been committed is dependent

upon the circumstances of the individual case. Special duties of judges whose violation may

result in the initiation of a disciplinary proceeding might include the following:

- Pursuant to section 39 DRiG, in and outside office a judge shall conduct himself, in relation

also to political activity, in such a manner that confidence in his loyalty

to the Constitution and his independence will not be endangered.

- Pursuant to section 41 DRiG, a judge shall not draw up expert legal opinions, nor shall he give legal advice for remuneration outside the course of his official duties.

6

By force of the reference in section 46 DRiG, the provisions of the BBG with regard to general duties (sections 52 to 76 BBG) shall apply accordingly, to the extent that the DRiG makes no other provision and that such application is compatible with the legal status of the judge. For example, the following ensue from relevant application of the provisions of the law applicable to civil servants:

- the duty of loyalty to the constitution (section 52 (2) BBG),
- the duty of maintaining official secrecy (sections 61, 62 BBG), which applies in addition to the special duty of maintaining confidentiality regarding the course of deliberations and voting.

3) Is the code of ethics the same for judges and for public ministries?

Yes

No (specify differences)

Partly, please see answer to question 2)

4) What are the legal or non legal consequences of violating the rules of ethics?

If any legal

consequences are foreseen, how are they enacted?

a) Evaluating professionalism;

Professional evaluation of judges is limited for constitutional reasons. It is quite clear that

judicial independence as guaranteed by the constitution forbids any kind of evaluation that

weighs, marks and values the correctness and quality of judicial decisions. Section 26 of the

Judiciary Act states that „judges are subject to service inspections only insofar as their

independence remains unaffected“. This means that the president of the court may, for instance, criticise a judge for his personal or professional conduct but never for the way he has applied the law in his decisions. Evaluations, therefore, have to be limited to more general observations (like e.g. the broadness of the knowledge of the law, the speediness and / or thoroughness of deciding cases, the amount of work dealt with) or - as the literal translation of the German technical term says - the „outer order of judicial business“, but they may not touch the core of judicial work, the correctness of the application of the law, the intrinsic value of the decision.

b) Disciplinary responsibility;

Violating the rules of ethics must be at the same time a service violation.

c) Penal responsibility;

In certain circumstances, judges may be held responsible pursuant to criminal law for perversion of justice. The elements of the criminal offence of perversion of justice are fulfilled when a judge, another public official or an arbitrator, in presiding over or deciding a case, is guilty of perverting the law for the benefit or to the detriment of a party.

An initial necessary aspect of this is that a decision is rendered which is objectively contrary to established rights and law. According to the consistent past decisions of the Federal Court of Justice, this must involve a fundamental interference with the administration of justice. The judge, public official or arbitrator must have consciously and seriously distanced himself from the law, and must have based his conduct upon standards that are not expressed in the law rather than upon established law and rights. The offence carries a potential prison term of between one and five years.

d) Civil responsibility;

In German law, liability for judicial conduct is even narrower than in French law. As in France, in practical terms, only the State is liable for damages which result from official conduct (or omissions) by a court. This is based upon Article 34 of the Basic Law (Grundgesetz – GG), which shifts the personal liability of public officials (section 839 of the German Civil Code (Bürgerliches Gesetzbuch - BGB) to the State.

As a rule, liability is excluded (by section 839 BGB) for official actions that are judicial decisions, unless the decision represents a criminal offence by the judge. Further, it is excluded to the extent that damages could have been avoided by judicial remedying of the decision. As such, the exclusion of liability applies in virtually all cases; further, judicial liability is raised as an issue only very infrequently. Most of such cases deal with omissions by the court, from which liability on the part of the State may be derived if the omission is the result of work overload (deficient organisation or distribution of resources, committed by judges or civil servants).

5) Who drew up the code of ethics and in which way?

a) The law (indicated date); German Judiciary Act, Federal Law of 8 September 1961

b) regulations;

c) legal precedent;

d) the judges' associations (self-regulating codes)

6) What are the main ethical duties for judges and public ministries?

a) In the carrying out of their roles;

b) In their private lives;

The German Judiciary Act (Deutsche Richtergesetz – DRiG) provides the following sections on ethical duties for judges and public ministries:

Section 38 Judicial oath

(1) A judge shall take the following oath at a public sitting of the court:

"I swear to exercise judicial office in conformity with the Basic Law (Grundgesetz) of the Federal Republic of Germany and with the law, to adjudicate to the best of my knowledge and belief, without distinction of person, and to serve the cause of truth and justice alone - so help me God."

(2) The oath can be taken without use of the words "so help me God".

(3) In respect of judges who are in the service of a Land the oath can include a

commitment to the Land constitution concerned and can be taken publicly in a different manner instead of being taken before a court.

Section 39 Maintenance of independence

In and outside office a judge shall conduct himself, in relation also to political activity, in such a manner that confidence in his independence will not be endangered.

7) In particular, is there a duty to appear to be impartial, in addition to the obligation to be impartial?

Please see answer to question 6.

8) Are there any ethical rules about relations with the mass media?

No

9) Are there any ethical rules that protect internal (with respect to the court heads, the CSM etc) and external (compared to executive power, legislative power etc) independence?

Section 4 Incompatible duties

(1) A judge shall not simultaneously perform duties of adjudicative and legislative or executive duties.

(2) Besides duties of adjudication a judge may, however,

1 . perform duties involving court administration,

2. perform other duties assigned by statute to the courts or judges,

3. undertake research and give instruction at a scientific institution of higher education, at a public teaching institution, or at an official teaching institution,

4. perform duties in matters concerned with examination,
5. act as chairman in conciliation agencies and in corresponding independent agencies within the meaning of section 104 sentence 2 of the Federal Personnel Representation Act (Bundespersonalvertretungsgesetz).

10) Are there any ethical rules on the incompatibility between judicial roles and other positions, professions and activities (study, research, teaching)?

Section 40 Arbitrators and conciliators

(1) A judge may only be granted permission to act additionally as an arbitrator or give an expert opinion in arbitration proceedings where the parties to the arbitration agreement commission him jointly or where he is nominated by an agency that is not a party to the proceedings. Permission shall be refused where at the time of the decision regarding the granting of permission the judge is seized of the case or can be seized thereof in the allocation of court business.

(2) Subsection 1 shall be applied mutatis mutandis to a judge who acts additionally as a conciliator in disputes between associations or between the latter and third parties.

Section 41 Expert legal opinion

(1) A judge shall not draw up expert legal opinions, nor shall he give legal advice for remuneration outside the course of his official duties.

(2) A professor of law or of political science who has civil servant status and who is also a judge may draw up expert legal opinions and give legal advice with the permission of the highest public authority administering the courts. Such permission shall only be granted generally or in an individual case where the judicial activity of the professor does not exceed the scale of an additional activity and it is not to be feared that official interests are being impaired.

Section 42 Additional activities in the administration of justice

A judge can be obliged to perform an additional activity (additional office, additional occupation) only in the administration of justice and in court administration.

11) Are there any ethical rules on the carrying out of constitutional rights (freedom of thoughts, of association, the protection of privacy etc.)?)?

No

12) Does any initial or continuing training exist concerning professional ethics? Yes, at the German Judicial Academy (Deutsche Richterakademie), you can find continuing training concerning professional ethics, e.g. a conference on “Judicial Ethics – Fundamental Principles, Perspectives, European Comparison”.

The aim of the seminar is to inform judges on the current stage of development in Europe, to conduct discussions on the subject and to tackle the subject more especially with respect to the German reality.

Hungary

1. Disciplinary Responsibility

- a) No.
- b) In the Hungarian legal system the Judiciary and the Public Service has separate regulations concerning their disciplinary responsibilities. Therefore, all of our following answers concern the judges only.
- c) The Act on the Status and Remuneration of the judges does not set up a specific, detailed list of wrongdoings. According to this Act, the judge commits a disciplinary offence, if:
violates his official duties, or
his way of life, or his personal conduct prejudices or endangers the
prestige of the judiciary.
- d) The above outlined terms concern only judges. Public service and public servants have separate regulations regarding disciplinary proceedings.
- e) In case of a judge, a disciplinary action may generally be initiated by the exercise of the employer's rights. This means mostly the president of the respective court, but in cases of court leaders (e. g. presidents and vice-presidents) the National Council of Justice has the authority to initiate disciplinary action.
- f.) According to the Act on the Status and Remuneration of Judges, disciplinary courts are to be established at the county courts, the courts of appeal, and at the Supreme Court. The disciplinary proceeding has two instances. The first instance court for the local and county court judges is the Disciplinary Court of the County Court, for judges of the courts of appeal, the Disciplinary Court of the Court of Appeal, for the supreme court judges the First Instance Disciplinary Court of the Supreme Court.
All of the disciplinary decisions may be appealed to the Second Instance Disciplinary Court of the Supreme Court.
The disciplinary court have seven members, elected for a period of six years by the full meeting of judges at the respective court. The Court function in three-member chambers, selected by the president of the disciplinary court.
- g.) If the offence, or the infringement of the duties are of a milder nature, the disciplinary court may dispense with the proceeding. However, if a disciplinary offence is established by the court, the sanctions may be the following:

- 1) Reprimand
- 2) Censure
- 3) Reducing the salary grade to the previous stage
- 4) Relieving from a leading office
- 5) Initiating the termination of the judicial office

h.) There are two guarantees:

Two instance disciplinary proceeding

The judge concerned may invoke the assistance of another judge or a councillor

i.) Yes. The sanctions listed in subparagraph 3,4,5 of the previous point g./ affect directly the career of a judge. Even the milder sanctions is subparagraph 1,2, may have negative influence the future promotion of a judge.

j.) see the answer in point f./

Judicial ethics and Conduct

2.) In the Hungarian legal system, there is no separate Code of Judicial Ethics and Conduct. However, Chapter II. of the above mentioned Act on the Status and Remuneration of Judges establishes in detail the duties and obligations of the judges, outlining the basic expectations regarding judicial ethics and conduct. Some of the main features of this regulation are:

- Professional conduct of the judge; relations to the participants of the court proceedings,
- Rules of incompatibility
- Rules of impartiality
- Rules of official secrecy
- The proper conduct of a judge, even outside his court.

3.) As already mentioned, there is no Code of Judicial Ethics and Conduct, but judges have their separate ethical terms and rules outlined in the Act mentioned above.

4.) The Act on the Status and Remuneration of Judges outlines only the most basic expectations, without mentioning sanctions connected to them.

However, violating the ethical rules may have non-legal and disciplinary consequences.

5.) See: point 2.)

6.) a/ a judge shall in his professional capacity

- perform his duties according to his Oath of Office,
- must not refuse to hear assigned cases,
- perform the duties of his office continuously, with good conscience
- shall deal with the assigned cases within a proper time
- shall behave himself properly and impartially toward participants of the court proceeding

b/ in his extra-judicial activities:

- shall conduct himself worthy to the prestige of his office and refrain from any activities, which may impair the invested trust and prestige of the judiciary
- refrain from public comments regarding cases already finished, or still pending, including his own cases

7.) The judge has to perform his duties in every cases impartially and without outside influence. Any attempt to infringe his impartiality is to be reported immediately to the president of the court. Even the appearance of the impartiality is to be avoided.

8.) There are no specific rules. As mentioned, the judges must not give any public information about their cases.

9.) The Constitution contains the most basic rule stating: „Judges are independent, and are subordinated only to the law”

10.) Judges must not participate in any political activities, and must not be members of any political parties. They must not be members of the Parliament or any public body, and must not be mayors, or take up any executive positions in the governmental bodies.

11.) The Act on the Status and Remuneration of Judges does not contain any rules in this respect.

12.) Within the framework of the central judicial training activities, all the young judges participate in training courses on the judicial ethics and conduct.

Ireland

Question 1.

a) No.

b) No.

c) No.

d) No.

e, f & g). Background:-

Presently, there is no formal code prescribed for the conduct and behaviour of judges in Ireland, however, it has been the practice, that the Presidents of the four jurisdictions of the Irish Courts exercise an informal and consultative role in guiding and advising judges in relation to the exercise of the judicial function. The Presidents of the Courts would also be a contact point between the public and judiciary and can play a role in the informal resolution of complaints. The only sanction which can be imposed on a judge is removal from office under Article 4.1 of the Constitution for stated misbehaviour or incapacity and then only on resolutions passed by both houses of the Irish Legislature (Oireachtas).

The background to this constitutional provision is to be found in the Constitutional imperative that all judges shall be independent in the exercise of their judicial duties and subject only to the Constitution and the law.

h). In the event of a resolution to impeach a judge, a judge would be entitled to be legally represented and to give evidence and make submissions in his/her defence. A judge is entitled to the same equality before the law as any other citizen.

i) The career of a judge would obviously be affected by a decision for his/her removal.

j) Not applicable. The procedure to remove a judge would be at the instance of parliament.

2. No.

3. Not applicable.
4. See previous note to 1.e,f and g.
5. See previous replies. It maybe helpful to note, that we are presently engaged in a process to establish a Judicial Council for the Irish Judiciary. Without being specific, the general objects of this Judicial Council would include the following:-

To preserve the independence of the judiciary

To promote the due administration of justice

To continue the development of the Judicial Studies Institute which provides courses and lectures for the continuing education of members of the judiciary. From time to time, our Judicial Studies Institute addresses questions of judicial ethics and the role of the judge in society.

To establish formal systems for the consideration of complaints against judges.

6. "Apart from specific prohibitions barring a judge from participating in the ordinary activities of a citizen, judges have to recognise the many limitations both in their public and private lives. For example, they have effectively to surrender the right to practice their profession should they cease to be judges, either by removal or retirement." See judgment of Kennedy CJ [In re the Solicitors and Sir James O'Connor].
7. It would be implicate, that the conduct of a judge should be such as to maintain and enhance, the confidence of the public, the legal profession and litigants. In the impartially of his judgments and in the manner the judge exercises his judicial function.
8. No.
9. No.
10. A judge is entitled to hold an honorary position but is not entitled to hold any other position of emolument. There is no objection to a judge writing books or receiving royalties and a judge can act as chairman or member of a tribunal of enquiry.
11. No.

12. Newly appointed judges are obliged to undergo any course of training or further education as directed by the President of their Court. This training is carried out under auspices of the Judicial Studies Institute. The Institute had addressed ethical issues and the judges role in the course of training seminars.

Italy

N.B.: The following answers were given based on the applicable legislation contained in articles 17 to 38 of the Royal Legislative Decree no. 511 of 31 May 1946 and articles 55 to 62 of the Presidential Decree (d.p.r.) no. 916 of 16 September 1958. Under law no. 150 of 2005, the government was delegated the power to change such regulatory provisions based on the following principles: type of disciplinary offences and introduction of specific sanctions for all types of offences, obligation to take disciplinary action by the Director of Public Prosecution (Procuratore Generale) before the Court of Cassation and discretionary nature of the Minister's action; regulation of the proceeding by transposing the provisions governing ordinary criminal cases with two significant differences: a) exclusion of coercive powers vis-à-vis the defendant and witnesses; b) use, i.e. reading, of the evidence gathered during enquiries. The legislative decree enforcing the delegation was approved by the Government, but is yet to be published in the Official Journal of the Italian Republic (Gazzetta Ufficiale) and consequently come into full force and effect.

1) Disciplinary responsibility:

a) Does your Country have a specific list of disciplinary offences?

- yes (possibly annex the text in English or French)
 no (proceed to question c)

b) Is such list the same for judges and public prosecutors?

- yes
 no (specify differences)

c) In the absence of a specific list, is there a generic legal or regulatory provision that refers to disciplinary offences?

- yes (possibly annex the text in English or French)

Art. 18 of the Royal Legislative Decree no. 511 of 1946 provides that: “A *judicial officer who is in breach of his duties, or who behaves, both in the fulfilment of his functions or in any other circumstances, in such a way as to make him unworthy of the esteem he should normally be held in or the confidence he should inspire, or as to compromise the prestige of the judiciary system, is subject to disciplinary sanctions in accordance with the provisions of the articles below.*”

The identification of conduct subject to discipline is among the tasks of the disciplinary judge. The Constitutional Court has judged the provision above to be constitutionally lawful.

- no (proceed to question e)

d) Is such generic provision the same for both judges and public prosecutors?

- yes
 no (specify differences)

e) Who promotes disciplinary action?

Disciplinary action is promoted at the discretion of the Minister or the Director of Public Prosecution before the Court of Cassation within one year from the day on which he gained knowledge of the disciplinary-relevant fact.

The exercise of disciplinary action is exclusively reserved for the Director of Public Prosecution, even when the action is promoted by the Minister. The exercise of disciplinary action is subject to a one-year term after which it expires. Within such term, the defendant must be notified of the decree setting the date of the oral hearing before the disciplinary judge.

f) Who is the disciplinary judge?

The disciplinary judge is a collegiate body, specifically the disciplinary division of the Italian Governing Council of the Judiciary (CSM), and consists of six permanent members and six acting members (two lay members and four judicial officers by profession for each of the two groups). The officers by profession (a judge of the Court of Cassation, a public prosecutor and two judges judging on the merits for each of the two groups of permanent and acting members) and the three lay members are elected by the CSM – in plenary meeting – among its members. The vice chairman of the Council, who is elected among the lay members at the time of taking office, is a current member by law and presides the session. In case of his absence, the disciplinary division is chaired by another lay member. The disciplinary division may be chaired by the President of the Italian Republic: in such case the vice chairman is excluded.

g) What sanctions are envisaged?

Any failure to specify a precise type of disciplinary offence implies that the disciplinary judge shall from time to time apply the sanction that he deems most appropriate and proportionally suited to the assessed breach.

The disciplinary sanctions include:

- a) warning (*ammonimento*), meant as the assessment of a breach and an exhortation to the judicial officer to observe his duties;
- b) reprimand (*censura*), meant as a formal warning served on the judicial officer for an assessed breach;
- c) loss of seniority (*perdita di anzianità*), meant as a delay of at least two months and not exceeding two years in the appointment to a higher post;
- d) removal (*rimozione*), meant as the definitive removal from the judiciary;
- e) discharge (*destituzione*), similar to removal but differing from it in that it relates to a criminal conviction although its effect is not automatic, but is rather correlated to the gravity of the historic fact assessed in a criminal case.

Finally, there is also a secondary sanction known as transfer *ex officio* (*trasferimento d'ufficio*), which may be added by the disciplinary judge when he inflicts any of the sanctions above the level of a mere warning.

h) What guarantees are available to a defendant judicial officer?

The defendant is entitled to be notified, on pain of forfeiture of any acts performed without a prior notice, of the commencement of the disciplinary proceeding, with the details of facts

that are attributed to the same. The regulatory provisions governing the proceeding are contemplated, with some differences expressly envisaged, in the Criminal Procedure Code of 1930, which governs an inquisitorial type of procedure. The Code of 1930, which was superseded by the Criminal Procedure Code of 1989 based on an accusatorial type of procedure, has remained in force limited to the disciplinary proceeding vis-à-vis judicial officers. The defendant may not be committed for a trial before the Disciplinary Division unless he was previously questioned on the facts that caused the breach.

A provisional measure of suspension from office and salary is also envisaged, which is either mandatory (in case of an arrest or another personal interlocutory measure under criminal law) or elective. The provisional measure may only be inflicted when the Disciplinary Division has heard the defendant.

The defendant may defend himself or be defended by another judicial officer (either in office or retired) or by a counsel.

The rulings of the Disciplinary Division may be appealed before the consolidated Divisions of the Court of Cassation on the same grounds as those envisaged by the Civil Procedure Code (breach of procedural rules or material breach; or insufficient or contradictory grounds).

i) Does a disciplinary conviction affect the judicial officer's career?

yes (specify effects)

The repercussions of a disciplinary conviction on the officer's career may be of two types:

- a) direct, such as loss of seniority in the office and release from service;
- b) indirect, as it may run counter to any subsequent evaluations on career advancement and appointments to any higher junior or senior management offices.

no

j) What is the nature of a disciplinary proceeding?

judicial

A disciplinary proceeding has a judicial nature.

administrative

1) Irrespective of the provisions on the disciplinary responsibility and behaviour subject to disciplinary sanctions, does your Country have a Code of Ethics for judicial officers?

yes (possibly annex the text in English or French)

A Code of Ethics (or "Code of Good Practice") was adopted by the Central Steering Committee of the National Association of the Judiciary, following a thorough consultation of its members, within the term prescribed by art. 58 bis of Legislative Decree no. 29/1993 (introduced by Legislative Decree no. 546/1993).

no

2) Is your Code of Ethics the same for judges and public prosecutors?

yes

no (specify differences)

3) What are the legal and non-legal effects of a breach of the Code of Ethics?

The rules contemplated in the Code of Ethics approved by the National Association of the Judiciary are internal rules governing a non-recognised association and consequently have a direct legal effect solely on its members and may not result in the infliction of the disciplinary sanctions as envisaged by the Association's by-laws.

Since the nature of ethical rules differs from that of provisions envisaging disciplinary offences, civil offences (torts) or criminal offences, because they contemplate a number of objectives underlying professional ethics, their breach does not **per se** directly affect disciplinary, civil or criminal liability. However, breaching the code of ethics may amount to an **indication or confirmation** of a breach of a disciplinary, civil or criminal provision having corresponding contents; in other words, the disciplinary judge may infer from the existence of a provision of the ethical code that a specific content of disciplinarily-relevant duties actually exists.

If juridical consequences are envisaged, what do they affect?

- a) evaluation of professional skills;
- b) disciplinary liability;
- c) criminal liability;
- d) civil liability;

4) What is the origin of the code of ethics?

- a) statutory law (enter the date);
- b) regulations;
- c) case law;
- d) Associations of Judicial Officers (Self-regulatory Codes)

5) What are the main ethical duties for judges and public prosecutors?

a) in the exercise of their functions:

In the fulfilment of his duties and in any professional behaviour, the judicial officer is to be inspired by such values as a lack of personal interest, independence and impartiality, and to perform his functions with diligence and efficiency.

b) in his private life:

In social life, a judicial officer shall act with dignity, correctness and awareness of public interest.

6) More specifically, in addition to being impartial, does the duty of having an impartial image exist?

Art. 9, last paragraph, of the Code of Ethics provides that the judicial officer shall ensure that, in the exercise of his functions, his impartiality image will be always and fully retained. To that end, he shall assess, with the utmost rigour, whether any situations call for abstention for serious reasons.

7) Are there any ethical rules envisaging relations with the media?

Yes, art. 6 of the Code envisages that, in relations with the press and other media, a judicial officer shall not solicit news reports related to the performance of his judicial activity and furthermore that whenever he is not bound by the secrecy or confidentiality of the information known to him for reasons associated with the fulfilment of his functions

and he believes it appropriate to provide such information, specifically on the judicial activity, so as to insure their correct disclosure to citizens and the exercise of the right to report information, or to protect the honour and reputation of citizens, then he shall avoid that any privileged or reserved personal information channels be established or used. Without prejudice to the principle of the full freedom to express one's views, a judicial officer shall also be inspired by the principles of balance and discernment in disclosing any information or in being interviewed by the press and other media.

8) Are there any ethical rules protecting internal independence (vis-à-vis court managers, the governing council of the judiciary, etc.) and external independence (vis-à-vis the executive or the legislative power, etc.)?

With reference to the protection of internal independence, art. 14 of the Code of Ethics provides special regulatory provisions governing the duties of managers and specifically envisages that a court manager shall ensure the independence of judicial officers and a relaxed working environment for the full court staff and further ensure transparency and equitableness in the court management while rejecting any external interference. He shall also be responsible for the enforcement of the natural judge principle.

In relation to the protection of external independence, art. 8 of the Code provides that a judicial officer shall warrant and represent that his functions will be transparently exercised and furthermore ensure the impartiality and independence of his image. To that end, a judicial officer shall avoid any involvement in business or political party power centres that may influence the exercise of his functions or tarnish his image.

9) Are there any ethical rules on the incompatibility between the exercise of judicial functions and other functions, professions or activities (e.g. study, research or teaching profession)?

Art. 8 of the Code of Ethics, last paragraph, without actually specifying the field of activity, states that a judicial officer shall not accept any assignments or perform any functions that may run counter to the full, correct fulfilment of his own functions, or influence his independence on account of the nature, source or terms of such assignments.

10) Are there any ethical rules with respect to the exercise of constitutional rights (freedom of thought and expression, freedom of association, privacy protection, etc.)?

In merely governing the limits of a judicial officer's conduct in both his social life and in the fulfilment of his functions, the Code of Ethics implicitly states that the officer shall be granted the exercise of constitutionally vested rights, and specifically makes reference to the full freedom of expressing one's views (art. 6). "A fundamental ruling of the Constitutional Court – no. 100 of 1981 – states the principle that judicial officers, as any other citizens, should be vested with the rights envisaged by the Italian Constitution. However such rights shall be balanced by the recognition of other vested rights, i.e. third-party rights and the right of all citizens to credibility and the independent and impartial exercise of jurisdiction. The balance between such constitutionally vested interests, the Constitutional Court contends, is entrusted to the Disciplinary Division.

11) Is initial or lifelong learning in ethics envisaged?

Just initial learning is envisaged for functionless deputy judges (known as *uditori giudiziari*), while the subsequent training of judicial officers focuses on the further learning of the judicial system rules.

Latvia

1)Disciplinary responsibility:

a)Is there a specific list of disciplinary wrongdoings in your country?

- Yes (if possible, attach the document in English or French)
- No (go on to question c)

b)Is this list the same for judges and for the public ministries?

- Yes
- No (specify differences)

c)If no specific list exists, are there any general instructions from which disciplinary wrongdoings can be deduced?

- Yes (if possible, attach the document in English or French)
- No (go on to question e)

d)Are these general instructions the same for judges and for the public ministries?

- Yes
- No (specify differences)

e)Who promotes disciplinary action?

According to the law “Judicial Disciplinary Liability Law” section 3 the following are entitled to initiate a disciplinary matter:

1) the Chief Justice of the Supreme Court - concerning judges and senators (judges of the Senate) of the Supreme Court, in all the cases specified in Section 1 of this Law, but concerning judges of district (city) courts and regional courts, as well as judges of Land Registry Offices of regional courts - in the cases specified in Section 1, Paragraph one, Clauses 1 and 2 of this Law;

2) the Minister for Justice - regarding judges of district (city) courts and regional courts, as well as judges of Land Registry Offices of regional courts - in all the cases specified in Section 1 of this Law;

3) the Chief Judges of regional courts - regarding judges of district (city) courts and judges of the Land Registry Offices of regional courts - in the cases specified in Section 1, Paragraph one, Clause 1 of this Law, but regarding judges of regional courts - in all the cases specified in Section 1 of this Law;

4) the Chief Judges of district (city) courts - regarding judges of district (city) courts - in all the cases specified in Section 1 of this Law; and

5) the Heads of Land Registry Offices of regional courts - regarding judges of Land Registry Offices of regional courts - in all the cases specified in Section 1 of this Law.

f) Who is the disciplinary judge?

According to the law “Judicial Disciplinary Liability Law” section 2:

(1) Matters concerning disciplinary and administrative violations by judges of district (city) courts, Land Registry Offices, regional courts and the Supreme Court shall be examined by the Judicial Disciplinary Board.

(2) The composition of the Judicial Disciplinary Board shall be the Chief Justice of the Supreme Court and his or her deputy, three judges of the Supreme Court, two Chief Judges of regional courts, two Chief Judges of district (city) courts and two Heads of Land Registry Offices. The members of the Judicial Disciplinary Board (with the exception of the Chief Justice of the Supreme Court) shall be elected by secret ballot for four years at a conference of judges.

(3) The chairperson of the Judicial Disciplinary Board shall be the Chief Justice of the Supreme Court. The Judicial Disciplinary Board from among their own members shall elect the vice-chairperson of the Judicial Disciplinary Board.

(4) The Minister for Justice and the Prosecutor General, or persons authorised by them, as well as a person authorised by the board of the Latvian Society of Judges, may participate in the sittings of the Judicial Disciplinary Board in an advisory capacity.

(5) The Judicial Disciplinary Board shall act in accordance with by-laws approved by the Judicial Disciplinary Board.

(6) The Supreme Court shall financially ensure the work of the Judicial Disciplinary Board.

g) What sanctions are imposed?

According to the law “Judicial Disciplinary Liability Law” section 7 the Judicial Disciplinary Board may take the following decisions:

1) to impose a disciplinary sanction:

- an annotation;
- a reprimand;
- a reduction of salary for a time period up to one year, withholding up to 20 per cent of the salary.

2) to send the materials of the disciplinary matter to the Office of the Prosecutor General for a decision regarding the initiation of a criminal matter;

3) to recommend the removal of the judge from office;

4) to send the materials of the disciplinary case to the Judicial Qualification Board for a decision regarding the downgrading of the qualification category of the judge;

5) to dismiss the disciplinary matter.

h)What guarantees does the accused judge have?

According to the law “Judicial Disciplinary Liability Law” Section 8, Paragraph 4 a decision in a disciplinary matter is final, except in a case provided for in Section 9, Paragraph 3 of this Law. According to this Law Section 12, Paragraph 1 a disciplinary sanction shall be considered to be extinguished if within one year, from the date when it was imposed, no new disciplinary sanction has been imposed upon the judge.

i)Does the disciplinary ruling affect the judge’s career?

- Yes (specify how) (it depends on violation hardness)
- No

j)Is the disciplinary procedure

- jurisdictional ?
- administrative ?

2) Aside from the regulations concerning disciplinary responsibility and conduct that can be punished, is there a code of ethics for judges in your country?

- Yes (if possible, attach the document in English or French)
- No

Is the code of ethics the same for judges and for public ministries?

- Yes
- No (specify differences)

4) What are the legal or non legal consequences of violating the rules of ethics? If any legal consequences are foreseen, how are they enacted?

- a)Evaluating professionalism;**
- b)Disciplinary responsibility (partly);**
- c)Penal responsibility;
- d)Civil responsibility;

5) Who drew up the code of ethics and in which way?

- a)The law (indicated date);
- b)regulations;
- c)legal precedent;
- d)the judges' associations (self-regulating codes)**

(A code of ethics for Latvian judges is confirmed in the Conference of Judges, what is self-governing institution of judges. All judges of the country shall take part in its operation.)

6) What are the main ethical duties for judges and public ministries?

- a)In the carrying out of their roles;
- b)In their private lives;**

7) In particular, is there a duty to appear to be impartial, in addition to the obligation to be impartial?

According to the law "On Judicial Power" section 86, paragraph 3 the office of a judge may not be combined with membership in a party or other political organisation.

8) Are there any ethical rules about relations with the mass media?

According to the code of ethics for Latvian judges, judge should take part in determination, readjustment and preservation of high conduct cultural standards. Judge can not give any public comment about pending case, what could anyhow affect on the results of proceedings.

9) Are there any ethical rules that protect internal (with respect to the court heads, the CSM etc) and external (compared to executive power, legislative power etc) independence?

According to the law “On Judicial Power” section 86, paragraph 2 judges may freely join together in organisations, which protect their independence, promote their professional development, and defend their rights and interests.

10) Are there any ethical rules on the incompatibility between judicial roles and other positions, professions and activities (study, research, teaching)?

According to the law “On Judicial Power” section 86¹ a judge with his or her consent and the permission of the Chief Judge for specific time may be assigned to work in another court (also higher instance courts), the Ministry of Justice or an international organisation (hereinafter - another institution). A judge may be assigned to work in another institution for time, which is not less than three months, but does not exceed three years. During this time the judge may not exercise the duties of a judge in the court from which he or she is assigned to work in another institution. A judge in performing work in another institution shall receive a judge’s basic salary and supplements for the qualification class if only the institution has not taken over the obligation to pay the judge a salary. Work in another institution shall be counted for the length of service of the judge.

According to the code of ethics for Latvian judges, judge can work as lecturer in educational institutions, state or social institutions, what doesn’t engage in profit-making.

11) Are there any ethical rules on the carrying out of constitutional rights (freedom of thoughts, of association, the protection of privacy etc)?

According to the code of ethics for Latvian judges, judge in his or her leisure time can take the floor with reports, speeches, write for press, to do lecturing, work as lecturer, as well as take part in other out-of-court activities, what don’t contradict with the code of ethics.

12) Does any initial or continuing training exist concerning professional ethics?

Yes, training concerning professional ethics exist and it is included in the regular trainings programme for new judges, and as well as for judges is offered the thematic seminar concerning professional ethics.

The Netherlands

1) Disciplinary responsibility:

a) Is there a specific list of disciplinary wrongdoings in your country?

Yes (if possible, attach the document in English or French)

No (go on to question c)

Yes, there is a penal sanction specifically for judges, accepting gifts, intended to influence their decision, apart from corruption –delicts of other government officials; besides there are wrongdoings, which are mentioned in the oath: no gifts to get a judicial appointment and lastly there are wrongdoings mentioned in the Judges' Law: being a notary, advocate or parliamentarian at the same time, not keeping secret the debates amongst judges about a decision and what has to be seen as affecting privacy of litigants and may be found in their files and lastly: having unilateral contacts with litigants or their advocates

c) Is this list the same for judges and for the public ministries?

Yes

No (specify differences)

No, it is different

b) If no specific list exists, are there any general instructions from which disciplinary wrongdoings can be deduced?

Yes (if possible, attach the document in English or French)

No (go on to question e)

There are general instructions also, e.g. in the oath: showing virtues like being diligent & honest and acting in office impartially; further on in the Judges' Law: not to neglect the dignity of the judicial office

c) Are these general instructions the same for judges and for the public ministries?

Yes

No (specify differences)

No

d) Who promotes disciplinary action?

The court president

e) Who is the disciplinary judge?

The court president who may give a warning and the Supreme Court who decides about dismissal

f) What sanctions are imposed?

Warning resp. dismissal

g) What guarantees does the accused judge have?

To be heard according to the standards of art. 6 of the Treaty of Rome (ECHR)

h) Does the disciplinary ruling affect the judge's career?

Yes (specify how)

No

Yes, the warning will be mentioned in the personal file and may – if still found relevant - be later on a matter of discussion if the judge asks for a promotion

i) Is the disciplinary procedure

jurisdictional ?

administrative ?

administrative but still with guarantees for being heard

2) Aside from the regulations concerning disciplinary responsibility and conduct that can be punished, is there a code of ethics for judges in your country?

Yes (if possible, attach the document in English or French)

No

there are Judicial Impartiality Guidelines since 2004 (published on www.rechtspraak.nl): principles, not compulsory rules about how to behave or withdraw in cases where litigants or their advocates are relatives, acquaintances, or where a (n additional or previous) job of a judge or his relatives is involved, or when the judge has been previously involved in a case or with the same parties; on other issues there have never been problems, so there are no guidelines either; only in the context of a broader legislation which asks for codes of ethics for all government officials, a broader code for judges also is now in the making

3) Is the code of ethics the same for judges and for public ministries?

Yes

No (specify differences)

No, totally different; the code for the public ministry has been made in 2000 without involvement of judges and is more complete

4) What are the legal or non legal consequences of violating the rules of ethics?

If any legal consequences are foreseen, how are they enacted?

a) Evaluating professionalism;

b) Disciplinary responsibility;

- c) Penal responsibility;
- d) Civil responsibility;

a) ! The now existing rules are not compulsory; they are suggested to be a matter of discussion between judges according to the famous adagium: “a code is nothing, coding is everything”; there are no examples until now of disciplinary measures after violation (b) but you never can tell what may happen in the future because the dignity of the profession may be deemed to be hurt in a special case according to the disciplinary authority (court-president or Supreme Court)

5) Who drew up the code of ethics and in which way?

- a) The law (indicated date);
- b) regulations;
- c) legal precedent;
- d) the judges’ associations (self-regulating codes)

d: the judges’ association together with the meeting of court presidents framed the above-mentioned Judicial Impartiality Guidelines; afterwards some individual court started to formulate extra rules; now the Council of the Judiciary is taking the initiative both on an European and – looking forward to the above-mentioned oncoming legislation that asks for a code for all government officials – national scale

6) What are the main ethical duties for judges and public ministries?

- d) In the carrying out of their roles;
- e) In their private lives;
- a) being impartial and being seen to be so (Hauschildt) according to the above-mentioned Guidelines
- b) conserve the dignity of the profession according to classical virtues (some of them are mentioned in the oath: honesty, accuracy, formerly also: courage)

7) In particular, is there a duty to appear to be impartial, in addition to the obligation to be impartial?

Yes, according to what the European Court in Strassbourg has decided since 1976 (Hauschildt)

8) Are there any ethical rules about relations with the mass media?

No, there have been no problems either until now

9) Are there any ethical rules that protect internal (with respect to the court

heads, the CSM etc) and external (compared to executive power, legislative power etc) independence?

Internal: if a judge thinks that standards implemented by the Council or the governing board of his court, have an undue influence on his autonomy on the decision of his cases or categories of cases entrusted to him, he may apply to the Supreme Court and ask annulations of these standards

10) Are there any ethical rules on the incompatibility between judicial roles and other positions, professions and activities (study, research, teaching)?

Not especially on study research and teaching; there has been some discussion on the acceptability of advises on the technical feasibility of legislation, given by the judges' association or by the Council. Additional jobs must be publicised and the court-president may advise against them. See also the above-mentioned statutory incompatibilities: advocate, notary, parliamentarian (except in the Senate !).

11) Are there any ethical rules on the carrying out of constitutional rights (freedom of thoughts, of association, the protection of privacy etc.)?

No

12) Does any initial or continuing training exist concerning professional ethics?

Yes, originally only initial for aspirant-judges, organised by the Judicial Training Center. At the moment many courts discuss in professionally led workshops with all their judges and court personnel ethical dilemma's which occur in daily practice .

Poland

1). Disciplinary responsibility

a) no

c) yes, there are general provisions at the statute adopted by the Parliament concerning courts of general jurisdiction. According to article 107 § 1 judge is responsible for misconduct (wrongdoings) in his/her duties, including obvious and shocking violation of law and for offence against dignity (self respect) of the judicial post (service)

d) no; courts organization and judges' profession are regulated by the law separately from the law concerning public prosecutors (ministries)

e) disciplinary action is promoted by the judge – prosecutor for judges on his own initiative or on the demand of the Minister of Justice, president of the respective court or collegium (self government body) of the court or on demand of The National Council for The Judiciary

f) judges of the courts of appeals (there are 11 courts of appeals in Poland) at the first instance and judges of The Supreme Court at the second instance, selected by drawing.

g) judge may be suspended for the time of duration of disciplinary proceeding; the punishment (sanctions) are as follows: warning, reprimand, dismissal from a function at the court (for example – president of the court), transfer to another judicial post, dismissal from judge's post

h) accused judge has the same guaranties as everybody during ordinary criminal procedure, disciplinary proceeding is open and transparent

i) punished judge waits longer for increasing his salary.

j) jurisdictional

2) there is a code of ethics for judges in Poland (attached)

3) no – see answer 1 b

4) there are not any direct legal consequences

5) National Council for the Judiciary, under special provision of the statute (act) concerning organization of the courts of general jurisdiction.

6) the judge shall always follow the rules of integrity, dignity, honour, sense of duty and always apply best practices; the judge must not take advantage of his status and prestigious position in his own interest or in the interest of other person; the judge should care for the authority of his office, the good of the court for which he works and the good of judiciary and the position of the court authority; the judge must avoid personal contact and business relations with anybody if they give rise to doubts as to the impartial performance of duties by the judge or jeopardize the prestigious status and undermine confidence in the office of the judge; in his conduct judge must not even create the appearance of failure to observe the legal order; without giving rise to doubt, the judge should be reliable in regard of his financial issues

7) yes

8) the judge should not voice his opinion in public on proceedings that are pending or are to be pending; presenting reasons of his decision judge should avoid using phrases that go beyond the factual need for an explanation of the court's standpoint that could jeopardize dignity or honour of persons involved in the case or third parties

9) the judge must not yield to any influences jeopardizing his independence regardless of their source and reason

10) yes, they are specified at the statute, judge may be employed only as teacher and researcher (part-time job), may not be active at any other way and field if it could disturb fulfilling his/her judge's duties. The judge has to notify intention of undertaking any job, occupation or activity to the president of the court, who has the right to object. The code of judges' ethics specifies only, that judge cannot be active as legal advisor or take any occupations or be active in the way which could affect his/her impartiality and integrity

11) according to the constitution -judge is not allowed to belong to any political party or trade union or be active in public in the way, which cannot be compatible with the principles of judge's and court's independence

12) no

Rumania

1) *Disciplinary responsibility:*

a) *Is there a specific list of disciplinary wrongdoings in your country?*

- Yes
 No

The disciplinary wrongdoings are regulated by **Chapter II - The disciplinary liability of judges and prosecutors of Law no. 303/2004** regarding the statute of judges and prosecutors, republished:

Art. 98 – (1) Judges and prosecutors shall be disciplinarily liable for their transgressions of service duties, as well as for acts that affect the prestige of justice.

(2) The disciplinary liability of military judges and prosecutors may be established only according to this Law.

Art. 99 – (1) The following shall be disciplinary offences:

- a) Violation of legal provisions regarding declarations of wealth, declarations of interests, incompatibilities and interdictions regarding judges and prosecutors;
- b) Intercessions for the resolution of requests, requesting or accepting the resolution of one's personal interests or of those of one's family or of other persons, otherwise than within the legally regulated framework for all citizens, as well as interference to the activity of another judge or prosecutor;
- c) Carrying out public political activities or expressing their political opinions in exercising their professional duties;
- d) Non-observance of the secrecy of judges' deliberations or of the acts or documents that have a secret character;
- e) Recurrent non-observance, out of imputable reasons, of the legal provisions on resolution of cases with celerity;
- f) Unjustified refusal to receive applications, conclusions, memorandums or documents filed by the parties to a trial;
- g) Unjustified refusal to fulfill a service duty;
- h) Exercise of the office with ill faith or serious negligence, unless the act is an offence;
- i) Late carrying out of the working duties, for imputable reasons;
- j) Recurrent unjustifiable absence from work;
- k) Undignified attitude during the exercise of service duties with regard to colleagues, lawyers, experts, witnesses or litigants.
- l) Non-fulfillment of the obligation related to transferring the basic office norm to the court or prosecutor's office where they work;

- m) Non-observance of the provisions on random case assignment;
- n) Direct participation or participation through intermediaries in pyramid-type games, gambling or investments systems for which the transparency of funds is not ensured according to the law.

Art. 100 – The disciplinary sanctions that may be applied to judges and prosecutors, according to the seriousness of their transgressions, are:

- a) Warning;
- b) Reduction of initial gross monthly indemnity by up to 15% for a period from one month to 3 months;
- c) Disciplinary transfer for a period from one month to 3 months to a court or prosecutor's office seated in the jurisdiction of the same court of appeal or in the jurisdiction of the same prosecutor's office attached to it;
- d) Exclusion from the magistracy.

Art. 101 – (1) The disciplinary sanctions provided under article 100 shall be decided by the sections of the Superior Council of Magistracy, under its organic law.

b) Is this list the same for judges and for the public ministries?

- Yes
- No

c) If no specific list exists, are there any general instructions from which disciplinary wrongdoings can be deduced?

- Yes
- No

Not applicable

d) Are these general instructions the same for judges and for the public ministries?

- Yes
- No

Not applicable

e) Who promotes disciplinary action?

The disciplinary action is promoted by a disciplinary board formed of *two inspectors* from Inspection Department for Judges within Superior Council of Magistracy and a *judge SCM member* from the Section for judges within the SCM Plenum:

Art. 45 of Law no. 317/2004, republished, regarding the Superior Council of Magistracy

(1) Disciplinary action shall be exercised by the disciplinary boards of the Superior Council of the Magistracy, composed of one member of the section for judges and 2 inspectors from the service of judicial inspection for judges and, respectively, one member of the section for prosecutors and 2 inspectors from the service of judicial inspection for prosecutors.

(2) The section for judges and the section for prosecutors within the Superior Council of the Magistracy shall every year appoint the members of the boards in paragraph (1). The disciplinary boards may not have the same members for two consecutive years.

(3) The members *de jure* of the Superior Council of the Magistracy, the president and the deputy-president may not be appointed to the boards of discipline.

(4) The disciplinary boards may be notified about disciplinary transgressions committed by judges and prosecutors, by any person concerned, or may act *ex officio*.

(5) Any notification about the inappropriate activity of judges and prosecutors that is erroneously directed towards courts or prosecutor's offices shall be forwarded to the disciplinary boards within 5 days from their registration.

f) *Who is the disciplinary judge?*

The role of disciplinary judge is carried into effect by the Section for judges within the Plenum of the Superior Council of Magistracy:

Art. 44 of Law no. 317/2004, republished, regarding the Superior Council of Magistracy

(1) The Superior Council of the Magistracy shall fulfil, through its sections, the role of law court in the field of disciplinary liability of judges and prosecutors, for the acts provided in Law No.303/2004 on the statute of judges and prosecutors.

(2) The Judges' Section acts as a disciplinary court also for the assistant magistrates of the High Court of Cassation and Justice.

g) *What sanctions are imposed?*

The sanctions imposed are provided by **art. 100 of Law no. 303/2004, republished, regarding the statute of judges and prosecutors.** [See point a)]

h) *What guarantees does the accused judge have?*

Art. 46 of Law no. 317/2004, republished, regarding the Superior Council of Magistracy

(1) In order to exercise the disciplinary action it is compulsory to perform the preliminary investigation, which shall be disposed by the holder of this action.

(2) Prior inquiries shall be performed by inspectors from the service of judicial inspection for judges, and respectively from the service of judicial inspection for prosecutors.

(3) A prior inquiry establishes the facts and their consequences, the circumstances in which they were committed, as well as any other conclusive data that can lead to a decision upon the existence or inexistence of guilt. ***It is obligatory to hear the person concerned and to check the defence brought by the judge or prosecutor who is being investigated.*** Refusal by the judge or prosecutor under investigation to make statements or to appear for the inquiry shall be included in an official record and shall not prevent the inquiry from being concluded. The judge or prosecutor under investigation is entitled to learn of all the acts of the inquiry and to request evidence for his or her defence.

(4) The result of the prior inquiry shall be forwarded to the disciplinary board within 60 days from registration of the notification with the Superior Council of the Magistracy, and in the following 20 days the disciplinary board shall notify the appropriate section in view of resolution of the disciplinary action.

(5) In the event that, before notifying the section, the disciplinary board finds that additional verifications are required, it shall designate an inspector from the corresponding service of the Judicial Inspection, in view of completing the prior inquiry. The result of the additional verifications shall be forwarded within 30 days to the board of discipline. In this case, the time limit of 20 days in paragraph (1) shall begin its course from receipt of the result of additional verifications.

(6) If the disciplinary board finds that the exercising of disciplinary action is not justified, it shall ordain dismissal.

(7) After receiving the result of the preliminary investigation, the holder of the disciplinary action shall call upon the SCM sections with a view to judge the disciplinary sanction.

(8) Disciplinary action may be exercised within one year, the latest, from the date when the infringement was committed.

Art. 47 of Law no. 317/2004, republished, regarding the Superior Council of Magistracy

(1) In the disciplinary proceedings before the sections of the Superior Council of the Magistracy, it is obligatory to summon the judge or prosecutor against whom disciplinary action is being exercised. The judge or prosecutor may be represented by another judge or prosecutor or may be assisted or represented by a lawyer.

(2) The judge or prosecutor and, the case being, his or her representative or lawyer are entitled to learn of all the documents of the case and to request presentation of evidence for the defence.

(3) If they find the notification to be well-founded, the sections of the Superior Council of the Magistracy shall apply one of the disciplinary sanctions provided in the law, according to the seriousness of the disciplinary infringement committed by the judge or prosecutor and to his or her personal circumstances.

Art. 48 of Law no. 317/2004, republished, regarding the Superior Council of Magistracy

The SCM sections shall settle the disciplinary action by means of a decision which shall mainly include the following:

- a) the description of the deed/act which constitutes the disciplinary violation and the legal instruments regulating the violation;
- b) the legal basis used for the application of the sanction;
- c) the grounds on which the defence brought by the judge or prosecutor were dismissed;
- d) the sanction applied and the reasons underlying the application of the said;
- e) the legal remedy and the deadline during which the decision may be appealed;
- f) the competent court where the relevant decision may be appealed.

Art. 49 of Law no. 317/2004, republished, regarding the Superior Council of Magistracy

(1) The decisions of the sections of the Superior Council of the Magistracy rendered on disciplinary action must be drafted within 20 days from their pronouncement and shall be served at once, in writing, to the judge or prosecutor. Service of such decisions shall be ensured by the General Secretariat of the Superior Council of the Magistracy.

(2) *The decisions in paragraph (1) may be appealed against on points of law within 15 days from service. The competence to deal with such appeals belongs to the Panel of 9 judges of the High Court of Cassation and Justice.* The Panel of 9 judges may not include the voting members of the Superior Council of the Magistracy and the judge or the prosecutor who is being sanctioned.

(3) The second appeal shall suspend the enforcement of the decision of the SCM section to enforce the relevant disciplinary sanction

(4) The decision whereby the second appeal provided by para. (2) is settled shall be irrevocable.

i) *Does the disciplinary ruling affect the judge's career?*

Yes - The disciplinary actions are considered for examinations of promotion to superior courts

No

j) *Is the disciplinary procedure*

jurisdictional

administrative

2) Aside from the regulations concerning disciplinary responsibility and conduct that can be punished, is there a code of ethics for judges in your country?

Yes - The Deontological (Ethical) Code for judges and prosecutors

No

Is the code of ethics the same for judges and for public ministries?

Yes

No

3) *What are the legal or non legal consequences of violating the rules of ethics? If any legal consequences are foreseen, how are they enacted?*

a) Evaluating professionalism;

b) Disciplinary responsibility;

c) Penal responsibility;

d) Civil responsibility;

- 4) *Who drew up the code of ethics and in which way?*
- a) The law (indicated date);
 - b) Regulations - **The Deontological (Ethical) Code for judges and prosecutors was elaborated by Superior Council of Magistracy;**
 - c) legal precedent;
 - d) the judges' associations (self-regulating codes)
- 5) *What are the main ethical duties for judges and public ministries?*
- a) In the carrying out of their roles;**
 - b) In their private lives;**
- 6) *In particular, is there a duty to appear to be impartial, in addition to the obligation to be impartial?*

Art. 6 of Law no. 303/2004 regarding the statute of judges and prosecutors

(3) Judges, prosecutors, assistant-magistrates and the specialized auxiliary personnel are obliged to make annual statements on their own responsibility mentioning whether their spouse, relatives or relations by marriage up to the fourth degree inclusively, exercise a legal office or perform a legal activity or activities of criminal investigation or research, as well as their workplace. The statements shall be registered and filed in the professional record.

Art. 9 of Deontological (Ethical) Code for judges and prosecutors

(1) Judges and prosecutors must be impartial in exercising their duties, being committed to decide objectively, free of any influences.

(2) Judges and prosecutors should abstain from any action and behavior that could infringe upon the trust in their impartiality.

Also, there are similar regulations within **Law no. 161/2003 regarding some measures for ensuring the transparency in exercising public titles, public functions and business environment, preventing and sanctioning of corruption:**

Chapter V

Regulations regarding magistrates

Art. 101 – Judge and prosecutor position is incompatible with any other public or private function, with the exception of didactic functions within higher education.

Art. 102 – Magistrates are forbidden to:

- a) perform arbitration activities in civil, commercial or any other litigation;
- b) be an associate, member in leading boards, administration or control of civil societies, commercial societies, including banks and other credit institutions, assurance or financial societies, national companies, or independent administrations;
- c) perform commercial activities, directly or by third parties;
- d) be a member of an economic interests group.

Art. 103 - (1) Magistrates shall not be subordinated to aims and politic doctrines.

(2) Magistrates cannot be members of political parties nor perform political activities.

(3) Magistrates have the obligation, in exercising their duties, to abstain from expressing their political beliefs.

Art. 104 – Magistrates are forbidden to perform acts contrary to the dignity of their position, or any other act that could affect the impartiality or prestige of the position.

Art. 105 - (1) Magistrates are forbidden to participate in the judging of a case, as judge or prosecutor:

- a) if they are spouses or relatives up to 4th degree;
- b) if they, their spouses or relatives up to 4th degree inclusively have any interest in the case.

(2) Provisions of para (1) shall also be applied to the magistrate that participate, as judge or prosecutor, to the judging of a case in appeals, if the spouse of relative up to 4th degree inclusively participated, as judge or prosecutor, at the judging of the case in first instance

(3) Provisions of para (1) and (2) shall be completed with provisions of Civil Procedure Code and Criminal Procedure Code regarding incompatibilities, abstention and challenge.

7) *Are there any ethical rules about relations with the mass media?*

There are provisions regarding the magistrates' relations with mass-media within the Regulation for organization and functioning of courts and prosecutors' offices, as well as in the Deontological Code of judges and prosecutors. [art. 6 para (1)]

8) *Are there any ethical rules that protect internal (with respect to the court heads, the CSM etc) and external (compared to executive power, legislative power etc) independence?*

Regulations regarding the protection of internal and external independence of judges and prosecutors are included in **Law no. 303/2004 regarding the statute of judges and prosecutors**, in the **Deontological (Ethical) Code for judges and prosecutors**, as well as in the **Regulation for organization and functioning of courts and prosecutors' offices**.

9)) *Are there any ethical rules on the incompatibility between judicial roles and other positions, professions and activities (study, research, teaching)?*

Law no. 303/2004 regarding the statute of judges and prosecutors and the **Deontological Code of judges and prosecutors** establish firm incompatibilities between the judicial roles and other activities. In this respect, the only extra-activities permitted to the magistrates are those of university assistant/professor and trainer in National Institute of Magistracy or National School of Clerks. Also, they can part in elaboration of publications, studies and scientific research [*art. 6 of the Deontological (Ethical) Code for judges and prosecutors*]

10) *Are there any ethical rules on the carrying out of constitutional rights (freedom of thoughts, of association, the protection of privacy etc.)?*

The judges are allowed to be part of the professional association (RUMANIAN Association of Magistrates), of examinations commissions and of civil or academic societies, without patrimonial purpose. Also, the judge can attend the sessions of Superior Council of Magistracy Plenum and can be a representative in the Scientific Council of National Institute of Magistracy.

12) *Does any initial or continuing training exist concerning professional ethics?*

The initial and the continuing training concerning professional ethics are carried out at the National Institute of Magistracy, institution which, as well as the National School of Clerks, is coordinated by the Superior Council of Magistracy.

Slovak Republic

1.) Disciplinary responsibility

a) Is there a specific list of disciplinary wrongdoings in your country?

The disciplinary wrongdoings are specifically stipulated in § 116 of the Act No. 385/2000 of the Coll. - On Judges and Associate/Lay Judges and on Amendments of and Supplements to Some Legal Acts.

b) Is this list the same for judges and for the public ministries?

The disciplinary responsibility of the civil/public servants (ministries) is regulated by § 60, paragraphs 1 and 2 of the Act No. 312/2001 of the Coll. - On Civil Service and on Amendments of and Supplements to Some Legal Acts. The service wrongdoing in the civil/public service is the violation of a civil servant's duty committed by the civil servant.

c) If no specific list exists, are there any general instructions from which disciplinary wrongdoings can be deducted?

- Yes (if possible, attach the document in English or French)
- No (go on to question e)

d) Are these general instructions the same for judges and for the public ministries?

- Yes
- No (specify differences)

e) Who promotes disciplinary action?

The following entities are authorized to submit a proposal to launch disciplinary proceedings (disciplinary action) against a judge:

- a) the Minister of Justice,**
- b) the Ombudsman,**
- c) the Judicial Council,**
- d) the President of the Regional Court, and also against a judge of the district court in his/her region,**
- e) the president of a court against a judge of the respective court,**
- f) the Judicial Council against the president of a court or against a judge of the respective court.**

f) Who is the disciplinary judge?

The judges of the Disciplinary Court are being elected by the Judicial Council for a three-year term of office, out of candidates proposed by the Judicial Councils, the Minister of Justice, and the National Council (Parliament) from among the judges of general courts or other individuals that fulfil the conditions stipulated by the Act on Judges and Associate/Lay Judges.

g) What sanctions are imposed?

The Disciplinary Court imposes one of the following measures for a disciplinary infringement:

- a) reprimand,
- b) suspension on full pay of the salary connected with his/her office, decreasing it by up to 15% for the period of at most three months, and in case of a repeated disciplinary infringement committed by the judge in the period before deletion of the disciplinary sanction, for the period of six months,
- c) recalling from the office of the president of a court or the vice-president of a court in case of a disciplinary infringement connected with execution of the office,
- d) the issue and publicizing of a decision connected with the fact that the judge concerned has not proved in a manner stipulated by the law the source of his/her increase in assets/property in the given year.

The Disciplinary Court imposes one of the following disciplinary measures for a serious disciplinary infringement or for a misdemeanour that has at the same time the character of a serious disciplinary infringement:

- a) to move the judge to a court of a lower instance,
- b) suspension on full pay of the salary connected with his/her office, decreasing it by 50% to 70% for the period from three months up to one year,
- c) recalling the judge from the office of a judge,
- d) recalling from the office of the president of a court or the vice-president of a court in case of a serious disciplinary infringement, in accordance with § 116, paragraph 2, subparagraph c), or
- e) the issue and publicizing of a decision connected with the fact that the judge concerned has not proved in a manner stipulated by the law the source of his/her increase in assets/property in the given year, and by doing so the judge could have affected the seriousness and dignity of the office of a judge, or to jeopardise the trust in independent, impartial and fair administration of justice by the courts.

h) What guarantees does the accused judge have?

Similar process to the penal proceedings is observed in the disciplinary proceedings, i.e. the judge has the right to defence, the judge can be represented by an attorney and has the right to request remedies, to propose procurement of evidence, and the like.

i) Does the disciplinary ruling affect the judge's career?

- Yes (specify how)
- No

Yes, besides other things the valid ruling (punishment) for a disciplinary infringement means that the judge cannot be elected during the determined period of time (until the sanction/punishment is deleted), for example, into self-governing bodies, or for a judge of the disciplinary court, and the like.

j) Is the disciplinary procedure

- jurisdictional?
- administrative?

It is a special type of a procedure which has all characteristic features of a jurisdictional procedure.

2.) Aside from the regulations concerning disciplinary responsibility and conduct that can be published, is there a code of ethics for judges in your country?

- Yes (if possible, attach the document in English or French)
- No

Yes, there is.

3.) Is the code of ethics the same for judges and for public ministries?

- Yes
- No (specify differences)

No, the judges have their own code of ethics, it is difficult to specify the differences, restrictions applicable to a judge are substantially broader.

4.) What are the legal or non legal consequences of violating the rules of ethics? If any legal consequences are foreseen, how are they enacted?

- a) Evaluating professionalism;
- b) Disciplinary responsibility;
- c) Penal responsibility;
- d) Civil responsibility.

Violation of the code of ethics by the judge can be considered for a disciplinary infringement, and it can lead to disciplinary proceedings (disciplinary action).

5.) Who drew up the code of ethics and in which way?

- a) The law (indicate the date);
- b) regulations;
- c) legal precedent;
- d) the judges' associations (self-regulating codes)

The first Code of Ethics for judges was drawn up by the Association of Judges of Slovakia, and subsequently the Code of Ethics was adopted by the Council of Judges of the Slovak Republic, which was the predecessor of the Judicial Council of the Slovak Republic. Presently one of the competences of the Judicial Council of the Slovak Republic is to approve, after reaching agreement with the Minister of Justice of the Slovak Republic, the principles of ethics of judges. The Act on Judges and Associate/Lay Judges stipulates that they have to

6.) What are the main ethical duties for judges and public ministries?

- a) In the carrying out of their roles;

a) promote and defend independence of the judiciary and its goodwill,

b) refuse any intervention, pressure, influence or request the objective of which could jeopardise the independence of the judiciary,

c) not to allow to be influenced when performing their office by interests of political parties, political movements, public opinion and means of communication,

d) act impartially and to approach the parties or the parties to the proceedings without any economic, social, racial, ethical, sexual or religious prejudice,

e) **control their behaviour, so that no doubts could be reasonably cast upon their impartiality,**

f) **observe principles of the ethics of judges.**

The stated facts are applicable to judges.

b) In their private lives;

In the civil (private) life, while performing the office of a judge, but also after terminating this execution of the office, the judge must refrain from anything that could affect the seriousness and dignity of the office of a judge, or to jeopardise the trust in independent, impartial and fair administration of justice by the courts.

7.) In particular, is there a duty to appear to be impartial, in addition to the obligation to be impartial?

This is clear from the content of above stated responsibilities.

8.) Are there any ethical rules about relations with the mass media?

The judge is obliged to refrain from expressing his/her opinion in public in connection with cases that are pending and hearings that are being carried out by the courts connected with these cases.

9.) Are there any ethical rules that protect internal (with respect to the court heads, the CSM etc) and external (compared to executive power, legislative power etc) independence?

They follow from the above mentioned facts and facts stated below.

10.) Are there any ethical rules on the incompatibility between judicial roles and other positions, professions and activities (study, research, lecturing/teaching)?

The legal act directly stipulates what is incompatible with execution of the office of a judge. According to valid provisions:

a) **The execution of the office of a judge is incompatible with the office in another body of the public power, with the employment by the State (civil service), with the labour employment, with a relationship similar to the labour employment, with entrepreneurial activities, with the membership in a governing body or a supervisory body of a legal entity that is carrying out entrepreneurial activities, neither with the economic or profit generating activities, with the exception of administration of one's own property, the scientific, pedagogical, literary or artistic activities, and besides the membership in the Judicial Council.**

b) **In case of doubts the Judicial Council decides on the obligation to terminate this office or activities, besides the membership in the Judicial Council.**

c) **The judge may execute an office in a professional organization of judges and in a trade union organization.**

11.) Are there any ethical rules on the carrying out of constitutional rights (freedom of thoughts, of association, the protection of privacy etc.)?

The judge must not be a member of any political party, and he/she neither has the right to go on strike. The execution of his/her office is suspended on the day when the judge becomes the President, a member of the government, a deputy of the National Council (Parliament) or the state secretary, the head of the office (chief of staff) of a central body responsible for the State administration of the courts, or a judge of the Constitutional Court of the Slovak Republic.

The execution of the office of a judge is being suspended also as of the day when the judge registers himself/herself as a candidate in the presidential elections for the President of the Slovak Republic, in elections into the National Council, or in elections into bodies of the territorial self-governments. The suspension lasts yet for three months after the results of elections are publicized, in case the judge was not elected, or the suspension lasts for yet additional three months after terminating the execution of the office for which he/she was elected in the given elections.

12.) Does any initial or continuing training exist concerning professional ethics?

The issues of ethics form a part of the professional training which is being provided for judges by the Judicial Academy.

In order to be complete and fully clear and understandable we are listing in this final part the basic responsibilities of a judge that are specifically defined by the Act on Judges and Associate/Lay Judges:

(1) In the civil life, when acting in the office of a judge, and also after termination of execution of this office, the judge must refrain from any and all things that could affect the seriousness and dignity of the office of a judge, or threaten the trust and confidence in independent, impartial and fair administration of justice by the courts. Restrictions applicable to officials that are civil/public servants when executing the public office are applicable correspondingly also to judges, in accordance with a special regulation No. 11.

(2) In the interest of impartiality of the office of a judge, the judge is obliged mainly

a) to promote and defend independence of the judiciary and its goodwill,

b) to refuse any intervention, pressure, influence or request the objective of which could jeopardise the independence of the judiciary,

c) not to allow to be influenced when performing his/her office by interests of political parties, political movements, public opinion and means of communication,

d) to act impartially and to approach the parties or the parties to the proceedings without any economic, social, racial, ethical, sexual or religious prejudice,

e) to control his/her behaviour, so that no doubts could be reasonably cast upon his/her impartiality,

f) to observe principles of the ethics of judges.

(3) The judge shall not, from the parties or from the parties to the proceedings or from their legal representatives, with the exception of cases stipulated in the legal acts governing the proceedings in front of the courts unilaterally receive information from them or provide it to them, or to negotiate with them the substance/matters of fact of the case that is pending and hearings that are being carried out by the courts connected with the case, or issues connected with the process that could influence the case.

(4) The judge is obliged to perform his/her duties conscientiously, to act in those cases that are allocated to him/her smoothly, without any undue delays; and the judge always has to notify the president of the court about the disproportionate number of allocated cases, in case there is an obvious danger that he/she cannot attend to them without any undue delay.

(5) The judge is obliged to perform his/her duties duly and in time, even in case he/she has the permission to carry out the work in domestic environment. The judge is also obliged to serve during the ordered emergency readiness and has to be available also overtime in connection with execution of the office, in harmony with the work schedule, as well as to perform the office of the judge of a disciplinary panel or the presiding judge of a disciplinary panel, in case he/she was elected to this office by the Judicial Council.

(6) The judge is obliged to use the determined days for hearings of the cases, and thus to provide for the due and timely processing of the cases allocated to him/her.

(7) The judge is responsible for not extending his/her professional knowledge and in accordance with the circumstances also for not making use of the offered options to education/training. The judge is obliged to contribute with his/her knowledge and capabilities to the professional training of those that are to be appointed for judges (trainees for judges) and younger colleagues from the aspect of time of holding the office. It is possible to make use of the knowledge and capabilities of the judge for the professional training focused on extending and deepening the professional quality of judges, those that are to be appointed for judges (trainees for judges) and other employees of courts only with his/her approval, and in case fulfilment of his/her duties in administration of justice does not prevent him/her from doing so.

(8) The judge has no right to go on strike and the judge must not act in a manner that would make it impossible in any way to carry on the activities of the judiciary.

(9) The judge must not be a member of any political party, nor of any political movement, and neither is he/she allowed to perform actively political activities in political parties or in political movements.

(10) The judge is obliged to observe secrecy, and even after termination of the office of a judge, concerning those matters that the judge got to know during execution of his/her office, in case he/she was not made exempt from this obligation based on this legal act, or by the person in the interest of which he/she is preserving this obligation of secrecy. Also the president of the respective court is authorized to make the judge exempt from this obligation due to serious reasons, and in case the president of the court is involved, then it is the president of the court of the immediately higher instance, who can do so, and in case the President of the Supreme Court is involved, then it is the President of the National Council, who can make him exempt from this obligation. The judge cannot be made exempt from the obligation to observe secrecy in matters concerning voting. But the judge cannot be forced to give a statement as a witness in connection with facts that the judge became aware of during execution of the office of a judge. The judge, even after being made exempt from the obligation to observe secrecy, is obliged to take care of legitimate interests of the parties to the proceedings.

(11) The judge is obliged to refrain from expressing his/her opinion in public in connection with cases that are pending and hearings that are being carried out by the courts connected with these cases.

(12) The judge is obliged to observe the rules of safety and protection of health at work, in accordance with a specific legal act; 11aa) the judge is being considered for an employee for the purposes of safety and protection of health at work.

Spain

1) Responsabilité disciplinaire:

d) Dans votre pays, une énumération spécifique des fautes disciplinaires est-elle prévue?

oui (joindre, si possible, le texte en anglais ou en français)

non (passer à la question c)

Articles 414 au 427 de la Loi Organique du Pouvoir Judiciaire, en particulier les articles 417, 418 et 419.

e) Cette énumération est-elle unique pour les juges et pour les ministères publics?

oui

non (spécifier les différences) **Le Ministère Public a son propre Statut Organique, articles 62 et suivants.**

f) En l'absence d'une énumération spécifique, existe-t-il une disposition générique permettant d'en déduire quelles sont les fautes disciplinaires?

oui (joindre, si possible, le texte en anglais ou en français)

non (passer à la question e)

Le Décret 33/1986, du 10 janvier, par lequel s'approuve le Règlement du Régime Disciplinaire des Fonctionnaires de l'Administration de l'État, s'applique avec caractère supplémentaire dans le cadre disciplinaire judiciaire.

g) Cette disposition générique est-elle unique pour les juges et pour les ministères publics?

oui

non (spécifier les différences)

Le Décret 33/1986, du 10 janvier, s'applique directement à la Fonction Publique -Administration Générale de l'État.

e) Qui intente l'action disciplinaire? **La Chambre de Gouvernement (chambre compétente en matière d'administration judiciaire) de la Cour d'Appel ou la Commission Disciplinaire du Conseil Général du Pouvoir Judiciaire ou la totalité des membres du Conseil sont compétents en matière d'instruction de dossiers disciplinaires et de sanctions aux juges et aux magistrats, aussi le doyen des Juges peut s'adresser à ces instances.**

f) Qui est le juge disciplinaire? **La Chambre de Gouvernement (chambre compétente en matière d'administration judiciaire) de la Cour d'Appel ou la Commission Disciplinaire désigne un juge instructeur. Les décisions adoptées peuvent être modifiées par la Cour de Cassation (Chambre du contentieux-administratif)**

g) Quelles sanctions sont prévues? **Article 420**

h) Quelles sont les garanties pour le magistrat inculpé? **Article 423.3**
Le magistrat sanctionné peut interjeter appel en voie administrative devant le Conseil General du Pouvoir Judiciaire et en voie juridictionnelle devant la Cour de Cassation (Chambre du contentieux-administratif)

i) La condamnation disciplinaire a-t-elle des effets sur la carrière du magistrat?

oui (préciser lesquels) **Le magistrat peut être déplacé à une autre Cour, suspendu des fonctions pour trois ans ou destitué.**

non

j) Quelle est la nature de la mesure disciplinaire?

juridictionnelle

administrative

2) Abstraction faite des normes sur la responsabilité disciplinaire et des comportements passibles de sanction disciplinaire existe-t-il dans votre pays un Code déontologique des magistrats?

oui (joindre, si possible, le texte en anglais ou en français)

non

Le Code déontologique est-il unique pour les juges et pour les ministères publics?

oui

non (spécifier les différences)

4) Quelles sont les conséquences, juridiques ou non, de la violation des normes déontologiques? Si des conséquences juridiques sont prévues, sur quel plan agissent-elles?

e) l'évaluation de la professionnalité;

f) la responsabilité disciplinaire;

g) la responsabilité pénale;

h) la responsabilité civile

Responsabilité pénale et disciplinaire dépendant des situations.

5) Par qui et comment le Code déontologique a-t-il été élaboré?

- e) par la loi (indiquer sa date);
- f) par les règlements;
- g) par la jurisprudence;
- h) par les Associations de magistrats (Codes d'autoréglementation)

Il n'existe pas, à présent, un Code déontologique, nonobstant, l'Espagne a contribué à la rédaction du Statut du Juge latino-américain, dans le cadre du Sommet Judiciaire de l'Amérique latine, dont les articles 37 à 44 font référence à la déontologie.

6) Quels sont les principaux devoirs déontologiques pour les juges et pour les ministères publics?

- f) dans l'exercice de leurs fonctions;
- g) dans la vie privée

Dans l'exercice de leurs fonctions, on attend des juges et des magistrats un comportement conforme aux principes suivants: Indépendance, impartialité, responsabilité, légalité, intégrité et décence, équité et proportionnalité.

Dans la vie privée, on attend l'accomplissement des principes étiqes à caractère général (les fondements étiqes et les principes moraux de la société). De toute façon, depuis 1985, date d'entrée en vigueur de la Loi Organique du Pouvoir Judiciaire, le comportement des juges dans la vie privée ne peut pas, en principe, être objet de sanction disciplinaire, sauf qu'un tel comportement eut une incidence directe dans leurs fonctions.

7) En particulier, outre le devoir d'être impartial existe-t-il aussi un devoir d'apparaître impartial?

Voir le point 6

8) Existe-t-il des règles déontologiques en ce qui concerne les rapports avec les médias?

9) Existe-t-il des règles déontologiques qui sauvegardent l'indépendance interne (par rapport aux chefs de service, au C.S.M. etc.) et externe (par rapport au pouvoir exécutif, législatif, etc.)?

L'article 11 de la Constitution espagnole sauvegarde l'indépendance interne et externe des juges et des magistrats. De même que les articles 378 et suivants de la Loi Organique du Pouvoir Judiciaire.

10) Existe-t-il des règles déontologiques sur l'incompatibilité entre l'exercice des fonctions judiciaires et les autres fonctions, professions et activités (d'étude, de recherche, d'enseignement) ?

Il existe la Loi 53/1984, du 26 décembre et les articles 389 et suivants de la Loi Organique du Pouvoir Judiciaire.

11) Existe-t-il des règles déontologiques concernant l'exercice des droits constitutionnels (de liberté d'opinion et d'expression, d'association, à la protection de la vie privée etc.) ?

Articles 395 et 396 de la Loi Organique du Pouvoir Judiciaire constituent une limite à la liberté d'expression des juges, il faut tenir compte, de même, l'article 401 de la Loi Organique du Pouvoir Judiciaire au sujet du régime d'association professionnelle des juges.

12) Une formation, initiale ou permanente, ayant pour objet la déontologie est-elle prévue?

Oui, l'Ecole Judiciaire du Conseil espagnol a fait plusieurs cours à ce sujet, par exemple à la ville de Mérida au mois de novembre 2004 en collaboration avec le Conseil Général des Avocats et, au mois de juin 2005 à l'Ecole d'été du Conseil.

Sweden

1) Disciplinary responsibility:

a) Is there a specific list of disciplinary wrongdoings in your country?

Yes (if possible, attach the document in English or French)

X No (go on to question c)

b) Is this list the same for judges and for the public ministries?

Yes

No (specify differences)

c) If no specific list exists, are there any general instructions from which disciplinary wrongdoings can be deduced?

Yes (if possible, attach the document in English or French)

X No (go on to question e)

d) Are these general instructions the same for judges and for the public ministries?

Yes

No (specify differences)

e) Who promotes disciplinary action?

The chief of the court shall report the matter to a commission (Statens ansvarsnämnd). Also the Parliamentary Ombudsmen and the Chancellor of Justice can promote disciplinary action.

f) Who is the disciplinary judge?

A commission (Statens ansvarsnämnd)

g) What sanctions are imposed?

deduction from salary or warning

h) What guarantees does the accused judge have?

The judge can let a court examine the case if he is dissatisfied with the commission's decision.

i) Does the disciplinary ruling affect the judge's career?

Yes (specify how)

X No, there is no specific regulation that dictate that a disciplinary ruling shall affect the judge's career.

j) Is the disciplinary procedure jurisdictional ?

X administrative

2) Aside from the regulations concerning disciplinary responsibility and conduct that can be punished, is there a code of ethics for judges in your country?

Yes (if possible, attach the document in English or French)

X No

3) Is the code of ethics the same for judges and for public ministries?

Yes -

No (specify differences) -

4) What are the legal or non legal consequences of violating the rules of ethics? If any legal consequences are foreseen, how are they enacted?

a) Evaluating professionalism;-

b) Disciplinary responsibility; -

c) Penal responsibility; -

d) Civil responsibility; -

5) Who drew up the code of ethics and in which way?

a) The law (indicated date); -

b) regulations; -

c) legal precedent; -

d) the judges' associations (self-regulating codes) -

6) What are the main ethical duties for judges and public ministries?

a) In the carrying out of their roles; -

b) In their private lives; -

7) In particular, is there a duty to appear to be impartial, in addition to the obligation to be impartial?

-

8) Are there any ethical rules about relations with the mass media? -

9) Are there any ethical rules that protect internal (with respect to the court heads, the CSM etc) and external (compared to executive power, legislative power etc) independence? -

10) Are there any ethical rules on the incompatibility between judicial roles and other positions, professions and activities (study, research, teaching)? -

11) Are there any ethical rules on the carrying out of constitutional rights (freedom of thoughts, of association, the protection of privacy etc.)? -

12) Does any initial or continuing training exist concerning professional ethics?

The National Courts Administration (Domstolsverket) has courses for judge's that contains ethics subjects.