

The Monitoring Mechanism of the Implementation of the Code of Judicial Ethics Rules in Albania

ERIOLE BRAIMLLARI

MSc., Assistant Professor
Faculty of Law, University of Tirana

Abstract

The mechanism for overseeing the implementation of the Ethics Code is provided in Articles 26-29. From a legal point of view, the Code of Ethics is not an act of binding force, but from a practical point of view the violation of the rules envisaged in it damages dignity and discredit the position and the figure of the judge, bringing disciplinary responsibility for it. In the first variant of 2000, the Code of Ethics provided that the violation of rules of ethics by a judge could bring his attention to be withdrawn by the National Judicial Conference. The Code established the Disciplinary Commission as an organ reviewing cases of ethical violations and the Executive Council of the National Judicial Conference as the body that dealt with and decided on their responsibility. The law stipulates that the body responsible for the disciplinary proceedings of judges is the High Council of Judicial (HCJ). Based on the changes that took place in 2006, the Code of Ethics defines the Ethics Committee as the body that interprets the norms contained therein, giving advisory opinions to the High Council of Justice Inspectorate at the request of the latter. As a novelty of changes to the Code of Ethics in 2006, its interpretation can be made by the Ethics Committee at the request of a judge who may address this body to determine whether a particular conduct is in accordance with the Code of Judicial Ethics.

Keywords: ethics, rules, Code, monitoring mechanism.

INTRODUCTION

The Code of Judicial Ethics was adopted in Albania by the National Judicial Conference in Albania in 2000, recognizing that an independent and honest judiciary is essential to give justice to a democratic society, taking into account inter alia the European Charter on the Statute of Judges and its Explanatory Memorandum prepared by the Council of Europe and adopted in Strasbourg in July 1998. This Code, through its provisions, aims to provide better guarantees for the powers, independence and impartiality of judges and defines the following standards of ethics and conduct professional qualifications that should be respected by judges, the violation of which is the basis for disciplinary action against the judge concerned. In such a case, according to the provisions of the Code¹, which were amended in 2006 at the Annual Meeting of the National Judicial Conference, the Inspectorate of the High Council of Justice may request the Ethics Committee of the National Judicial Conference to issue an advisory opinion on the concrete behavior of a judge against whom an investigation is underway by this inspectorate.

It is worth pointing out that the principles of conduct in the judiciary that transcend the Albanian Code of Judicial Ethics, which are general, have referred to the Bangalore Principles on which a number of international codes are based, although it should be said that not all the countries have adopted ethical codes for judges, such as France, where the High Council of Magistrates issued in 2003 a summary of deontological rules that should be applied by both judges and prosecutors but without naming the code². This has to do with the fact that these rules of professional conduct develop over time and should not be hardened in an ethical code. Even the Federal Republic of Germany does not have a Code of Judicial Ethics, which is no longer considered a code of conduct. References such as judges should be ethically behaved in the Basic Law³, the German Judicial Act⁴, and the relevant court acts of the German Land.

¹ Code of Judicial Ethics, Article 27

² Rapport de la commission des lois du Sénat no 176 du 24 janvier 2007.

³ Basic Law of the Federal Republic of Germany dated on 8 May 1949, last amended on July 2014, Article 92 and Article 97. For more information see: www.juris.de and <http://www.gesetze-im-internet.de>

Bangalore's principles seem to be the basis for a set of codes of judicial ethics. Through their analysis it is noted that the provisions contained in the Albanian Code of Judicial Ethics are the same as those of the Texas Code of Conduct, Ohio, and beyond. We can mention the innovation, the prediction that the Indigenous State Code provides that a judge can not seek direct funding for an organization, unless he can promote contributions to such an organization or entity, but only from members of the judge's family, or judges over whom the judge does not exercise the supervisory authority. The Albanian Code envisages the terms of detention in the organization, but does not express such a prediction. Activities allowed under the Indiana Code generally include activities sponsored by or undertaken on behalf of non-for-profit public or private educational institutions, and other NGOs⁵.

Mechanism for monitoring the implementation of the Code of Ethics

The mechanism for overseeing the implementation of the Code of Ethics is provided in Articles 26-29. From a legal point of view, the Code of Ethics is not an act of binding force, but from a practical point of view the violation of the rules envisaged in it damages dignity and discredit the position and the figure of the judge, bringing disciplinary responsibility for it⁶. In the first variant of 2000, the Code of Ethics provided that the violation of rules of ethics by a judge could bring his attention to be withdrawn by the National Judicial Conference. The Code established the Disciplinary Commission as an organ reviewing cases of ethical violations and the Executive Council of the National Judicial Conference as the body that dealt with and decided on their responsibility.

The law stipulates that the body responsible for the disciplinary proceedings of judges is the HCJ. With the changes that took place in 2006, the Code of Ethics defines the Ethics Committee as the body that interprets the norms contained therein, giving advisory

⁴ German Judicial Act, 19 April 1972, last amended on 5 February 2009, Art. 38-43

⁵ Indiana Code of Judicial Ethics, adopted on March 1, 1993 and amended on January 1, 2011. See also: https://secure.in.gov/judiciary/rules/jud_conduct/jud_conduct.pdf

⁶ Boxing, A., Vata, V., (2014) Manual of the Code of Judicial Ethics, p. 13

opinions to the High Council of Justice Inspectorate at the request of the latter. As a novelty of changes to the Code of Ethics in 2006, its interpretation can be made by the Ethics Committee at the request of a judge who may address this body to determine whether a particular conduct is in accordance with the Code of Judicial Ethics.

Elements of ethics have been raised in the legal status of the new law no. 96/2016 "On the Status of Judges and Prosecutors". Article 3 of the law provides that the magistrate should not hold inappropriate contracts. Expressing "inappropriate" contacts is very general and creates legal uncertainty. It can serve as a pressure for judges. The constitutional court in 2017 abolished this part of the provision, considering it unconstitutional. Article 4 of this law provides that the magistrate shall take all reasonable measures to maintain the dignity of the function, including the activities performed even when the magistrate is not exercising official functions. The Magistrate takes all measures to protect and strengthen:

- a) the dignity and standards of its function;
- b) the reputation of justice and public confidence in the judicial and prosecutorial systems;
- c) the status of magistrates' function.

The councils publish standards of ethics and rules of conduct. This Law, in addition to the professional skills, provides that in judging the judges, ethics and commitment to the professional values of the judge and prosecutor are taken into account (Article 71 / c of the law). With Justice Reform Laws, the High Judicial Council has been granted the right to adopt the rules of judicial ethics. Article 83 of Law no. 115/2016 dated 3.11.2016 "On the governance bodies of the justice system" provides that the High Judicial Council is responsible for adopting standards of judicial ethics and rules of conduct of judges and for monitoring their respect. In particular, the Council exercises the following duties: a) publishes standards of ethics and rules of conduct of judges; b) review the rules from time to time and, where necessary, amend them; c) Analyze the level of implementation / compliance of ethics rules and publicly report on the findings.

According to the Bangalore Principles, due to the nature of the judicial service, national justice systems should adopt effective measures to provide mechanisms for the implementation of these principles if they do not already exist in their jurisdictions. The

Judicial Integrity Group is committed to preparing a formulation of procedures for the effective implementation of the Bangalore Judicial Principles. As with the principles themselves, these procedures are not intended to be seen as mandatory for the national justice system, but will be provided as guidelines and formative standards.

The Albanian Code of Ethics also stipulates in its provisions that judges and administrative officials of the judicial power should take measures to regulate their relations and activities in accordance with the rules of the code. The code leaves full discretion to this right, serving as a counselor to them. I think problems arise here, because in itself the Code of Ethics still has some vague elements. The Code of Judicial Ethics does not contain any concrete sanctions in the event of non-enforcement or violation of it.

Also, Article 4 of the Code of Ethics provides that: "During his or her work the judge shall avoid any inappropriate behavior that is inconsistent with the law, code of ethics, as well as actions that may harm or cast doubt on the figure his moral ". But the code does not give any information about those behaviors or actions that conflict with ethics. I think the code should be clearer in this regard. On the other hand, according to the Bangalore Principles, although the principles of judicial behavior are intended to be binding on judges, it is not foretold that any alleged violation by them should lead to disciplinary action. Not every failure of a judge to respect the principles results in abuse of office (or misconduct). If the disciplinary measure is, or is not, it may depend on other factors, such as the seriousness of the violation, whether there is a recurrence or not of inappropriate behavior, and the effect on the judicial system as a whole. What should be addressed in the Code of Ethics provision is precisely the definition of the term "inappropriate behavior". Based on the Bangalore Principles, some of the inappropriate behaviors that a judge should avoid while exercising his function are⁷:

1. Lack of dignity in behavior;
2. Relationships with parties in the process, favoring or appearing to favor certain persons;
3. Influence on the interests of family;

⁷ New Mexico Judicial Ethics Handbook, April 2011; Commentary on the Principles of Bangalore.

4. Acceptance of gifts, favors or other benefits due to the exercise of his duties by him or his family members.

Based on the above treatment, I think the code would need to contain these elements to be as clear as possible and not to create gaps.

Disciplinary violation under Article 101 of the Law "On the Status of Judges and Prosecutors" (now repealed) provides that: disciplinary violations and issues of activity also constitute c) any other case that unjustifiably carries out acts and conduct inappropriate in the exercise of office or abroad, which discredit the position and the image of the magistrate or which seriously undermine public confidence in the judicial system or prosecution ". This provision, albeit with partial changes, continues to be similar to Article 32 of the previous law, according to which it constituted a disciplinary offense "acts and conduct that seriously discredited the position and the figure of the judge. According to Article 102 of the same law constitutes a disciplinary violation in particular of the magistrates' acts and attitudes as follows: repeated or severe violation of the rules of solemnity, rules of conduct in relations with the participants in the proceedings, prosecutors, lawyers, witnesses, other subjects involved in the process, as well as with the chairman, colleagues and judicial administration personnel; Also constitutes a disciplinary violation of non-notification by the magistrate of the court or prosecutor's office and the Council, as well as competent bodies, according to the law, for interferences or the exercise of other forms of improper influence by lawyers, political officials, public officials and other subjects (Article 102 (3) (c) of the law). The constitutional amendments of 2016 brought as a novelty the provision of the Constitution of cases where a judge is disciplinary under the law. The Constitutional provisions stipulate that: "*A Judge shall be dismissed by the High Judicial Council when: a) commits serious professional or ethical violations that discredit the position and the figure of a judge during the exercise of his duty (...)*"⁸ The Code of Ethics, and that of the Constitution do not provide sanctions stemming from the violation of its rules, which create place for a possible change.

⁸ Constitution of the Republic of Albania. Article 140/2 a, as amended by law no. 76/2016, dated 22.7.2016.

Predictions in the context of improving judicial ethics

Regarding the upgrading of the Code of Judicial Ethics, based on the Bangalore Principles, I think some provisions of the Code should be improved, expanded, particularly in those rules whereby ethical violations and applicable sanctions are foreseen. It would be useful to set the exact sanctions, which should be effective and in full compliance with the guarantee of the behavior of judges in respect of ethical rules. The author appreciates that the Code of Ethics should be broadened to international standards and those applicable by the EU and to be analyzed and specified with detailed details of the issues that are governed by it.

Referring to the Code, the Commission has only an advisory character. It exercises its role only if such a thing is required by the HCJ or by the judges. It follows from the practice that the HCJ has solicited opinions only in cases of promotion of judges and there is no case for judges to seek an opinion from the Commission. Giving such limited authority has made the Commission not to play the proper role. With the new legal changes of 2016, the power to initiate disciplinary proceedings against a judge, including ethics rules, belongs to the High Inspectorate of Justice. The Ethics Advisor is another innovation of the Justice Reform. The Ethics Advisor gives advice at the request of the appropriate judge for the most appropriate behavior inside and outside the court, on controversial issues of ethics. It continuously compiles, publishes and updates a questionnaire-informative manual on ethics dilemmas. For certain issues related to the behavior of judges in general, eg for non-individual cases, the counselor addresses the High Judicial Council for opinion (Article 83/4 of the law).

CONCLUSIONS AND RECOMMENDATIONS

The Code of Ethics contains rules on the independence and impartiality of judges, the manner of exercising judicial functions and other non-judicial activities. With the new legal changes of 2016, the Code of Judicial Ethics has remained ineffective after the body that approved it was abolished by the National Judicial Conference. Under these conditions, a new Code of Judicial Ethics is needed which should reflect the principles of Bangalore and be more concrete in terms of ethical violations. With the Justice Reform, the task of observing the

implementation of the ethics rules has been passed to the High Inspectorate of Justice, which has the right to initiate a disciplinary process in the High Judicial Council when it notes violations of ethics by judges. Another innovation is the Ethics Advisor, who is a Supreme Court judge elected to this post by the High Judicial Council. I think it would be better if the ethics council consisted of a panel of judges rather than a single judge.

The lack of sanctions in the Code of Judicial Ethics is a flaw to be taken into account in the eventuality of the new Code, except for the above, thus avoiding the possibility of confusion in practice, this being seen in the light of constitutional changes dated 22.07.2016, more specifically in Articles 128, 140 and 149 / c, and the legal ones analyzed above, where disciplinary responsibility relates not only to serious professional and ethical violations. I think disciplinary sanctions should be separated from ethical sanctions. By their very nature, ethical sanctions are and should be easier. If a violation is so severe that it may lead to the dismissal of a judge, it is understandable that it is a violation of the law and not simply a violation of the rules of professional ethics.

REFERENCES

1. Basic Law of the Federal Republic of Germany dated on 8 May 1949, last amended on July 2014.
2. Boxing, A., Vata, V., (2014) Manual of the Code of Judicial Ethics.
3. Code of Judicial Ethics, Albania.
4. Constitution of the Republic of Albania, as amended.
5. German Judicial Act, 19 April 1972, last amended on 5 February 2009, Art. 38-43
6. Indiana Code of Judicial Ethics, adopted on March 1, 1993 and amended on January 1, 2011.
7. New Mexico Judicial Ethics Handbook, April 2011; Commentary on the Principles of Bangalore.
8. Rapport de la commission des lois du Sénat no 176 du 24 janvier 2007.

Websites:

- https://secure.in.gov/judiciary/rules/jud_conduct/jud_conduct.pdf
- www.juris.de
- <http://www.gesetze-im-internet.de>