

Maria Joanna Gondek<sup>1</sup>, Dorota Charkiewicz<sup>2</sup>

## Rules on professional ethics for judges and court assessors

### Abstract

*In this article, the authors outline selected ethical aspects of the set of rules of professional ethics for judges and court assessors. They present the concepts of judicial independence and justice in relation to the concept of law, which are crucial for the ethical context in which a judge acts. They present a historical outline and the process of creation of the ethical institutions of the judicial profession, considering its evolution and influence on the current wording of the rules, and present the current regulations, crowning the process of codification of the set of rules of professional ethics of judges and court assessors.*

### Keywords

*Independence, justice, ethics, judge, administration of justice, ethical principles.*

### 1. Introduction. Ethical foundations of the code of professional ethics – selected aspects

Ethics in the behaviour of judges and concern for dignity affect the implementation of the main function of the courts, which is the administration of justice, as well as the implementation of the complementary function of performing other legal protection tasks entrusted by law.

The purpose of this article is to present the ethical aspects of the set of rules of professional ethics of judges and court assessors, the notion of judicial independence and justice in terms of the context of

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<sup>1</sup> dr hab. Maria Joanna Gondek, Department of Language, Rhetoric and Media Law, John Paul II Catholic University of Lublin ORCID:0000-0002-9005-1623.

<sup>2</sup> dr Dorota Charkiewicz, Department of Law, Administration and Security, Warsaw Management University ORCID:0000-0002-1068-7569.

ethical action of a judge in the legal conception, to present the historical outline and the process of creation of ethical institutions of the judicial profession, taking into account its evolution and influence on the current wording of the rules, and to present the currently binding regulations, crowning the process of codification of the code of ethics of judges.

The leading sense of many discussions concerning the ethics of the judicial profession may lead to the belief that the sphere of judicial ethics belongs to the field of positive law. In this context, discussants considering ethical issues related to the exercise of the judicial profession often refer merely to the interpretation of positive law. In this narrowing perspective in relation to the moral foundations of human action, they refer to a certain spectrum of procedural, criminal, civil or administrative factors. However, it is important to emphasise that everything related to a specific choice and a specific decision made by a judge is always made in attribution to and in connection with their sphere of moral action. The decision-making, choice-related action of the judge clearly introduces an ethical context, and hence it should also be linked to philosophical interpretations.

At the same time, it should be noted that discussions concerning ethical contexts of exercising the judicial profession very often direct the main attention to diagnosing and stigmatising various forms of evil in such action, as well as making an (otherwise necessary) reflection on how to effectively avoid these various forms of evil. To this end, specific instructions for preventive and protective action against evil are created. However, it should be mentioned that the main objective of ethics is to reveal the good as the goal of action and the ways of realising a particular good in specific action<sup>3</sup>. It is only on this recognised basis that the protection of the good or an indication of how to make a separation from evil in action can legitimately emerge. The ethical context of every action of a judge is built primarily by the link to the good as the goal of the action, and not by the separation from evil, which will appear later, already as a consequence of the link to the good. This linking of action with the good as the goal of action is the basis of the universality and voluntariness of every action of the judge.

By the same token, it should be emphasised that, without a doubt, judges, in making certain jurisprudential choices, are practically aiming at a certain fixed point of reference in their professional action (sometimes

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<sup>3</sup> The fundamental fact that every human action aims at achieving some good, hence such a good should be regarded as the goal of human action, was pointed out by Aristotle, *Etyka nikomachejska* (Nicomachean Ethics), 1094 a.

in a way that is not fully realised at a theoretical-ethical level). The point in question is that which, at the deepest and most essential level, would justify their rulings. Both the judge's own instance of conscience and the opinion of the community indicate that such an infallible point of reference, still regarded as the judge's current task, is the realisation of the good of man. This human good, however, must be understood specifically and realistically, not abstractly and ideally. It is not a distant formula, but a good accomplished in the context of specific circumstances, which differ every time. It consists in ensuring the security of human life and protecting the development of this life on all possible material-spiritual levels in the specific circumstances of human existence.

Paying attention to the ethical context of the functioning of Resolution No. 25/2017 of the National Council of the Judiciary of 13 January 2017 Collection of the principles of professional ethics of judges and court assessors (chapter one discusses the general principles, chapter two the principles of service, chapter three the principles of off-duty conduct), the concept of judicial independence contained therein should be emphasised, which is crucial for the ethical context of a judge's action.

It is not difficult to see that the interpretation of the concept of independence is made in relation to the accepted conception of law. Among various conceptions of law that exist in the culture, there is a particularly noteworthy common-sense reading of what the law is. It is justified scientifically by classical realist philosophy, which points out that the existential basis for the functioning of law is to be found in human nature and the relations that occur between people<sup>4</sup>. It is in the sphere of human relations that independence and justice are realised. The moral greatness and significance of justice exceeds, according to ancient thinkers, even the harmony of the cosmos. The Latin name for justice – *iustitia* – derives from the verb *iustari* – to equalize. The process of moral levelling refers to one's relationship with another human being and indicates the compensatory action owed to a person by other people.

Written down in the ranks of codes, the legal order as a law established in the form of legal norms – *lex* arranges the order of social action and introduces rational rules for the communal functioning of man. At the same time, it should be noted that the judge, although in constant professional contact with the order *lex*, is not only in contact with this order in their judicial work. At the base of the statutory law

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<sup>4</sup> See M. A. Krąpiec, *Człowiek, prawo i naród* (Man, Law and Nation), Mikołów 2002.

the *lex*, as enshrined in the various codes to which the judges constantly refer in their work, stands the more fundamental legal order, which is the order of *ius*<sup>5</sup> – the natural law. This order clearly reveals the ethical context of the judge's action and is the basis for the formulation of any code of professional ethics.

At the same time, this order is older than any form of social organisation. It is realised in interpersonal relations, independently of the norms of *lex* jurisprudence in force at a given time. What is the essence of the relationship of *ius* law? It concerns the obligation (duty) to act or not to act, with primary motive, which is the welfare of another person. *Ius* thus determines what the essential order of just action consists of in relation to another human being.

In the action of every judge, the general and analogous norm of natural law is realised, which indicates that good is to be done and evil is to be avoided in action. Therefore, the order of *ius* is defined as the just thing itself, realising the good of a specific human being. This order develops the sphere of man's personal life, i.e. a life that is rational and free. If there were no law embodied in the indication good is to be done and evil is to be avoided, it would be equivalent to acting to help and harm another human being, and thus the aspiration to save a human being's life and the opposite aspiration to deprive him or her of life could be treated equally.

In view of the goal of developing the various forms of social life, the law of *ius* has been made more and more specific and explicit, which has taken the form of the formulation of various legal norms of a *lex* nature, enshrined in specific codes, laws and individual acts. Definitively, it is pointed out that *lex* laws are formulated by human reason, subordinated to the common good, which includes the good of a particular person, as well as issued by a legitimate authority and promulgated in the community to which the law is addressed<sup>6</sup>. Against the background of this definition, laws which do not realise the primary objective and reason for the law, namely the good of man, are not laws, but only pseudo-rights, for it is with a view to realising the good of man that the need for the law itself arises. The factor of the realisation of the human good is therefore crucial in an ethical context.

The set of rules of professional ethics for judges and court assessors identifies independence as the ethical basis of a judge's work.

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<sup>5</sup> See M. A. Krąpiec, *Człowiek i prawo naturalne (Man and Natural Law)* Lublin 1993.

<sup>6</sup> S. Thomae Aquinatis, *Summa theologiae*, I-II, q. 90, a 4.

The judge's independence is rooted in the judge's decision-making freedom as a human being. The independence of deciding and adjudicating that makes up the independence of a judge's decision-making certainly concerns the judge's relationship to the *lex standi* norm free from indirect interference. However, this does not exhaust the essence of the judge's independence. It must be emphasised that, on the ethical side, independence essentially consists in the freedom to guide the judge's decision with an intellectual reading of the content of reality. In a particular way, the recognition of reality concerns the diagnosis of factors that realise the good of man and the community (*ordo boni ac recti*). Here we are dealing with the freedom of decision consisting in the fact that the will of the judge, guided by the rational discernment, freely chooses specific goods. In the context of the realisation of the moral life of man, this is a fundamental experience of the human condition as a rational and free person.

From judicial independence grows the just action of the judge. In the context of the reading of the Collection of Principles of Professional Ethics for Judges and Judicial Assessors, it should be noted that a judge, by virtue of the potential structure of being and the potential nature of action characteristic of every human being, is capable of acting independently and justly. His or her independent and fair action is formed in the course of experience, but it is not so without the work done beforehand. Such action is not automatically attributed to the judge, but requires repeated efforts and endeavours by the judge. Fundamental to this is the judge's duty to make a renewed effort to understand and implement the law in the context of recognising the good of human beings and the community, and not merely to read and implement the correct course of legal procedure.

The Collection of Principles of Professional Ethics for Judges and Judicial Assessors, pointing to the independence of the judge's action, in fact emphasises that the judge's work is an expression of the realisation of the human capacity to emerge from himself or herself acts of sovereign action. Individual decisions implemented by a judge, concerning taking or not taking an action, choosing a specific legal provision, making a specific interpretation of legal provisions, in the public perception appear as acts of independent action. A judge cannot be compelled to carry out such acts by another person or even by a particular community, if the judge himself does not allow it. They are intrinsically internal and free acts. They are not, however, because of the potential nature of human action, perfect. They require constant work by the judge on his decisions

and his intellectual discernment. The judge both shapes his independence and the justice of his judicial action, which grows out of independence, and does not realise it as ready-made. It can therefore be seen that independence is shaped by repeated acts of independent action, consisting of a willingness to work hard intellectually and morally, which directly influences the acts of decision-making. The judge has a direct opportunity through intellectual and moral work to influence his decisions. Thus, he or she retains the ability to form lasting dispositions to act independently and justly.

In the case of judicial independence and justice, we are undoubtedly dealing with the sphere of moral action. The most important task, therefore, is to improve the volitional sphere accordingly and to educate it as sustainable and prepared to give to others what they are entitled to. Justice does not function outside the world of the judge's action as a distant model or a matchless ideal. Analysed from the subjective side, it is first and foremost a just will or will giving back to others what they are entitled to, securing and protecting by law the welfare of human beings in the concrete circumstances of their condition and situation.

## **2. Historical background**

The first attempt to formalise the rules of conduct of judges took place during a speech by a member of parliament (whose name is unknown) in the Sejm of the Republic in the 17th or 18th century<sup>7</sup>. Stanisław Michał Roliński, a barrister, translated this speech from his book *Orator Polonus*<sup>8</sup>. The most important principles of ethical conduct of judges, were set out in seventeen canons concerning the behaviour and conduct of those administering justice as follows:

*„I mo Korrupcyom nie podpadający.*

*2do Powinni te Prawa zachować, które stanowią.*

*3tlQ Powinni być sumnienia dobrego, cnotliwi.*

*4to W sądzeniu nec morosi, nec nimis celeres.*

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<sup>7</sup> A. Korzeniewska-Lasota, Z polskich prac nad kodyfikacją zasad etyki sędziowskiej (From Polish work on the codification of the principles of judicial ethics), *Studia Warmińskie* 54 (2017), p. 266.

<sup>8</sup> A. Korzeniewska-Lasota, Z polskich prac nad kodyfikacją zasad etyki sędziowskiej (From Polish work on the codification of the principles of judicial ethics), *Studia Warmińskie* 54 (2017) p. 266 i S. M. Roliński, Sędziowie być powinni (Judges should be) *Palestra* przed laty 1997, *Palestra* 41/5–6(473–474), pp. 139–153.

- 5to Prawdę kochający y mówiący.  
6to Na obie strony uszy mający.  
7mo Łaskawi, dyskretni, cierpliwi.  
8vo Nie ubodzy.  
9no Wstrzemięźliwi.  
10mo Respektami się osób, godności, pokrewieństw, nie uwodzący.  
11 mo Sprawiedliwi.  
12mo Bez dystynkcyj wedle Prawa zarówno wszystkich sądzący.  
13t10 Nie młodzi.  
14to Bez Instygatorów nie sądzący.  
15to Nikomu nie obligowani.  
16t0 Dobrze uczeni.  
17 Przy słuszności odważni y ginąć gotowi”<sup>9</sup>.

The substantive scope of each of the enumerated canons of conduct for judges, was elaborated with a broad justification of the specific conduct of the judge and included a precise explanation of what exactly it would consist of. As an example, one can cite the rationale for the seventh principle of ethics for judges formulated as follows: "Gracious, discreet, patient"<sup>10</sup>. The author explained precisely what ethical and compliant behavior of a judge in this regard was supposed to consist of:

*„Kto wyda wyrok, nie wysłuchawszy jednej ze stron i postanowi, że to jest słuszne, jest niesprawiedliwym. Nie karz nikogo, niezbadawszy go. Wysłuchaj i strony przeciwnej. Drugie ucho w całości zachowuję dla pozwanego. Przy sądzeniu bądź miłosiernym dla dzieci jak ojciec i jak mąż dla matki ich, a będziesz jako syn Najwyższego. Nie mogą godnie sądzić o podwładnych ci, którzy w sprawach ich ulegają nienawiści lub względom. Gdzie wszystko jest karane, tam plami się królewska dostojność. Gdzie wszystko się przebacza, oblicze Majestatu bez bojaźni karalności miane jest za nic. Częściej pożądają wieki dobrego sędziego – rzadziej go widują”<sup>11</sup>.*

<sup>9</sup> S. M. Rośliński, Sędziowie byźdź powinni (Judges should be) Palestra przed laty 1997, Palestra 41/5–6 (473–474), p. 139.

<sup>10</sup> *Ibidem*.

<sup>11</sup> „Ad septim um punctum. 23) In iudicando esto pupillis misericors ut Pater et pro viro Matri illorum et eris tu velut filius altissimi Eccl. 14. Iudicare digne de subditis nequeunt, qui in subditorum causis vel odium vel gratiam sequuntur. S. Greg. Ubi totum punitur, regia serenitas crudelitate polluitur. Ubi vero totum remittitur, facies

During the Second Polish Republic, we can find the main non-formalized strands of the Polish tradition of professional ethics for judges, when judges who were well-known in the legal community and who prided themselves on their authority, attempted to set out frameworks and canons of behavior for 'being a judge'<sup>12</sup>. These were judges held in high esteem in the judicial community because of their moral authority and extensive knowledge of the law, and the models they created for ethical behavior by judges provided a model for subsequent generations of lawyers<sup>13</sup>, with the most important principle for the exercise of their office being that of independence<sup>14</sup>. Although the idea of drafting a normative code of professional ethics for judges emerged during this period, it was not successful because, as indicated, of the complexity of the issues involved<sup>15</sup>.

On the other hand, in the inter-war period, the disciplinary jurisdiction of the legal profession (including attorneys) functioned very efficiently, as evidenced by numerous rulings of the Executive Department of the Supreme Bar Council in Warsaw<sup>16</sup>. As an example of a disciplinary ruling, one may cite the judgment of the Higher Disciplinary Court at the Supreme Bar Council in Warsaw of 19 November 1938 in case no. 118/38/Sd, in which it was held that "Conclusion of an agreement by an advocate with a client to the effect that the client cedes a part of the claim to the advocate, in return for which the advocate pays the costs of the trial for him and does not demand any advance payments from the client, is contrary to good practice as an advocate and the dignity of the state", or the judgment of the Higher Disciplinary Court at the Supreme Bar Council in Warsaw of 3 September 1938 in the case no. 118/38/Sd, in which it was held that "It is contrary to good practice as an advocate and

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Majestatis sine metu disciplinae contemnitur. Rupert. Bonum iudicem saecula vovent saepius, rarius vident. Pacat." – from S. M. Roliński, *Sędziowie bydź (...)* (Judges should (...)) pp. 142–143.

<sup>12</sup> A. Korzeniewska-Lasota, *Z polskich prac nad kodyfikacją (...)* (From Polish work on the codification (...)), p. 266.

<sup>13</sup> A. Żurawski, *Etyka zawodu sędziego ze szczególnym uwzględnieniem niezawisłości sędziowskiej (uwag kilka)* (Ethics of the judicial profession with particular reference to judicial independence (a few remarks)), (in:) *Niezawisłość sędziowska*, Warszawa 1990, p. 63.

<sup>14</sup> L. K. Paprzycki, *Ten, który jest sędzią* (He who is a judge) *Palestra* 1993, *Palestra* 37/5–6(425–426), No 5–6, p 39-42.

<sup>15</sup> A. Korzeniewska-Lasota, *Z polskich prac nad kodyfikacją (...)* (From Polish work on the codification (...)), p. 266.

<sup>16</sup> S. M. Roliński, *Sędziowie bydź (...)* (Judges should (...)), p. 151.



the dignity of the state". In the case from 3 September 1938 in No. 66/38/Sd, it was pointed out that "a verdict of the Disciplinary Court acquitting an advocate of a charge of not answering a colleague's letters does not entitle him to continue not answering letters after the disciplinary verdict, which cannot constitute a 'settled case' for the future"<sup>17</sup>.

An equally interesting example of ethical responsibility of legal professionals, was the disciplinary case conducted against attorney Stanisław Węśławski, who was an *ex officio* attorney in the appeal proceedings. This attorney, being aware of the "hopelessness" of the case (as he stated), violated various deadlines in the case. As a result of the disciplinary proceedings against him, he was given a penalty of admonishment by the Higher Disciplinary Court at the Supreme Bar Council in Warsaw in a judgment of 17 December 1938<sup>18</sup>.

Residual historical sources indicate as early as in 1939 that the Association of Judges and Prosecutors made attempts to develop a code of professional ethics for judges, but detailed proposals for regulating these solutions have not survived to the present day<sup>19</sup>.

After the Second World War, the idea of drafting a code of ethical principles for judges was revived, but this did not ultimately happen again, due to the numerous and predominant voices of representatives of the doctrine and the legal profession in the discussion pointing to the fact that the activities of judges do not require additional regulation, as they are standardized in the existing legal provisions<sup>20</sup>.

During the same period, representatives of the legal profession of attorneys succeeded in getting the first ethical code for the legal profession (attorneys) passed. At the plenary meeting of the Supreme Bar Council held on 6 and 7 May 1961, the "Collection of rules of advocacy ethics and dignity of the profession"<sup>21</sup> was adopted. It was pointed out

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<sup>17</sup> *Ibidem*.

<sup>18</sup> P. Dąbrowski, Odpowiedzialność dyscyplinarna adwokatów w okresie dwudziestolecia międzywojennego-wileński casus Stanisława Węśławskiego 1896-1942 (Disciplinary responsibility of advocates in the interwar period – the Vilnius case of Stanisław Węśławski 1896–1942), *Studia Iuridica Lublinensia* 2016, vol. XXV, 2, p. 41–47.

<sup>19</sup> J. R. Kubiak, Wokół idei kodeksu etyki zawodowej sędziów (On the idea of a code of professional ethics for judges) *Palestra* 1995, 39/3–4(447–448), p. 78–79.

<sup>20</sup> A. Żurawik, Refleksje o etyce zawodowej sędziów (Reflections on the professional ethics of judges), *Przegląd Naukowy Disputatio* 2011, 12 (1–2), p. 109.

<sup>21</sup> S. Janczewski, Zbiór zasad etyki adwokackiej i godności zawodu (The Rulebook on Bar Ethics and Dignity of the Profession), *Palestra* 1961, 5/6(42), 5–10, p. 5.

that this body of ethics should constitute a compendium of knowledge for all advocates regarding the proper behavior of members of the profession, and for trainee advocates, knowledge of this body of ethics should be a "sine qua non" condition for taking the bar exam<sup>22</sup>. The Code of Ethics consists of seven chapters: Chapter I – General provisions, Chapter II – Conduct of the profession, Chapter III – Relationship with courts and authorities, Chapter IV – Relationship with colleagues, Chapter V – Relationship with clients, Chapter VI – Relationship with the Bar authorities, Chapter VII – Final provisions<sup>23</sup>.

In 2001, the provision of Article 2(1) para. 8 of the Act on the National Council of the Judiciary provided a formal and legal basis for the development by the National Council of the Judiciary, the first normative set of rules of professional ethics for judges<sup>24</sup>. It should be emphasized that at that time, other legal professions already had normatively binding codes of ethics (legal counsels or advocates)<sup>25</sup>.

At that time, a set of ethical rules for judges called the "Set of Rules of Conduct for Judges" was developed and enacted in 2002 by one of the judges' associations<sup>26</sup>.

### **3. Body of Principles of Professional Ethics for Judges and Court Assessors**

The legal basis for the development of a normative set of ethical principles for judges was the provision of Article 2 para. 1 pt. 8 of the Act of 27 July 2001 on the National Council of the Judiciary, which stipulates the duty of the National Council of the Judiciary to ensure that the principles of professional ethics are observed by judges<sup>27</sup> (currently it is the provision of art. 3 par. 1 pt. 3 of the Act of 12 May 2011 on the National

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<sup>22</sup> Ibidem, p. 9–10.

<sup>23</sup> Z. Krzemiński, Z historii prac nad kodyfikacją zasad etyki adwokackiej (From the history of the work on the codification of the rules of advocacy ethics) *Palestra* 1968, 12/11(131), 58–65, p. 62.

<sup>24</sup> Act of 27 July 2001 on the National Council of the Judiciary, *Journal of Laws* 2001, No.100, item 1082.

<sup>25</sup> A. Korzeniewska-Lasota, Z polskich prac nad kodyfikacją (...) (From Polish work on the codification (...)), p. 271.

<sup>26</sup> A. Korzeniewska-Lasota, Z polskich prac nad kodyfikacją (...) (From Polish work on the codification (...)), p. 271.

<sup>27</sup> The provision of Article 2(1) para. 8 of the Act of 27 July 2001 on the National Council of the Judiciary, *Dz. U.* 2001, No.100, item.1082.

Council of the Judiciary)<sup>28</sup>. Resolution of the National Council of the Judiciary No. 16/2003 of 19 February 2003 enacted the Collection of principles of professional ethics of judges, constituting an annex to this resolution<sup>29</sup>. This collection consisted of 3 chapters and contained general provisions (Chapter 1), rules for the performance of the service (Chapter 2) and rules of conduct of a judge outside the service (Chapter 3).

In the following years, the Collection of Principles of Professional Ethics of Judges, was supplemented several times by, inter alia, Resolution No. 741/2009 of the National Judicial Council of 7 October 2009, Resolution No. 1295/2015 of the National Judicial Council of 8 December 2015, Resolution No. 14/17 of the National Judicial Council of 11 January 2017, Resolution No. 15/17 of the National Judicial Council of 11 January 2017.

Resolution No. 741/2009 of the National Council of the Judiciary of 7 October 2009 assumed that the rules of ethics apply *mutatis mutandis* to retired judges<sup>30</sup>.

Resolution No. 1295/2015 of the National Council of the Judiciary of 8 December 2015 clarified that the Rules of Ethics apply to judicial assessors entrusted with the performance of judicial functions and apply accordingly to retired judges<sup>31</sup>.

By Resolution No. 14/17 of the National Council of the Judiciary of 11 January 2017, § 3a was added after § 3, indicating that a judge should avoid all kinds of personal contacts and economic relations with natural persons, legal entities and other entities, as well as avoid undertaking activities in the private, professional and public sphere that could give rise to a conflict of interest and thus negatively affect the perception of a judge as an impartial person and undermine confidence in the office of a judge<sup>32</sup>.

By Resolution No. 15/17 of the National Council of the Judiciary of 11 January 2017 on amending the content of the Statement of Principles of

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<sup>28</sup> Act of 12 May 2011 on the National Council of the Judiciary (i.e. Journal of Laws 2021, item 269).

<sup>29</sup> Resolution of the National Council of the Judiciary No. 16/2003 of 19 February 2003, together with the annex.

<sup>30</sup> Resolution No. 741/2009 of the National Council of the Judiciary of 7 October 2009. [www.krs.pl](http://www.krs.pl) accessed 4.10.2023.

<sup>31</sup> Resolution No. 1295/2015 of the National Council of the Judiciary of 8 December 2015. [www.krs.pl](http://www.krs.pl) accessed 4.10.2023.

<sup>32</sup> Resolution No. 14/17 of the National Council of the Judiciary of 11 January 2017. [www.krs.pl](http://www.krs.pl) accessed 4.10.2023.

Professional Ethics of Judges, § 23 was added after § 22, which stipulates that a Judge should exercise restraint in the use of social media<sup>33</sup>.

The National Council of the Judiciary, by a Resolution of 13 January 2017. ( No. 25/2017) promulgated the consolidated text of the Collection of Principles of Professional Ethics for Judges and Court Assessors - hereinafter referred to as the Collection of Principles of Professional Ethics for Judges. This resolution takes into account the changes that were introduced to the Collection of Principles of Professional Ethics for Judges and Court Assessors (annex to Resolution No. 16/2003 of the National Council of the Judiciary of 19 February 2003) as a result of subsequent resolutions of the National Council of the Judiciary.

It should be emphasised that the rules of professional ethics of judges adopted in the Code of Ethics apply not only to judges, but also to assessors entrusted with judicial functions and retired judges (to some extent). The Code of Ethics of Judges guarantees the power of the National Council of the Judiciary to amend or supplement the provisions of that Code. The National Council of the Judiciary is also empowered to interpret the provisions of the rules of ethics for judges.

The set of rules of professional ethics for judges and court assessors consists of three chapters. The first chapter contains the general rules applicable to the professional ethics of judges and court assessors, the second chapter sets out the rules for the performance of the service and the third chapter sets out the rules for the conduct of a judge outside the service.

The first chapter contains general provisions indicating the specific duties and personal limitations of a judge that are associated with the exercise of the office of judge. It is emphasised that a judge should at all times be guided by the principles of integrity, dignity, honour, a sense of duty and observe good morals.

Judges, by virtue of their office, have judicial immunity. The provision of the first sentence of Article 80(1) sentence one of the Act of 27 July 2001. Law on the Common Court System, stipulates that a judge may not be arrested or held criminally responsible without the permission of the competent disciplinary court (immunity)<sup>34</sup>. In accordance with the regulations of the Code of Ethics for Judges – immunity should not be abused

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<sup>33</sup> Resolution No. 15/17 of the National Council of the Judiciary of 11 January 2017 on amending the content of the Statement of Principles of Professional Ethics of Judges, [www.krs.pl](http://www.krs.pl) accessed 4.10.2023.

<sup>34</sup> The provision of Article 80 of the Law on the System of Common Courts Journal of Laws 2001 No. 98, item 1070 i.e. Dz. U. of 2023, item 217.

and a judge should not carry out activities that could lead to the promotion of the interests of others or his own interest by virtue of his status as a judge and the prestige associated with the office they hold.

A judge should also avoid all kinds of personal contacts and economic ties with various entities, regardless of their organisational structure and legal form (§ 3). The provisions of Article 86 § 3 of the Act of 27 July 2001. Law on the System of Common Courts, establish formal prohibitions on a judge's participation in various organisational forms of enterprises and ways of participation in these entities. According to these provisions, a judge may not be a member of the management board, supervisory board or audit committee of a commercial law company, may not be a member of the management board, supervisory board or audit committee of a cooperative, may not be a member of the management board of a foundation conducting business activities, may not hold more than 10% of the shares or interests representing more than 10% of the share capital in a commercial law company, may not conduct business activities on his own account or jointly with other persons, as well as manage such activities or be a representative or proxy in the conduct of such activities. These restrictions also apply to companies under foreign law<sup>35</sup>.

Acts carried out in breach of these provisions are invalid by of law and are not subject to registration in the relevant court registers<sup>36</sup>.

It is rightly pointed out that actions which would give rise to a conflict of interest by way of a judge taking actions in different spheres of the judge's life (both private, professional and public) - may undermine confidence not only in that particular judge, but affect the perception of the judiciary as a whole and consequently cause the judge to be perceived as biased in particular circumstances.

Pursuant to the provisions of § 5 and § 6 of the Statement of Principles of Professional Ethics for Judges - caring for the authority of the office of a judge, including the good of the court where the judge works, as well as the good of the judiciary and the systemic position of the judiciary, a judge should not only comply with the principles that have been regulated in the Statement of Principles of Ethics, but should avoid actions that may affect the dignity of the judicial profession or its impartiality.

Restrictions in this respect are reflected in other applicable legal provisions. In the provision of art.86 of the Act of 27 July 2001. Law on

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<sup>35</sup> The provision of Article 86 § 3 of the Law on the System of Common Courts Journal of Laws 2001 No. 98, item 1070 i.e. Journal of Laws of 2023, item 217.

<sup>36</sup> *Ibidem*, § 4.

the Common Court System, regulates the possibility for a judge to take up additional employment in a teaching, scientific or research position and to take up another occupation or way of earning<sup>37</sup>. While it is possible for a judge to take up employment in scientific and teaching positions if it does not interfere with the performance of the judge's duties, taking up additional professional activities by a judge is possible only if the following conditions are cumulatively met: they do not interfere with the performance of the judge's duties, they do not undermine confidence in the judge's impartiality and they do not detract from the dignity of the judge's office.

If a situation arises in which a judge or an assessor has breached the ethical rules, the Code of Ethics for Judges imposes an obligation on them to take action, without undue delay, to remedy the consequences of that unethical behavior or, if that is not possible, to take action to compensate for the damage caused by that behavior.

It should be emphasized that the Code of Ethics for Judges imposes on judges and assessors a duty to respond to the unethical behavior of other judges and even the power to require other judges to act ethically. In view of this, the failure to respond to the unethical behavior of other judges should also be considered through the prism of a possible breach of the Rules of Ethics by an irresponsible judge.

Chapter Two, which regulates the rules governing the performance of a judge's and an assessor's duties, imposes an obligation to undertake actions without delay and without exposing the parties and the State Treasury to unnecessary costs. In the event of a breach of this principle, where, as a result of an action or inaction of the court, a party's right to conduct and conclude court proceedings without undue delay has been violated, a party is entitled to file a complaint. The rules and procedure of filing and examining the complaint are regulated by the Act of 17 June 2004 on a complaint for infringement of a party's right to have a case heard in preparatory proceedings conducted or supervised by a public prosecutor and court proceedings without undue delay (i.e. Journal of Laws of 2023, item 1725, as amended).

At the same time, the set of rules of professional ethics for judges, specifies the manner in which a judge and a court assessor should behave during the conduct of court proceedings, inter alia:

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<sup>37</sup> The provision of Article 86 of the Law on the Common Court System Journal of Laws 2001 No. 98, item 1070 i.e. Journal of Laws of 2023, item 217.

- when explaining procedural issues to the parties and giving reasons for the ruling, he should do so in a manner that is comprehensible to them (§ 11);
- in the reasons for the decision, the judge should avoid wording which goes beyond the factual need to justify the court's position and which may offend the dignity or honor of litigants or third parties (§ 11);
- should take care for the orderly conduct and proper level of application of the procedures in which he/she participates (§ 12);
- with regard to the parties and other persons involved in the proceedings, the judge should maintain a dignified attitude, be patient, polite, and require of them appropriate behavior (§ 12);
- should react appropriately in the event of inappropriate behavior of persons participating in the proceedings, in particular if they show prejudice on the grounds of race, sex, religion, nationality, disability, age or social or financial status or for any other reason (§ 12);
- should not express his or her opinion in public on pending or impending proceedings (§ 13).

With regard to the attribute of a judge's independence, a judge may not be subject to any influence that interferes with his or her independence (regardless of its source or cause). If a situation arises that prevents an independent judge from exercising his or her office, the judge is obliged to immediately notify this fact to the relevant superior. There may also be a situation in which there are grounds for a judge to apply for exclusion from hearing a case.

In civil procedure, pursuant to Article 49 § 1 of the Act of 17 November 1964 – the Code of Civil Procedure<sup>38</sup>, the court excludes a judge at his or her request or at the request of a party if there is a circumstance of such a kind that it could give rise to a justified doubt as to the judge's impartiality in a given case. In criminal procedure, pursuant to Article 42 § 2 of the Act of 6 June 1997 – the Code of Criminal Procedure, if a judge recognizes that there is a reason excluding him/her by virtue of the Act pursuant to Article 40 of the Code of Criminal Procedure<sup>39</sup>, he/she excludes himself/herself by submitting a written statement to the file, and another judge steps into the case in his/her place. On the other hand, a judge in respect of whom a request for exclusion has been submitted, due to the occurrence of circumstances of such a kind that

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<sup>38</sup> Act of 17 November 1964 Code of Civil Procedure (i.e. Journal of Laws 2023, item 1550, as amended).

<sup>39</sup> Act of 6 June 1997 Code of Criminal Procedure (i.e. Journal of Laws 2022, item 1375, as amended).

could raise a justified doubt as to his impartiality in a given case, may submit a relevant written statement to the file.

The Code of Ethics for Judges specifies, however, that such a request for exclusion from consideration of a case may be submitted by a judge only if there are reasonable grounds for doing so. Abuse of the institution of exclusion of a judge, which may be qualified as a violation of the rules of ethics of the judiciary, is unacceptable.

Chapter three regulates the judge's off-duty conduct. Not only should a judge avoid personal contacts and any economic ties with other parties if they could raise doubts as to the impartial performance of his duties or undermine the prestige and confidence in the judicial office (§ 17), but a judge must also not create even the appearance of disrespect for the legal order by any of his behavior (§ 16).

An additional duty of a judge is to take steps to ensure that his or her next of kin do not perform the activities set out in § 16 and 17 of the Code of Judicial Ethics. The definition of persons next of kin to a judge can be found, for example, in Article 115 § 11 of the Act of 6 June 1997 – Penal Code (Journal of Laws of 2022, item 1138, as amended)<sup>40</sup>, according to which a person closest to a judge is a spouse, ascendant, descendant, sibling, relative in the same line or degree, a person in an adoption relationship and their spouse, as well as a person in cohabitation.

In addition, a judge should properly and diligently manage his or her financial affairs and not undertake financial activities that may be perceived as taking advantage of the judge's own position (§ 18).

Judges are also prohibited from providing legal services or accepting any benefits that may give the impression that they are an attempt to influence him or her. Nor should those closest to the judge accept such benefits.

One of the most recently introduced provisions in the Ethics Rulebook is a regulation mandating restrained use of social media, which means careful, prudent and balanced use of these forms of participation in virtual spaces.

## **4. Conclusion**

In conclusion, it should be emphasized that one of the basic elements of the Body of Principles of Professional Ethics for Judges and Judicial

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<sup>40</sup> Act of 6 June 1997 Criminal Code (i.e. Journal of Laws 2022, item 1138, as amended).



Assessors, is the duty of every judge (and judicial assessor entrusted with the performance of judicial duties) to care for the dignity of the office of judge, in his/her conduct during the performance of official duties, as well as during the time when professional duties are not directly performed. The purpose of the professional ethics of judges is either to serve the good performance of the profession or to safeguard it from the dangers and temptations that threaten it<sup>41</sup>. Judges' ethical behavior and concern for the dignity of the office affect the main function of the courts, which is the administration of justice.

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<sup>41</sup>M. Ossowska, *Socjologia moralności. Zarys zagadnień (Sociology of Morality. Outline of issues)*, Warsaw 1963, p. 49.

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## Zasady etyki zawodowej sędziów i asesorów sądowych

### Streszczenie

*W artykule autorzy zarysowują wybrane aspekty etyczne zbioru zasad etyki zawodowej sędziów i asesorów sądowych. Przedstawiają kluczowe dla kontekstu etycznego działania sędziego pojęcie niezawisłości sędziowskiej i sprawiedliwości w odniesieniu do określonej koncepcji prawa. Prezentują rys historyczny i proces tworzenia instytucji etycznych zawodu sędziego z uwzględnieniem jego ewolucji i wpływu na aktualne brzmienie przepisów oraz przedstawiają aktualnie obowiązujące regulacje, wieńczące proces kodyfikacji zbioru zasad etyki zawodowej sędziów i asesorów sądowych.*

### Słowa kluczowe

*Niezawisłość, sprawiedliwość, etyka, sędzia, wymiar sprawiedliwości, zasady etyczne.*