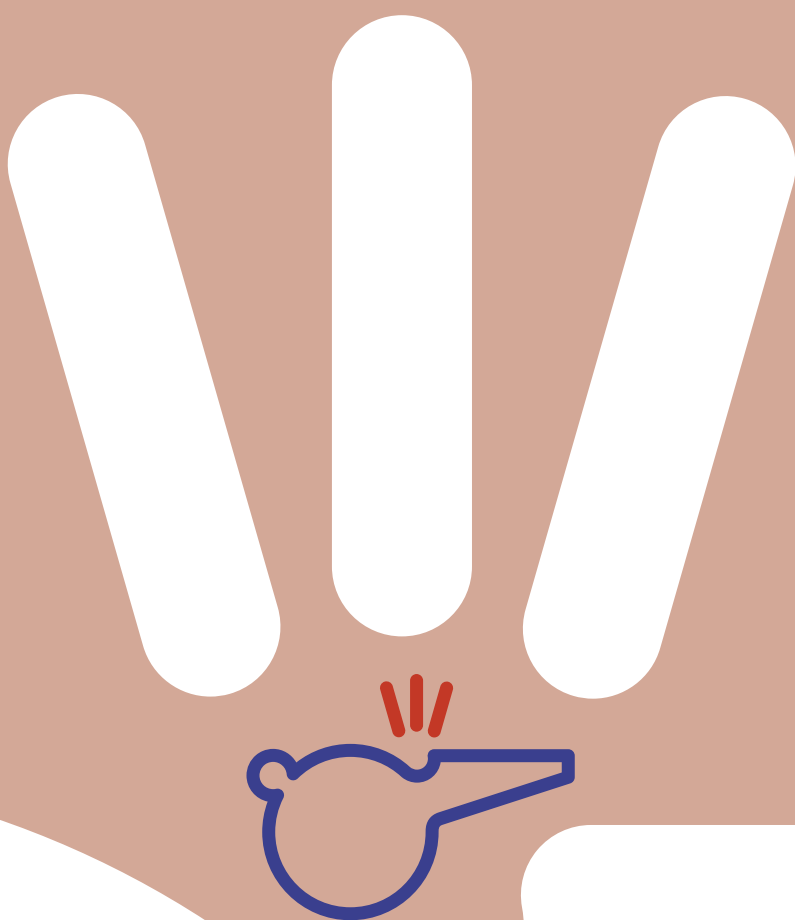


Codes of ethics for judges and prosecutors



Iceland 
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CLIENT

Czech Republic – Ministry of Justice

registered office Vyšehradská 16, 128 10 Prague 2

AUTHOR

CÍSAŘ, ČEŠKA, SMUTNÝ s.r.o., law firm

registered office at Hvězdova 1716/2b, Nusle, 140 00 Prague 4

DATE OF PREPARATION

25 September 2023



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1 Introduction and assignment of the comparative study

As part of the project “Strengthening the Fight against Corruption; Part 3 – Codes of Ethics for Judges and Prosecutors – Comparative Study and Brochure”, the Ministry of Justice commissioned a comparative study on the issue of codes of ethics for judges and prosecutors and a related brochure. The law firm Císař, Češka, Smutný s.r.o. was appointed as the author of the comparative study and brochure on the basis of a public contract.

The aim of the comparative study is not to interfere with the performance of the duties of judges and prosecutors. The topic of comparing codes of ethics in selected countries is very interesting from a professional and societal point of view. Perceiving the work of judges and prosecutors, or the judiciary in general, as impartial, independent and fair by the general public is important for the stability of society as a whole. It is extremely important, if the judiciary is not to be subject to the will of the political representation, that it gains the support and backing of the general public. This is precisely what the published codes of ethics for judges and prosecutors are intended to do.

A comparison of the status of codes of ethics for judges and prosecutors was carried out in a total of 11 states: Czech Republic, Slovakia, Austria, Germany, Canada, Denmark, Norway, Finland, Sweden, Estonia, Lithuania. The comparison focused on more than 10 areas. The form of codes of ethics, their scope, bindingness, enforceability of codes of ethics and handling of breaches, ethics education and support, and examples of good practice were assessed.

The results of the comparative study were subsequently presented at the international conference “*Strengthening the Fight against Corruption: Moral Dilemmas of Judges and Prosecutors*”, which took place in Prague on 19 and 20 June 2023. Selected findings, as well as topics for further discussion that emerged from the conference, are included in this brochure.

As the size of the brochure does not allow to cover all the interesting aspects and differences, only selected examples are given below. For more information, see the comparative study, available from the website korupce.cz

2 Selected information and findings from the comparative study – codes of ethics in the czech republic

2.1 Judges

At present, two codes of ethics exist independently of each other, namely the **Code of Ethics for Judges**, which was drafted under the leadership of the current President of the Supreme Court, and the **Ethical Principles of Judicial Conduct**, authored by the Judicial Union of the Czech Republic.

The **Code of Ethics for Judges** is binding for all judges, thanks to the deliberations of the Judicial Councils. By their nature, the **Ethical Principles of Judicial Conduct** apply only to members of the Czech Union of Judges, which is a voluntary professional association of judges in the Czech Republic. The individual parts of the Code of Ethics for Judges subsequently regulate sub-issues such as the acceptance of gifts and other benefits, the judge's relationship with the media or the judge's behaviour on social media.

A common denominator of these codes is that a breach of the rules contained in these codes does not in itself lead to disciplinary proceedings unless it also fulfils the prerequisites in the Act on Courts and Judges. If the statutory prerequisites are met, ordinary disciplinary proceedings will be initiated before the Supreme Administrative Court.

A comprehensive **commentary** on the Code of Judicial Ethics has been published. The commentary on each provision contains relevant case law, including disciplinary decision-making practice. The commentary also contains ethical questions that a judge should be able to ask. It includes, for example, questions that may be raised in the assessment of bias (an example of such a question is: *"Am I prepared to state the reason for my bias even if it is not public knowledge and its disclosure may be embarrassing to me?"*). A similar document entitled Open Set of Ethical Dilemmas of Judges was also published by the Czech Union of Judges.

In the Czech Republic, the prevailing attitude is that a judge should be able to resolve ethical issues on his or her own. However, this does not exclude the possibility for a given judge to ask for advice, for example, from the **Ethics Court of the Czech Union of Judges**, which is open to all judges.

The codes also address a judge's conduct on **social media**. Social networks and similar platforms are to be used by the judge with caution so as not to undermine judicial dignity. In addition, the Czech Union of Judges has published a document entitled **"Ethical Limits of a Judge's Activity on Social Networks"**. In it, it discusses in detail the problems associated with a judge's activity on social media – for example, the very act of "friending" on social media. This may indicate possible bias on the part of the judge.

2.2 Prosecutors

Prosecutors have a **Code of Ethics for Prosecutors**. The Code of Ethics for Prosecutors is binding for all public prosecutors. The individual areas of the code of ethics cover sub-issues such as the acceptance of gifts and courteous and polite behaviour, including dressing appropriately.

Violations of the Code may give rise to liability for disciplinary offences. However, this conclusion is to some extent relativised by disciplinary decision-making practice. The Court of Disciplinary Proceedings has so far inferred disciplinary liability only on the basis of violations of the relevant provisions of the Act on Public Prosecution.

The commentary provides a detailed interpretation of each paragraph as well as relevant case law, including disciplinary decision-making practice. Ethics training is mandatory for all prosecutors. Ethical issues related to the performance of the office of public prosecutor are covered by training upon taking office and every three years thereafter.

Ethics advice is provided by senior prosecutors. Prosecutors may also seek advice from a specialised institution, the **Ethics Commission of the Czech Union of Prosecutors**. So far, eight opinions have been issued by the Commission. For example, the participation of prosecutors in televised knowledge contests is generally possible. However, prosecutors are to maintain a certain degree of moderation and restraint and resist any personal exhibitionism.

3 Selected information and findings from the comparative study – Results of the comparison of the different areas in the selected countries

3.1 Form of codes of ethics and their binding nature

Judges

All the countries assessed have written codes of ethics for judges and prosecutors. As regards the question of the binding nature of codes of ethics for judges, the non-binding nature of these codes prevails in the countries compared. Only Norway, Estonia, Lithuania and Slovakia have binding codes of ethics.

It is worth mentioning that the binding nature of the Slovak code of ethics for judges (**Principles of Judicial Ethics**) is derived from the Act on Judges and Presiding Judges. Moreover, the activities of the Judicial Council of the Slovak Republic are of great importance here. According to the Slovak Constitution, the Judicial Council of the Slovak Republic is a constitutional body of judicial legitimacy. It is the competence of the Judicial Council of the Slovak Republic to issue principles of judicial ethics in cooperation with the bodies of judicial self-government. Compared to other countries that are the subject of the comparative study, this is an exceptional constitutional enshrinement of ethical principles not only for judges but also for prosecutors.

Prosecutors

Codes of ethics for prosecutors are binding in more states than codes of ethics for judges. They are only non-binding in Austria, Germany and Finland.

3.2 Areas of conduct and behaviour covered by codes of ethics

Judges

All judicial codes of ethics more or less cover the same areas (independence, impartiality, equality, integrity, discretion, acceptance of gifts, contact with the public). Consequently, some of these arrangements stand out for not being traditional compared to the other countries.

In **Lithuania**, for example, it is the question of respect and loyalty to the state. In particular, it concerns the issues of observance of the judicial oath or politically neutral and correct behaviour. In addition, **Norway** addresses, for example, the obligation to intervene if a judge becomes aware of a material breach of duty by another judge.

In **Germany**, on the other hand, the requirements for moderation, humanity and courage of the judge in question are regulated. The requirements of humanity are that it is appropriate to treat others with respect, including seeking mutual understanding, when exercising the profession of judge or prosecutor.

Prosecutors

In the case of codes of ethics for prosecutors, these codes more or less cover the same areas. Similarly, some that are not quite traditional compared to the other countries stand out.

In **Denmark**, there is a requirement for the prudent use of irony or slang. Danish ethical guidelines also regulate, for example, the non-acceptance of gifts and other benefits, or the determination of what is acceptable – e.g., chocolates, flowers, a few bottles of wine of reasonable value per lecture.

3.3 Publication of codes of ethics

In all of the countries compared, codes of ethics for judges and prosecutors are available online for the general public. However, the methods of publication often differ. In contrast to the situation in the Czech Republic, there are also countries that have developed clear websites for the code of ethics. This is the case with codes of ethics for judges, for example in **Canada** and **Slovakia**. **Denmark** is a partial exception in terms of accessibility to the general public. A General Code of Conduct applies to the work of a Danish prosecutor. In addition, there is a document that complements this General Code of Conduct, namely the Guidelines for Good Conduct and Ethics in Public Prosecution. However, these supplementary guidelines are not available to the public.

3.4 Scope of codes of ethics

As regards the scope of the codes of ethics for judges in the countries compared, in most of these countries the fact that the scope applies to all judges is explicitly stated. In some states, the general application to all judges does not follow directly from the text of the codes of ethics in question; they are nonetheless principles common to all judges. Therefore, general jurisdiction can be inferred. The same is the case with prosecutors.

3.5 Methodological support for the practical use of codes of ethics

Judges

In general, methodological support for the practical use of codes of ethics is very important. It provides a better understanding of the purpose of the code of ethics. The methodological support emphasises that it is not simply a question of compliance with regulations, but the need to take ethical rules into account in every situation in life. In most of the countries compared, commentaries or practice guides are available on codes of ethics for judges.

In **Sweden**, three comprehensive publications entitled “Good Conduct for Judges” are available. These publications address a wide range of ethical issues. The areas of behaviour they regulate are further elaborated in the first document in 60 questions and over 100 sub-questions. An example of a question on the principle of independence is, for example, “How can I resist the pressure of public opinion and unjustified attempts to influence my judicial activities?”

In this context, it is necessary to highlight an unusual document. A compendium of ethical and professional standards for judges and prosecutors has been prepared in **Germany**. It is not a code of ethics, but a document that collects the provisions of legislation that have an ethical overlap, both at the state and federal level.

Prosecutors

A commentary on the code of ethics is now almost standard. It is also possible to highlight the approach in **Norway**, where prosecutors have a **document with 58 examples of ethical dilemmas**. These can serve as a starting point for discussion, reflection and awareness-raising. The examples are deliberately worded in such a way that they are not answered in the document.

3.6 Enforceability of codes of ethics

The enforceability of codes of ethics is related to their binding nature in the legal sense. In most countries, the codes are not binding and therefore not enforceable. Where they are binding, a breach of their rules may lead to disciplinary action under the presumptions in the relevant laws. The same applies to codes of ethics for prosecutors.

3.7 Institutions for dealing with breaches of codes of ethics

Special institutions are called upon to deal with breaches of rules arising from binding codes of ethics, provided that the codes are binding and enforceable in a legal sense.

In **Norway**, for example, the Supervisory Committee deals with violations of the Ethical Principles of Judicial Conduct. The Supervisory Committee uses the code of ethics as a benchmark for good conduct. In **Estonia**, violations of the Code of Ethics are dealt with by the Disciplinary Chamber. The Disciplinary Chamber states that the Code of Ethics serves as a benchmark for good conduct.

With regard to prosecutors, for example, in **Lithuania**, the competent institution in matters of disciplinary proceedings of prosecutors is the Ethics Commission of Prosecutors.

3.8 Addressing breaches of ethics

The aforementioned institutions may impose various sanctions for breaches of the obligations contained in the code of ethics, based on its binding and enforceable nature.

Judges

In **Slovakia**, a disciplinary offence is punishable by a warning and a reduction in salary. The judge can also be reprimanded in writing if this form of redress is sufficient. In **Norway**, the Supervisory Committee can also issue an opinion on what is considered to be good conduct by a judge without imposing disciplinary measures on the judge. In **Lithuania**, the Court of Honour may impose one of the disciplinary sanctions on a judge or may propose the removal of a judge from office.

Prosecutors

The higher number of states in which the code of ethics for prosecutors is binding and enforceable is reflected in the variety of ways in which breaches of the code of ethics can be addressed. In **Slovakia**, the disciplinary chamber can, for example, transfer a prosecutor to a lower-level prosecutor's office. Another example is **Estonia**, where a prosecutor can be reprimanded, his or her salary reduced, or he or she can be removed from office. The punishment for disciplinary offences is similar in **Lithuania**.

3.9 Advice on ethical issues

Judges

In most of the compared states, it is possible to seek advice on ethical issues related to the exercise of judicial office from the Judicial Council or other specially created ethics councils.

For example, in **Austria**, an **Ethics Council** was established in 2017. The Ethics Council deals with issues of judicial values, measures for judicial education, and has an advisory function. However, the Association of Austrian Judges has reported that so far, judges have only referred a few cases to the Ethics Council.

In **Estonia**, ethics advice is provided by a special advisory body, which can also be contacted anonymously. The Council's opinions and recommendations are published on the Supreme Court's website. An example of such opinions is the answer to the question whether a judge may participate in film shoots for which a fee is paid. The Judicial Ethics Council has concluded that a judge's participation in various activities is limited only to the extent that it conflicts with the interests of justice. However, the role or the character played by the judge should not commit criminal acts or behave immorally.

Prosecutors

Advice on ethical issues for prosecutors can usually be provided by the supervisors of the prosecutors concerned.

In **Lithuania**, advice is provided by the Ethics Commission of Prosecutors. The consultations of the Ethics Commission of Prosecutors have been published on the website of the State Prosecutor's Office, where they can be consulted by anyone. In five years, the Commission has provided 10 consultations. For example, there was the question of whether a prosecutor can have a side income from renting an apartment. The Ethics Committee concluded that it is possible, but that the activity should not be of a business nature.

However, advice on ethical issues can take different forms. In **Denmark**, candidates for the office of public prosecutor have a mentor during their training. They can thus turn to him or her or to their supervisor for advice on ethical issues.

3.10 Ethics education and training

Training in ethical issues is provided to judges and prosecutors primarily through the judicial academy or similar educational institution of a given state. In some countries, ethical issues are part of the preparation for the office of judge or prosecutor. In this context, we can mention the role of the Czech Judicial Academy, which provides training in ethics.

Judges

The **Austrian** Ministry of Justice has indicated that the Austrian Judiciary's training programme offers a wide range of personal development seminars. Particular emphasis is placed on the topics of ethics, the work of judges and prosecutors, and the professional handling of difficult or unusual situations in court proceedings.

Judicial education in **Norway** is focused on the proper exercise of the judicial profession (judgecraft) and ethics is an integral part thereof. The initial training takes place in the first year after the appointment of the judge and is divided into modules, one of which deals specifically with ethics.

Prosecutors

Ethics is also part of the training of new prosecutors, for example in **Denmark**. The training focuses on typical ethical dilemmas in practice.

3.11 Evaluation of statistics on breaches of ethics rules

The prevailing trend is that no statistics are kept on breaches of the codes of ethics of judges or prosecutors. This is partly due to the fact that many codes of ethics are not binding and enforceable. In contrast to the codes of ethics for prosecutors, for which statistics on violations are not kept in any of the countries compared, statistics are kept for codes of ethics for judges in **Norway** and **Lithuania**.

3.12 Ethics on social media

States have taken different approaches to enshrining recommendations for the use of social networking sites, including the fact that some codes of ethics do not contain such specific ethical rules at all. In such a case, the general rules contained in the codes of ethics may reasonably be relied upon.

Judges

The **Swedish Academy of Judicial Education** has prepared non-public recommendations on appropriate behaviour for judges. Above all, judges should take into account that anything they write on social networks may remain on the internet forever. They should also avoid **their contributions being confused with official positions**. Judges should also be aware that clicking the “like” button can be perceived as taking a position.

Prosecutors

A regulation directly in the code of ethics can be found in **Denmark**. Prosecutors have the right to express their views and opinions like any other citizen, but they must maintain professional secrecy. It must also be clear that the views are not expressed on behalf of the prosecution.

4 Selected information and findings from the International Conference on Codes of Ethics

The range of issues addressed at the international conference was considerable. This brochure does not aim to cover all the topics in detail, so only a selection of information and findings is summarised below.

4.1 Summary of the conference

Moral dilemmas of judges and prosecutors in the Czech Republic

At the opening of the conference, Judge **Kateřina Šimáčková** of the European Court of Human Rights summarized that ethics is not the solution for people who break the rules from the start. It is important for those who want to do the right thing, but find it difficult to detect all the risks and temptations. GRECO President **Marin Mrčela** addressed, for example, the issue of the remuneration of judges for ancillary activities – e.g., for seminars (where the remuneration threshold lies).

After the presentation of the above-mentioned comparative study by **Jaromír Císař**, a partner at CÍSAŘ, ČEŠKA, SMUTNÝ s.r.o., the first panel was devoted to a reflection on the situation regarding ethical dilemmas in the Czech Republic, not only from the perspective of judges but also prosecutors.

President of the Supreme Court of Justice **Petr Angyalossy** views the code of ethics as helping to maintain high ethical standards simply by being a signal to the public of what to expect. A judge should accept a code of ethics because it is his or her own, not because of fear of punishment.

Libor Vávra, the President of the Czech Union of Judges, greatly misses an independent body like the Judicial Council. According to him, only this body has the legitimacy to adopt a code of ethics binding on all judges. In this context, he sees a problem with the adoption of the Czech Code of Ethics for Judges, which, in his view, was adopted more or less in silence.

The panel also provided insight into the scope of the Code of Ethics and the issues covered by it. According to Chief Prosecutor **Igor Stříž**, corruption is not a matter of ethics, but of law. Issues of a corrupt nature are not mentioned in the code of ethics, and rightly so. In his opinion, professional ethics should place great emphasis on respect for other legal professions and legal opinions.

However, the panel also brought a more pragmatic perspective. **Jan Lata**, President Emeritus of the Czech Union of Prosecutors, has a more reserved view of the code of ethics. In his view, the code of ethics is “written” in the provisions of the Act on Courts and Judges and the Act on Public Prosecution. He finds it interesting that such a code of ethics also has a procedural element, such as a commission that issues opinions.

Moral dilemmas of a Constitutional Court judge

The conference also offered insights into moral dilemmas from the perspective of the legal profession. Constitutional Court judge **Tomáš Lichovník** presented the dilemmas of a Constitutional Court judge.

The dilemmas of plenary decision-making are linked to the fact that fifteen judges accumulate considerable power. Therefore, constitutional judges should rule with respect for legislative power and should not translate opinions on de lege ferenda regulation into decisions, but rather stick to the constitutional level, in accordance with the constitutional order.

It is also important to resist the temptation to pander to the state to which the judge will be returning. At the end of his or her term, the judge could seek to improve the status of lawyers, district court judges, etc. It is therefore good to be aware of this dilemma so that the Constitutional Court judge in question does not even subconsciously acknowledge it. Restraint is also important in Senate decision-making, as the votes of two judges of the Constitutional Court Senate can overturn the decisions of the extended chambers of the Supreme Court and the Supreme Administrative Court.

Insight into the situation in Slovakia

Andrea Moravčíková, Vice President of the Supreme Court of the Slovak Republic, offered insight into the regulation of codes of ethics in Slovakia. As mentioned above, Slovakia is also interesting in that it has principles of judicial ethics enshrined in law. This is what Vice-President Moravčíková emphasised when she said that this anchoring is necessary because of the corruption scandals of Slovak judges in the past. It is an appeal to judges to be aware of the importance of professional ethics. She also drew attention to the practical aspects of the functioning of the self-governing body of the judiciary. In practice, a competence problem arises when filing a disciplinary petition, when it is necessary to wait to see whether the petition will be filed by the President of the Judicial Council or by the President of the court where the judge serves. This aspect should also be taken into account if a self-governing body such as the Judicial Council is to be considered in the Czech Republic.

Social networks and artificial intelligence

The relationship between professional ethics and artificial intelligence, as well as the behaviour of judges and prosecutors on social media, were major topics of the international conference.

Luboš Dörfl, President of the High Court in Prague, captured the basis of the ethical dilemma on social media. Judges or prosecutors must be able to ask themselves whether they will use their freedom to exercise their opinion or whether they will voluntarily limit themselves with regard to their profession. He distinguishes between situations when a judge should express his or her opinion (defending the values of the judiciary), when he or she can (e.g., defending his or her own decision), and when he or she should not (criticism of the courts, general political issues).

The rapid development of artificial intelligence is related to its interaction with professional ethics. **Pavel Pražák**, Vice-President of the Municipal Court in Prague, pointed out the problem of using artificial intelligence in courts in relation to privacy and data security. He also raised the ethical question of whether it is right to use artificial intelligence. For example, is it acceptable for AI to write justifications for decisions? Having a debate on this topic is very beneficial, as AI will be used regardless of its potential regulation as it develops. It is therefore necessary to set rules for its use as soon as possible.

These topics were comprehensively followed up by **Alžběta Solarczyk Krausová** from the Institute of State and Law. She pointed out that the European Union also considers the use of artificial intelligence to be risky and is preparing the so-called Artificial Intelligence Act. It should set relatively strict rules for the use of artificial intelligence in the judiciary. It is expected that it will be necessary to explicitly state that artificial intelligence was used in the decision. Artificial intelligence in the judiciary is not only addressed at the level of the European Union, but also at the level of individual states. For example, the law in France prohibits the creation of artificial intelligence systems that will map the decision-making of individual judges and the integrity of their decisions.

A foreign perspective on professional ethics

The conference also offered other contributions from experts from abroad. Former prosecutor **Lloydette Bai-Marrow** gave an overview of the situation in the UK. She emphasized, for example, the importance of the prosecutor not being detached from reality and perceiving the human dimension of the case and the impact of the prosecution. **Veronica Dragalin**, Chief Prosecutor of Moldova, presented the current state of professional ethics in Moldova. It was evident that she had a broader view of professional ethics, as she prioritised cases of corruption in the judiciary. **Mike Cressey** of the OECD also stressed that any code of ethics for judges should be adopted by the relevant judicial bodies and respect the division of power.

4.2 Summary of the conclusions of the conference

The following brief conclusions can be drawn from the conference:

- the debate on ethical issues of judges and prosecutors is ongoing and still relevant;
- judges and prosecutors perceive the risks associated with the use of social networks;
- the judges' and prosecutors' emphasis on restraint and appropriate self-restraint continues;
- the growing importance of artificial intelligence and its potential negative impact not only on data security and privacy should not be underestimated;
- artificial intelligence could help judges and prosecutors, especially in the case of repetitive activities;
- judges may lack their own self-governing body, such as a judicial council, which will further guarantee their independence;
- regarding practical issues related to the establishment and functioning of a self-governing body, inspiration can be drawn from Slovakia.

5 Summary and conclusions

5.1 Conclusion

In general, the situation regarding the codes of ethics of judges and prosecutors in the Czech Republic can be considered very satisfactory. Codes of ethics have been issued for judges and prosecutors declaring adherence to the highest professional standards. All of these codes of ethics are developed to a high standard, including related supporting materials.

In conclusion, it is therefore possible to consider what could be improved in the future in the case of Czech codes of ethics. In particular, a suitable awareness campaign or at least a separate website where the code of ethics can be easily accessed should be considered. This applies in particular to the Code of Ethics for Judges, which could be published and briefly presented to the general public on a separate website, at least on the Supreme Court website. This step would also promote openness of the judiciary and public confidence in it. It should be recalled that public confidence is one of the very strong guarantees of the independence of the judiciary.

5.2 Examples of good practice

The comparative study also included a request to summarise examples of good practice. It therefore concludes by summarising and generalising these examples.

An explicit declaration of the binding or non-binding nature of the code helps to clearly identify the nature of the document. It is appropriate to establish the code as an interpretative aid in interpreting relatively vague legal norms related to the duties of a judge.

On the basis of the study carried out, it also appears that **continuous action by a self-governing body** is appropriate. The self-governing body shall guarantee continuity in addressing ethical issues. In addition, it allows for a flexible response to current issues by issuing various opinions or methodologies. Another advantage is the simultaneous elimination of the danger of inappropriate interference by the executive (or legislative) power in independence.

A **commentary** containing references to relevant literature and disciplinary case law is also appropriate. Similarly, the development of a **practical handbook** containing model cases or model questions may be welcomed. Both can help in decision-making when dealing with a particular ethical dilemma.

The provision of **consultations with an independent body** is beneficial. It is not appropriate to restrict them to consultation through a senior member of staff or supervisor. In addition, it is advisable to allow the question to be asked anonymously. This can help to ensure that consultations are objective and confidential.

Finally, ongoing **training on professional ethics** can be highlighted **as part of preparation for the profession**. Mandatory training on professional ethics for aspiring judges and prosecutors or judicial officers in waiting can ultimately contribute to high confidence in a country's judiciary..

CÍSAŘ, ČEŠKA, SMUTNÝ s.r.o., law firm

The law firm CÍSAŘ, ČEŠKA, SMUTNÝ s.r.o., has prepared this document with the use of its professional knowledge and experience, taking into account the applicable legislation, available decision-making practice and professional literature current as of the date of preparation of this document, as well as all documents and information provided by the Client for the purpose of preparation of this document. The document focuses only on the selected area of law which the law firm CÍSAŘ, ČEŠKA, SMUTNÝ s.r.o., considers to be relevant for the content of the legal analysis. The conclusions reached may therefore be subject to further changes according to additional information provided or other information found.

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