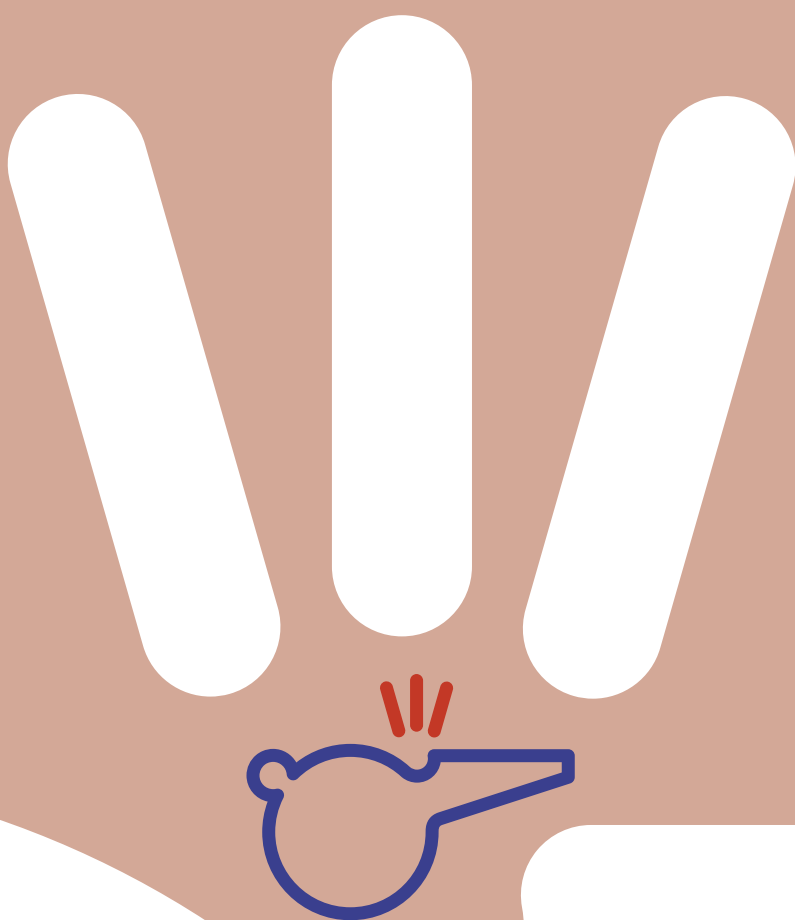


Comparative study

Codes of ethics for judges and public prosecutors



Iceland 
Liechtenstein
Norway grants

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1 Default state and assignment

CÍSAŘ, ČEŠKA, SMUTNÝ s.r.o., law firm (hereinafter the “**Author**”) prepared a comparative study for the Ministry of Justice (hereinafter the “**Client**”) on the basis of the public contract entitled “Stepping up the fight against corruption; Part 3 – Codes of ethics for judges and public prosecutors – Comparative study and brochure”.

The comparative study describes the status of codes of ethics in selected states: Czech Republic, Slovakia, Austria, Germany, Canada, Denmark, Norway, Finland, Sweden, Estonia, Lithuania.

The comparative study answers the questions specified by the Client in Annex 1 of the Contract for the preparation of the comparative study and technical documents. the codes of ethics are compared in the following areas:

- 1) the form of the codes of ethics – what type of document the codes of ethics are set out in and how binding they are,
- 2) the areas of behaviour and conduct covered, or not covered, by the codes of ethics,
- 3) how the codes of ethics are published (including whether they are available to the general public),
- 4) applicability – whether all levels of judges and public prosecutors are bound by the codes of ethics,
- 5) methodological support for the practical application of the codes of ethics, whether or not it is provided to the persons concerned, including the form of methodological support (methodological guides, manuals, examples from practice, commentaries, guidelines, training, consultations, ethics committee, etc.),
- 6) the enforceability of the codes of ethics (whether this is legally anchored and in which regulation, whether and what sanctions are provided for non-compliance),
- 7) institutes that address possible breaches of codes of ethics – the use of judicial councils, ethics commissions, disciplinary chambers, etc.,
- 8) the methods of dealing with ethics breaches, the possibilities of appeal against imposed sanctions,
- 9) advice on ethics, who provides it and how; interest in this support service from the persons concerned,
- 10) training provided in relation to codes of ethics (whether it is provided, in what form, by whom and how often),
- 11) the evaluation of statistics on breaches of the ethical rules set out in the codes of ethics (if available),
- 12) a clear summary of identified examples of good practice.

Based on the Client’s request, the Author also analysed available information on documents regulating the behaviour of judges and public prosecutors on social networks in the relevant states.

In the preparation of the study, the Author relied not only on publicly available sources but also on documents provided by relevant institutions in selected states, and these were individually contacted by the Author for this purpose. A summary of the responses received from the institutions contacted is attached to this study.

2 Czech republic

2.1 Judges

Codes of Ethics in the Czech Republic, their forms, areas of regulation and applicability

There are currently two codes of ethics in the Czech Republic that apply to the conduct of judges. the first of these is the **Code of Ethics for Judges**, which was drafted under the leadership of the current president of the Supreme Court, JUDr. Petr Angyalossy, Ph.D.¹ the second is not explicitly identified as a code of ethics. It is the **Ethical Principles of Judicial Conduct** authored by the Czech Union of Judges. the Ethical Principles of Judicial Conduct were approved at the 15th Assembly of Representatives of the Sections of the Czech Union of Judges on 26 November 2005. the Ethical Principles of Judicial Conduct have greatly influenced the form of the more recent Code of Ethics for Judges.

The current Code of Ethics for Judges refers to the draft Code of Judicial Conduct prepared in Bangalore in 2001². the Code also claims to be based on the Ethical Principles of Judicial Conduct. the Code of Ethics for Judges is a response to the Czech Republic evaluation report adopted by GRECO at its 72nd plenary session in Strasbourg on 1 July 2016, as part of the Fourth Evaluation Round on the prevention of corruption in relation to members of parliament, judges and public prosecutors. the Czech Republic was recommended to adopt a code of ethics for all judges, accompanied by explanatory notes and examples.³

The Code of Ethics for Judges and the Ethical Principles of Judicial Conduct are available online for the general public. the Ethical Principles of Judicial Conduct are available on the website of the Czech Union of Judges.⁴ The Code of Ethics for Judges⁵ is available from the websites of individual courts (more details below). However, this differs in comparison with the other states compared in that it is not possible to find any official website that would include a statement that the Code of Ethics for Judges has been adopted, or when it was adopted, to whom it is addressed, and that would provide a brief description of it⁶. In this respect, it also differs from the code of ethics issued for public prosecutors.⁷ It can thus be concluded that the Code of Ethics for Judges could be more widely disseminated to the general public through appropriate awareness-raising activities. Awareness-raising activities may take the form of a clear website that introduces the general public to the issues and need for the Code of Ethics for Judges, or may take the form of a brochure, as is the case in Lithuania.

There is a fundamental difference between the Code of Ethics for Judges and the Principles of Judicial Conduct in terms of their **applicability**. This difference is based on the nature of the body that adopted the document. The Czech Union of Judges is a purely “voluntary professional association of judges of the Czech Republic”⁸.

- 1 It is reported that Angyalossy worked on the draft Code of Ethics with 20 other judges. A listing of the 23 authors is not publicly available (cf. <https://www.seznamzpravy.cz/clanek/eticky-kodex-soudcu-je-hotovy-angyalossy-jej-predal-benesove-110432>). On the formation of the working group, Angyalossy said: “The working group that created the Code of Ethics was recruited from judges of general courts of all levels, including representatives of the Czech Union of Judges. This means it was made up of people trusted by all the judges at the relevant courts to represent their views.” (Cf. <https://www.pravniprostor.cz/clanky/ostatni-pravo/rozhovor-petr-angyalossy-stat-se-soudcem-byl-muj-zivotni-sen-jako-predseda-vsak-mohu-prilozit-ruku-k-dilu-byt-justici-prospesny-i-v-jinych-smerech>)
- 2 Regarding these principles, cf. e.g.: <https://www.icj.org/wp-content/uploads/2014/03/Bangalore-Principles-of-Judicial-Conduct-instrument-2002-eng.pdf>
- 3 GRECO Evaluation Report 2016, paragraph 118, available from: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c319a>
- 4 Available from <https://www.soudci.cz/o-nas/eticke-zasady-chovani-soudce.html>
- 5 Available for example from: <https://justice.cz/documents/16809/0/Etický+kodex+soudců-2020.pdf/113b03de-faf7-43f0-a5c8-3bd04401c732>
- 6 Information on the adoption of the Code of Ethics for Judges was provided on the websites of individual courts, yet it is not easy to find now.
- 7 Available from: <https://verejnazaloba.cz/vice-o-sz/eticky-kodex-statniho-zastupce/>
- 8 Available from: <https://www.soudci.cz/o-nas/su-cr.html>

The exact number of members of the Czech Union of Judges is not publicly available. According to its website, “[b]y the proportion of members to the total number of judges, the Czech Union of Judges is one of the strongest professional associations in Europe.”⁹ Figures appear that indicate membership numbers ranging from one third¹⁰ to one half¹¹ of all judges.

The adoption of the Code of Ethics for Judges was accompanied by certain challenges. the main point was that judges should not have their code of ethics “dictated by outsiders”.¹² However, this was not the only problem. The adoption of the Code of Ethics was a response to the fact that there was no supreme judicial body to bring together all the judges in the country. the Czech Union of Judges could fulfil this mission to a certain extent. However, it does not unite all judges, as membership is not compulsory and it already has its own code of ethics.¹³

The fundamental question of bindingness is related to the above issue. the position of judges is specific in many respects and **their independence has been repeatedly declared at constitutional level** cf. e.g. Articles 81 and 82(1) of Constitutional Act No 1/1993 Coll., the Constitution of the Czech Republic, as amended (hereinafter the “**Constitution**”) or Article 36(1) of Resolution of the Presidium of the Czech National Council No 2/1993 Coll., on the proclamation of the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic, as amended (hereinafter the “**Charter of Fundamental Rights and Freedoms**”). It is thus natural to conclude in the literature that the adoption of a code of ethics binding on all judges cannot be performed by anyone other than the judges themselves.¹⁴ the explanatory note sent to the individual courts together with the draft Code of Ethics for Judges also draws attention to this problem: “*The judiciary, however, still has no representative body that is endowed to issue ethical rules binding on all judges.*”¹⁵

The authors of the Code of Ethics for Judges therefore came up with a solution according to which the Code of Ethics for Judges should be approved by the individual judicial councils: “*In the absence of a supreme body of judicial self-government to which judges would delegate the authority to create a code of ethics, it remains up to each judge to address individual ethical issues to the best of their knowledge and conscience. However, in terms of the applicable law, the judiciary has a single democratically constituted body which, at the time of its creation, was intended as the embryo of judicial self-government. This is the judicial councils (assemblies of judges), which act as advisory bodies to the presidents of the courts. the statutory powers of the judicial councils do not include the adoption of a code of ethics, but by their democratic nature they are an eligible platform for presenting ethical rules to judges.*”¹⁶

Some judicial councils, however, initially refused to discuss the Code of Ethics of Judges, as the law does not provide for their competence to discuss such a document.¹⁷

9 Available from: <https://www.soudci.cz/o-nas/su-cr.html>

10 Available from: <http://www.sucr.cz/zpravy-a-stanoviska/slovo-soudce/762-je-nas-hodne-nebo-malo-.html>

11 Available from: <https://www.ceska-justice.cz/2020/11/soudcovskou-unii-povede-jeji-nekdejsi-prezident-libor-vavra/>

12 Available from: https://www.irozhlas.cz/zpravy-domov/soud-soudci-eticky-kodex-marie-benesova-ministerstvo-spravedlnosti_1908011219_dok
Similarly also <https://www.ceska-justice.cz/2019/08/soudci-se-vzepreli-ministerstvu-kvuli-etickemu-kodexu/>
Also FINDEJS, Stanislav. Code of Ethics – what it will introduce. Legal Space [online]. 2020 [cit. 2022-11-11]. Available from: <https://www.pravniprostor.cz/nazory/glosa-stanislava-findejse/eticky-kodex-co-noveho-prinasi>

13 Cf. e.g. FINDEJS, Stanislav. Code of Ethics – what it will introduce. Legal Space [online]. 2020 [cit. 2022-11-11]. Available from: <https://www.pravniprostor.cz/nazory/glosa-stanislava-findejse/eticky-kodex-co-noveho-prinasi>

14 FINDEJS, Stanislav. Code of Ethics – what it will introduce. Legal Space [online]. 2020 [cit. 2022-11-11]. Available from: <https://www.pravniprostor.cz/nazory/glosa-stanislava-findejse/eticky-kodex-co-noveho-prinasi>

15 Meeting of the representatives of the judicial councils – explanatory note dated 1 September 2020. Available from: <https://www.justice.cz/documents/15689/2426015/TMP08175623Setkani+zastupcu+soudcovskych+rad+-+vysvetlujici+dopis.docx/8a73052a-de51-46d2-8318-c269a73ef727>

16 Meeting of the representatives of the judicial councils – explanatory note dated 1 September 2020. Available from: <https://www.justice.cz/documents/15689/2426015/TMP08175623Setkani+zastupcu+soudcovskych+rad+-+vysvetlujici+dopis.docx/8a73052a-de51-46d2-8318-c269a73ef727>

17 Available from: https://www.lidovky.cz/byznys/kratce-z-justice-prijeti-soudcovskeho-etickeho-kodexu-se-zacina-komplikovat.A200829_212603_In_byznys_pravo_ssu

A draft Code of Ethics for Judges was prepared and submitted to Minister of Justice Maria Benešová in June 2021.¹⁸ However, Angyalossy subsequently said in an interview that this draft was subsequently circulated to judges for their information: *“We have given them a relatively long period of time to comment, partly due to it being over the summer when it can be expected that holidays may prolong the hearings in individual courts. **We have tentatively agreed a deadline of the end of September**, by which time I should have received feedback on the submitted Code of Ethics. **the vision is probably that the judicial councils in all courts in the country will discuss it and state whether they will accept the code as their own and whether they will adopt it. Once this is done, the codes of ethics will be published on the courts’ websites.** I would like to meet with representatives of all the judicial councils here at the Supreme Court in early September, at which time we would discuss the acceptance mechanism and, if necessary, I will explain anything not clear from the Code, the commentaries and the attached case law of the disciplinary chambers.”*¹⁹ The announced meeting was eventually cancelled due to the anti-epidemic measures in place.²⁰

Angyalossy eventually said in October 2022: *“**The Code of Ethics is published on the websites of all the courts and we have not had any feedback that any of the judges have reservations about it. It is a set of basic rules that every judge should have in their own heart, and I believe that this is really the case.**”*²¹ **It can be concluded from this statement and from the context of the preceding statements that, despite some initial ambiguities, the Code of Ethics has been adopted by the individual courts, and in its original version.**

In terms of the **areas covered by the two ethical rules mentioned**, the applicability of the two documents is very similar. the Code of Ethics for Judges is divided into four parts:

- A) Independence;
- B) Impartiality and equality – this deals primarily with issues of speech that could give rise to a suspicion of bias, restraint in publicly expressing political views, and avoiding discrimination;
- C) Integrity and dignity – this mainly addresses issues of how a judge contributes to the perception of the fairness of a decision, the acceptance of gifts or other benefits, the relationship with the media, and behaviour on social media;
- D) Professionalism and conscientiousness – this mainly addresses the issue of the relationship between judicial duties and other professional activities, and the issue of confidentiality.

The Ethical Principles of Judicial Conduct divide the rules into six parts:

- A) Independence – this addresses e.g. the issue of defending independence in personal and professional life;
- B) Impartiality – this also regulates a judge’s relationship with the media;
- C) Integrity – this primarily addresses the issue of accepting gifts or acting responsibly in managing one’s own property;
- D) Dignity – this addresses issues of a judge’s relationship with the media and avoiding improper conduct;
- E) Equality – this elaborates on the issues of avoiding any discrimination;
- F) Professionalism – this regulates the question of the relationship between judicial duties and other professional activities or the development of professional knowledge, including the development of international law.

Enforcement of codes of ethics and resolution of breaches

The Code of Ethics **is not a binding standard**. Therefore, a breach of the ethical rules contained in the Code of Ethics for Judges does not in and of itself lead to disciplinary proceedings [unless it also fulfils the prerequisites in Act No 6/2002 Coll.,

¹⁸ Available from: <https://www.seznamzpravy.cz/clanek/eticky-kodex-soudcu-je-hotovy-angyalossy-jej-predal-benesove-110432>

¹⁹ Available from: <https://www.pravniprostor.cz/clanky/ostatni-pravo/rozhovor-petr-angyalossy-stat-se-soudcem-byl-muj-zivotni-sen-jako-predsed-vsak-mohu-prilozit-ruku-k-dilu-byt-justici-prospesny-i-v-jinych-smerech>

²⁰ Available from: https://www.lidovky.cz/byznys/kratce-z-justice-prijeti-soudcovskeho-etickeho-kodexu-se-zacina-komplikovat.A200829_212603_ln_byznys_pravo_ssu

²¹ Available from: https://www.lidovky.cz/byznys/kratce-z-justice-prijeti-soudcovskeho-etickeho-kodexu-se-zacina-komplikovat.A200829_212603_ln_byznys_pravo_ssu

on courts, judges, lay judges and the state administration of courts and on amendments to certain other laws (the Courts and Judges Act), as amended (hereinafter the “CJA” or the “Courts and Judges Act”), see below].

The Code of Ethics for Judges does not aim to expand the legal duties of judges. This is, inter alia, confirmed by president of the Supreme Court Angyalossy: “[T]he Code is also beneficial in that in recent years there has been a reduction in offences punishable by disciplinary action, **although a breach of the code cannot itself be the basis for disciplinary proceedings** – it is formulated somewhat more broadly than the Courts and Judges Act.”²²

The aforementioned explanatory memorandum should be considered an important interpretative tool for the Code of Ethics for Judges. This memorandum briefly explains the insight into the binding nature of the rules, the consequences of breaching them, and the purpose and objective of the given code of ethics: “The ethical rules established by the working committee are to be considered **non-binding**, i.e. their breach cannot be considered a breach of official discipline or a breach of duties arising from the employment relationship, as is the case with the Code of Ethics of the Office of the Government. Although they are non-binding, they represent an elaboration of the high standard of judicial office set by law, and insisting on their observance within the judiciary can lead to a deepening of public confidence in its functioning.

Moreover, if the aim of the Code is to unify and clarify ethical rules, it is not possible to speak of their being binding in the sense of binding legal norms. As discussed above, ethical rules are meant to shape human action in situations where there is a choice through free will. They do not primarily serve to assess permissible or forbidden behaviour, but to help people realise the “best path” that an individual can choose in specific situations. It is then impossible to speak of the unambiguous binding nature of such rules, and certainly not of punishing non-compliance. This is the purpose of disciplinary rules and the disciplinary liability of a judge derived from them.”²³

Similarly, the introduction to the commentary to the Code of Ethics for Judges states that “the ambition [of the Code of Ethics for Judges] is certainly not (and cannot be) to set rigid rules of conduct or even to extend the duties of a judge beyond the applicability of the applicable legislation.”²⁴

As regards the **Ethical Principles of Judicial Conduct**, by their nature they cannot be considered binding as they apply only to judges who are also members of the Czech Union of Judges. However, even for them, the Ethical Principles of Judicial Conduct are not a binding norm in the true sense of the word, as their breach is not associated with any sanction. the GRECO Evaluation Report²⁵ also states that the Ethical Principles of Judicial Conduct are not a binding standard.

It can be concluded that neither the Code of Ethics for Judges nor the Ethical Principles of Judicial Conduct are binding and enforceable, and therefore that their breach is not a disciplinary offence, nor can disciplinary measures be imposed for their breach.

For the sake of completeness, the Author also briefly discusses the disciplinary liability of judges. Judges are liable for disciplinary offences, which are defined in Section 88(1) of the CJA as “**culpable breach of a judge’s duties, as well as culpable conduct or actions by which a judge undermines the dignity of the judicial office** [respectively pursuant to Section 88(2) of the CJA a breach of duties related to the office of the president of a court, vice-president of a court, president of a division of the Supreme Court or the Supreme Administrative Court] or undermines confidence in the independent, impartial, professional and fair decision-making of the courts.”

22 Available from: <https://www.ceska-justice.cz/2022/10/eticky-kodex-ubylo-karnych-prohresku-u-soudcu-rekl-predseda-nejvyssiho-soudu/>

23 Meeting of the representatives of the judicial councils – explanatory note dated 1 September 2020. Available from: <https://www.justice.cz/documents/15689/2426015/TMP08175623Setkani+zastupcu+soudcovskych+rad+-+vysvetlujici+dopis.docx/8a73052a-de51-46d2-8318-c269a73ef727>

24 Commentary to the Code of Ethics for Judges, p. 5.

25 GRECO Evaluation Report 2016, paragraph 116, available from: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c319a>

The duties of judges are defined in Section 79 et seq. of the CJA. These are, in particular, the following duties:

- the duty to exercise the office independently, within reasonable time limits, without delays, impartially and fairly [Section 79(1)],
- the duty to perform their duties conscientiously, and to declare personal interests, activities, assets, income and liabilities [Section 80(1)],
- the duty to refuse any interference, pressure, influence, wish or request which might have the effect of undermining the independence of the judiciary [Section 80(2)(c)],
- the duty to act impartially and without any economic, social, racial, sexual, religious or other prejudice [Section 80(2)(e)],
- the duty to give every party to the proceedings, party to judicial proceedings, or their representatives a full opportunity to exercise their rights [Section 80(3)],
- the duty to give clear and careful reasons for a decision [Section 80(3)],
- the duty to act in such a way as not to jeopardise or undermine confidence in the court’s decision-making when acting outside the performance of judicial duties [Section 80(4)],
- the duty to respect other judges, persons practising law, and other parties to judicial proceedings [Section 80(6)],
- the duty of confidentiality (Section 81),
- the duty of professionalism [Section 82(1)],
- the duty of continuing education and furthering professional legal and other knowledge [Section 82(2)],
- the duty to contribute knowledge and experience [Section 83(1)].

Judges, presidents of courts, vice-presidents of courts, chairpersons of divisions of the Supreme Court or the Supreme Administrative Court have disciplinary liability. the disciplinary liability of judges of the Constitutional Court is addressed directly in Act No 182/1993 Coll., on the Constitutional Court, as amended (hereinafter the “**Constitutional Court Act**”).²⁶ *“An act by which a judge diminishes the dignity and respectability of their office or endangers confidence in the independent and impartial decision-making of the Constitutional Court, as well as other culpable breaches of the judge’s duties”* is a disciplinary offence by a judge of the Constitutional Court.²⁷

Since 2008, the competent disciplinary court has been the Supreme Administrative Court, which acts and decides in chambers composed of the president of the chamber, their deputy, a judge and three lay judges. Section 4(1) of Act No 7/2002 Coll., on proceedings in the cases of judges, public prosecutors and lay judges, as amended (hereinafter “**Act No 7/2002 Coll.**”), provides that *“The president of a chamber will be a judge of the Supreme Administrative Court, their deputy will be a judge of the Supreme Court and another member of the chamber from among the judges will be a judge of a superior, regional or district court. In the case of proceedings concerning judges deciding cases in the administrative justice system, the president of the chamber is a judge of the Supreme Court and their deputy is a judge of the Supreme Administrative Court. Lay judges must always include at least one public prosecutor, one attorney and one person practising another legal profession if they are registered in the list of assessors for judges.”*

The disciplinary proceedings themselves are always initiated on the basis of a petition submitted by the entities listed in Section 8 of Act No 7/2002 Coll. There is a subjective time limit of six months and an objective time limit of three years for filing a petition for disciplinary proceedings. the accused is entitled to choose a defence counsel from among judges or attorneys. If necessary, a preliminary investigation of unclear facts is carried out. If not, the disciplinary chamber directly holds an oral hearing.

²⁶ See Section 132 et seq. of the Constitutional Court Act.

²⁷ See Section 133(2) of the Constitutional Court Act.

If the chamber concludes that the disciplinary defendant has committed a disciplinary offence, it decides by a majority vote of all its members that they are guilty and imposes a disciplinary measure on them or decides not to impose any disciplinary measure. Depending on the seriousness of the disciplinary offence, the judge may be subject to one of the following disciplinary measures:²⁸

- (i) a reprimand,
- (ii) a salary reduction of up to 30% for a maximum of one year and, in the case of repeated disciplinary offences committed by the judge in the period before the expungement of the disciplinary measure, for a maximum of two years,
- (iii) removal from the office of president of the chamber and
- (iv) removal from the office of judge.

Disciplinary measures that may be imposed on presidents or vice-presidents of courts, or on the president of a chamber of the Supreme Court or Supreme Administrative Court, are listed in Section 88(2) of the CJA.

If this is sufficient, the Minister of Justice may deal with minor deficiencies in the work or minor lapses in conduct with a mere reprimand. They may also temporarily suspend a judge who is *“prosecuted for such a disciplinary offence for which the disciplinary action proposes the imposition of the disciplinary measure of removal from office, for a period of time until the final conclusion of the disciplinary proceedings”*, pursuant to Section 100(1)(b) of the CJA.

A decision of the disciplinary court cannot be appealed – it is therefore a single-instance procedure (cf. Section 21 of Act No 7/2002 Coll.).

Unfortunately, there are no statistics available that directly relate to breaches of the ethical rules set out in the codes of ethics. However, individual disciplinary decisions can be found on the website of the Supreme Administrative Court via a search form. In 2022, the Disciplinary Chamber of the Supreme Administrative Court decided on 19 cases of disciplinary offences, in one of which the judge was acquitted of the disciplinary charge. Of the 18 cases of disciplinary offences, 11 involved delays in proceedings. However, none of these decisions explicitly states that there has been a breach of the Code of Ethics for Judges.

Ethics education and support

Methodological support for the practical use of the codes consists primarily of the commentary to the Code of Ethics, which is part of the more extensive edition of the Code of Ethics for Judges.²⁹ the commentary discusses each paragraph and each sentence of the code in detail. For each sentence, it provides related legislation that may be relevant for a broader understanding of the issue, a general interpretation of each sentence of the relevant provision, as well as relevant case law. the case law contained in this commentary includes not only decisions of general courts but also disciplinary decision-making practice, i.e. decisions of the Disciplinary Chamber of the Supreme Administrative Court. Where appropriate, the commentary also includes a list of relevant literature. the commentary at the end of each annotated paragraph contains ethical questions that a judge should be able to ask themselves.

The spectrum of issues is very broad. It includes questions that may be raised in the assessment of bias (an example of such a question is: *“Am I prepared to disclose the reason for my bias even if it is not publicly known and its disclosure may be unpleasant for me?”*³⁰), including concerning a judge’s conduct outside the courtroom (e.g.: *“Can the views I present be perceived as support for a particular political programme or political entity?”*³¹). the processing of such questions must be evaluated as something positive, as they allow the judge to respond better in specific situations and thus avoid doubts about the person of the judge or their impartiality and independence.

28 Cf. Section 88(1) of the CJA.

29 Two versions of the Code of Ethics for Judges can be found on courts’ websites. the first version contains only the text of these rules, the second also a comprehensive commentary.

30 Commentary to the Code of Ethics for Judges, p. 15.

31 Commentary to the Code of Ethics for Judges, p. 28.

However, the Code of Ethics of the Judge, or the commentary to it, should be seen only as a supporting tool for when a judge is unable to resolve ethical issues on their own.³² This implies that judges have a great responsibility in this respect and that every judge should be a person morally and personally mature enough to be able to resolve ethical issues that arise primarily on their own.

If, however, the problem is complex and the judge in question would not be able to answer it even using the Code of Ethics for Judges or the Ethical Principles of Judicial Conduct, they may seek advice from the president of the court, the Minister of Justice or the Czech Union of Judges.

In addition, the Czech Union of Judges has published an Open Set of Ethical Dilemmas for Judges, which is available on their website.³³ As it directly states in its preamble, it is *“in the form of commentaries, reflections and questions and references to related court decisions as well as interesting articles on individual points of the Code of Ethics of the Czech Union of Judges.”*³⁴ It is, moreover, a *“living document”* to be *“continuously updated and modified by the Court of Ethics of the Czech Union of Judges in cooperation with the Republican Council of the Czech Union of Judges.”*³⁵

In addition, the Czech Union of Judges has a specialised body dedicated to addressing ethical issues. This specialised body is the Court of Ethics of the Czech Union of Judges. the Court of Ethics consists of five members³⁶ and two alternates³⁷. the existence of an institution of this nature is to be appreciated, especially in a situation where *“it is open to non-members of the Czech Union of Judges with its advice.”*³⁸

The Judicial Academy and regional courts also provide general education for judges on ethical issues. The Judicial Academy routinely holds voluntary three-day seminars twice a year, attended by around 100 judges and public prosecutors per year.³⁹ In addition, the Supreme Court regularly holds Ethics Roundtables to discuss ethical issues on a selected topic.

Rules for the use of social networks

Following an additional question from the Client, the Author will also briefly mention the issue of judges' use of social networks.

The Code of Ethics for Judges, unlike the Ethical Principles of Judicial Conduct, addresses this issue. Article III, point 11 of the Code of Ethics for Judges states that *“A judge shall use social networks and similar platforms with caution so that their opinions, and the information, images and sound recordings they publish do not undermine judicial dignity.”*

As far as legal regulation is concerned, this topic must first of all be viewed from the perspective of the constitutional right of freedom of expression. the freedom of expression of judges is fundamentally limited by their office. In particular, it is important that their public expression does not jeopardise judicial dignity, and does not call into question confidence in the judiciary or the judge's personal impartiality and independence.⁴⁰

32 Commentary to the Code of Ethics for Judges, p. 5.

33 Available from: <https://www.soudci.cz/o-nas/otevreny-soubor-eticky-dilemat-soudce.html>

34 An open set of ethical dilemmas for judges, available from: <https://www.soudci.cz/o-nas/otevreny-soubor-eticky-dilemat-soudce.html>

35 Ibid.

36 JUDr. Ladislav Derka (High Court Prague), JUDr. Veronika Křesťanová (Municipal Court Prague), Mgr. Ondřej Kubů (District Court Tábor), Mgr. Zdeněk Chalupa (District Court Jihlava), JUDr. Zlataše Jířová (Regional Court Prague).

37 Mgr. Karel Šemík (District Court Ústí nad Labem), JUDr. Alena Fintová (Regional Court Plzeň).

38 Commentary to the Code of Ethics for Judges, p. 5.

39 The next seminar is now the Ethics in Law seminar and will be held from 9 to 11 October 2023, and is open to judges and public prosecutors. Available from: https://asja.jacz.cz/index.php?pageid=1006&course_id=13687

40 DERKA, Ladislav. Ethical limits of a judge's social media activity. Czech Union of Judges [online]. 2017, [cit. 2023-04-14]. Available from: <http://www.soudci.cz/zpravy-a-stanoviska/pohledy-a-nazory/843-eticke-meze-pusobeni-soudce-na-socialnich-sitich.html>

The latter two values are enshrined in the Constitution in Article 82(1). the restriction itself is then enshrined in Section 17(4) of the Charter of Fundamental Rights and Freedoms, Section 10(2) of the Convention for the Protection of Human Rights and Fundamental Freedoms or Section 80 of the CJA.

A breach of duties in Section 80 of the CJA means committing a disciplinary offence, which is dealt with through disciplinary proceedings before a disciplinary court. Such an offence can, of course, also be committed on the internet.

In the case of expression published via social networks, the specific manner of the publication must be examined. It makes a difference whether the expression is directed to a specific person (in a so-called “chat”) or is published in a way that reaches a larger number of people. Such a distinction is often highly contested and ambiguous. For example, the Constitutional Court has stated that *“the nature of the Facebook social network is not, in the opinion of the Constitutional Court, unambiguously private or public”*⁴¹ and that it is always necessary to take into account the protection of the privacy of the profile of a given user, i.e. it is not possible to exclude that purely private communication is possible on Facebook. At the same time, the nature of the particular platform plays a role, e.g. if it could be described as extremist, i.e. attacking the essence of a democratic society.⁴²

The problem may be the “friendship” itself on **social networks** (esp. Facebook). This could indicate that the judge may be biased in the event they decide in a case in which the person in question is involved. By adding each other to the list of “friends”, the users express a certain affection towards each other, according to the Czech Union of Judges.⁴³ the Supreme Court has also commented on this, stating that *“listing a person among so-called ‘friends’ on Facebook may in itself be grounds for disqualifying the judge in question from hearing a case under Section 30(1) of the Criminal Procedure Code.”*⁴⁴ A judge should also pay attention to the “like” function, which also represents a form of certain sympathy or consent to a post (whether this is a share, article, comment, photo, etc.)⁴⁵ Articles and posts shared by other users on a given judge’s profile pose a potential threat. Such a contribution may influence them (and thus compromise their impartiality), especially in relation to a matter on which they are to decide.⁴⁶

The Czech Union of Judges emphasizes that all the above applies even if a judge speaks anonymously on social media, i.e. not under their own name.⁴⁷

Examples of good practice

The Author considers that the strictly expressed non-binding nature of the code is to be welcomed. the basic principles of judicial conduct are already described in the Courts and Judges Act and as such are binding and enforceable. On the other hand, the Code of Ethics for Judges and the Ethical Principles of Judicial Conduct serve as “guides” for achieving the highest standards of conduct.

This is important not only for preserving the impartiality and independence of judges, where adherence to ethical standards can help them choose the appropriate course of action in specific cases, but also for building confidence in the courts as independent institutions in the eyes of the public.

41 Constitutional Court ruling of 30 October 2014, case No III. ÚS 3844/13.

42 DERKA, Ladislav. *Ethical limits of a judge's social media activity*. Czech Union of Judges [online]. 2017, [cit. 2023-04-14]. Available from: <http://www.soudci.cz/zpravy-a-stanoviska/pohledy-a-nazory/843-eticke-meze-pusobeni-soudce-na-socialnich-sitich.html>

43 Ibid.

44 Resolution of the Supreme Court of 16 November 2011, case No 7 Tdo 1289/2011.

45 DERKA, Ladislav. *Ethical limits of a judge's social media activity*. Czech Union of Judges [online]. 2017, [cit. 2023-04-14]. Available from: <http://www.soudci.cz/zpravy-a-stanoviska/pohledy-a-nazory/843-eticke-meze-pusobeni-soudce-na-socialnich-sitich.html>

46 Ibid.

47 Ibid.

The fact that the Commentary to the Code of Ethics for Judges contains questions that relate to specific situations in which a given judge may find themselves is to be welcomed. Some of the questions are interconnected and the judge's answers are thus divided into several steps. By answering these questions, a judge can deduce for themselves in a particular case what conduct is not only in accordance with legal norms but also ethically correct. It is necessary to highlight, for example, this series of interconnected questions: *"Is the event I intend to attend public or private? Do I know any of the people who will be attending this event? Do I know the planned or anticipated course of the event? Do I intend to attend such an event in my official capacity or as a private individual? Will my participation be active or passive? Do the answers to the above questions suggest that my participation could lead to a diminution of judicial dignity?"*⁴⁸

2.2 Public prosecutors

Bindingness of codes of ethics, their applicability and forms

Public prosecutors in the Czech Republic have their own code of ethics and it is binding for all public prosecutors (**Code of Ethics for Public Prosecutors** of 16 April 2019 with effect from 1 May 2019). As can be seen, inter alia, from the website of the Prosecutor General's Office, this code of ethics was issued as a **Joint Measure** of public prosecutors at all levels⁴⁹, No 7 SPR 269/2017 (hereinafter the **"Joint Measure"**).⁵⁰ It is stated in the same place that "[t]his code of ethics is **binding on all public prosecutors**"⁵¹, which is also implied by Article III(1) of the Joint Measure. **the binding nature and applicability of the Code of Ethics for Public Prosecutors are thus clearly declared.**

Codes of ethics of public prosecutors have a relatively long tradition in the Czech Republic. the Code of Ethics for Public Prosecutors of 16 April 2019 is the fourth document of this nature. Prior to this code, ethical issues of the performance of the public prosecutor's office were already regulated by the Code of Professional Ethics of Public Prosecutors (created by the Prosecutor General's Office), the Moral Code of Public Prosecutors (created by the Union of Public Prosecutors of the Czech Republic) and the Codes of Ethics of Public Prosecutors (adopted as part of internal anti-corruption measures at individual public prosecutors' offices).⁵²

The Code of Ethics for Public Prosecutors is available online for the general public⁵³. This code covers more or less the same **areas of conduct** as similar codes of ethics or similar ethical rules in the other states under review. the Code of Ethics specifically regulates:

- A) legality and independence – it regulates the exercise of authority according to the law and the conscience of the public prosecutor independently of other influences;
- B) impartiality;
- C) expertise – it addresses the issue the performance of the office at the highest professional level;
- D) trustworthiness – it addresses issues of trustworthiness in personal life as well, including not accepting gifts;
- E) dignity and decorum – it governs issues of confidentiality, courtesy and decorum, including appropriate dress;
- F) cooperation not only with other public prosecutors, but also with other authorities, including foreign ones.

Statistics on breaches of the Code of Ethics for Public Prosecutors are not available.

⁴⁸ Commentary to the Code of Ethics for Judges, p. 32.

⁴⁹ Respectively, regional public prosecutors issued this Joint Measure also for the respective district public prosecutors' offices.

⁵⁰ Available from: <https://verejnazaloba.cz/vice-o-sz/eticky-kodex-statniho-zastupce/>

⁵¹ Available from: <https://verejnazaloba.cz/vice-o-sz/eticky-kodex-statniho-zastupce/>

⁵² Commentary to the Code of Ethics for Public Prosecutors, p. 2.

⁵³ Available from: <https://verejnazaloba.cz/vice-o-sz/eticky-kodex-statniho-zastupce/>

Enforcement of codes of ethics and resolution of breaches

The Code of Ethics for Public Prosecutors declares its binding nature for all public prosecutors. However, there are doubts as to whether a breach of the Code of Ethics for Public Prosecutors can in itself establish disciplinary liability. As the literature states: *“The code of ethics de facto develops and specifies the duties of the public prosecutor enshrined in the commented provision and Section 25 of the Act on the Public Prosecutor’s Office. It is questionable whether it would be possible to make binding those parts of the code of ethics that would exceed the legal duties of public prosecutors, but given the current content of the code of ethics, this is a theoretical question.”*⁵⁴

The Code of Ethics for Public Prosecutors was issued as a Joint Measure pursuant to Section 13c(7) of Act No 283/1993 Coll., on the Public Prosecutor’s Office, as amended (hereinafter the **“Act on the Public Prosecutor’s Office”**).

Public prosecutors are liable for disciplinary offences, which are defined in Section 28 of the Act on the Public Prosecutor’s Office as *“a culpable breach of the duties of a public prosecutor, culpable conduct or actions of a public prosecutor that threaten confidence in the work of the public prosecutor or in the professionalism of their actions, or diminishes the dignity and respectability of the office of public prosecutor.”*

According to expert literature, a breach of the measures under Section 13c(7) of the Act on the Public Prosecutor’s Office could result in a breach of duty.⁵⁵ Therefore, it could be concluded that a breach of the Code of Ethics for Public Prosecutors may give rise to liability for disciplinary offences and that it is therefore enforceable. However, this conclusion is to some extent relativised by disciplinary decision-making practice. No decision has yet been issued in disciplinary proceedings in which the disciplinary liability of a public prosecutor has been established on the basis of a breach of the Code of Ethics for Public Prosecutors or the previous Code of Professional Ethics of Public Prosecutors. the disciplinary court has so far inferred disciplinary liability only on the basis of breaches of the relevant provisions of the Act on the Public Prosecutor’s Office.

Since the Code of Ethics for Public Prosecutors does not add new duties to the public prosecutor beyond the statutory ones, the disciplinary court takes into account primarily whether the relevant provision of the Act on the Public Prosecutor’s Office has been breached.

Disciplinary proceedings are conducted and decided by the disciplinary court, which is the Supreme Administrative Court. It always sits and decides in chambers composed of the president of the chamber, their deputy and four lay judges. Section 4a(1) of Act No 7/2002 Coll. states that *“The president of the chamber will be a judge of the Supreme Administrative Court and their deputy will be a judge of the Supreme Court. Two of the lay judges will be public prosecutors and two will be persons nominated pursuant to paragraph 4, third sentence. Among the lay judges, who are not public prosecutors, there must always be at least one attorney and one person practising another legal profession, if they are entered in the list of lay judges for proceedings in the matter of judges.”*

The disciplinary proceedings themselves are always initiated on the basis of a petition submitted by the entities referred to in Section 8(5) of Act No 7/2002 Coll. the accused is entitled to choose a defence counsel from the ranks of public prosecutors and attorneys. If necessary, a preliminary investigation of any unclear facts is carried out. If not, the disciplinary chamber holds an oral hearing.

If the chamber, by a majority of all votes, concludes that the disciplinary defendant has committed a disciplinary offence, it may impose one of the following disciplinary measures on the public prosecutor, depending on the seriousness of the disciplinary offence: a reprimand, a salary reduction of up to 30% for a maximum of one year and, in the case of repeated disciplinary offences committed by the public prosecutor in the period before the expungement of the disciplinary sanction, for a maximum of two years, and removal from office.

54 PAVLIK, J. Section 24. [Duties of the Public Prosecutor]. In: LATA, J., PAVLÍK, J., ZEZULOVÁ, J. the Law on State Prosecution. Commentary. [ASPI system]. Wolters Kluwer. Available from: www.aspi.cz. ISSN 2336-517X.

55 PAVLIK, J. Section 28. [Disciplinary Offence]. In: LATA, J., PAVLÍK, J., ZEZULOVÁ, J. the Law on State Prosecution. Commentary. [ASPI system]. Wolters Kluwer. Available from: www.aspi.cz. ISSN 2336-517X.

If the hearing of the public prosecutor's disciplinary offence is sufficient, the imposition of such disciplinary measure may be waived. In the case of minor deficiencies and shortcomings, the conduct may be reprimanded in writing by a high public prosecutor without initiating disciplinary proceedings.⁵⁶ the Minister of Justice will temporarily suspend a public prosecutor from the performance of their duties if they are prosecuted for a disciplinary offence for which the disciplinary measure of removal from office may be imposed, for the period until the disciplinary proceedings are concluded.⁵⁷

Ethics education and support

An important methodological support for the practical use of the Code of Ethics for Public Prosecutors is the commentary, which is part of the more extensive edition of the Code of Ethics for Public Prosecutors.⁵⁸ The commentary discusses each paragraph of the code in detail. It provides a detailed interpretation of each paragraph as well as relevant case law. the case law contained in the commentary includes not only decisions of general courts, but also disciplinary decision-making practice, i.e. decisions of the Disciplinary Chamber of the Supreme Administrative Court, and opinions of the Ethics Committee of the Union of Public Prosecutors of the Czech Republic.

With regard to the provision of support on ethical issues, high public prosecutors shall, upon request, provide advice on the interpretation of and compliance with the Code of Ethics (cf. Article IV of the Joint Measure). Ethics training is mandatory for all public prosecutors. Ethical issues related to the performance of the office of public prosecutor are covered by training upon taking office and thereafter every three years (cf. Article V of the Joint Measure). Public prosecutors may also seek advice from a specialised institution – the **Ethics Committee of the Union of Public Prosecutors of the Czech Republic** provides opinions on problematic issues that may arise in practice. The opinions are subsequently published on the website and are publicly available. So far, the Ethics Committee of the Union of Public Prosecutors of the Czech Republic has prepared opinions on the following questions:

- the possibility for a public prosecutor to carry out lecturing activities on the basis of a trade licence;⁵⁹
- the use of municipal flats by public prosecutors on preferential terms;⁶⁰
- the participation of public prosecutors in televised knowledge-based competitions;⁶¹
- the membership of public prosecutors in Rotary clubs;⁶²
- organising exhibitions in public prosecutors' office premises;⁶³
- the participation of public prosecutors in the bodies of legal persons;⁶⁴
- a speech by JUDr. Prokešová before a journalist;⁶⁵
- letter of Mgr. Nováková addressed to the Minister of Justice regarding the further appointment of JUDr. Vesecká.⁶⁶

56 Cf. Section 30 of the Act on the Public Prosecutor's Office.

57 Cf. Section 22(2) of the Act on the Public Prosecutor's Office.

58 On the website of the public prosecutor's office we can find both the Code of Ethics for Public Prosecutors itself and a version with an extensive commentary.

59 Opinion of the Ethics Committee on the Possibility for a Public Prosecutor to Perform Lecturing Activities on the Basis of a Trade Licence, 12 November 2019, available from: <https://www.uniesz.cz/stanovisko-eticke-komise-k-moznosti-statniho-zastupce-vykonavat-lektorskou-cinnost-na-zaklade-zivnostenskeho-opravneni/>

60 Opinion of the Ethics Committee on the use of Municipal Flats by Public Prosecutors on Preferential Terms, 22 February 2019, available at: <https://www.uniesz.cz/stanovisko-eticke-komise-k-uzivani-obecnich-bytu-statnimi-zastupci-za-zvyhodnenych-podminek/>.

61 Opinion of the Ethics Committee on the Participation of Public Prosecutors in Televised Knowledge-Based Competitions of 14 May 2015, available from: <https://www.uniesz.cz/stanovisko-eticke-komise-k-ucasti-statnich-zastupcu-v-televiznich-vedomostnich-soutezich/>

62 Opinion of the Ethics Committee on the Membership of Public Prosecutors in Rotary Clubs with Rules of Professional Conduct, 26 November 2012, available from: <https://www.uniesz.cz/stanovisko-eticke-komise-k-clenstvi-statnich-zastupcu-v-rotary-klubech-s-pravidly-profesni-etiky/>

63 Opinion of the Ethics Committee on the Organisation of Exhibitions in Public prosecutors' Office Premises of 10 August 2012, available from: <https://www.uniesz.cz/stanovisko-eticke-komise-k-poradani-vystav-v-prostorach-statniho-zastupitelstvi/>

64 Statement of the Ethics Committee on the Participation of Public Prosecutors in the Bodies of Legal Persons, 7 November 2011, available from: <https://www.uniesz.cz/prohlaseni-eticke-komise-k-ucasti-statnich-zastupcu-v-organech-pravnickych-osob/>

65 Opinion of the Ethics Committee of the Union of Public Prosecutors on the Speech of JUDr. M. Prokešová of 7 June 2011, available from: <https://www.uniesz.cz/stanovisko-eticke-komise-usz-k-vystoupeni-judr-m-prokesove/>

66 Opinion – Mgr. Věra Nováková of 1 December 2010, available from: <https://www.uniesz.cz/stanovisko-mgr-vera-novakova/>

In general, the Judicial Academy and the regional, high and supreme public prosecutors' offices are also involved in the education of public prosecutors in ethical issues. Educational activities for public prosecutors are often shared with judges. the Judicial Academy routinely holds voluntary three-day seminars twice a year, attended by around 100 judges and public prosecutors per year.⁶⁷

Examples of good practice

The clear declaration of the binding nature of this code of ethics and its application to all public prosecutors can be considered positive. the Code of Ethics for Public Prosecutors can be perceived as a "guide" on how to achieve the highest standards of conduct, something important not only for maintaining the independence and impartiality of public prosecutors, but also for the public image of the judiciary.

⁶⁷ The next seminar is now the Ethics in Law seminar and will be held from 9 to 11 October 2023, and is open to judges and public prosecutors. Available from: https://asja.jacz.cz/index.php?pageid=1006&course_id=13687

3 Slovakia

3.1 Judges

Form of codes of ethics, their applicability, binding force

The Judicial Council of the Slovak Republic issued on 17 December 2015 its Principles of Judicial Ethics. However, these were not the first principles to exist in Slovakia. These new principles also stipulated that the *“Principles of Judicial Ethics approved by the Judicial Council of the Slovak Republic on 14 April 2001”* are repealed. These abolished principles are also referred to in the GRECO Evaluation Report of 2013 in paragraph 84.⁶⁸

The Judicial Council of the Slovak Republic is a body which has its basis in Section 141a et seq. of Constitutional Act No 460/1992 Coll., the Constitution of the Slovak Republic. Pursuant to Section 141a(1) of Constitutional Act No 460/1992 Coll., the Constitution of the Slovak Republic, the Judicial Council of the Slovak Republic is *“the constitutional body of judicial legitimacy.”* Pursuant to Section 141a(6)(i) of Constitutional Act No 460/1992 Coll., the Constitution of the Slovak Republic, the competence of the Judicial Council of the Slovak Republic includes *“to issue principles of judicial ethics in cooperation with the bodies of judicial self-government”*. Compared to the other states that are the subject of this analysis, this is an exceptional constitutional enshrinement of ethical principles, not only for judges but also for public prosecutors.

Pursuant to Section 141a(6)(a) of Constitutional Act No 460/1992 Coll., the Constitution of the Slovak Republic, it is also the task of this council to *“ensure the performance of the tasks of public control of the judiciary”*. The important position of the Judicial Council of the Slovak Republic can be traced from the fact that it is this council that submits proposals for the appointment of new judges to the president of the republic (cf. Sections 6 and 7 of Act No 385/2000 Coll., on judges and lay judges).

Pursuant to Section 30(2)(g) of Act No 385/2000 Coll., on judges and lay judges, judges are obliged to observe the principles of judicial ethics. the title of the quoted provision is *“Basic Duties of a Judge”*. Moreover, the text of the Principles of Judicial Ethics explicitly states that they set standards for regulating the conduct of judges. In this way, they differ considerably from the other texts of judicial ethics compared, which are conceived rather as non-binding and recommending “guidelines” for correct conduct. **It is therefore possible to speak of the binding nature of these ethical principles on the basis of the law. This also implies a general application to all judges.**

The Principles of Judicial Ethics are **available online** for the general public on the website of the Judicial Council of the Slovak Republic.⁶⁹

The **areas of conduct** covered by these ethical principles are not particularly different from similar documents in the comparison states. the Principles of Judicial Ethics first set out general principles in Article II, under which they subsume compliance with fundamental values such as independence and impartiality, integrity, fairness and transparency, courtesy, discretion, confidentiality, tolerance, equal treatment and sufficient professional qualifications. Furthermore, emphasis is placed on the personal qualities of the judge. By these qualities, the Principles of Judicial Ethics mean the exercise of judicial office with humanity, courage, seriousness, discretion, diligence, respect and the ability to listen. the duties of the judge arising from these principles are also regulated at the end of this article. These duties are divided into duties in the exercise of their office, duties to their profession and duties in civil life. the duties in civil life are further divided into the judge’s private life, their out-of-work activities, and their public life.⁷⁰

68 GRECO Evaluation Report 2013, available from:
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ca488>

69 Available from: <https://www.sudnarada.gov.sk/zasady-sudcovskej-etiky/>

70 Cf. Principles of Judicial Ethics, p. 3.

Subsequently, specific rules are derived from the general principles in Article III, and guarantees of compliance and liability for breach of the principles are set out. For example, the above-mentioned duty to uphold fundamental values like independence and impartiality results in the specific rule in Article III(1), which provides that *“A judge shall respect and promote the independence, integrity, moral integrity and impartiality of the judiciary and shall avoid improper conduct or behaviour, including that which objectively gives the appearance of impropriety”*. Consultancy activities are also regulated (see the details below).

Enforcement of codes of ethics and resolution of breaches

Pursuant to Section 53(1)(d) of Act No 757/2004 Coll., on courts: ***“The president of the court shall ensure observance of the principles of judicial ethics, the principles of the dignity of judicial proceedings and the continuity of judicial proceedings and, to this end, shall monitor the observance of judicial ethics”***.

Pursuant to Section 53(3) of Act No 757/2004 Coll., on courts: *“If the president of the court finds that the principles of judicial ethics, the dignity of judicial proceedings and the continuity of judicial proceedings have been breached, they shall discuss the findings with the judge concerned [...] and, where appropriate, impose measures within their competence leading to the correction of the deficiencies and the elimination of their causes.”* Such judges are subsequently obliged under the cited provision to act in accordance with those measures within the applicability of their duties under special regulations.

Pursuant to Section 115 of Act No 385/2000 Coll., on judges and lay judges, judges are responsible for disciplinary offences, which are further divided into disciplinary offences, serious disciplinary offences, and serious disciplinary offences incompatible with the office of judge. the exact list of offences is set out in Section 116 of Act No 385/2000 Coll., on judges and lay judges. Liability for them is extinguished by limitation, which is five years for culpable conduct that causes a delay in the proceedings and three years in other cases.

In view of the above, it is important that, from the perspective of disciplinary liability, the duty to observe the principles of judicial ethics is one of the basic duties of judges. Pursuant to Section 116(1)(a) of Act No 385/2000 Coll., on judges and lay judges, culpable failure to fulfil or breach of judges' duties is also a disciplinary offence.

The competent disciplinary court is the Supreme Administrative Court (Supreme Administrative Court of the Slovak Republic), which acts and decides in disciplinary chambers (cf. Section 3 of Act No 432/2021 Coll., on the disciplinary rules of the Supreme Administrative Court of the Slovak Republic). the chambers are composed of five members, namely the president, two chamber judges and two lay judges [cf. Section 5(1) and (2) of Act No 432/2021 Coll., on the disciplinary rules of the Supreme Administrative Court of the Slovak Republic].

The disciplinary proceedings themselves are always initiated on a petition, which may be filed by the entities listed in Section 15 of Act No 432/2021 Coll., on the disciplinary rules of the Supreme Administrative Court of the Slovak Republic. There is a subjective time limit of one year and an objective time limit of three years for filing a petition to initiate proceedings. If necessary, a preliminary investigation of any unclear facts is carried out. If not, the disciplinary chamber holds an oral hearing. the accused is entitled to choose a defence counsel from among judges or attorneys.

The disciplinary chamber may, by a majority of votes, impose the following measures for a disciplinary offence:⁷¹ censure, a salary reduction of up to 30% for a maximum period of three months and, in the case of a repeat offence committed before the expungement of the first offence, for a period of up to six months.

In the case of minor deficiencies at work or behavioural lapses, the entity entitled to file a disciplinary petition may reprimand the judge in writing for such conduct, if such a form of redress is sufficient [cf. Section 117(7) of Act No 385/2000 Coll., on judges and lay judges].

⁷¹ Cf. Section 117 of Act No 385/2000 Coll., on judges and lay judges.

An appeal can be made against a decision in disciplinary proceedings within 15 days from the date of delivery of the decision [Section 37(2) of Act No 432/2021 Coll., on the disciplinary rules of the Supreme Administrative Court of the Slovak Republic]. Such appeal may be lodged by the judge who was the subject of the decision or by the petitioner under the conditions set out in Section 37(1) of that Act. Other admissible remedies pursuant to Section 37(5) of the Act are not admissible. Pursuant to Section 37(4) of that Act, a party to the proceedings may request a renewal of proceedings within three years of the date on which the disciplinary decision became final.

Thus, it can be concluded that the Principles of Judicial Ethics are binding and enforceable, and that disciplinary measures can be imposed for their breach.

Unfortunately, there are no statistics available regarding breaches of the ethics rules set forth in the Principles of Judicial Conduct.

Slovak judges do not have any special rules for their conduct on social networks, but the provisions of the Principles of Judicial Ethics can be reasonably applied.

Ethics education and support

As in the case of the Czech judiciary, the main guarantor of compliance with the principles of judicial ethics is the judge themselves [cf. Article IV(1) of the Principles of Judicial Ethics].

The **Judicial Council of the Slovak Republic** is another guarantor of judicial ethics in Slovakia. However, according to Article IV(2) of the Principles of Judicial Ethics, the Judicial Council of the Slovak Republic exercises general supervision over the application of ethical principles and their observance. At the same time, according to this quoted paragraph, **the Principles of Judicial Ethics are to be regularly updated and their interpretation unified**. In order to unify the interpretation, it is to publish opinions and recommendations on its website (cf. Article IV(3) of the Principles of Judicial Ethics and Section 27c(f) of Act No 385/2000 Coll., on judges and lay judges).⁷² Its remit includes providing answers to specific questions and ethical dilemmas of judges [cf. Article V(1) of the Principles of Judicial Ethics].

In the context of **advisory activities**, the Principles of Judicial Ethics also mention the possibility for the competent bodies of judicial self-government to provide consultations on ethical issues at the request of a judge [cf. Article V(2) (a) of the Principles of Judicial Ethics].

Unlike in Czech regulation, there is no publicly available **commentary** to the Principles of Judicial Ethics, and it is not even clear whether one exists. However, its existence is anticipated by Article VI(4) of the Principles of Judicial Ethics.

Regarding **training**, the conclusions of the GRECO Evaluation Report 2013 in paragraph 84⁷³ state: *“Ethical issues are dealt with in the introductory and – occasionally – specialised training courses offered to judges by the Judicial Academy.”*

⁷² All opinions are available from: <https://www.sudnarada.gov.sk/stanoviska-sudnej-rady-slovenskej-republiky/>. Cf. e.g. the most recent Opinion of the Judicial Council of the Slovak Republic of 30 April 2018 on the interpretation of the Principles of Judicial Ethics pursuant to Article V(1) (a) of the Principles of Judicial Ethics, available from: https://www.sudnarada.gov.sk/data/files/916_stanovisko-sudnej-rady-slovenskej-republiky-z-30-aprila-2018-k-interpretacii-zasad-sudcovskej-etiky-podla-cl-v-ods-1-pism-a-zasad-sudcovskej-etiky.pdf?csrt=6039960107433892501

⁷³ GRECO Evaluation Report 2013, available from: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ca488>

The GRECO Compliance Report 2015⁷⁴ states that *“The Judicial Academy has been organising training on ethical issues for several years. For example, in 2015, two training sessions on professional ethics for judges and public prosecutors were held which, among other things, dealt with the preparation of the ‘Principles of Judicial Ethics’. Once adopted, training on the Principles of Judicial Ethics will be included in the Judicial Academy’s curriculum.”*

The conclusions of the 2013 GRECO Evaluation Report in paragraph 84⁷⁵ state that: *“Ethical issues are dealt with in the introductory and – occasionally – specialised training courses offered to judges by the Judicial Academy.”*

Examples of good practice

The role of the Judicial Council of the Slovak Republic, as the main body established directly on the basis of Constitutional Act No 460/1992 Coll., the Constitution of the Slovak Republic, which consistently deals with issues of judicial ethics, can definitely be considered positive. the two-instance nature of the disciplinary procedure is also positive.

The fact that the binding nature of these ethical rules is not in doubt is also positive.

3.2 Public prosecutors

Form of codes of ethics, their applicability, binding force

Public prosecutors in Slovakia have their own code of ethics (**Code of Ethics for Public Prosecutors**). This code was adopted by the Council of Public Prosecutors of the Slovak Republic at its regular meeting on 11 January 2016. the Code of Ethics stands out at first glance because it has legal basis – the provisions of Act No 154/2001 Coll., on public prosecutors and trainee public prosecutors. Pursuant to Section 217a of this Act: *“The rules of ethics for public prosecutors are contained in the Code of Ethics for Public Prosecutors. the Code of Ethics for Public Prosecutors is approved by the Council of Public Prosecutors; the Code of Ethics for Public Prosecutors is published on the website of the General Prosecutor’s Office.”*

The characteristics of the Code of Ethics are described in a comprehensive commentary: *“The Code of Ethics cannot be considered a rigid and closed document. On the contrary, it is a living document, open to the knowledge resulting from the decision-making activity of the Ethics Committee as well as from the knowledge of the public prosecutor’s office resulting from the submissions of natural and legal persons concerning the administration and conduct of the public prosecutor. Amendments thereto will be approved by the Council of Public Prosecutors.”*⁷⁶

The binding nature of the Code of Ethics for Public Prosecutors is directly derived from the law. Pursuant to Section 26(1)(n) of Act No 154/2001 Coll., on public prosecutors and trainee public prosecutors: *“The public prosecutor shall observe the rules of ethics in the performance of public prosecution”*. Moreover, the preamble to the given Code of Ethics explicitly states that *“The Code of Ethics for Public Prosecutors is **binding for all public prosecutors**”*.

The Code of Ethics for Public Prosecutors is available online for the general public⁷⁷.

74 GRECO Compliance Report 2015, paragraph 37, available from: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ca50e>

75 GRECO Evaluation Report 2013, available from: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ca488>

76 Commentary on the Code of Ethics for Public Prosecutors, p. 2, available from: <https://www.genpro.gov.sk/eticka-komisia-prokuratury/komentar-k-etickemu-kodexu-prokuratorov-3971.html>

77 Available from: <https://www.genpro.gov.sk/eticka-komisia-prokuratury/eticky-kodex-prokuratora-3970.html>

With regard to the **areas of conduct and behaviour** covered by this code, the Code of Ethics for Public Prosecutors first specifically determines, in Article 1, the requirements to uphold the legality and independence of the public prosecutor's conduct. These requirements are specified in the individual provisions, so for example in Article 1.2 it can be found that the public prosecutor may not exceed the powers conferred by law in the performance of their official duties. In other words, it is a manifestation of the principle of enumerativity of public law pretensions. A public prosecutor may also not, for example, accept gifts or other benefits that would raise suspicions about their independence (Article 1.4).

The following is the requirement for the impartiality of the public prosecutor, which is expressed in Article 2 of the Code of Ethics for Public Prosecutors. According to Article 2.1, impartiality is one of the basic principles of the work of the public prosecutor. They must therefore refrain, for example, from public speeches and comments that could adversely affect proceedings (cf. Article 2.1.2).

Article 3 of the Code of Ethics for Public Prosecutors further addresses the topics of expertise and professionalism of the public prosecutor's conduct. In this context, it is necessary to emphasise in particular the duty to improve not only one's professional knowledge but also one's social skills and selected personal qualities (cf. Article 3.3). Moreover, the Code of Ethics for Public Prosecutors deepens solidarity among public prosecutors by requiring the public prosecutor to share their knowledge and experience with colleagues (Article 3.6).

All this is then reflected in the requirement for their credibility (Article 4), courtesy and decency (Article 5). The public prosecutor must also therefore behave in accordance with the rules of ethics outside their office (Article 4.1), while being courteous and respectful of their surroundings (Article 5.1).

The wording of the oath taken by a trainee public prosecutor upon appointment to their office is evidence of the considerable emphasis placed on ethics in public prosecution. Pursuant to Section 239(3) of Act No 154/2001 Coll., on public prosecutors and trainee public prosecutors, a trainee public prosecutor takes an oath in which they undertake, among other things, to prepare conscientiously for the performance of the office of public prosecutor and to **adopt the principles of ethics relating to public prosecution**.

Slovak public prosecutors do not have special rules for conduct on social media, but the provisions of the Code of Ethics for Public Prosecutors may be applied accordingly.

Enforcement of codes of ethics and resolution of breaches

Pursuant to Section 188(1)(a) of Act No 154/2001 Coll., on public prosecutors and trainee public prosecutors, a disciplinary offence is a *“culpable failure to fulfil or breach of the duties of a public prosecutor.”* It can thus be assumed that the regime will be similar to that of a judge. the title of Section 26 of Act No 154/2001 Coll., on public prosecutors and trainee public prosecutors, is *“Basic duties of the public prosecutor”* and its paragraph 1(n) determines that the public prosecutor shall observe the rules of ethics in public prosecution in the performance of their office. **In view of the above, it can be concluded that the Code of Ethics for Public Prosecutors is binding and enforceable and that a breach of the rules contained therein may result in disciplinary proceedings.**

Disciplinary proceedings are conducted in the same way as for any other disciplinary breach, with one exception. In the event an entity entitled to file a petition for disciplinary proceedings believes that the disciplinary offence by the public prosecutor consists in a breach of ethical rules, they will ask the Ethics Committee for an opinion that is binding on them [cf. Section 217b(1) of Act No 154/2001 Coll., on public prosecutors and trainee public prosecutors].

Liability is extinguished by limitation, which is five years for culpable conduct that has caused delays in proceedings and three years in other cases [cf. Section 194(1) of Act No 154/2001 Coll., on public prosecutors and trainee public prosecutors].

The competent disciplinary court is the Supreme Administrative Court (Supreme Administrative Court of the Slovak Republic), which acts and decides in disciplinary chambers (cf. Section 3 of Act No 432/2021 Coll., on the disciplinary rules of the Supreme Administrative Court of the Slovak Republic). the chambers are composed of five members, namely the president, two chamber judges and two lay judges [cf. Section 5(1) and (2) of Act No 432/2021 Coll., on the disciplinary rules of the Supreme Administrative Court of the Slovak Republic].

The disciplinary proceedings themselves are always initiated on a petition, which may be filed by the entities listed in Section 16 of Act No 432/2021 Coll., on the disciplinary rules of the Supreme Administrative Court of the Slovak Republic. There is a subjective time limit of one year and an objective time limit of three years for filing a petition to initiate proceedings. If necessary, a preliminary investigation of any unclear facts is carried out. If not, the disciplinary chamber holds an oral hearing. the accused is entitled to choose a defence counsel from among attorneys or public prosecutors [cf. Section 22(1) and (2) of Act No 432/2021 Coll., on the disciplinary rules of the Supreme Administrative Court of the Slovak Republic].

The disciplinary chamber may, by a majority of votes, impose a written reprimand or a salary reduction of up to 15% of the basic salary for a maximum of three months; in the case of a repeat disciplinary offence committed in the period before the expungement of the disciplinary measure, for a maximum of six months. In the event of serious misconduct, the penalty may be a reduction of the basic salary by 15% to 50% for a maximum of one year, removal from the post of high public prosecutor, transfer to a lower level public prosecutor's office or removal from office.⁷⁸

An appeal may be filed against a decision in disciplinary proceedings within 15 days from the date of delivery of the decision [Section 37(2) of Act No 432/2021 Coll., on the disciplinary rules of the Supreme Administrative Court of the Slovak Republic]. An appeal may be filed by the public prosecutor who was the subject of the decision or by the petitioner, under the conditions set out in Section 37(1) of the quoted Act. Other admissible remedies pursuant to Section 37(5) of the Act are not admissible. Pursuant to Section 37(4) of the Act, a party to the proceedings may request a retrial within three years of the date on which the disciplinary decision became final.

Statistics on breaches of the ethical rules set out in the codes of ethics are not available.

Thus, it can be concluded that the Code of Ethics for Public Prosecutors is binding, enforceable and that disciplinary measures can be imposed for its breach.

Ethics education and support

There is a commentary on the code of ethics that was issued on 4 February 2016. This commentary is not as extensive as the Czech commentary to the Code of Ethics for Public Prosecutors or the Czech commentary to the Code of Ethics for Judges. It does not contain a list of references to the relevant laws, nor does it cite relevant case law or literature. It only provides a brief explanation of each provision of the Code of Ethics for Public Prosecutors.

The commentary itself notes that it is not **“rigid guidance on the application of the code by the petitioner or the ethics committee itself.”**⁷⁹ It is merely guidance on the interpretation of the text of the code of ethics in question.

The importance of further training for public prosecutors is also emphasised in the text of the Code of Ethics for Public Prosecutors itself – the entire Chapter 3 *“Expertise and professionalism of public prosecutors”* is devoted to it. the commentary subsequently presents how further training for public prosecutors works in Slovakia on page 6: *“Dozens of training events are organised every year to ensure that public prosecutors engage in lifelong learning. the Judicial Academy of the Slovak Republic is an educational institution that provides and organises*

⁷⁸ Cf. Section 189 of Act No 154/2001 Coll. on public prosecutors and trainee public prosecutors.

⁷⁹ Commentary to the Code of Ethics for Public Prosecutors, p. 2.

*educational activities for lifelong learning for public prosecutors. These training activities are planned in cooperation with the public prosecutors themselves and therefore always reflect their real needs. Educational activities for public prosecutors are also organised by the public prosecutor's offices themselves, in particular by the General Prosecutor's Office of the Slovak Republic. It is essential that the public prosecutor participate in such educational activities that contribute to the maintenance and deepening of their professional knowledge necessary for the proper and professional performance of the public prosecutor's office."*⁸⁰

The 2015 report on the implementation of GRECO recommendations states in paragraph 55⁸¹ that: *"The curriculum of the Slovak Judicial Academy for 2015 included training activities in ethics, namely two training courses on 'Professional ethics for judges and public prosecutors' and one training course on 'Judicial ethics and the quality of judicial decisions'. Seminars on these topics are scheduled for May and October 2015, and the curriculum will be updated as needed."* These training events continued as per the 2017 Second report on the implementation of GRECO recommendations, paragraph 59.⁸²

Examples of good practice

The fact that the ethical rules contained in the Code of Ethics for Public Prosecutors are binding and enforceable in Slovakia is also positive.

Slovakia seems to place a great deal of emphasis on legal ethics. the above is well illustrated by the fact that a trainee public prosecutor takes an oath in which they undertake, among other things, to prepare themselves conscientiously for the performance of the public prosecutor's office and to learn the principles of ethics in public prosecution.

⁸⁰ Commentary to the Code of Ethics for Public Prosecutors, p. 6.

⁸¹ Report on compliance with GRECO recommendations for 2015, available from: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ca50e>

⁸² Second report on compliance with GRECO recommendations from 2017, available from: <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/168075f4b7>

4 Austria

4.1 Judges

Form of codes of ethics, their applicability, binding force and enforceability

As the **Association of Austrian Judges** (*Die Vereinigung der österreichischen Richterinnen und Richter*) states on its website⁸³, in 2003 the Association of Austrian Judges initiated a discussion process in Wels in which all judges from all over Austria could participate. On 8 November 2007, the Austrian judges adopted a declaration of judicial ethics called the “Welser Erklärung” (**Declaration of Wels**) after its place of origin. As the title of the document implies, the Declaration of Wels is a **non-binding recommendation document**.

The Declaration of Wels is available online for the general public on the website of the Association of Austrian Judges.⁸⁴ Due to its non-binding nature, it can be applied to the conduct of all judges at all levels.

The Declaration of Wels addresses the **broad area of judicial conduct**, including conduct outside the office, in the sense that conduct outside the office is left to the individual judge’s own responsibility (cf. Article IX of the Declaration of Wels). the first article of the Declaration of Wels contains a principle that is not quite traditional compared to other states, namely the protection of human rights and fundamental freedoms, including democratic and constitutional order. Article II regulates the independence of judges. Independence also includes the refusal of inappropriate gifts and invitations to events, and the rejection of any favouritism. Article III elaborates on the requirements for responsibility and organisation of each judge including, for example, personal development in all relevant areas and the proactive and purposeful organisation of work. the Declaration of Wels is conceived in such a way that it is not only about the personal development of the judge in question, but also about the exemplary training of those entrusted to the judge in question for training (cf. Article IV). Emphasis is also placed on the best possible organisation and administration of the judiciary (Article V).

Article VI regulates the issue of objective and equal treatment of the parties to proceedings to ensure a fair trial. the following Article VII regulates the requirement for rapid and high-quality decision-making without excessive formalism. the authors of the Declaration of Wels also recognize the importance of case law and therefore take efforts to ensure that oral and written statements are understandable to the public (Article VIII). the last Article X also addresses social influences.

Due to its non-binding, recommendatory nature, the Declaration of Wels is not enforceable and a breach of these principles cannot constitute a disciplinary offence. Hence the study does not discuss ways of dealing with ethics breaches or the institutes that address this issue.

However, according to the 2016 GRECO Evaluation Report, paragraph 103,⁸⁵ the Association of Austrian Judges is only one of the professional organisations that exist. This report states in paragraph 104 that the Austrian authorities also consider the code of ethics adopted in 2008 (and updated in 2012) by the Federal Chancellery for civil servants to be a code of ethics. Pursuant to paragraph 105 of the above-quoted report, this may give rise to contradictions as it is not clear to what extent the two codes will be equally applicable.

83 Available from: <https://richtervereinigung.at/ueber-uns/ethikerklaerung/>

84 Available from: <https://richtervereinigung.at/ueber-uns/ethikerklaerung/>

85 GRECO Evaluation Report 2016, available from: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806f2b42>

This contradiction continues to persist. According to the Ministry of Justice, the **Compliance Guidelines** (*Compliance-Leitlinien*) issued by the Ministry apply to all employees of the Austrian judiciary, including all judges and public prosecutors.⁸⁶ the Association of Austrian Judges, on the other hand, has stated that it only recognises the Declaration of Wels.⁸⁷

Nevertheless, the Author will also briefly describe the Compliance Guidelines. These guidelines are also inherently **not binding**. the Compliance Guidelines are available to the general public from the website of the Ministry of Justice.⁸⁸ the areas of conduct governed by these guidelines are independence, respect for the law and the rule of law, objectivity and impartiality, integrity, fairness, respect for the protection of fundamental rights, transparency, legal certainty, good administration of justice and fairness.

Statistics on breaches of the ethics rules in these documents are not available, partly due to the non-binding and non-enforceable nature of these ethics rules.

The Association of Austrian Judges, in cooperation with the Ethics Council (*Der Ethikrat*), has issued **recommendations for the use of social media by judges**. Article IX. the Declaration of Wels urges judges to be prudent in their conduct and statements to avoid any appearance of dependency and to maintain their credibility as judges. the recommendations directly state that Article IX does not exclude activities on social media, but provides a basis for interpreting ethical values when using it.⁸⁹

The recommendations recognise the growing importance of social media and the dangers associated with it. the recommendations summarise that judges are free to express their opinions and beliefs, but must be sensitive to their status as a judge and the impact of their social media activity on their reputation and standing in the legal system. the guidelines include specific recommendations, such as avoiding sharing information about ongoing cases and considering the potential impact of personal statements on public perceptions of the judiciary. The guidelines also advise judges to be careful in their choice of words and non-verbal communication on social media (e.g. when posting photographs).

The recommendations on the use of social media also include Compliance Guidelines that urge extra caution: *“Also in the case of social networks, no content may be disseminated that could damage the reputation of the office, the service or the professional image (e.g. content that could give the impression of bias and/or discrimination). It is also forbidden to disseminate internal service information or other information that has become known from official activities (e.g. details from files) on social networks.”*⁹⁰

Ethics education and support

On the occasion of the 10th anniversary of the adoption of the Declaration of Wels, the Association of Austrian Judges prepared a commentary on the individual principles contained in the Declaration. This comprehensive commentary clearly addresses all the articles of the Declaration of Wels.⁹¹

An Ethics Council (*Der Ethikrat*) was established in 2017 to advise on ethical issues. It started its activities in 2018, when the first members were elected. According to the commentary to the Declaration of Wels, the Ethics Council addresses issues of judicial values, measures for the education of judges, as well as the interpretation and submission of concrete proposals for the further development of the Declaration, including **an advisory capacity**.⁹²

86 Reply of the Austrian Ministry of Justice to the letter of 7 March 2023. Unpublished material, see Annex 1.

87 Reply of the Association of Austrian Judges to the letter of 7 March 2023. Unpublished material, see Annex 2.

88 Available from: <https://www.justiz.gv.at/justiz/compliance.79b.de.html>

89 Available from: <https://richtervereinigung.at/ueber-uns/empfehlungen-im-umgang-mit-sozialen-medien/>

90 Cf. Compliance Guidelines, pp. 43 and 44, available from: <https://www.justiz.gv.at/justiz/compliance.79b.de.html>

91 See Annex 2.

92 Cf. Commentary on the Declaration of Wels, pp. 5–6, available from: https://richtervereinigung.at/wp-content/uploads/delightful-downloads/2019/07/2019_Welser-Erklärung-Broschüre.pdf

Ethics advice is also governed by the Compliance Guidelines. Advice can be sought from a supervisor or head of department and, if that is not enough, the relevant department of the Ministry of Justice can be contacted.⁹³

The Author was informed by the Association of Austrian Judges that judges have so far only referred a few cases to the Ethics Council. However, they do not have the exact figures as they do not keep any records of these petitions.⁹⁴

According to the GRECO Evaluation Report 2016, paragraph 173: *“During this initial preparation [of judges, note from the Author] the courses include the ethics and professional conduct expected of judges and public prosecutors.”* Further, this report states in this paragraph that: *“At the end of 2012, the Association of Austrian Judges held a two-day seminar to present a revised version of the Declaration of Wels and to raise awareness of its new content.”*⁹⁵

The Austrian Ministry of Justice found that the training programme for the Austrian judiciary offers a wide range of personal development seminars. Particular emphasis is placed on the topics of ethics, service law for judges and public prosecutors, the job description of judges and public prosecutors, communication training, interaction between courts, experts and parties to the proceedings, professional handling of difficult or unusual situations in court proceedings, and impartial decision-making. To ensure comprehensive training, all these topics are already included in the training for judicial trainees. Educational events (usually in-person seminars) are held so regularly that all judicial trainees can attend them as part of their training.⁹⁶

In addition, the organisers of training for the Austrian judiciary (the Federal Ministry of Justice, the higher courts, the Procurator General’s Office, the Supreme Court and the Association of Austrian Judges, as well as the Association of Austrian Public Prosecutors) offer a number of training events in this field at varying frequencies every year. The aim of these training events is in particular to raise awareness of judicial independence.⁹⁷

An enquiry to the Association of Austrian Judges revealed that they do not currently run any courses on ethics. However, online training on compliance is ongoing for all professions within the judiciary.⁹⁸

Examples of good practice

The Declaration of Wels is accompanied by a quality commentary that can assist judges in deciding on the ethical issues they may face in their office. Judges also have access to a wide range of ethics and personal development training.

The existence of recommendations for the use of social media by judges issued by the Association of Austrian Judges in cooperation with the Ethics Council is also positive.

4.2 Public prosecutors

Form of codes of ethics, their applicability, binding force and enforceability

According to the preamble to the **Professional Code (Berufskodex)**, “[a]s judicial authorities within the meaning of Section 90a of the Austrian Federal Constitutional Law and thus part of the third branch of state power, Austrian public prosecutors undertake to comply with the Declaration of Principles of the Association of Austrian Judges

93 Compliance Guidelines, p. 44, available from: <https://www.justiz.gv.at/justiz/compliance.79b.de.html>

94 Reply of the Association of Austrian Judges to the letter of 7 March 2023. Unpublished material, see Annex 2.

95 GRECO Evaluation Report 2016, available from: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806f2b42>

96 Reply of the Austrian Ministry of Justice to the letter of 7 March 2023. Unpublished material, see Annex 1.

97 Reply of the Austrian Ministry of Justice to the letter of 7 March 2023. Unpublished material, see Annex 1.

98 Reply of the Association of Austrian Judges to the letter of 7 March 2023. Unpublished material, see Annex 2.

of 8 November 2007 (Declaration of Wels) and the 'Standards of Professional Responsibility and Declaration of Fundamental Duties and Rights of Public Prosecutors' (Professional Code of the International Association of Public Prosecutors) of 23 April 1999 **and adopt the Professional Code.**"⁹⁹

The Professional Code must be perceived as a non-binding document, but by its nature it influences the conduct of all public prosecutors. the Professional Code is **available online for the general public** on the website of the **Association of Austrian Public Prosecutors** (*Vereinigung Österreichischer Staatsanwältinnen und Staatsanwälte*).¹⁰⁰

As regards the areas of conduct and behaviour covered by the Professional Code, these provisions are not particularly different from the other ethical rules compared. However, in the introduction, like the Declaration of Wels, Article I provides for respect for human rights and fundamental freedoms and respect for the principles of the democratic rule of law.

The Professional Code also regulates the requirements for:

- A) the impartiality and objective performance of duties (Article II);
- B) independence (Article III);
- C) the quality of decision-making in public prosecuting in terms of thoroughness, speed and clarity (Article IV);
- D) continuing education, including in ethics (Article V);
- E) off-duty conduct (Article VI);
- F) socio-political engagement with regard to the credibility of public prosecutors (Article VII);
- G) the public prosecutor's relations with the public through the media (Article VIII).

Due to its non-binding, recommendatory nature, the Professional Code is not enforceable and its breach cannot give rise to disciplinary liability. Hence the study does not discuss ways of dealing with ethics breaches or the institutes that address this issue.

According to the interpretation of the Ministry of Justice, public prosecutors are also covered by the Compliance Guidelines. the discussion of these guidelines in chapter 4.1 applies mutatis mutandis to public prosecutors.

Statistics on breaches of the rules of ethics set out in the Professional Code are not available given the non-binding and non-enforceable nature of the code.

Ethics education and support

As confirmed by the Association of Austrian Public Prosecutors, there are no additional materials to the Professional Code in the sense of a commentary, practical guide or other such documents. There is also no institution set up to advise on ethical issues.¹⁰¹

Ethics training is carried out for judges and public prosecutors together. the Author therefore refers to the relevant chapter above.

Examples of good practice

The Author did not identify any examples of good practice due to the very fragmentary regulation of ethical issues for the Austrian public prosecutors.

99 Available from: <https://staatsanwaelte.at/wer-wir-sind/berufskodex/>

100 Available from: <https://staatsanwaelte.at/wer-wir-sind/berufskodex/>

101 Reply of the Association of Austrian Judges to the letter of 7 March 2023. Unpublished material, see Annex 2.

5 Germany

5.1 Judges

Form of codes of ethics, their applicability, binding force and enforceability

In April 2013, the Federal Assembly of Representatives of the German Association of Judges (*Die Bundesvertreterversammlung des Deutschen Richterbundes*) adopted the discussion paper “**Judicial Ethics in Germany – Theses for Discussing Professional Ethics of Judges and Public Prosecutors at the Deutscher Richterbund**” (*Richterethik in Deutschland – Thesen zur Diskussion Richterlicher und Staatsanwaltlicher Berufsethik im Deutschen Richterbund*).¹⁰² **the document deliberately refrains from formulating guidelines or a “code”:** “Ethical conduct is always the result of a process of deliberation and reflection based on free will. There is no single right or wrong answer to many questions. *Deutscher Richterbund* has therefore **deliberately chosen not to prepare guidelines or codes of conduct in terms of professional ethics**. Instead, in its theses on the professional ethics of judges and public prosecutors, it adopts those values that characterize conscious and responsible judges and public prosecutors. There is no definitive canon of values in this context. However, the *Deutscher Richterbund* is convinced that the values discussed in the following text are fundamental to the office of judges and public prosecutors.”¹⁰³

This document is available to the general public from the website of the German Association of Judges (*Der Deutsche Richterbund*).¹⁰⁴

In terms of conduct and behaviour, the discussion paper elaborates on a set of values that should be indispensable for judges and public prosecutors. These values include:

- A) independence;
- B) impartiality;
- C) personal integrity and probity – it is appropriate to behave in this way not only when working but also in one’s personal life; for judges and public prosecutors, important aspects of personal integrity include credibility, strong commitment, but also the courage to admit one’s mistakes and to be able to correct them;
- D) a sense of responsibility;
- E) moderation – it is advisable to behave in such a way as not to damage confidence in the judiciary or public prosecution; emotional restraint is also appropriate;
- F) humanity – it is appropriate to treat others with respect when acting as a judge or public prosecutor, including seeking mutual understanding;
- G) courage;
- H) diligence;
- I) transparency.

Similarly to other codes of ethics, the discussion paper mentions independence and impartiality first and foremost, but also emphasises personal integrity, a sense of responsibility, moderation, humanity, courage, diligence and transparency.

However, based on the GRECO Evaluation Report, the Federal Ministry of Justice and Consumer Protection published a compendium of ethical and professional standards for judges and public prosecutors in March 2016

¹⁰² Cf. <https://www.drb.de/positionen/themen-des-richterbundes/ethik>

¹⁰³ Available from: https://www.drb.de/fileadmin/DRB/pdf/Ethik/1901_DRB-Broschuere_Richterethik_EN_Judicial_Ethics.pdf

¹⁰⁴ Available from: https://www.drb.de/fileadmin/DRB/pdf/Ethik/1901_DRB-Broschuere_Richterethik_EN_Judicial_Ethics.pdf

that runs to over 500 pages. **This compendium states on p. 509 that there is no separate code of ethics for judges and public prosecutors in Germany.**¹⁰⁵

Although there is no specific code of ethics for judges in Germany, there is legislation that takes ethical principles into account. the special duties of judges are set out in Sections 38 to 43 of the German Judiciary Act (*Deutsches Richtergesetz, BGBl. I P. 713*). the Federal Civil Service Act (*Bundesbeamtengesetz, BGBl. I P. 160*) also regulates, for example, the admissibility of non-judicial activities during judicial service and gainful employment or other employment outside the civil service in the first years after retirement (cf. Section 99, 100 and Section 105). A judge may be held liable for a breach of these statutory provisions under the relevant legislation [German Judiciary Act (*Deutsches Richtergesetz, BGBl. I P. 713*)] and the Federal Disciplinary Act (*Bundesdisziplinargesetz, BGBl. I P. 1510*). However, this is not purely a breach of ethical rules and the indicated discussion document.

The **Code of Conduct for the Justices of the Federal Constitutional Court** (*Verhaltensleitlinien für Richterinnen und Richter des Bundesverfassungsgerichts*) may also constitute a code of ethics. This Code is available to the general public from the website of the Federal Constitutional Court.¹⁰⁶ the areas of conduct covered by the Code includes guidelines typical of all codes of ethics, such as independence, impartiality and integrity. However, the Code also contains instructions corresponding to the special status of a judge of the Federal Constitutional Court: restraint in criticising other legal opinions, participation only in events appropriate to the dignity of the office. the Code also includes special rules for conduct after leaving office. For example, a judge may not represent anyone before the Federal Constitutional Court or give the impression to others that they are making improper use of internal knowledge. the Author could not find any information that this Code is binding. Its binding nature does not derive from the Rules of Procedure of the Federal Constitutional Court (*Geschäftsordnung des Bundesverfassungsgerichts*) or the Federal Constitutional Court Act (*Bundesverfassungsgerichtsgesetz, BGBl. I P. 1473*). Nor do the laws in question provide for the consequences of breaching the Code. the Author therefore concludes that the Code is not binding or enforceable.

Due to the non-binding, recommendatory nature of these documents addressing judicial ethics, breaches of the ethical rules set out therein are not enforceable, and breaches of these principles alone cannot give rise to disciplinary liability. Hence the study does not discuss ways of dealing with ethics breaches or the institutes that address this issue.

Statistics on breaches of the ethics rules set out in the above documents are not available given the non-binding and non-enforceable nature of this document.

The Federal Court of Justice (*Bundesgerichtshofs*) has confirmed that there are currently no special rules governing the use of social networks.¹⁰⁷

Ethics education and support

As mentioned above, the compendium of ethical and professional standards for judges and public prosecutors, which runs to over 500 pages, is a valuable overview of ethical standards in law. the above discussion paper “Judicial Ethics in Germany – Theses for Discussing Professional Ethics of Judges and Public Prosecutors at the Deutscher Richterbund” should also be considered an important source of education for judges and public prosecutors on ethical issues.

105 *Regelungen in Bund und Ländern über das berufsethische Verhalten von Richtern und Staatsanwälten; available from: https://www.bmj.de/SharedDocs/Downloads/DE/Fachinformationen/Kompendium_von_Regelungen_in_Bund_und_Laendern_%C3%BCber%20das_berufsethische_Verhalten_von_Richtern_und_Staatsanwaelten_Web.pdf?__blob=publicationFile&v=2*

106 *Available from: <https://www.bundesverfassungsgericht.de/DE/Richter/Verhaltensleitlinie/Verhaltensleitlinie.html>*

107 *Reply of the Federal Court of Justice to the letter of 7 March 2023. Unpublished material, see Annex 3.*

Judges and public prosecutors can benefit from joint training courses organised by the German Judicial Academy (*der Deutschen Richterakademie*). the 2014 GRECO Evaluation Report states that the German Judicial Academy organises weekly conferences on topics such as “*Judicial Ethics – Foundations, Perspectives, a Global Comparison of Judicial Ethical Standards*” and “*Judicial Independence – a European Comparison*”. Participation is voluntary and open to judges from all federal states. A total of 766 judges and public prosecutors attended these courses between 2009 and 2013.¹⁰⁸

In addition, the German Judicial Academy publishes its annual plans for upcoming training and conferences every year.¹⁰⁹ This year, the German Judicial Academy included in its programme a conference entitled Ethics of Judges and Public Prosecutors – Judicial Standards in an International Comparison (*Richterliche und staatsanwaltliche Ethik – Justizielle Standards im länderübergreifenden Vergleich*). This conference is intended for all judges and public prosecutors interested in discussing professional ethics. the aim is to inform participants about developments in other states and encourage them to self-critically examine their values and conduct and to strengthen their internal independence.

Publicly available sources do not indicate that there is a specialised institution that provides advice or opinions on ethical issues to which individual judges can address their questions.

Examples of good practice

It is clear, and not only from the tradition of training events, that concern with the ethics of judges and public prosecutors has a long tradition in Germany. the existence of a sophisticated document that **does not impose new duties on judges and public prosecutors but expects them to discuss ethical issues and thus better accept them voluntarily as their own** can be appreciated. There is a visible tendency not to limit oneself to ethical rules directly related to the performance of the office, but to take into account those that have a **general ethical dimension** (e.g. bravery).

5.2 Public prosecutors

Form of codes of ethics, their applicability, binding force and enforceability

In Germany, the ethics of public prosecutors and judges are addressed together. the above discussion paper “*Judicial Ethics in Germany – Theses for Discussing Professional Ethics of Judges and Public Prosecutors at the Deutscher Richterbund*”, as well as the comprehensive compendium, is also applicable to public prosecutors. This is already clear from the title of the document (*Richterethik in Deutschland – Thesen zur Diskussion Richterlicher und Staatsanwaltlicher Berufsethik im Deutschen Richterbund*). the areas of conduct and behaviour regulated by this document are the same for public prosecutors and judges. the Author was unable to find any separate documents relating only to the regulation of the ethics of public prosecutors.

This is confirmed in the 2014 GRECO Evaluation Report, paragraph 147: “**As in the case of judges, there is no separate code of ethics for public prosecutors, yet there is legislation on ethical principles and rules of conduct.**”¹¹⁰ However, this does not only address a breach of the ethical rules and the indicated discussion document.

108 2014 GRECO Evaluation Report, paragraphs 186 and 187, available from: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c639b>

109 The current year’s programme is available from: https://www.deutsche-richterakademie.de/icc/drade/nav/4fc/4fc060c6-20f5-0318-e457-6456350fd4c2&class=net.icteam.cms.utils.search.AttributeManager&class_uBasAttrDef=a001aaaa-aaaa-aaaa-eeee-000000000054.htm

110 2014 GRECO Evaluation Report, available from: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c639b>

The Author has not found that there are currently any specific rules governing the use of social networks.¹¹¹

As the issues of ethics of public prosecutors and judges are addressed together, the Author refers to the conclusions of chapter 5.1. the Author has not found any information in relation to ethical rules that would apply only to public prosecutors over and beyond the above.

Ethics education and support

According to the conclusions of the 2014 GRECO Evaluation Report, paragraph 248, “*training activities for judges are also available to public prosecutors.*”¹¹² **Therefore, the Author also refers to the conclusions of chapter 5.1.**

Examples of good practice

In connection with the above, the Author refers to the conclusions of chapter 5.1.

¹¹¹ Reply of the Federal Court of Justice to the letter of 7 March 2023. Unpublished material, see Annex 3.

¹¹² 2014 GRECO Evaluation Report, available from:
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c639b>

6 Canada

6.1 Judges

Form of codes of ethics, their applicability, binding force and enforceability

The **Ethical Principles for Judges** published by the **Canadian Judicial Council** (CJC) are currently in force.

Judicial ethics has a long tradition in Canada. the Canadian Judicial Council has been involved in judicial ethics for decades. It published the Commentaries on Judicial Conduct in 1991. It subsequently published the **Ethical Principles for Judges** in 1998. These principles were the most comprehensive treatment of the subject in Canada at the time and have become an essential resource in the education and continuing professional development of judges. In 2016, a review of the 1998 Ethical Principles for Judges was launched to take into account societal changes and the evolving role of judges. the revised document, which retains the format of the original document, has been widely consulted within and outside the judiciary, and incorporates feedback from judges, professional organisations and the public. the new edition provides greater consistency of meaning between the English and French versions and is written in gender-neutral language.¹¹³

The Ethical Principles for Judges are available online for the general public from the Canadian Judicial Council website.¹¹⁴ However, these ethical principles have only a limited applicability as they apply only to judges appointed at federal level.¹¹⁵ the areas covered by the Ethical Principles for Judges are very general. They are only formulated as recommendations in the areas listed below. the individual areas then contain further sub-principles, or a concretisation of these principles:

- A) independence – addresses issues of avoiding and rejecting undue influence, public trust, and institutional and administrative independence;
- B) personal integrity – addresses issues of personal conduct, confidentiality and discretion, civility and respect, access to justice and self-represented litigants, conduct towards others, use of status or authority, fundraising, letters of reference, and collegial support;
- C) diligence and competence – addresses issues of timeliness, professional development, but also physical and mental wellness;
- D) equality – addresses issues of equality in proceedings, avoidance stereotypes, avoiding association with discriminatory organisations;
- E) impartiality – addresses issues of judicial duties, restraints, political activity, public statements, promotion, public engagement, conduct on social media, gifts and remuneration, attendance at conferences and other events, and conflicts of interest.

The Ethical Principles are **non-binding** for judges **and therefore unenforceable**: *“The ethical principles articulated in this document are aspirational. They are not intended to be a code of conduct that sets minimum standards. They are advisory in nature and are designed to (i) describe exemplary behaviour which all judges strive to maintain; (ii) assist judges with the difficult ethical and professional issues that confront them; and (iii) help members of the public better understand the judicial role.”*¹¹⁶

Statistics on breaches of the ethical rules set out in the Ethical Principles for Judges are not available due to the non-binding and non-enforceable nature of these principles.

¹¹³ Cf. *Ethical Principles for Judges*, pp. 8-12.

¹¹⁴ Available from: https://cjc-ccm.ca/sites/default/files/documents/2021/CJC_20-301_Ethical-Principles_Bilingual_Final.pdf

¹¹⁵ Cf. *Ethical Principles for Judges*, p. 6.

¹¹⁶ *Ethical Principles for Judges*, p. 7.

The requirements for the conduct of a judge on social media are addressed in sections 5.B.15 to 5.B.18 of the annotated Ethical Principles for Judges. The requirements highlight the importance of judges' conduct on social media. Judges should be aware of the impact their actions may have on themselves and on their ability to perform their duties. Communication on social media is public and persistent, with the potential for messages to be shared beyond the intended audience. Judges should avoid inappropriate communication and actions that could raise concerns of bias.

Ethics education and support

As already mentioned, the revised Ethical Principles for Judges retain the format of the original document. Each chapter contains a set of principles that elaborate on the relevant parts of the commentary associated with each principle. Statements express the core values or themes of judicial ethics, while principles identify the components of each statement and express conduct that meets the highest standards with respect to the relevant principle.

The **Canadian Association for Legal Ethics**/Association canadienne pour l'éthique juridique (CALE/ACEJ) is a non-profit organization that focuses on legal ethics in Canada.¹¹⁷ This organization also teaches judicial ethics.¹¹⁸ The **CJC Advisory Committee on Judicial Ethics** is another body that responds to ethical issues and ensures that help is readily available to judges seeking advice. The interest from judges was not ascertained by the Author from public sources and no response in this regard was received from the institutions contacted by the Author.

Examples of good practice

Judicial ethics in Canada has a long history and is given considerable emphasis in the life of a judge. It is necessary to appreciate the form of the ethical principles, which have the nature of a "living" document that is constantly evolving, since the ethical challenges that a judge encounters in their office are not constant either.

6.2 Public prosecutors

Form of codes of ethics, their applicability, binding force and enforceability

Canadian public prosecutors do not have a code that explicitly refers only to the handling and regulation of ethical issues. The **Code of Conduct** applies to all public prosecution employees.

The Code of Conduct is available online to the general public from the Public Prosecution Service of Canada website¹¹⁹.

As regards areas of conduct and behaviour, the Code of Conduct sets out general principles:

- A) respect for people (Section 7.1) – addresses issues of behaviour towards others, including descriptions of expected behaviour, harassment, discrimination and problem-solving in the workplace, and the use of official languages;
- B) respect for the organization (Section 7.2) – addresses issues of political activities, off-duty conduct, public criticism of the Public Prosecution Service of Canada and the federal government, and communication with the public;
- C) professionalism and integrity (Section 7.3) – addresses disclosure of information concerning wrongdoing in the workplace, disclosure of information and confidentiality, security of information, providing information or testimony, conflict of interest and post-employment situations, acceptance of gifts and other benefits, consumption of intoxicants, and professional appearance;
- D) stewardship (Section 7.4) – addresses issues of care and use of government property or valuables, electronic network access and use, personal use of government property, equipment and services, and hours of work.

¹¹⁷ Available from: <https://ethicsincanada.com/about/>

¹¹⁸ Available from: <https://cjc-ccm.ca/en/training-new-judges>

¹¹⁹ Available from: <https://www.ppsc-sppc.gc.ca/eng/bas/cc.html>

The Code of Conduct is binding for all public prosecution employees. Employees who do not comply with the values and expectations set out in this Code of Conduct may be subject to administrative or disciplinary action, which may lead to termination of employment (cf. Chapter 4 of the Code of Conduct).

Statistics on breaches of the ethical rules set out in the Code of Conduct are not available.

The Author has not been able to establish, from publicly available sources, whether there are binding guidelines for the conduct of public prosecutors on social networks, and no response in this regard has been received from the institutions contacted by the Author. the Code of Conduct only states, Section 7.2.1, that employees should exercise extra caution, particularly when using social media and other collaborative tools enabled by information technology, so as not to compromise their professionalism and ability to perform their duties in an impartial manner or to inadvertently disclose information not intended for the public.

Ethics education and support

Training for public prosecutors is provided by the Public Prosecution Service of Canada through a programme called “School for Prosecutors”. This is an in-house legal training programme for federal public prosecutors administered by the Law Practice Management Division of the Public Prosecution Service of Canada.¹²⁰ the Author was unable to obtain specific training programmes from publicly available sources.

Public prosecutors facing an ethical dilemma can turn to their supervisor for advice (cf. Chapter 9 of the Code of Conduct). the information publicly available does not show how often such advice is sought and, by the nature of the matter, it can be assumed that no such statistics will be kept.

Examples of good practice

The Author has not identified examples of good practice in this case.

¹²⁰ Available from: <https://www.ppsc-sppc.gc.ca/eng/spr-epo/index.html>

7 Denmark

7.1 Judges

Form of codes of ethics, their applicability, binding force and enforceability

Danish judges have available the **Ethical Principles for Judges** (*Etiske principper for dommere*) published by the Association of Danish Judges (*Den danske Dommerforening*). the 2016 GRECO Report on the implementation of the GRECO recommendations, paragraph 28, shows that these **ethical principles apply to all judges**.¹²¹

The Ethical Principles for Judges are available online for the general public from the website of the Association of Danish Judges.¹²²

The areas of conduct covered by these principles include:

- A) independence, impartiality and integrity of the judge – additionally noted in point 4. the Ethical Principles for Judges state that a judge, like any other, has constitutional rights, including freedom of expression and freedom of association. In the exercise of their rights, a judge must be aware of the courts' and judges' special role in society.
- B) respectful treatment and discretion,
- C) quality performance of duties – including maintaining and developing competence (cf. point 8 of the Ethical Principles for Judges),
- D) openness to the public and
- E) accountability for the running of the court and the judiciary (including cooperation with other judges).

Due to the non-binding, recommendatory nature of the Ethical Principles for Judges, breaches of the ethical rules set out therein are not enforceable, and breaches of these principles alone cannot give rise to disciplinary liability. Hence the study does not discuss ways of dealing with ethics breaches or the institutes that address this issue.

Statistics on breaches of the ethical rules set out in the Ethical Principles for Judges are not available, not least because the principles are not enforceable.

Similarly, there are no special rules for the conduct of judges on social media. It can be concluded that the Ethical Principles for Judges can be invoked in these cases.

Ethics education and support

According to the 2016 GRECO Report on the implementation of GRECO recommendations: *"Ethical principles are also the subject of the 'Ethics for the Modern Judge's Workday' training course, which is offered as part of a multi-day programme of courses at the Judicial Academy."*¹²³

According to the 2019 GRECO Interim Report on the implementation of GRECO recommendations, the Association of Danish Judges was also to issue a commentary on the above-mentioned ethical principles.¹²⁴ However, this commentary is not publicly available.

¹²¹ Report on the implementation of GRECO recommendations from 2016, available from: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c3240>

¹²² Available from: <https://www.dommerforeningen.dk/dommerforeningen/etiske-principper-for-dommere/>

¹²³ Report on the implementation of GRECO recommendations from 2016, paragraph 28, available from: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c3240>

¹²⁴ GRECO Interim Report on the implementation of GRECO recommendations, 2019, paragraph 29. Available from: <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16809a59ea>

It is not clear from publicly available sources that there is an institution of an advisory nature that would issue opinions or recommendations on problematic ethical issues or to which individual judges could turn for advice.

Examples of good practice

An interesting aspect of these ethical principles is their last point No 10 (Ansvarlighed), which requires judges to be accountable for the running of the court and the judiciary, including related cooperation with other judges. This is a provision that takes into account the judge's responsibility for the wider developments in judicial self-government.

7.2 Public prosecutors

Form of codes of ethics, their applicability, binding force and enforceability

Here the public prosecutors have a relatively different position in relation to codes of ethics than public prosecutors in most of the other states compared. This is because they do not have a code of ethics in the true sense of the word that would apply exclusively to their activities. Instead, they are also subject to the **Code of Conduct in the Public Sector**.¹²⁵ However, there is also a document that complements this Code of Conduct in the Public Sector, namely the **Guidelines for Good Conduct and Ethics in the Public Prosecution Service** (*God adfærd og etik i anklagemyndigheden*).¹²⁶ However, these complementary principles are not available for the public.

The Code of Conduct in the Public Sector covers the following areas of conduct and behaviour:

- A) conduct in accordance with fundamental values (Chapter 1) – e.g. democratic values, the rule of law, impartiality, independence, lawful and good administration;
- B) the authority to issue directions (Chapter 2) – this includes, for example, the right and duty to decline an unlawful order;
- C) freedom of expression (Chapter 3) – e.g. statements on behalf of yourself or on behalf of the public authority and whistleblowing;
- D) confidentiality (Chapter 4) – the issue of confidential information, caution when disclosing information and requirements in the exchange of information between public authorities;
- E) impartiality (Chapter 5) – including conflict of interest issues;
- F) receiving gifts and other benefits (Chapter 6);
- G) secondary employment (Chapter 7) – including the requirements that this secondary employment must meet;
- H) duties, liability and rights (Chapter 8);
- I) sound financial management (Chapter 9).

The Guidelines for Good Conduct and Ethics in the Public Prosecution Service provide for:

- A) requirements relating to appearance and professional conduct – they also include a warning that conduct or appearance should not be perceived as a sign of sympathy for a particular political party (e.g. use of a logo, slogan);
- B) correct and appropriate expression and communication – including, for example, requirements for clarity of expression, caution in the use of irony or slang;
- C) confidentiality – e.g. you can't just inspect a colleague's file out of curiosity;
- D) access to registers and specialised systems in accordance with the law – access to systems only within the necessary context of specific work tasks;
- E) impartiality;

¹²⁵ Available for the general public from: <https://modst.dk/media/18742/code-of-conduct-in-the-public-sectorforside.pdf>

¹²⁶ See Annex 15.

- F) not accepting gifts and other benefits – or determining what is still acceptable – e.g. chocolates, flowers, a few bottles of wine of reasonable value for a lecture;
- G) freedom of expression, relationship to social networks;
- H) conduct outside the office.

It is clear from the Guidelines for Good Conduct and Ethics in the Public Prosecution Service that they are **binding** and that actions contrary to these Guidelines may lead to **sanctions under the service regulations**. In more serious cases, breaches of the duty to maintain professional confidentiality and the misuse of registers, identity documents and service records may lead to criminal prosecution [cf. Section 152 of the Danish Criminal Code (*Straffeloven, LBK nr 1360 of 28/09/2022*)].

However, this is not disciplinary liability for breach of ethical principles per se. It is always a breach of a legal duty that reflects a given ethical rule. The Guidelines for Good Conduct and Ethics in the Public Prosecution Service list the laws that could be breached. These laws are the Public Administration Act (*Forvaltningsloven, LBK nr 433 of 22/04/2014*), the Civil Service Act (*Funktionærloven, LBK nr 1002 of 24/08/2017*), the Personal Data Protection Act (*Persondataloven, LOV nr 429 of 31/05/2000*)¹²⁷, the Judicial Administration Act (*Retsplejelovens, LBK nr 1655 of 25/12/2022*), the Civil Servants Act (*Tjenestemandsløven, LBK nr 511 of 18/05/2017*) and the aforementioned Criminal Code. **Therefore, we cannot speak of the enforceability of the code of ethics as such and of the institutions called upon to deal with ethical misconduct.**

Statistics on breaches of the ethical rules set out in the Guidelines are not available.

The Guidelines for Good Conduct and Ethics in the Public Prosecution Service directly contain recommendations on **how a public prosecutor should behave on social media**. Public prosecutors have the right to express their views and opinions just like any other citizen, but they must be aware of the duty of professional secrecy and the general requirements of honesty and integrity. When they express themselves on issues concerning public prosecution, it must be clear that they are speaking for themselves and are not expressing opinions on behalf of public prosecution. They also need to be aware that content posted on social media may be publicly accessible and carefully consider who has access to it. Public prosecutors should also avoid disclosing information about associates without their consent.

Ethics education and support

The Guidelines for Good Conduct and Ethics in the Public Prosecution Service are designed to elaborate on each individual guideline. This makes it easier to address the ethical issues that arise.

The director of public prosecutions has created a “training package” on the theme of ethics.¹²⁸ Ethics is also part of the training of new public prosecutors (focused on typical ethical dilemmas in practice). According to the training catalogue for 2023, the first training module for new public prosecutors is entitled the Role of the Public Prosecutor and an Introduction to Good Work in Court (*Rollen som anklager og introduktion til det gode retsarbejde*). This training includes good conduct and ethics in public prosecution (*God adfærd og etik i anklagemyndigheden*).¹²⁹

127 This law has now been repealed and replaced by the new Data Protection Act (*Databeskyttelsesloven, LOV nr 502 of 23/05/2018*).

128 Report on the implementation of GRECO recommendations from 2016, paragraph 33, available from: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c3240>

129 Training Catalogue for 2023, p. 15, available from: https://anklagemyndigheden.dk/sites/default/files/inline-files/Anklagemyndighedens_uddannelseskatalog_2023.pdf

Trainee public prosecutors have a mentor available during their training. They can thus turn to them or to their supervisor for advice on ethical issues. Public prosecutors may always seek advice from the local police commissioner, the personnel centre of the Director of Public Prosecutions or the personnel department of the Ministry of Justice.¹³⁰

Examples of good practice

The Guidelines for Good Conduct and Ethics in the Public Prosecution Service recognise the importance of social networks today and therefore make recommendations on good conduct adapted to the needs of the online environment.

130 2014 GRECO Evaluation Report, paragraph 178, available from:
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c323e>

8 Norway

8.1 Judges

Form of codes of ethics, their applicability, binding force and enforceability

In the introduction, the **Ethical Principles for Norwegian Judges** of October 2010 (*Etiske prinsipper for dommeratferd*) already emphasize that they **apply to all judges and apply to their conduct outside their office**. Specifically, according to the cited principles, they apply to all professional judges in the general courts and land consolidation courts, both in and out of court. the accompanying text, which is published on the website of the **Supervisory Commission (Tilsynsutvalget for dommere)**, shows that the foundation for the principles is Section 55(3) of the Courts Act (*Lov om domstolene, LOV-1915-08-13-5*). Here it states that: *"In their judicial activities, a judge is independent. A judge shall perform their judicial duties impartially and in a manner that inspires general confidence and respect."*¹³¹ According to the indicated source, the Ethical Principles for Norwegian Judges have been adopted by the Norwegian Association of Judges (*Den norske Dommerforening*), the Tekna organisation (*Teknas etatsforening for jordskifterettene*) and the Norwegian Courts Administration (*Domstoladministrasjonen*) and have been developed in cooperation.¹³²

The ethical principles of judicial conduct are binding, but due to their general nature are not directly enforceable (details in the following chapter). the purpose of the principles is to encourage judges to act in a way that creates confidence in the courts and their decisions. the principles are also intended to provide information on what constitutes good judicial practice.¹³³

The Ethical Principles for Norwegian Judges are available to the general public online from the website of the Supervisory Committee.¹³⁴

The areas of conduct and behaviour covered by the Ethical Principles for Norwegian Judges include:

- A) the basic requirements for acting in accordance with the law and good judicial practice;
- B) independence;
- C) impartiality – a judge should exercise their adjudicatory role with impartiality;
- D) integrity – including the prohibition on accepting gifts and other benefits;
- E) emphasis on equal treatment and fair treatment of parties and other actors before the courts – including the judge's respect for the role of attorneys and public prosecutors in the administration of justice. An attorney must not be identified with their client;
- F) the proper preparation of judicial decisions, including proper reasoning;
- G) discretion – including the fact that the judge must not communicate the decision before it is handed down;
- H) competence;
- I) efficient performance of duties;
- J) prudence in expression;
- K) the judge's relationship with the media;
- L) the conduct of judges outside the role of judge;
- M) appropriate conduct after the termination of their office is unusual from the perspective of the other rules of ethics compared, but understandable from the perspective of ethics;
- N) the unusual duty to intervene if a judge becomes aware of a substantial breach of duty by another judge.

¹³¹ Available from: <https://www.domstol.no/no/tilsynsutvalget-for-dommere/etiske-retningslinjer/>

¹³² Available from: <https://www.domstol.no/no/tilsynsutvalget-for-dommere/etiske-retningslinjer/>

¹³³ Cf. *Ethical Principles for Norwegian Judges*, p. 1.

¹³⁴ Available from: <https://www.domstol.no/no/tilsynsutvalget-for-dommere/etiske-retningslinjer/>

Enforcement of codes of ethics and resolution of breaches

The **Supervisory Committee** (*Tilsynsutvalget*) is responsible for overseeing the ethical conduct of judges. The Supervisory Committee can be defined as a disciplinary body that hears and decides on complaints against judges.¹³⁵

Pursuant to Section 236 of the Courts Act (*Lov om domstolene, LOV-1915-08-13-5*), the Supervisory Committee may decide on disciplinary measures if a judge intentionally or negligently breaches duties arising from their office or otherwise acts contrary to the good morals of a judge. In this regard, as the 2018 Supervisory Court Annual Report notes, the Ethical Principles for Norwegian Judges¹³⁶ are an important tool for the Supervisory Committee in assessing what constitutes proper judicial conduct. These principles are actively applied in the decision-making of this Committee. However, as confirmed to the Author by the Norwegian Courts Administration (*Norges domstoler*), the general nature of these principles means they are not enforceable as such. the Supervisory Committee usually concludes that the judge has breached the rules of good judicial conduct (see Section 236 of the last law mentioned), using the Ethical Principles for Norwegian Judges as the benchmark for good conduct.¹³⁷

According to the above-mentioned provision, one consequence of a breach of duty may be disciplinary action in the form of a reprimand (*kritikk*) or a warning (*advarsel*). the Supervisory Committee may also issue an opinion on what constitutes proper conduct of a judge without imposing disciplinary measures on the judge.

The persons listed in Section 237 of the Courts Act (*Lov om domstolene, LOV-1915-08-13-5*) – e.g. parties and other actors before the courts if they are directly affected by the procedure, the president of the court and the Norwegian Bar Association – have the right to file a complaint with the Supervisory Committee against the conduct of a judge. However, only the ministry, the court administration and the president of the court of the judge in question have the right to file a complaint against the judge on grounds of conduct outside the office.

The decision of the Supervisory Board is not subject to appeal but may be challenged by an action¹³⁸ pursuant to Section 239 of the Courts Act (*Lov om domstolene, LOV-1915-08-13-5*).

Basic statistics on the number of complaints filed are contained in the annual reports of the Supervisory Committee. So far, annual reports from 2002 to 2020 are publicly available¹³⁹. the 2020 Annual Report contains a summary of these statistics for those years:

*“Between 2002 and 2020, the Supervisory Committee received 2 078 complaints. the Supervisory Committee adopted a total of 2 002 decisions, of which 1 040 were negative. the plenary of the Committee substantively reviewed 834 cases. the remaining cases were dealt with in other ways, usually through withdrawal of the complaint or its dropping for other reasons. **the Supervisory Committee decided to impose disciplinary measures in a total of 87 cases, in seven of which a warning (advarsel) was issued. Two reprimands were subsequently overturned.***

The number of complaints varies somewhat from year to year, with 66 in 2003 (the lowest) and 176 in 2011 (the highest). One trend over this period is that the number of complaints has stabilised at a higher level than previously. One reason for this may be that the complaints procedure has become more familiar among the parties and other actors before the courts and that the threshold for filing complaints against judges has been lowered during the Committee’s existence. the number of complaints increased from 109 to 148 between 2015 and 2017. This was a significant increase of 73%.

135 Available from:
<https://www.domstol.no/globalassets/upload/da/domstol.no/om-domstolene/klage-pa-dommere/tilsynsutvalget/bokmal.pdf>

136 Supervisory Commission Annual Report 2018, p. 2, available from:
<https://www.domstol.no/globalassets/upload/da/domstol.no/om-domstolene/tilsynsutvalget/arsmeldinger/arsmelding-2018.pdf>

137 Reply from the Norwegian Courts Administration to the letter of 13 March 2023. Unpublished material, see Annex 4.

138 By its nature, this will presumably be an administrative action.

139 Available from: <https://www.domstol.no/no/tilsynsutvalget-for-dommere/publikasjoner/arsmelding/>

There were 124 complaints in 2018 and 130 in 2019. It is difficult to say whether this reflects a new trend or a random fluctuation in the number of complaints received. Only 97 complaints were received in 2020. This is a clear reduction compared to previous years. This naturally relates to the coronavirus pandemic, so the reduction does not necessarily reflect a general trend.”¹⁴⁰

In addition, the Norwegian Courts Administration has issued recommendations on how to use social media for court employees, including judges. These are recommendations only and are not binding in themselves. The text of the recommendations is not publicly available. In addition, there are recommendations on how to use social networks for private purposes, and these are issued to all public sector employees.¹⁴¹

Ethics education and support

The Supervisory Committee contributes to the development of judicial ethics and cooperates in educational programs. In addition to addressing filed complaints, the Supervisory Committee may deal with offences on its own initiative. In addition, the Committee may issue general statements on what is included in the term “appropriate judicial conduct”. This also gives it the character of ethical advice.¹⁴²

In addition, the board of the Norwegian Association of Judges has decided to establish a Judicial Ethics Committee. The purpose of this committee is to stimulate discussion of judicial ethics issues within the association and in the courts. In addition, the committee should be able to provide guidance to judges on ethical issues.

Mandatory judicial training also focuses on ethical issues. As communicated to the Author by the Norwegian Courts Administration, this mandatory training of judges can be divided into (a) initial training and (b) ongoing training. Initial training takes place in the first year after appointment and is divided into modules, with Module 4 in particular dealing specifically with ethics. It should be emphasised that judicial education in Norway is focused on the proper exercise of the judicial profession (*judgcraft*) and ethics forms an integral part of it. Continuing education will often include courses and seminars on ethics.¹⁴³

Examples of good practice

The explicit anchoring of the Ethical Principles for Norwegian Judges as an interpretative tool in assessing disciplinary offences of judges and their active use for this purpose in practice is positive.

The Ethical Principles for Norwegian Judges appropriately articulate prohibitions relating to conduct of a judge outside the role of judge. Paragraph 13 of the Ethical Principles states that judges should not make use of the title of judge in a way that may cause confusion of their roles/mix of positions, or when such use otherwise is not justified. At the same time, judges should act with caution in giving advice, or otherwise engage in other litigation.

The Ethical Principles for Norwegian Judges also contain an **unusual duty to intervene** if a judge becomes aware of a substantial breach of duty by another judge. Such a duty to intervene is not typical in the compared states, even in the case of ethical rules for public prosecutors. However, its introduction can be seen as positive, especially as by its nature it is a declaration that a judge is responsible for the proper development of the judiciary.

The Author also considers positive the fact that the **Supervisory Committee keeps statistics on cases handled**. Compared to the other states whose ethical principles are the subject of this analysis, this is an exception.

¹⁴⁰ Supervisory Commission Annual Report 2020, p. 10, available from: https://www.domstol.no/contentassets/09a214a619a3464ab4cabdbf64e86800/arsmelding_2020_digital.pdf

¹⁴¹ Available from: <https://www.digdir.no/digitalisering-og-samordning/privat-bruk-av-sosiale-medium/1956>

¹⁴² Complaints against judges (Klage på dommere), available from: <https://www.domstol.no/globalassets/upload/da/domstol.no/om-domstolene/klage-pa-dommere/tilsynsutvalget/bokmal.pdf>

¹⁴³ Reply from the Norwegian Courts Administration to the letter of 13 March 2023. Unpublished material, see Annex 4.

8.2 Public prosecutors

Form of codes of ethics, their applicability, binding force and enforceability

Norway has **ethical guidelines** binding on all public prosecutors (*Etiske retningslinjer for medarbeidere i påtalemyndigheten*). These guidelines were introduced by **Circular RA-2017-2** and, in addition to these ethical guidelines, there are general ethical guidelines for the civil service.¹⁴⁴ the ethical guidelines apply to all public prosecutors.

The ethical guidelines are available to the general public online from the Norwegian Prosecuting Authority website.¹⁴⁵

The areas of conduct and behaviour covered by these ethical guidelines are quite broad and include:

- A) the basic requirements for acting in accordance with the law;
- B) independence;
- C) an objective approach at all stages of criminal proceedings – including the presentation of information and evidence in favour of the accused, and not only against them;
- D) impartiality;
- E) integrity – also a prohibition on accepting gifts and other benefits;
- F) the quality and efficiency of the conduct of criminal proceedings;
- G) expertise and professionalism – also to prevent miscarriages of justice as far as possible;
- H) respect for others and related equal access – including for victims and witnesses and those accused, charged or convicted;
- I) discretion;
- J) limits on freedom of expression – e.g. they must not make statements contrary to the presumption of innocence, they should consider informing their head of department of statements and appearances in the media, on TV programmes, in films etc;
- K) public and media information – they should express respect that the public has adequate information about criminal matters and respect for the role and social mission of the press;
- L) off-duty conduct in a manner that does not undermine confidence in public prosecution;
- M) the responsibility of high public prosecutors for compliance with these ethical guidelines – also the responsibility to make subordinates aware of these ethical guidelines; moreover, Guideline 13 of these ethical guidelines states that any member of the public prosecution service who becomes aware of an apparent breach of the code of ethics should raise the matter in an appropriate manner in dialogue with the person concerned or their superior.

The last mentioned Guideline 13 of the ethical principles is rather unusually worded compared to other states, because of the establishment of responsibility for compliance with the guidelines. the guideline in question is: *“The director of public prosecutions, the regional directors of public prosecutions, senior administrative officers, heads of offices and senior police commissioners shall ensure that each member of the prosecution authorities is familiarised with of the code of ethics for public prosecution **and bear overall responsibility for its observance.** Any member of the public prosecution authorities who becomes aware of an apparent breach of this code of ethics should **raise the problem in an appropriate manner in dialogue with the person concerned or their superior.**”* The second part of the requirement, meaning the duty to intervene under certain conditions, is similar to that found in the Ethical Principles for Norwegian Judges (cf. chapter 8.1 above).

¹⁴⁴ Available from:
<https://www.riksadvokaten.no/wp-content/uploads/2017/09/Rundskriv-2017-2-Etiske-retningslinjer-for-medarbeidere-i-patalemyndigheten.pdf>

¹⁴⁵ Available from:
<https://www.riksadvokaten.no/wp-content/uploads/2017/09/Rundskriv-2017-2-Etiske-retningslinjer-for-medarbeidere-i-patalemyndigheten.pdf>

The Author has been advised by the public prosecutions authorities that breaches of the guidelines are dealt with internally by a senior public prosecutor or the police. Sanctions may include a follow-up interview with the immediate supervisor or corrective measures.

Statistics on breaches of the ethical rules set out in the codes of ethics are not available, as confirmed to the Author by the Norwegian public prosecution authorities.

Ethics education and support

There is no separate commentary available on the ethical guidelines. However, most of the principles are further elaborated by a brief commentary in the relevant ethical guidelines. This commentary is however not as detailed as, for example, the commentary to the Czech Code of Ethics for Public Prosecutors. It does not analyse each paragraph, but rather focuses on explaining some provisions and the application of the terms mentioned.

Public prosecutors have a file with fictitious examples available. As can be seen from the letter of the director of public prosecutions dated 19 March 2019, which was sent to all Norwegian public prosecutors' offices, these 58 fictional examples can serve as a starting point for discussion and reflection on issues of public prosecution ethics or as inspiration for the preparation of own examples. the aim is to raise awareness of the various ethical issues that public prosecutors may encounter in their daily work.¹⁴⁶

These are fictitious examples about Peder Ås and Marte Kirkerud, both employed by the public prosecution authorities. Examples include the following: *"Marte Kirkerud was an active environmental activist in her youth and regularly chained herself to fences etc. during demonstrations to influence the authorities in favour of greening. The head of the department is unaware of this and assigns Kirkerud a case where Greenpeace members were reported for obstructing helicopter transport to an oil platform. Kirkerud won't tell her supervisor because she believes it won't affect how she handles the case."*¹⁴⁷

These examples are of varying lengths and focus on different topics related to proper ethical conduct: *"Peder Ås receives a phone call from his good friend. the friend has found what he thinks is a batch of drugs in his son's bedroom and is unsure about what to do. Ås decides to advise him."*¹⁴⁸

The set of examples thus appropriately stimulates the thinking of public prosecutors in various areas of ethical conduct.

The public prosecution authorities informed the Author that the ethical guidelines are the subject of annual meetings and seminars for all public prosecutors. the guidelines are also addressed in a compulsory course for newly recruited public prosecutors provided by the Norwegian Police University College (*Politihøgskolen*). Advice on ethical issues may be sought from an immediate supervisor or a colleague.¹⁴⁹

Examples of good practice

Fictional examples from practice are a useful tool that helps public prosecutors answer specific questions more easily. They can thus help resolve individual ethical dilemmas without the need for a binding and enforceable rule of conduct.

The accountability of high public prosecutors for adherence to ethical guidelines is exemplary and demonstrates that emphasis is placed on ethical principles.

146 Letter from the director of public prosecutions "Etiske retningslinjer – Anvendelse på enkelttilfeller" dated 19 March 2019. Unpublished material, see Annex 6.

147 Letter from the director of public prosecutions "Etiske retningslinjer – Anvendelse på enkelttilfeller: Fiktive eksempler om Peder Ås og Marte Kirkerud som begge er ansatt i påtalemyndigheten" dated 19 March 2019. Unpublished material, see Annex 6.

148 Ibid.

149 Reply from the Norwegian public prosecution authorities to the letter of 7 March 2023. Unpublished material, see Annex 5.

9 Finland

9.1 Judges

Form of codes of ethics, their applicability, binding force and enforceability

The Finnish Association of Judges (*Suomen tuomariliitto*) issued its **Ethical Principles for Judges** (*Tuomarin eettiset periaatteet*) in Helsinki on 12 October 2012 on the occasion of Judges' Day.¹⁵⁰ These ethical principles **are not binding**, but because of their non-binding nature they apply to all judges. According to the representatives of the Advisory Council on Judicial Ethics (*Tuomareiden eettinen neuvottelukunta*), their non-binding nature must also be seen in the context of the fact that the Finnish Association of Judges is not a state organisation. These principles must therefore be seen as self-regulation by the Finnish judiciary.¹⁵¹

The Ethical Principles for Judges are available for the general public online from the website of the Finnish Association of Judges.¹⁵²

The areas of behaviour and conduct covered by these ethical principles are more concisely formulated than in other ethical rules documents. the Ethical Principles for Judges only regulate:

- A) independence and impartiality – this covers related issues including respect for human rights and the rule of law, the requirement for appropriate conduct that enhances confidence in the courts, and limits on freedom of expression;
- B) correctness and fairness of decision-making – this regulates related issues, including the preservation of the human dignity of the parties and other actors before the courts;
- C) professional skills – this regulates related issues, including that a judge must undertake continuing education, and sets out requirements for decision-making – a carefully considered and elaborated decision within a reasonable time;
- D) openness to the public – this includes the requirement to be aware of the importance of the court decision, which should be clear and easy to understand.

Due to their non-binding nature, they cannot be enforced – the study therefore does not discuss ways of dealing with ethics breaches or the institutes that address such issues.

According to the preface to the Ethical Principles for Judges, these principles are not a set of rules that would directly provide judges with solutions to all problems concerning professional ethics. In particular, the document contains general principles for identifying and interpreting ethical issues, as well as guidelines for discussing and resolving such issues. A judge who understands ethical considerations, is familiar with the guiding principles of justice and is committed to upholding those principles forms the foundation on which an ethically sound judiciary is built.¹⁵³

Statistics on breaches of the ethical rules set out in the Ethical Principles for Judges are not available, given the non-binding and non-enforceable nature of the Ethical Principles.

Finnish judges do not have specific rules for conduct on social media, but the provisions of the Ethical Principles for Judges can be applied accordingly.

¹⁵⁰ Cf. Preface to the Ethical Principles, p. 14, available from:

https://asiakas.kotisivukone.com/files/tuomariliitto.kotisivukone.com/tiedostot/tuomarin_eettiset_periaatteet.pdf

¹⁵¹ Response of the Advisory Council on Judicial Ethics to the letter of 7 March 2023. Unpublished material, see Annex 7.

¹⁵² Available from: https://asiakas.kotisivukone.com/files/tuomariliitto.kotisivukone.com/tiedostot/tuomarin_eettiset_periaatteet.pdf

¹⁵³ Cf. Preface to the Ethical Principles, p. 14, available from:

https://asiakas.kotisivukone.com/files/tuomariliitto.kotisivukone.com/tiedostot/tuomarin_eettiset_periaatteet.pdf

Ethics education and support

There is no commentary on the Ethical Principles for Judges. the majority of information on judicial ethics training is not publicly available. According to the Second Report on the Implementation of GRECO Recommendations of 2017, the Ministry of Justice *“prepared training on ethical principles for all new judges. In addition, training programmes for newly appointed presidents address this topic using different types of case studies. the various parts of the judicial training programmes address typical ethical issues that arise in the day-to-day work of judges on specific cases. Approximately 40 judges from district and appellate courts participate in this training every year.”*¹⁵⁴

In addition, *“in 2015, a judicial training programme for district trainee judges [was launched]: four seven-day training sessions are held annually, covering issues such as exclusion for bias, conduct and ethics of judges. In 2016, topics related to this training were developed into instructional videos and online studies to reach all general courts.”*¹⁵⁵

Until the end of 2019, the Ministry of Justice was responsible for organising training for judges and other court employees. At the beginning of 2020, the National Courts Administration was established, and has since then been responsible, inter alia, for organising training for judges and other court employees. This training is planned in collaboration with the Council for Education and courts.¹⁵⁶

Several training courses include sections on ethical principles. the largest section is part of a three-year training programme for younger judicial candidates. A full day of training is used to discuss the social role and ethics of judges (once a year). A two-hour class on ethical principles is included in the training for new district court judges (twice a year). In the online materials provided to district court interns, there is a video tutorial on ethical principles. This tutorial is basically available to anyone working in the court at any time.¹⁵⁷

Considerable emphasis has begun to be placed on advice on judicial ethics in Finland. the Finnish Association of Judges and the Association of Supreme Court Judges worked together to prepare the establishment of the **Advisory Council on Judicial Ethics** (*Tuomareiden eettinen neuvottelukunta*). At its annual meeting in 2021, the Finnish Association of Judges approved the establishment of the Advisory Council and established a working group for this purpose.

Pursuant to Article 2 of the Rules of Procedure of the Advisory Council on Judicial Ethics¹⁵⁸, the aim of the newly established institution is to promote awareness of the professional ethical principles of judges and to promote discussion of ethical issues related to the role of judges.

Pursuant to Article 3 of the Rules of Procedure, the Advisory Council will follow international principles, guidelines and recommendations concerning the professional ethics of judges and the role and activities of judges. According to the quoted Article, the Advisory Council

- will also consult with judges on professional ethics issues and conducts dialogues with judges and associations of judges;
- can also organise training itself or participate in training organised by other bodies;
- may also prepare reports, issue recommendations and opinions, and make suggestions for changes to established ethical principles and other issues of professional ethics of judges in order to fulfil its purpose.

¹⁵⁴ Second Report on the Implementation of GRECO Recommendations 2017, paragraph 15, available from: <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680728761>

¹⁵⁵ Second Report on the Implementation of GRECO Recommendations 2017, paragraph 16, available from: <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680728761>

¹⁵⁶ Reply from the Finnish National Courts Administration to the letter of 7 March 2023. Unpublished material, see Annex 8.

¹⁵⁷ Reply from the Finnish National Courts Administration to the letter of 7 March 2023. Unpublished material, see Annex 8.

¹⁵⁸ The text of the Rules of Procedure of the Advisory Council on Judicial Ethics (*Tuomareiden eettisen neuvottelukunnan säännöt*) is available from: https://asiakas.kotisivukone.com/files/tuomariliitto.kotisivukone.com/Eettisen_neuvottelukunnan_saannot.pdf

However, the Advisory Council on Judicial Ethics is not competent to address or supervise the conduct of individual judges (cf. Article 3 of the Rules of Procedure). the Rules of Procedure also provide, in Article 4, that it is for the Advisory Council on Judicial Ethics to decide which matters it will deal with.

As the Advisory Council on Judicial Ethics has just started its activities, there is no data on how the advisory activities of this institution will be used by judges.

Examples of good practice

The establishment of the Advisory Council on Judicial Ethics reflects the contemporary emphasis placed on judicial ethics in Finland.

9.2 Public prosecutors

Form of codes of ethics, their applicability, binding force and enforceability

Public prosecutors in Finland have had **ethical guidelines** (*Eettiset linjaukset*) since 2016. These ethical guidelines are **non-binding**. By their nature, they are only principles and values that go beyond the statutory rules. However, due to their non-binding nature, they can be applied to all public prosecutors. As stated in the introduction to the English version of these ethical guidelines, not everything can be regulated by law. Ethical principles and values are also required. These describe the ideals that guide operations and behaviour, and go further than rules. A prosecutor adhering to good prosecutor practice is guided by not only statutory obligations, but also the ethics of the prosecutor's profession.¹⁵⁹ the aim of these ethical guidelines is to facilitate public prosecutors' decision-making on ethical issues: "*Values and ethical principles act as a compass when difficult choices need to be made.*"¹⁶⁰

The ethical guidelines are available for the general public online from the website of the Finnish public prosecutor's office (*Syyttäjälaitos*).¹⁶¹

The Ethical Guidelines address topics typically addressed by similar ethical rules. the Ethical Guidelines thus regulate the requirements for:

- A) equality and fairness;
- B) independence and impartiality, and conflicts of interest – responsible behaviour outside the office;
- C) transparency – to increase public trust, the Ethical Guidelines state that inquiries regarding decisions, activities and matters handled by the public prosecutor's office must be answered without delay;
- D) trust and confidentiality – this addresses, for example, the issue of refraining from obtaining confidential information on matters not personally handled by the public prosecutor in question, and the requirement of confidentiality after the service relationship is ended;
- E) responsibility – in the sense of fiscal responsibility, responsibility for the efficient use of public funds, and the requirement to allocate work tasks responsibly;
- F) competence – this addresses e.g. the issue of personal responsibility for learning new skills and expertise;
- G) working as a community – this addresses e.g. the issue of behaviour at work, where such behaviour should be businesslike and polite;
- H) emphasis on a high level of oral and written communication;
- I) not accepting gifts and other benefits;
- J) appropriate conduct and appearance;
- K) conduct outside work – the conduct of the public prosecutor must not undermine confidence in the Finnish Prosecution Service.

¹⁵⁹ Cf. Ethical Guidelines (*Eettiset linjaukset*) in English, available from: <https://syyttajalaitos.fi/en/the-ethical-guidelines>

¹⁶⁰ Ibid.

¹⁶¹ Available from: <https://syyttajalaitos.fi/en/the-ethical-guidelines>

Due to their non-binding nature, they cannot be enforced – therefore, the analysis does not discuss ways of dealing with ethics breaches and the institutes addressing this issue.

Statistics on breaches of the ethical rules set out in the Ethical Guidelines are not available, given the non-binding and non-enforceable nature of the Ethical Guidelines.

Ethics education and support

There is no commentary on the Ethical Guidelines. Information on judicial ethics training is not publicly available and the competent Finnish authorities have not provided the requested cooperation to the Author on these issues. Similarly, there is no indication from publicly available sources that there is an institution to which public prosecutors can turn for advice.

According to the 2015 Report on the implementation of GRECO recommendations, the Ethical Guidelines *“have been discussed several times by the steering group of the public prosecutor’s office and the cooperating public prosecution authorities. In addition, ethics for public prosecutors was taught in two courses for public prosecutors in 2014. Training on ethical issues was also provided as part of internal training and employee events of public prosecutors’ offices. the same topic was on the agenda of a national event for public prosecutors held in March 2014, which was attended by virtually all prosecution staff and a large number of other stakeholders. There is also a plan to produce a document providing further explanation of the principles, to print a poster summarising their most important points, and to provide training material on the application of the ethical principles, which will be part of almost every upcoming training event organised for public prosecutors.”*¹⁶²

Examples of good practice

The Ethical Guidelines appropriately address accountability in terms of fiscal responsibility, responsibility for the efficient use of public funds, and the requirement for responsible allocation of work tasks. These forms of accountability are also important for ensuring the public prosecutor correctly perceives their own position.

¹⁶² Report on the implementation of GRECO recommendations from 2015, paragraph 38, available from: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c5d15>

10 Sweden

10.1 Judges

Form of codes of ethics, their applicability, binding force and enforceability

Judges in Sweden do not have a code of ethics in the true sense of the word. However, they have three comprehensive documents on the subject of judicial ethics: **Good Judicial Practice** (*God domarsed*) published by the **Swedish Association of Judges** (*Sveriges Domareförbund*). These are the documents: Good Judicial Practice – Principles and Issues (*God domarsed – grundsatser och frågor*), Good Judicial Practice – Ethics and Responsibility (*God domarsed – om etik och ansvarstagande*), Good Judicial Practice – on Professional Responsibility and Supervision (*God domarsed – om tjänsteansvar och tillsyn*).

All these documents are available to the general public from the website of the Swedish Association of Judges.¹⁶³

The rules contained therein are applicable to all judges, but they are more in the nature of general rules that are not directly binding. A revision of the Good Judicial Practice documents is currently under way and is expected to be completed in the spring of 2023.¹⁶⁴ No other binding document on professional ethics for Swedish judges has been issued.

The areas of conduct and behaviour touched upon in the Good Judicial Practice are defined in the first of these publications, subtitled Principles and Issues (*God domarsed – grundsatser och frågor*). the integrity of judges is identified as a fundamental principle, and this is followed by four basic areas of principles:

- A) independence,
- B) impartiality and equal treatment,
- C) good conduct and behaviour in relation to others,
- D) competence and efficiency.

These principles, or the areas of conduct and behaviour they govern, are further elaborated in the given document through 60 questions and more than 100 sub-questions to help judges become aware of their position and to facilitate decision-making on ethical issues. One example of a question on the principle of independence is, “How can I resist the pressure of public opinion and unjustified attempts to influence my judicial activities?” the principle of fairness and equality of treatment is, for example, linked to the question “Am I aware of how my behaviour and statements during a hearing might affect whether the parties consider the court to be impartial?”. Good conduct and behaviour in relation to others is related to the question “Do I provide clear information tailored to the needs of the person in question?”. In relation to the latter principle of competence and efficiency, an example relevant question is: “Do I make sure that my decisions are understandable to the parties and other actors before the courts?”. This question is then followed by a relevant sub-question: “Do I use correct, simple and understandable language in my decisions, both spoken and written?” These questions must be assessed as being very positive, as judges facilitate the highest standards of conduct and behaviour.

The Government Disciplinary Board (*Statens ansvarsnämnd*) decides on matters relating to disciplinary proceedings (inter alia) against judges. Decisions of the Government Disciplinary Board cannot be appealed. However, an employee may appeal against a decision on disciplinary punishment within three weeks of notification of the decision. the case is then assessed by the competent court as an employment dispute. If the case involves a judge, the judge must be present at the court hearing.¹⁶⁵

¹⁶³ Available from: <https://domareforbundet.se/index.php?pageId=550>

¹⁶⁴ The review is being conducted by a former justice of the Supreme Court.

¹⁶⁵ Good Judicial Practice – Ethics and Responsibility, p. 74, available from: https://domareforbundet.se/files/pages/550/god_domarsed-om_etik_och_ansvarstagande_webb.pdf

No statistics are kept on breaches of ethical rules by judges.

As regards the use of social networks by judges, there are no binding guidelines on the conduct of judges on social networks. However, the Academy of Judicial Education (*Domstolsakademin*) has prepared non-public recommendations on appropriate conduct for judges. Above all, judges should be aware that anything they post on social networks may remain on the internet forever. They should also **avoid the possibility of their contributions being confused with official positions**. Judges should also be aware that clicking the “like” button can be perceived as taking a position. It is also necessary to be critical of information they obtain from social media.¹⁶⁶

Ethics education and support

The **Judicial Training Academy** (*Domstolsakademin*), part of the National Courts Administration (*Domstolsverket*), is responsible for training judges. All judges have the opportunity to take courses in various areas of law on an ongoing basis.

The Academy offers an optional five-part training course on “The Role of the Judge” in the form of lectures intended to improve the competence of judges in issues that are central to the exercise of their office. Each course is two days long and is run twice a year. It is a broadly focused course, in which ethical issues are discussed, among others. the course is divided into the following thematic units: A – the role of the judge and the functioning of the court, B – Independence and decision-making, C – Communication by the judge, D – the creative judge, E – A trip to Europe.

The aforementioned **Swedish Association of Judges** plays an important role in matters relating to judicial ethics. It maintains documents on good judicial practice and actively promotes the integration of judicial ethics into judicial education and the debate on judicial ethics.¹⁶⁷

The Swedish Association of Judges monitors internal and external issues affecting the judicial profession, participates in debates and takes positions on them. the Swedish Association of Judges is a natural partner in the public debate on issues relating to legislation, the administration of justice and the independence and autonomy of judges and courts, **as well as on issues relating to judicial ethics**, the role of judges and judicial accountability in a broader sense.¹⁶⁸ However, the available information does not indicate that the Swedish Association of Judges or any other authorised body provides consultation in individual cases.

Examples of good practice

Judges in Sweden have been addressing the issue of judicial ethics for a long time. Despite the fact that the above ethical rules are only of a recommendatory nature, the level of attention paid to addressing these issues would indicate that the ethical rules are respected in the daily work of judges. It is necessary to highlight three basic comprehensive publications on good judicial practice (*God domarsed*). As mentioned above, it is also necessary to highlight the list of questions designed to help judges become aware of their position and to facilitate decision-making on ethical issues.

11.2 Public prosecutors

Form of codes of ethics, their applicability, binding force and enforceability

Public prosecutors in Sweden have a code of ethics, the **Ethical Rules for Public Prosecutors** (*Etiska riktlinjer för anställda i åklagarväsendet*).

¹⁶⁶ Reply from the Swedish National Courts Administration to the letter of 20 March 2023. Unpublished material, see Annex 9.

¹⁶⁷ Available from: <https://domareforbundet.se/index.php?pageId=553>

¹⁶⁸ Available from: <https://domareforbundet.se/index.php?pageId=553>

The Ethical Rules for Public Prosecutors show the background to their adoption in their introductory paragraphs. In order to provide further support on issues relating specifically to public prosecution¹⁶⁹, the Prosecutor-General commissioned a working group in October 2012 to develop ethical rules. The Working Group's proposal was submitted in March 2013 and subsequently sent to all chambers and units of the Swedish Prosecution Authority and the European Public Prosecutor's Office. **On the basis of this consultation process, the Prosecutor-General decided on the Ethical Rules for Public Prosecutors.** An overview of decisions of interest in this area, including those of the parliamentary ombudsman and the Government Disciplinary Board (*Statens ansvarsnämnd*), is given in the annex to the Rules.¹⁷⁰

To ensure that ethical issues remain relevant in public prosecutors' offices, the Prosecutor-General issued a special decision on the administration of ethical guidelines at the same time. As a result, the Ethical Rules were updated in 2015 and 2020.¹⁷¹

The **Ethical Rules for Public Prosecutors** are available online for the general public on the Swedish Prosecution Authority's website.¹⁷²

The Ethical Rules for Public Prosecutors regulate the requirements for conduct and behaviour in the following areas:

- A) independence and legal procedure in proceedings – this also addresses the issue of seeking to ensure the correctness of decisions by public prosecutors, but also of correcting incorrect decisions by courts or other authorities;
- B) objectivity and impartiality;
- C) fair conduct – this is related to objectivity and impartiality, as it is important that public prosecutors' conduct does not give rise to suspicion of bias; it also addresses, for example, the issue of using clear and correct language;
- D) the public and the promotion of transparency, including contact with the media – this addresses, for example, the issue of maintaining an appropriate level of vigilance when making statements about various suspicions of crime during preliminary investigations, and the issue of objective and impartial expression when evaluating judicial decisions;
- E) good housekeeping – this also addresses, for example, the choice of transport and accommodation for business trips and the efficient use of working time;
- F) accepting gifts;
- G) workplace behaviour – this addresses the issue of responsibility for creating a suitable working environment;
- H) public speaking – this addresses the issue of public speaking to ensure that public confidence in the public prosecutor in question or public prosecution in general is not damaged.

The **Ethical Rules for Public Prosecutors are of general application** and are therefore **binding** on all Swedish public prosecutors. A breach can be addressed on two levels. If the breach is linked to criminal proceedings, it is investigated by the Prosecutor-General's Supervision Department. Such an investigation is concluded with a written decision that includes a commentary on the problem. This decision is published on the internal website if needed. If the breach is unrelated to criminal proceedings, it can be addressed as a breach of employment duties by the public prosecutor, i.e. as an employment law dispute.¹⁷³

169 *The Common Core Values for Civil Servants have been in place for some time and support civil servants in their efforts to develop a good administrative culture characterised by democracy, human rights and the rule of law, efficiency and accessibility.*

170 *Cf. Ethical Rules for Public Prosecutors, p. 1.*

171 *Available from: <https://www.aklagare.se/globalassets/dokument/ovriga-dokument/rar/rar-20141-etiska-riktlinjer.pdf>*

172 *Available from: <https://www.aklagare.se/globalassets/dokument/ovriga-dokument/rar/rar-20141-etiska-riktlinjer.pdf>*

173 *Reply from the Swedish Public Prosecutor's Office, Supervision Department, to the letter of 7 March 2023. Non-public document, see Annex 10.*

Ethics education and support

There is official methodological material on the Ethical Rules for Public Prosecutors, which is in the nature of a commentary on the individual provisions. A summary of individual decisions in disciplinary cases is attached to this document¹⁷⁴.

The training of public prosecutors is provided by the Swedish Public Prosecution Service. There is ethics training for all new public prosecutors through two courses, namely (i) the Fundamentals of Investigation and (ii) Ethics and the Role of the Public Prosecutor.

The basic training programme for public prosecutors is compulsory and lasts 15 teaching weeks spread over the first three years of practice as a public prosecutor. During the basic education programme, there are several courses in which ethical principles are addressed.¹⁷⁵

The Parliamentary Ombudsmen (*Riksdagens ombudsmän*) and/or the Chancellor of Justice (*Justitiekanslern*) can assess in a particular case whether the public prosecutor has acted, for example, in accordance with the principle of objectivity. the decisions of the Parliamentary Ombudsmen and the Chancellor of Justice are not binding, but public prosecutors are expected to abide by them.

Public prosecutors can also ask questions or seek advice from the Swedish Public Prosecution Service's Supervision Department (*Tillsynsavdelningen*).

There are no rules regarding the use of social networks by public prosecutors. According to the Swedish Public Prosecutor's Office's Supervision Department¹⁷⁶, **such regulation is almost impossible in view of the constitutionally enshrined right to freedom of expression.**

No statistics are kept on breaches of ethical rules.

Examples of good practice

The official methodological material on the Ethical Rules for Public Prosecutors, which is a commentary on the individual provisions, is well prepared and enables public prosecutors to more easily identify desirable behaviour and prevent breaches, and supports the development of ethically correct behaviour by Swedish public prosecutors.

¹⁷⁴ Available from: <https://www.aklagare.se/globalassets/dokument/ovriga-dokument/rar/rar-20141-etiska-riktlinjer.pdf>

¹⁷⁵ Reply from the Swedish Public Prosecutor's Office, Supervision Department, to the letter of 7 March 2023. Non-public document, see Annex 10.

¹⁷⁶ Reply from the Swedish Public Prosecutor's Office, Supervision Department, to the letter of 7 March 2023. Non-public document, see Annex 10.

11 Estonia

11.1 Judges

Form of codes of ethics, their applicability, binding force and enforceability

The **Code of Ethics** (*Kohtunike eetikakoodeks*) was adopted at the third regular court *en banc* on 13 February 2004, and subsequently amended on 8 February 2019 at the 18th regular court *en banc*. the Code of Ethics applies to all judges and is **binding**.

The Code of Ethics governs the following areas of conduct and behaviour:

- A) general requirements for judges (points 1 to 10 of the Code of Ethics) – addresses issues such as integrity, independence, impartiality, diligence in the exercise of the authority entrusted to them, conflicts of interest, other permitted activities, and the permissibility of political involvement;
- B) courts and court procedure (points 11 to 19 of the Code of Ethics) – this addresses, for example, issues of appropriate professional level and participation in in-service education, patience during proceedings and courtesy towards the parties to the proceedings, colleagues and court employees, avoidance of bias, decision-making without unnecessary delays and excessive formalism, and the prohibition of public criticism of the procedure or decision of another judge;
- C) independence and impartiality (points 20 to 26 of the Code of Ethics) – this addresses issues such as avoiding conflicts of interest, prohibiting support for political movements or their candidates, and accepting donations;
- D) extrajudicial activities (points 27 to 32 of the Code of Ethics) – this addresses issues such as participation in social and cultural life, abstaining from the use of narcotics and excessive use of alcohol, and open communication with the media and the public.

In addition to the above-mentioned areas of conduct and behaviour, the Code of Ethics also regulates the basic characteristics of the Ethics Council of Judges (cf. points 33 to 40 of the Code of Ethics).

The Code of Ethics is available online on the Supreme Court's website.¹⁷⁷

A breach of the Code of Ethics does not automatically constitute a disciplinary offence, but may lead to this consequence.¹⁷⁸ Pursuant to Section 87(2) of the Courts Act (*Kohtute seadus, RT I 2002, 64, 390*), it is a disciplinary offence for a judge to commit an unlawful act which consists in failure to perform or improper performance of an official duty; it is also a disciplinary offence for a judge to act improperly. the Disciplinary Chamber, which conducts disciplinary proceedings, has stated that the rules contained in the Code of Ethics may be used to interpret both the concept of improper conduct and the concept of *improper performance of official duties*.¹⁷⁹

The Disciplinary Chamber consists of five Supreme Court judges, five district court judges and five judges of the courts of first instance. the president of the Disciplinary Chamber appoints a five-member panel consisting of three Supreme Court judges, one district court judge and one judge of a court of first instance to decide on a disciplinary case involving a judge.

The members of the Disciplinary Chamber are elected by the individual courts in plenary session. the Supreme Court in plenary session also appoints the president of the Disciplinary Chamber. Judges are elected and appointed to the Disciplinary Chamber for a period of three years.

¹⁷⁷ Available from: <https://www.riigikohus.ee/en/estonian-court-system/estonian-judges-code-ethics>

¹⁷⁸ Reply of the Supreme Court of Estonia to the letter of 7 March 2023. Non-public document, see Annex 11.

¹⁷⁹ Ditto.

Pursuant to Section 97(3) of the Courts Act (*Kohtute seadus, RT I 2002, 64, 390*), a judge may appeal against a decision of the Disciplinary Chamber to the Supreme Court (plenary) within 30 days of the announcement of the decision. Possible disciplinary sanctions are [Section 88(1) of the Courts Act [*Kohtute seadus, RT I 2002, 64, 390*]]: (1) censure; (2) a fine of up to one month's salary; (3) a salary reduction; (4) removal from office.

Regarding statistics on breaches of the Code of Ethics, since 2004 (when the Code of Ethics was adopted) there has been only **one disciplinary case involving a breach of the Code**. There are no specific guidelines for the conduct of judges on social media.

Ethics education and support

There are no study materials on the Code, but there are opinions and recommendations of the Ethics Council of Judges on the Code.

The Ethics Council of Judges (*Kohtunike eetikanõukogu*) is a special advisory body on ethical issues. The establishment of the Council is foreseen by the Code of Ethics. the Council's opinions and recommendations are published on the Supreme Court's website.¹⁸⁰ It consists of five judges elected by the Supreme Court in plenary session, which may include judges emeritus. the term of office of a Council member is three years.

A judge may refer a matter to the Ethics Council of Judges for a statement. Such a referral can also be made anonymously. the Ethics Council of Judges may also issue general recommendations to judges on its own initiative or on a proposal. the opinions and recommendations of the Ethics Council of Judges are not binding.

The Ethics Council of Judges issues opinions after consultation with at least three members and recommendations after consultation with at least five members. the opinions and recommendations of the Ethics Council of Judges are issued by mutual agreement among its members. Technical support is provided by the Supreme Court.

The Ethics Council of Judges may also invite an ethics expert to provide an opinion on a particular issue. In recent years, this possibility of advice has been used approximately once or twice a year, i.e. the Ethics Council of Judges usually gives one or two opinions or recommendations per year.

Ethics training is part of the annual training programme for judges. the training plan for judges includes ethics as an important topic. Ethics training is mandatory for new judges and is a separate part of seminars for novice judges. This is usually a one-day training in a lecture-seminar format with the purpose of generating discussion. Ethical principles are also addressed both in litigation training (e.g. communication with vulnerable litigants) and in the coaching of judges.

There are currently no rules or recommendations on the use of social networking sites, but such guidelines are planned for the near future. However, the Council for Administration of Courts (*Kohtute haldamise nõukoda*) has set out more general recommendations for courts' relations with the media¹⁸¹. the recommendation states, inter alia: *Court employees must keep in mind the interests and image of the court when communicating with the public. **When court employees express their own personal opinions, they must emphasise that these are their personal opinions and not those of the court.** In specific court cases, the judge avoids giving his/her personal opinion. The judge may explain to the media the content of the judgment, the nature of the proceedings and the status, rights and duties of the participants in the proceeding. In case of a judgment that has not been reasoned in writing, the judge is recommended to explain to the media, upon their request, the reasons behind the judgment.*

180 Available here: <https://www.riigikohus.ee/et/kohtunike-omavalitsuskogud/kohtunike-eetikanoukogu> (in Estonian only).

181 Available here: https://www.riigikohus.ee/sites/default/files/elfinder/dokumendid/recommendations_for_the_courts.pdf

Examples of good practice

The broad representation of judges in the body competent to deal with disciplinary offences (the Disciplinary Chamber), where judges of lower courts (including courts of first instance) are also represented, is positive.

Another positive thing is the existence of the Ethics Council of Judges as a special body for ethics, the activities of which include issuing opinions and recommendations on ethical issues, as well as providing consultations in specific cases. the explicitly foreseen possibility of anonymous queries is also positive, as it may strengthen the trust and motivation of judges to raise questions with the Ethics Council.

11.2 Public prosecutors

Form of codes of ethics, their applicability, binding force and enforceability

The **Code of Ethics for Public Prosecutors** (*Prokuröride eetikakoodeks*) was adopted by the General Assembly of Public Prosecutors on 12 April 2013 and is published on the website of the Prosecutor's Office.¹⁸² It applies to all Estonian public prosecutors, regardless of local jurisdiction [Section 4(3) of the Code].

The Code of Ethics for Public Prosecutors regulates the following areas of conduct and behaviour:

- A) general rules of conduct for public prosecutors – addressing, for example, the duty to comply with the Constitution, the duty to uphold the reputation of public prosecution, the requirement to maintain the dignity of the office and to observe the principles of good conduct, and the requirement for impartiality and independence;
- B) rules relating to preliminary proceedings and proceedings before the courts – addressing, for example, issues of honour and dignity, the professional, objective, fair and honest performance of duties, avoiding suspicion of bias, refraining from compromising contacts, avoiding conflicts of interest and prohibiting the acceptance of gifts or other benefits;
- C) relations with colleagues and the public – addressing issues such as appropriate and courteous behaviour towards others and prohibitions on discussing disputes with colleagues in the media or in public;
- D) secondary activities and non-work activities – addressing, for example, membership of civic associations and charities.

The Code of Ethics for Public Prosecutors also contains implementing provisions [inter alia, establishing the **Ethics Council** (*Prokuröride eetikanõukogu*)].

The Code of Ethics for Public Prosecutors is not directly and in itself binding on public prosecutors. However, pursuant to Section 10(2) of the Code, it **serves as a basis for decision-making by the Disciplinary Committee** (*Distsiplinaarkomisjoni*) **when hearing disciplinary cases** involving public prosecutors, or as a basis for assessing specific conduct in disciplinary proceedings. When making decisions, the Disciplinary Board may rely on the requirements for professional ethics and the conduct of public prosecutors contained in the Code of Ethics for Public Prosecutors.

Disciplinary offences are defined as *unauthorised failure to perform or inadequate performance of duties or improper conduct*. Improper conduct is defined as conduct contrary to **generally accepted moral standards or that brings the public prosecutor or the office of the public prosecutor into disrepute**, whether or not it is committed in the performance of the public prosecutor's duties.¹⁸³ **Inappropriate conduct may include, among other things, a breach of the rules set out in the Code of Ethics for Public Prosecutors.**¹⁸⁴

¹⁸² The Code of Ethics is available here: <https://www.prokuratuur.ee/et/organisatsioon/prokuroride-eetikakoodeks>

¹⁸³ Cf. Section 31 of the Act on the Public Prosecutor's Office (*Prokuratuuriseadus*, RT I 1998, 41, 625).

¹⁸⁴ Reply of the Estonian Prosecutor's Office to the letter of 7 March 2023. Non-public document, see Annex 12.

The Disciplinary Committee, after hearing a case, submits its proposal to the Minister of Justice or the Prosecutor General on whether or not to impose a disciplinary sanction. Disciplinary sanctions under Section 31(3) of the Act on the Public Prosecutor's Office (*Prokuratuuriseadus, RT I 1998, 41, 625*) are

- censure;
- salary reduction of up to 30% of annual salary;
- removal from office.

The imposition of a disciplinary sanction may be challenged in the administrative courts [cf. Section 42(5) of the Act on the Public Prosecutor's Office (*Prokuratuuriseadus, RT I 1998, 41, 625*)].

The Ethics Council cannot initiate proceedings against a public prosecutor on the grounds of a breach of the **Code of Ethics for Public Prosecutors**, but the opinion of the Ethics Council may be taken into account in disciplinary proceedings by the Disciplinary Committee.¹⁸⁵ It can therefore be concluded that a breach of the **Code of Ethics for Public Prosecutors** is not automatically grounds for disciplinary prosecution of a public prosecutor, but may result in such disciplinary prosecution.

Statistics on breaches of the Code of Ethics for Public Prosecutors are not kept. There are also no specific guidelines for the conduct of public prosecutors on social media. the principles in the Code of Ethics for Public Prosecutors shall apply mutatis mutandis.

Ethics education and support

In March 2013, the Ethics Council issued an interpretative opinion on the **Code of Ethics for Public Prosecutors** regarding conflicts of interest. the document methodically elaborates areas related to (i) accepting gifts, (ii) free-time activities and (iii) misuse of inside information. There are no other official explanatory or study materials on the Code of Ethics.

There is no specific training for public prosecutors' ethics in Estonia and, according to the Estonian Prosecutor's Office, there is no need for such training.¹⁸⁶

The Ethics Council for Public Prosecutors has been asked for an opinion on an ethics-related issue on four occasions in the last five years.

Examples of good practice

The existence of the Ethics Council can, which makes statements on ethical issues in specific cases, can again be held as an example of good practice. the issuance of an interpretative opinion on the **Code of Ethics for Public Prosecutors** regarding conflicts of interest, supplemented by concrete examples from practice (even if only in the area of accepting gifts), is also welcome.

¹⁸⁵ Reply of the Estonian Prosecutor's Office to the letter of 7 March 2023. Non-public document, see Annex 12.

¹⁸⁶ Reply of the Estonian Prosecutor's Office to the letter of 7 March 2023. Non-public document, see Annex 12.

12 Lithuania

12.1 Judges

Form of codes of ethics, their applicability and binding force

The **Code of Ethics for Judges** (*Lietuvos respublikos teisėjų etikos kodeksas*) was adopted by decision of the General Assembly of Judges on 28 June 2006. Article 3 of the Code of Ethics for Judges states that this Code **applies to all judges**. However, the National Courts Administration has informed the Author that there is an exception – the Code of Ethics for Judges does not apply to judges of the Constitutional Court.^{187, 188} the Code of Ethics for Judges is **binding and enforceable**.

The Code of Ethics for Judges is available online to the general public on the National Courts Administration website.¹⁸⁹

The areas of conduct and behaviour covered by the Code of Ethics for Judges are, with a few exceptions, similar to those in the other states compared. the Code regulates the requirements for:

- A) respect for the person – this addresses issues such as respect for the rights and dignity of the parties to proceedings;
- B) respect and loyalty to the state – this addresses issues such as compliance with the judicial oath, and politically neutral and correct conduct;
- C) the fairness and impartiality of judges;
- D) independence;
- E) discretion;
- F) transparency and openness in relation to the public – this addresses, for example, the requirement to provide the public with reasons for a judge's decisions and the requirement to avoid conflicts of interest;
- G) honesty – this addresses, for example, the issues of maintaining the judge's reputation, proper conduct, and not disparaging the reputation of other judges;
- H) conduct that means the judge can be an example to others – for example, the judge should set an example by their behaviour, demeanour and discipline, and should be punctual, helpful and tolerant;
- I) integrity – for example, a judge should not breach legal regulations, should thoroughly address the substance of pending cases, avoid haste and only superficial examination of the case file, yet at the same time should not prolong the proceedings;
- J) solidarity with other judges – this addresses issues such as mutual assistance and exchange of experience, and knowledge or mutual assistance in defending against defamation in the media, unreasonable criticism and professional discredit;
- K) continuous professional development.

Enforcement of codes of ethics and resolution of breaches

Breaches of judicial ethics are regulated in Title IX *“Responsibility of judges, their removal and dismissal from office, evaluation of their performance”* of the **Law on Courts** (*Teismų įstatymas, Nr. I-480*). Section 83(1) of the Law on Courts (*Teismų įstatymas, Nr. I-480*) provides that disciplinary proceedings against a judge will take place before the **Court of Honour** (*Teisėjų garbės teismas*).

¹⁸⁷ Reply of the Lithuanian National Courts Administration to the letter of 20 March 2023. Unpublished material, see Annex 13.

¹⁸⁸ The Author found a similar opinion in the public media:

<https://www.delfi.lt/news/daily/law/g-kryzevicius-teiseju-etikos-kodeksas-konstitucinio-teismo-teisejams-negalioja.d?id=63901898>

¹⁸⁹ Available from: https://www.teismai.lt/data/public/uploads/2014/11/teiseju_etikos_kodeksas.doc

Pursuant to Section 83(2) of the Law on Courts (*Teismų įstatymas, Nr. I-480*), a judge may be subject to disciplinary proceedings:

- 1) for an act that brings a judge into disrepute;
- 2) for breaching other requirements of the Code of Ethics for Judges;
- 3) for failing to comply with the restrictions on the professional or political activities of judges laid down by law.

An act bring a judge into disrepute is defined as one incompatible with judicial honour and not meeting the requirements of the Code of Ethics for Judges, which disparages the name of a judge and undermines the authority of the court. Official misconduct in the form of gross negligence in the performance of a specific judicial duty or unexcused failure to perform a specific duty is also considered to be conduct prejudicial to the position of a judge [Section 83(3) of the Law on Courts (*Teismų įstatymas, Nr. I-480*)]. the requirements for initiating disciplinary proceedings are contained in Section 84 of the above-mentioned law.

Pursuant to Article 85(8) of the Law on Courts (*Teismų įstatymas, Nr. I-480*), the **Judicial Ethics and Disciplinary Committee** (*Teisėjų etikos ir drausmės komisija*) decides on the initiation of disciplinary proceedings against judges. This examines reasoned motions from persons concerning the initiation of disciplinary proceedings against a particular judge, but only for specific acts or omissions that may give rise to disciplinary liability.

If the Judicial Ethics and Disciplinary Committee initiates disciplinary proceedings, the case is referred to the Court of Honour [cf. Section 83(1) in conjunction with Section 84(6) of the Law on Courts (*Teismų įstatymas, Nr. I-480*)]. In cases where the initiation of disciplinary proceedings is refused, the decision of the Judicial Ethics and Disciplinary Committee is final and cannot be appealed.

After reviewing a disciplinary action, the Court of Honour may, by its decision under Section 86(1) of the quoted law:

- 1) dismiss the disciplinary action on the grounds that there are no reasons for disciplinary liability;
- 2) dismiss the disciplinary action on the grounds that the time limit has expired;
- 3) limit itself to a review of the disciplinary action;
- 4) impose a disciplinary sanction.

The Court of Honour may impose one of the disciplinary sanctions listed in Section 87 of the Law on Courts (*Teismų įstatymas, Nr. I-480*):

- 1) censure (*pareikšti pastabą*);
- 2) reprimand (*pareikšti papeikimą*);
- 3) severe reprimand (*pareikšti griežtą papeikimą*).

Moreover, the Court of Honour may, by its decision pursuant to Section 86(2) of the Law on Courts (*Teismų įstatymas, Nr. I-480*):

- 1) propose to the President of the Republic or the Parliament (Seimas) the removal of a judge from office in accordance with the procedure established by law;
- 2) to propose that the President of the Republic requests the Seimas to initiate impeachment proceedings against a judge.

The decision of the Court of Honour may be appealed to the Supreme Court within ten days of its adoption [cf. Section 86(2) of the Law on Courts (*Teismų įstatymas, Nr. I-480*)].

The Code of Ethics for Judges does not set out specific rules and requirements for the conduct of judges on social media. Nor is there any other official document that formulates such rules. the Judicial Ethics and Disciplinary Committee, when considering submissions concerning the permissible conduct of judges on social media, addresses this topic in its decisions, responses and consultations and provides various types of recommendations, thereby shaping current practice.¹⁹⁰

Statistics on ethics breaches

The Judicial Ethics and Disciplinary Committee publishes annual reports each year, including statistical data.

In 2022, the Judicial Ethics and Disciplinary Committee adopted five decisions (against six judges), with three judges being prosecuted. Disciplinary proceedings were not initiated in two cases, and these were limited to a hearing by the said committee.

In 2021, the Judicial Ethics and Disciplinary Committee adopted nine decisions: disciplinary proceedings were initiated against four judges, while in three cases disciplinary proceedings were not initiated after consideration by the Judicial Ethics and Disciplinary Committee, and in two cases disciplinary proceedings were not initiated.

In 2020, there were seven decisions adopted by the Judicial Ethics and Disciplinary Committee: disciplinary proceedings were initiated against two judges, while in two cases disciplinary proceedings were not initiated, in one case disciplinary proceedings were discontinued due to the absence of the subject of disciplinary liability, and in two cases disciplinary proceedings were not initiated but were limited to a hearing of the case.

In 2019, the Judicial Ethics and Disciplinary Committee adopted eight decisions (against 11 judges), with one judge being subject to disciplinary proceedings, in four cases disciplinary proceedings were not initiated after consideration by the Judicial Ethics and Disciplinary Committee, and in three cases disciplinary proceedings were not initiated.

In 2018, the Judicial Ethics and Disciplinary Committee adopted 16 decisions, with disciplinary proceedings initiated against two judges, disciplinary proceedings against five judges were limited to a hearing before the Committee, disciplinary proceedings were not initiated against eight judges due to the absence of grounds for disciplinary liability, and one decision was rejected due to the termination of the judge's mandate.

Ethics education and support

The Code of Ethics for Judges is accompanied by a comprehensive commentary referred to as a practical guide (*praktinis vadovas*). the latest practical guide is from 2022. Previous versions of this guide were published in 2017 and 2018.¹⁹¹ the guide discusses in detail the purpose and objectives of the Code, as well as its application and the sources on which it is based. It then discusses the individual ethical principles and their application. The analysis is also supplemented by relevant decisions of the Judicial Ethics and Disciplinary Committee and the Court of Honour.

Pursuant to Section 85(1) of the Law on Courts (*Teismų įstatymas, Nr. I-480*), the aforementioned Judicial Ethics and Disciplinary Committee may also advise judges on ethical issues. As reported in relation to the work of this Committee by the National Courts Administration, it will develop a recommended model of specific conduct that meets the requirements for judicial ethics based on an assessment of the individual situation and specific circumstances. In 2022, the Judicial Ethics and Disciplinary Committee provided seven consultations on various issues – on the issue of leasing real estate, membership in the Rotary Club, the right to scientific and creative activity, etc.¹⁹²

190 Reply of the Lithuanian National Courts Administration to the letter of 20 March 2023. Unpublished material, see Annex 14.

191 All editions of the guide to the Code of Ethics are available from:
<https://www.teismai.lt/lt/teismu-savivalda/teiseju-etikos-ir-drausmes-komisija/apie-komisija/182>

192 Reply of the Lithuanian National Courts Administration to the letter of 20 March 2023. Unpublished material, see Annex 14.

There were five consultations in 2021, one in 2020, three in 2019, three in 2018, three in 2017 and two in 2016.

According to the 2015 Report on the implementation of GRECO recommendations, paragraph 43, the permanent training programme for judges *“has been updated to include the following topics: ‘Ethical Requirements for the Conduct of Judges’; ‘Conflicts of Interest in Judicial Activities’; ‘Limits of Bias and Impartiality’; ‘Practical Application of the Code of Ethics for Judges’; and ‘Peculiarities of Managing Corruption Risks in the Judiciary’. All new judges and court presidents attend these mandatory trainings. Information about educational activities is public.”*¹⁹³

Examples of good practice

The practical guide to the Code of Ethics for Judges is detailed and includes interpretation of individual provisions, and relevant decisions by the Judicial Ethics and Disciplinary Committee and the Court of Honour. the importance of this guide also lies in its frequent updating.

The consultation service provided in practice by the Judicial Ethics and Disciplinary Committee is also something positive. the compilation of statistical data on disciplinary offences in the annual reports of the Committee is also to be commended.

12.2 Public prosecutors

Form of codes of ethics, their applicability and binding force

Code of Ethics for Public Prosecutors of the Republic of Lithuania (*Prokurorų etikos kodekso*) was adopted by Order No I-68 of the Prosecutor General of 30 April 2004. It was subsequently updated in 2012 (Order of the Prosecutor General No I-15 of 9 January 2012). the Code of Ethics for Public Prosecutors of the Republic of Lithuania is **binding, enforceable and applicable to all public prosecutors. This follows directly from Section 39(1) and (2) of the Law on Public Prosecution** (*prokuratūros įstatymas, Nr. I-599*), as well as directly from the text of the Code of Ethics for Public Prosecutors of the Republic of Lithuania (cf. point 15 of the quoted Code of Ethics: *“Public prosecutors shall be held liable for breach of this Code in accordance with the procedure established by the Law on Public Prosecution of the Republic of Lithuania.”*).

The Code of Ethics for Public Prosecutors of the Republic of Lithuania is available online for the general public on the website of the Public Prosecutor’s Office.¹⁹⁴

The areas of conduct regulated by the Code of Ethics for Public Prosecutors of the Republic of Lithuania do not differ in any particular way from similar regulations in the compared states. the Code of Ethics for Public Prosecutors of the Republic of Lithuania regulates the requirements for:

- A) fairness – this addresses, for example, the requirement to act reasonably and fairly and to take considered decisions, including respect for the principle of the presumption of innocence;
- B) civility – this includes, for example, the requirement that the public prosecutor not spread rumours, not unnecessarily criticise colleagues and not act arrogantly;
- C) independence;
- D) impartiality;
- E) non-abuse of powers – this addresses issues such as not using state property for other purposes and not using official powers to influence the decisions of others;
- F) confidentiality requirements;

¹⁹³ Report on the implementation of GRECO recommendations from 2015, available from: <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c32e2>

¹⁹⁴ Available from: <https://www.prokuraturos.lt/data/public/uploads/2017/04/2012-01-09-nr-i-15-prokuroru-etikos-kodeksas.pdf>

- G) solidarity with other public prosecutors – this addresses, for example, issues of the mutual exchange of information, knowledge and skills, and refraining from public and unjustified comments on the work of other public prosecutors;
- H) respect for and compliance with the law – this addresses, for example, the requirement to comply with ethical principles;
- I) responsible conduct – this addresses, for example, the issue of not accepting gifts and other benefits.

The Code of Ethics for Public Prosecutors of the Republic of Lithuania does not specifically regulate conduct on social media, nor are there any other materials available. the rules contained in the Code may be applied mutatis mutandis to ethical issues related to the use of social networks.¹⁹⁵

Enforcement of codes of ethics and resolution of breaches

As mentioned above, the Code of Ethics for Public Prosecutors of the Republic of Lithuania is binding and enforceable. the competent institution in matters of disciplinary proceedings for public prosecutors is the **Prosecutors' Ethics Commission** (*Prokurorų etikos komisija*). Section 40(1) of the Law on Public Prosecution (*prokuratūros įstatymas, Nr. I-599*) provides that the following disciplinary measures may be imposed on a public prosecutor for a breach of the Code of Ethics for Public Prosecutors:

- 1) censure (*pastaba*);
- 2) reprimand (*papeikimas*);
- 3) transfer to a lower office (*perkėlimas į žemesnės pareigas*);
- 4) dismissal from office (*atleidimas iš tarnybos*).

Dismissal from office may be imposed on a public prosecutor pursuant to Section 40(2)(5) of the Law on Public Prosecution (*prokuratūros įstatymas, Nr. I-599*) for breach of the Code of Ethics for Public Prosecutors of the Republic of Lithuania that discredits the authority of the public prosecutor and public confidence in public prosecution.

The persons who may initiate an investigation into the conduct of a public prosecutor are listed in Section 41(2) of the quoted law.

With regard to appeals against decisions, Section 42(5) of the quoted law states that an appeal may be lodged against a decision imposing a service penalty within one month of the date of its notification, and an appeal may be lodged with a court against a decision to remove a public prosecutor from office in accordance with the Law on Administrative Proceedings (*administracinių bylų teisenos įstatymas, Nr. VIII-1029*) within one month of the date of delivery of the decision.

Statistics on breaches of the ethics rules set out in the Code of Ethics for Public Prosecutors of the Republic of Lithuania are not available.

Ethics education and support

A comprehensive commentary on the Code of Ethics for Public Prosecutors of the Republic of Lithuania is published as a practical guide (*Lietuvos respublikos prokurorų etikos kodekso taikymo, praktinis vadovas – Application of the Code of Ethics for Public Prosecutors of the Republic of Lithuania, Practical Guide*).¹⁹⁶ the guide discusses in detail the different ethical principles and their application. the analysis is also supplemented by relevant decisions of the Prosecutors' Ethics Commission.

¹⁹⁵ Reply of the Lithuanian Public Prosecutor's Office to the letter of 20 March 2023. Unpublished material, see Annex 14.

¹⁹⁶ Available from: <https://www.prokuraturos.lt/data/public/uploads/2017/03/prokuroru-etikos-kodekso-taikymo-praktinis-vadovas-red.pdf>

As stated in the 2019 Second Report on the implementation of GRECO recommendations at paragraph 53: *“Furthermore, training on ethics, integrity and conflicts of interest is provided on a regular basis, not only in the Prosecutor General’s Office, but also at the level of regional prosecutors’ offices In the period November 2016 to November 2018, 37 trainings on issues of relevance to prosecutors’ conduct have taken place (such as “prosecutors’ ethics”, “relevant issues of prosecutors’ ethics”, “professional ethics in the civil service” and “identification, management and prevention of conflicts of interest”), in which more than 500 prosecutors participated.”*¹⁹⁷

The Author was informed by the Lithuanian Prosecutor’s Office (*Lietuvos Respublikos generalinės prokuratūros*) that the Prosecutor’s Office has not recently held any training sessions on ethical issues.¹⁹⁸

In 2017, an amendment to the Rules of Procedure of the Ethics Committee for Public Prosecutors was adopted, which enshrined an additional function, namely the provision of consultations on ethical issues. A public prosecutor is entitled to apply to the Committee for consultation concerning their person or their activities in respect of which they have certain ethical doubts (cf. paragraph 55 of the Resolution on the Order of the Prosecutor General of the Republic of Lithuania of 9 January 2012 No I-16 *“On Approval of the Rules of Procedure of the Ethics Committee for Public Prosecutors”*¹⁹⁹). the consultations of the Ethics Committee for Public Prosecutors have been published on the website of the Public Prosecutor’s Office, where they can be consulted by anyone.²⁰⁰ the Commission has provided 10 consultations over five years.

Examples of good practice

The Ethics Committee for Public Prosecutors is active in many areas, and the publication of consultations is a positive contribution to the credibility of public prosecution.

197 Second Report on the Implementation of GRECO Recommendations 2019, available from: <https://rm.coe.int/greco4-2019-18-fourth-evaluation-round-corruption-prevention-in-resp/168096d994>

198 Reply of the Lithuanian Public Prosecutor’s Office to the letter of 20 March 2023. Unpublished material, see Annex 14.

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13 Conclusion

13.1 Summary of findings

Below, the Author presents a summary of the information obtained for each area, always in comparison with the situation in the Czech Republic. In general, the situation regarding the codes of ethics for judges and public prosecutors in the Czech Republic can be considered very satisfactory. Codes of ethics or documents of a similar nature have been issued for judges and public prosecutors, which is a good signal to the general public regarding the declaration and observance of the highest professional standards of ethically compliant behaviour. All these applicable codes of ethics and documents of a similar nature are of a high standard, including their related supporting materials such as extensive commentaries developing the ethical principles contained therein.

Judges

01 FORM AND BINDING FORCE

At present, there are two codes of ethics in the Czech Republic independent of each other, namely the Code of Ethics for Judges, which was developed under the leadership of the current president of the Supreme Court, JUDr. Peter Angyalossy, Ph.D., and the Ethical Principles of Judicial Conduct, authored by the Czech Union of Judges. What these codes have in common is that they are not binding norms and a breach of the rules contained in the Code of Ethics for Judges or the Ethical Principles of Judicial Conduct does not in itself lead to disciplinary proceedings unless it also fulfils the prerequisites in the Courts and Judges Act. If the prerequisites set out in the Courts and Judges Act are met, ordinary disciplinary proceedings will be initiated before the Supreme Administrative Court.

All the states assessed here have codes of ethics, ethical principles or other documents of the nature of a code of ethics. As regards the question of the binding nature of these codes, in the majority of the states compared they are of a non-binding nature. In addition to the Czech Republic, this is also the case in Germany, Austria, Canada, Sweden, Finland and Denmark. On the other hand, the codes of ethics or similar documents are binding for judges in Norway, Estonia, Slovakia and Lithuania.

02 REGULATED AREAS OF CONDUCT AND BEHAVIOUR

The Code of Ethics for Judges is divided into four parts, namely: I. Independence, II. Impartiality and Equality, III. Integrity and Propriety, IV. Competence and Diligence. These individual parts then regulate sub-issues such as the acceptance of gifts and other benefits, a judge's relationship with the media or a judge's conduct on social media. In comparison to the other states compared, the regulation of conduct on social media is a rather rare part of the code of ethics and should therefore be highlighted.

The Ethical Principles of Judicial Conduct divide the ethical rules into six parts, namely: I. Independence, II. Impartiality, III. Integrity, IV. Dignity, V. Equality, VI. Expertise. the individual parts then address sub-issues, where it is worth mentioning the less traditional strengthening of expertise, including regarding the development of international law.

All the codes or similar documents cover more or less the same areas. Modifications to individual codes of ethics or similar documents thus touch on issues of independence, impartiality, equality, integrity and expertise. Consequently, any arrangements that are not quite traditional compared to the other states compared stand out. In Lithuania, for example, there is the question of respect and loyalty to the state. Norway addresses, for example, the duty to intervene if a judge becomes aware of a material breach of duty by another judge. In Germany, on the other hand, moderation, humanity and courage of the judge in question are regulated.

03 METHOD OF PUBLICATION

In all the states compared, codes of ethics or other documents in the nature of a code of ethics are available to the general public online.

04 APPLICABILITY

In the Czech Republic, the Code of Ethics for Judges is applicable to all judges, thanks to discussion in individual judicial councils. By their nature, the Ethical Principles of Judicial Conduct apply only to members of the Czech Union of Judges.

As regards the applicability of codes of ethics or similar documents in the nature of a code of ethics in the other states compared, in most of these states the fact that the applicability applies to all judges is explicitly stated.

In some states, such as Austria, Germany, Finland and Sweden, the general applicability of application to all judges does not follow directly from the text of the ethical rules in question. However, the principles contained in these rules should be common to the conduct and behaviour of all judges, and therefore the general applicability of these ethical rules can be inferred.

05 METHODOLOGICAL SUPPORT

In the Czech Republic, a comprehensive commentary on the Code of Ethics for Judges has been published. Similarly, the Czech Union of Judges has published an Open Set of Ethical Dilemmas for Judges in relation to the Ethical Principles of Judicial Conduct, and this is available on their website.

Similarly, commentaries or practical guides are available in most of the states compared. In this context, it is necessary to highlight a document that is unparalleled in the compared states, not only in its applicability. In Germany, a compendium of ethical and professional standards for judges and public prosecutors has been prepared on the recommendation of GRECO, and runs to over 500 pages. In Sweden, on the other hand, there are three comprehensive publications (Judicial Conduct – Principles and Issues; Ethics and Responsibility; Professional Responsibility and Supervision) which discuss a wide range of ethical issues.

06 ENFORCEABILITY

Neither the Code of Ethics for Judges nor the Ethical Principles of Judicial Conduct are binding and enforceable, and therefore breach of them is not a disciplinary offence, nor can disciplinary measures be imposed for their breach. As stated above in paragraph 01 FORM AND BINDING FORCE, disciplinary liability would only arise if the relevant provisions of the Courts and Judges Act were breached simultaneously.

Since codes of ethics or similar documents in the nature of a code of ethics are not binding in most of the other states compared, they cannot be enforced.

However, in Slovakia, Norway, Estonia and Lithuania, the binding nature of the respective codes of ethics means a breach of the rules may lead to disciplinary proceedings as foreseen in the relevant laws.

07 INSTITUTES ADDRESSING BREACHES OF ETHICS

As mentioned above, in the Czech Republic, a breach of ethical rules does not lead to disciplinary proceedings unless it also fulfils the prerequisites in the Courts and Judges Act.

In Lithuania, the Judicial Ethics and Disciplinary Committee decides on the initiation of disciplinary proceedings against judges. Any subsequent disciplinary proceedings take place before the Court of Honour. In Slovakia, classic disciplinary proceedings are held before the Supreme Administrative Court. In Norway, breaches of the Ethical Principles for Norwegian Judges are dealt with by the Supervisory Committee. the Supervisory Committee usually concludes that the judge in question has breached the rules of good judicial conduct, using the local code of ethics – Ethical Principles for Norwegian Judges – as the benchmark for proper conduct. In Estonia, breaches of the Code of Ethics are dealt with by the Disciplinary Chamber. the Disciplinary Chamber states that the rules contained in the Code of Ethics may be used to interpret both the concept of misconduct and the concept of improper performance of official duties.

As mentioned above, in the remaining states, codes of ethics or similar documents in the nature of a code of ethics are non-binding and therefore not enforceable.

08 WAYS TO ADDRESS BREACHES OF ETHICS

As mentioned above, in the Czech Republic, a breach of ethical rules does not lead to disciplinary proceedings unless it also fulfils the prerequisites in the Courts and Judges Act.

In Slovakia, the following measures can be imposed for committing a disciplinary offence: censure or a salary reduction of up to 30% for a maximum period of three months. In the event of a repeat offence committed before the expungement of the first offence, the above reduction in pay may be imposed for up to six months. In the case of minor shortcomings in work or conduct, a person entitled to bring a disciplinary action may reproach the judge in writing if such a form of redress is sufficient.

In Norway, a judge can be reprimanded or warned. the Supervisory Committee may also issue an opinion on what constitutes proper conduct of a judge without imposing disciplinary measures on the judge. In Estonia, the possible disciplinary sanctions that can be imposed on judges are censure, a fine of up to one month's salary, a reduction in salary or removal from office. In Lithuania, the Court of Honour may impose one of the disciplinary sanctions (censure, reprimand, severe reprimand) on a judge. In addition, the Court of Honour may propose that the judge be removed from office or request that impeachment proceedings be initiated against the judge.

As mentioned above, in the remaining states, codes of ethics or similar documents in the nature of a code of ethics are non-binding and therefore not enforceable.

09 CONSULTANCY

In the Czech Republic, the prevailing attitude is that a judge should be able to resolve ethical issues on their own. However, this does not exclude the possibility for a judge to ask for advice from the president of the court, the Minister of Justice or the Court of Ethics of the Czech Union of Judges, which is open not only to members of the Czech Union of Judges.

In most of the other states compared, recommendations on ethical issues related to the exercise of judicial office can be sought from judicial councils or other specially constituted councils (these may be referred to as committees, commissions, bodies) on ethics. In Austria, for example, the Ethics Council was established in 2017. A similar Committee on Judicial Ethics has also been established by the Norwegian Association of Judges.

10 TRAINING

In general, the Judicial Academy and regional courts also educate judges on ethical issues. the Judicial Academy routinely holds voluntary three-day seminars twice a year, attended by around 100 judges and public prosecutors per year. In addition, the Supreme Court regularly holds Ethics Roundtables to discuss ethical issues on a selected topic.

As regards training in judicial ethics, in other states this is usually provided by the relevant judicial academy or similar institution responsible for the training of judges. In some states, ethical issues are already part of the preparation for office. This is the case, for example, in Slovakia, Austria, Sweden and Estonia.

11 STATISTICS

In the Czech Republic, there are no separate statistics that directly address breaches of codes of ethics.

In Norway, limited information is publicly available from the Supervisory Committee reports. By 2020, the Supervisory Committee had decided to impose disciplinary measures in a total of 87 cases, in seven of which a warning was issued.

In Lithuania, statistics on ethics breaches are compiled in the annual reports of the Judicial Ethics and Disciplinary Committee. the latest available data – for 2022 – shows that in 2022 the Judicial Ethics and Disciplinary Committee adopted five decisions (against six judges), with three judges being prosecuted. Disciplinary proceedings were not initiated in two cases, and these were limited to a hearing by the said committee.

No such statistics are kept in the other states compared.

Public prosecutors

01 FORM AND BINDING FORCE

Public prosecutors in the Czech Republic have at their disposal the Code of Ethics for Public Prosecutors of 16 April 2019 with effect from 1 May 2019, which was adopted as a so-called Joint Measure. the Code of Ethics for Public Prosecutors is binding for all public prosecutors. This binding effect follows directly from Article III(1) of the Joint Measure.

All states compared have codes of ethics or a similar document containing ethical principles. Compared to the other states whose regulations were the subject of this study, the relevant codes of ethics for public prosecutors or documents of a similar nature are binding in more states than the codes of ethics for judges. Thus, the relevant codes of ethics or documents of a similar nature are binding for public prosecutors in Slovakia, Canada, Denmark, Norway, Sweden, Estonia and Lithuania. the codes of ethics or similar documents for public prosecutors in Austria, Germany and Finland are not binding.

02 REGULATED AREAS OF CONDUCT AND BEHAVIOUR

In the Czech Republic, the Code of Ethics regulates the legality and independence, impartiality, expertise, credibility, dignity and bearing, as well as cooperation not only with other public prosecutors, but also with other authorities, including foreign ones. the individual areas regulate sub-issues such as the acceptance of gifts or polite and courteous conduct, including appropriate dress.

All the codes or similar documents cover more or less the same areas. Emphasis is placed on addressing issues of independence, impartiality, equality, personal integrity and probity, discretion, acceptance of gifts and contact with the public. Similarly to the case of the codes of ethics of judges, some of these regulations, which are not quite traditional compared to the other states compared, stand out. In Slovakia, for example, it is a requirement to improve not only one's professional knowledge, but also social skills and selected personal qualities. In Denmark, there is a requirement for the prudent use of irony or slang or for access to registers and specialised systems in accordance with the law.

03 METHOD OF PUBLICATION

The Code of Ethics for Public Prosecutors is available on the website of the Prosecutor General's Office.

All codes or similar documents are available to the general public online. the exception to this is Denmark, where the supplementary Guidelines on Good Conduct and Ethics in the Public Prosecution Service are not publicly available.

04 APPLICABILITY

In the Czech Republic, the Code of Ethics for Public Prosecutors explicitly applies to all public prosecutors.

Similar explicit declarations of general application can be found in codes of ethics or documents of a similar nature in Slovakia, Canada, Denmark, Norway, Estonia, Lithuania and Sweden. In the other states, the general applicability to all public prosecutors does not follow directly from the text of the ethics rules in question. However, the principles contained in these rules should be common to the conduct and actions of all public prosecutors, and therefore the general applicability of these ethical rules can be inferred.

05 METHODOLOGICAL SUPPORT

In the Czech Republic, the Code of Ethics for Public Prosecutors is accompanied by a commentary which provides a detailed interpretation of each paragraph as well as relevant case law.

A commentary on a code of ethics or a document of a similar nature is almost standard nowadays. Almost all states have commentaries on relevant codes of ethics or documents of a similar nature. the exceptions are public prosecutors in Canada and Finland, who do not have such commentaries.

In this context, it is necessary to highlight a document that is unparalleled in the compared states, not only in its applicability. In Germany, a compendium of ethical and professional standards for judges and public prosecutors, which runs to over 500 pages, was created upon recommendation by GRECO. It is also worth highlighting the approach in Norway, where public prosecutors also have a document including 58 examples of ethical dilemmas.

06 ENFORCEABILITY

Breaches of the Code of Ethics for Public Prosecutors may result in liability for disciplinary offences. However, this conclusion is to some extent relativised by disciplinary decision-making practice. No decision has been issued in disciplinary proceedings in which the disciplinary liability of a public prosecutor has been established on the basis of a breach of the Code of Ethics for Public Prosecutors or the previous Code of Professional Ethics for Public Prosecutors. the disciplinary court has so far inferred disciplinary liability only on the basis of breaches of the relevant provisions of the Act on the Public Prosecutor's Office.

As regards the situation in the other states compared, as mentioned above the relevant codes of ethics or documents of a similar nature are binding and therefore enforceable for public prosecutors in Slovakia, Canada, Denmark, Norway, Sweden, Estonia and Lithuania. On the other hand, the codes of ethics or similar documents for public prosecutors in Austria, Germany and Finland are non-binding and therefore not enforceable.

07 INSTITUTES ADDRESSING BREACHES OF ETHICS

As regards the conduct of disciplinary proceedings in the Czech Republic, these are conducted and decided by the disciplinary court, which is the Supreme Administrative Court. the disciplinary proceedings themselves are always initiated on the basis of a petition submitted by the entities referred to in Section 8(5) of Act No 7/2002 Coll. The accused is entitled to choose a defence counsel from the ranks of public prosecutors and attorneys.

In the other states compared, where codes of ethics or similar documents containing ethical principles are enforceable, the institutions addressing ethical breaches vary. In Slovakia, for example, there are classic disciplinary proceedings before the Supreme Administrative Court. In Lithuania, the competent institution for disciplinary proceedings involving public prosecutors is the Prosecutors' Ethics Commission.

08 WAYS TO ADDRESS BREACHES OF ETHICS

In the Czech Republic, if the chamber concludes, by a majority of all votes, that the accused has committed a disciplinary offence, it may impose one of the following disciplinary measures on the public prosecutor, depending on the seriousness of the disciplinary offence: a reprimand, a salary reduction of up to 30% for a maximum of one year and, in the case of repeated disciplinary offences committed by the public prosecutor in the period before the expungement of the disciplinary sanction, for a maximum of two years, and also removal from office. If the hearing of the public prosecutor's disciplinary offence is sufficient, the imposition of the disciplinary offence may be waived. In the case of minor deficiencies and shortcomings, the conduct may be subject to reprimand in writing by a high public prosecutor without initiating disciplinary proceedings.

In the other states compared, where codes of ethics or similar documents containing ethical principles are enforceable, the ways of dealing with ethical breaches vary. In Slovakia, for example, the disciplinary chamber may, by a majority vote, give a public prosecutor a written reprimand or a reduction of up to 15% of their basic salary for a maximum of three months for disciplinary offences; in the case of repeated disciplinary offences committed in the period before the disciplinary measure was expunged, for a maximum of six months. In the event of serious misconduct, the penalty may be a reduction in the basic salary by 15% to 50% for a maximum of one year, removal from the office of high public prosecutor, transfer to a lower level public prosecutor's office or removal from office.

Another example is Estonia, where a public prosecutor can be censured, subject to a salary reduction or removed from office. In Lithuania, a public prosecutor can similarly be censured, reprimanded, reassigned to a lower office or even removed from office.

09 CONSULTANCY

In the Czech Republic, the Ethics Committee of the Union of Public Prosecutors of the Czech Republic provides opinions on ethical issues. In addition, pursuant to Article IV of the Joint Measure, senior public prosecutors may provide consultations on the interpretation of and compliance with the Code of Ethics for Public Prosecutors upon request.

As for the situation in the other states compared, ethics advice can usually be provided by the superiors of the public prosecutors concerned. In Lithuania, the Prosecutors' Ethics Committee provides advice. A Lithuanian public prosecutor is entitled to ask it for advice concerning their person or their activities in respect of which they have certain ethical doubts. The consultations of the Prosecutors' Ethics Committee have been published on the website of the Public Prosecutor's Office, where they can be consulted by anyone.

10 TRAINING

Ethics training is mandatory for all public prosecutors in the Czech Republic. Ethical issues related to the performance of the office of public prosecutor are covered by training upon the prosecutor taking office and every three years thereafter. In general, the Judicial Academy and the regional, high and supreme public prosecutors' offices are also involved in the education of public prosecutors in ethical issues.

In most of the states compared, training in public prosecution ethics is provided by a judicial academy or a similar institution responsible for training public prosecutors. In Denmark, for example, the Director of Public Prosecutions has created a "training package" on ethics. Ethics is also part of the training of new public prosecutors (focused on typical ethical dilemmas in practice). According to the training catalogue for 2023, the first module of the training for new public prosecutors is called the Role of the Public Prosecutor and an Introduction to Proper Work in Court. This training includes proper conduct and ethics in public prosecution.

11 STATISTICS

In the Czech Republic and in the other states compared, there are no separate statistics directly addressing breaches of codes of ethics or similar documents.

13.2 Summary of good practice examples

The Author here summarises and generalises the examples of good practice they have identified in the states compared.

First of all, the Author would emphasise that the declared non-binding nature of the code, or, on the contrary, its declared binding and enforceable nature, help to clearly determine the nature of the document in question. The establishment of the code as an aid in the interpretation of relatively vague legal norms related to the duties of a judge is positive.

On the basis of the study, the continuous activity of a self-governing body of the character of a judiciary council in the area of the professional ethics of judges or a similar body for the needs of public prosecutors also seems appropriate. Such a self-governing body guarantees continuity in dealing with ethical issues that judges or public prosecutors may face. Moreover, the existence of such a body allows for a flexible response to current issues by issuing various opinions or methodologies. Another advantage of this approach is the elimination of the risk of inappropriate interference by the executive (or legislative) power in the independence of the courts or the independence of the public prosecutors.

The Author also sees the elaboration of a commentary (or similar document) on ethical principles, containing a more detailed interpretation of the ethical recommendations, as positive. The relevant disciplinary case law is an appropriate complement to such a commentary. Similarly, the development of a practical guide (or similar document) containing model (fictitious) cases and providing guidance on how to proceed in specific ethically ambiguous situations would be welcomed. It is also appropriate to supplement such commentary, guide or similar documents with model questions that may help in decision-making when addressing a particular ethical dilemma.

It would also be beneficial to implement measures to ensure the possibility of consultation with an independent body in specific cases. In this context, it does not seem appropriate to restrict consultation to consultation through a senior employee or supervisor. In addition, it is advisable to allow questions to be asked anonymously. This measure can also help ensure that consultations are objective and confidential and do not depend on such senior employee or supervisor.

Finally, the Author emphasizes ongoing training focused on professional ethics as part of the preparation for the office of judge or public prosecutor. Mandatory training on professional ethics for novice judges and public prosecutors or trainee judges can ultimately contribute to high confidence in a country's judiciary.

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14 List of annexes

Annex 1 – Austria – Ministry of Justice

Annex 2 – Austria – Association of Austrian Judges

Annex 3 – Germany – Federal Court of Justice

Annex 4 – Norway – Norwegian Courts Administration

Annex 5 – Norway – Norwegian Prosecuting Authority (1st answer)

Annex 6 – Norway – Norwegian Prosecuting Authority (2nd answer)

Annex 7 – Finland – Advisory Council on Judicial Ethics

Annex 8 – Finland – National Courts Administration

Annex 9 – Sweden – Swedish National Courts Administration

Annex 10 – Sweden – Public Prosecutor's Office

Annex 11 – Estonia – Supreme Court

Annex 12 – Estonia – Prosecutor's Office

Annex 13 – Lithuania – National Courts Administration

Annex 14 – Lithuania – Prosecutor General's Office

Annex 15 – Denmark – Guidelines for Good Conduct and Ethics in the Public Prosecution Service

15 List of abbreviations used

Charter of Fundamental Rights and Freedoms – Resolution of the Presidium of the Czech National Council No 2/1993 Coll., on the declaration of the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic, as amended

Joint Measure – the measure of 16 April 2019, No 7 SPR 269/2017

Constitution – Constitutional Act No 1/1993 Coll., the Constitution of the Czech Republic, as amended

Act No 7/2002 Coll. – Act No 7/2002 Coll., on proceedings in matters of judges, public prosecutors and bailiffs, as amended

Courts and Judges Act – Act No 6/2002 Coll., on courts, judges, lay judges and the state administration of courts and on amendments to certain other laws (Courts and Judges Act), as amended

Act on the Public Prosecutor's Office – Act No 283/1993 Coll., on the public prosecutor's office, as amended

Constitutional Court Act – Act No 182/1993 Coll., on the Constitutional Court, as amended

CJA – Act No 6/2002 Coll., on courts, judges, lay judges and the state administration of courts and on amendments to certain other laws (Courts and Judges Act), as amended

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CÍSAŘ, ČEŠKA, SMUTNÝ s.r.o., law firm, has prepared this document using 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 CÍSAŘ, ČEŠKA, SMUTNÝ s.r.o., law firm, considers to be relevant for the content of the legal analysis. the conclusions reached may therefore be subject to subsequent changes depending on additional information provided or other information found.

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